

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

February 25, 2003

1:30 p.m.

MEMBERS PRESENT

Senator Con Bunde, Chair
Senator Ralph Seekins, Vice Chair
Senator Gary Stevens
Senator Bettye Davis
Senator Hollis French

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 47

"An Act extending the termination date of the Board of Nursing."

MOVED SB 47 OUT OF COMMITTEE

SENATE BILL NO. 48

"An Act extending the termination date of the Board of Certified Direct-Entry Midwives."

MOVED SB 48 OUT OF COMMITTEE

SENATE BILL NO. 72

"An Act extending the termination date of the Regulatory Commission of Alaska; and providing for an effective date."

HEARD AND HELD

PREVIOUS ACTION

SB 47 - No previous action to consider.

SB 48 - No previous action to consider.

SB 72 - No previous action to consider.

WITNESS REGISTER

Ms. Amy Seitz

Staff to Senator Wagoner
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 47 and SB 48 for the sponsor.

Mr. Rick Urion, Director
Division of Occupational Licensing
Department of Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800

POSITION STATEMENT: Supported SB 47 and SB 48.

Ms. Nancy Sanders, Chair
Board of Nursing
Department of Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800

POSITION STATEMENT: Commented on SB 47 and SB 48.

Ms. Pat Davidson
Legislative Audit Division
Alaska State Legislature
PO Box 113300
Juneau, Alaska 99811-3300

POSITION STATEMENT: Commented on audit of SB 47, SB 48 and SB 72.

Ms. Kaye Kanne, Executive Director
Juneau Family Birth Center
3225 Hospital Dr.
Juneau AK 99801

POSITION STATEMENT: Supported SB 48.

Commissioner Will Abbott
Regulatory Commission of Alaska
701 W 8th Ave.
Anchorage AK 99501

POSITION STATEMENT: Supported SB 72.

Mr. Wesley E. Carson
Alaska Communication Systems
600 Telephone Ave.
Anchorage AK 99503

POSITION STATEMENT: Opposed SB 72.

Ms. Marie Darlin, Coordinator

Capital City Task Force
AARP

Juneau AK 99801

POSITION STATEMENT: Supported SB 72.

Mr. Eric Yould, Executive Director
Alaska Rural Electric Cooperative Association (ARECA)
703 West Tudor Road Number 200
Anchorage, Alaska 99503

POSITION STATEMENT: Commented on SB 72.

Ms. Dana Tindall, Sr. Vice President
Legal, Regulatory and Governmental Affairs
GCI

2550 Denali Street Suite 1000
Anchorage, AK 99503

POSITION STATEMENT: Supported SB 72.

Mr. Mike Felix, President
AT&T Alascom
210 E. Bluff Drive
Anchorage AK 99501

POSITION STATEMENT: Commented on SB 72.

ACTION NARRATIVE

TAPE 03-6, SIDE A

SB 47-EXTEND BOARD OF NURSING
SB 48-EXTEND BOARD OF MIDWIVES

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at 1:30 p.m. and announced SB 47 to be up for consideration. All members were present.

MS. AMY SEITZ, staff to Senator Wagoner, sponsor of SB 47, said the purpose of SB 47 is to extend the sunset date of the Board of Nursing from June 30, 2003 to June 30, 2011. She explained:

The Board of Nursing was established to insure the protection of the public's health, safety and welfare. The Board accomplishes this by setting a minimum of education and experience an individual needs to become a licensed professional and also by investigating any complaints against these professionals. The Division of Legislative Audit reviewed the board and concluded that due to their success in carrying out these

responsibilities, the termination date should be extended until the year 2011.

CHAIR BUNDE said the Division of Legislative Budget and Audit (LBA) made two recommendations: to develop procedures to notify the Board of Pharmacy of changes in the status of prescription authority to various nursing licensees; and to develop a self-evaluation monitoring check list for organizations that utilize certified nursing aide training programs. He asked if those recommendations had been addressed.

MS. SEITZ replied that the Board is working on them now.

SENATOR FRENCH asked if those two recommendations would be the subject of later legislation.

MS. SEITZ replied that she thought so.

MR. RICK URION, Director, Division of Occupational Licensing, said he supported both SB 47 extending the Board of Nursing and SB 48, which extends the Board of Midwives.

CHAIR BUNDE asked if the Board was making progress on meeting the recommendations of LB&A.

MS. NANCY SANDERS, Chair, Board of Nursing, said that both recommendations were administrative procedures and were being addressed by the board.

SENATOR SEEKINS asked if these are relatively minor things that could be taken care of administratively.

MS. SANDERS replied, "Absolutely."

SENATOR SEEKINS said that it shouldn't take a meeting of the Board of Nursing to accomplish.

MS. SANDERS agreed that it could be taken care of in-house fairly quickly.

MS. PAT DAVIDSON, Director of LBA, agreed that no statutory fixes are necessary. The eight-year extension of the Board of Nursing takes into account the minor operational deficiencies.

CHAIR BUNDE said there has been an increase in applicant for licensure. He asked if that increase would begin to address the nursing shortage.

MS. SANDERS replied that they hope so.

SENATOR SEEKINS moved to pass SB 47 from committee with individual recommendations and its zero fiscal note. There were no objections and the roll was called. SENATORS DAVIS, FRENCH, STEVENS, SEEKINS and BUNDE voted in favor therefore SB 47 was passed from committee.

CHAIR BUNDE announced SB 48 to be up for consideration.

MS. SEITZ, Staff to Senator Wagoner, sponsor of SB 48, explained that it extends the sunset date for the certified direct entry midwives to 2007. They have done a good job according to LB&A.

MS. KAYE KANNE, Executive Director, Juneau Family Birth Center, said she is a Juneau midwife and served on the Board of Certified Direct Entry Midwives for eight years. She testified that the board had done a good job of writing and implementing regulations and continues to keep them up to national standards. She pointed out that Alaska certified direct entry midwives delivered almost 10 percent of Alaska babies last year. That number has grown considerably since the board's inception in 1992. In the Mat-Su Borough midwives delivered 25 percent of the babies, in Fairbanks 12 percent of the babies and in Juneau 15 percent of the babies. Nationwide, midwives attend the births of 5 percent or less. She said the midwives have delivered the babies with really good outcomes.

SENATOR SEEKINS moved to pass SB 48 from committee with individual recommendations and its zero fiscal note. SENATORS DAVIS, FRENCH, STEVENS, SEEKINS and BUNDE voted in favor, therefore SB 48 passed from committee.

SB 72-EXTEND REGULATORY COMMISSION OF ALASKA

CHAIR BUNDE announced SB 72 to be up for consideration but that he did not intend to pass the bill from committee during this hearing.

MR. WILL ABBOTT, Commissioner, Regulatory Commission of Alaska (RCA), said the RCA's mission statement is:

To protect the consumer interests by insuring affordable, reliable utility and pipeline services and insuring that the utility and pipeline infrastructure is adequate to support the community needs.

He was pleased that the Administration had put forward a four-year extension for the RCA and said an extension is in the best interests of the state.

MR. WESLEY E. CARSON, Alaska Communication Systems, told members:

I am here today to emphasize the importance of deferring any action to reauthorize the RCA until the state has articulated a clear set of telecommunications policies to guide the commission. Although we've long advocated for the development of such policies to guide the RCA, this issue is of even more critical importance today. On February 20, the Federal Communications Commission issued its long awaited rules to revise network unbundling obligations for competition in the local telephone market. In making this decision the FCC took the unprecedented step of delegating to state commissions broad regulatory discretion that had previously been thought to be only exercised by federal authority. This delegation will allow the RCA to now unilaterally determine whether incumbent local telephone companies like ACS must continue to provide elements of their networks to competitive carriers at below-cost prices. As the FCC has failed to provide specific instructions to the states, it's now imperative that the legislature act to develop appropriate telecommunications policies to guide the RCA in its decision-making responsibilities going forward.

There are many telecommunications policy issues that require your attention. The report to the Senate appointees to the Task Force on operations of the RCA submitted on January 30 by Darby Associates makes some very relevant points including that the regulators need to fashion rules designed to encourage investment, that the RCA should review the adequacy need and rationale for legacy regulations based on an assumption of incumbent market power and that it is time to explore a wide range of the less regulatory options and find ways to substitute market forces for regulation.

The RCA has currently demonstrated a propensity for more regulation as the means of promoting competition

rather than allowing market forces to govern. The Darby Report quite correctly concludes that 'application of old regulatory models based on market conditions that no longer prevail does a gross disservice to the people of Alaska.'

As you may know, Anchorage holds the distinction of being the most competitive local telephone market in the country. Although open to competition for a much shorter period of time, Fairbanks and Juneau are rapidly moving in a similar direction. In all three of these markets, the RCA has unfairly mandated that the competitor be allowed to use the ACS networks at rates that are below our cost. The RCA has also taken an activist role in terminating the rural exemptions that Congress authorized to insure that the nation's smaller markets remain viable, even terminating the rural exemption in locations as small and costly to serve as Nenana and Seldovia. The net result of these regulatory actions has been to compromise the company's ability to attract and commit capital. This is clearly not just an ACS opinion, but rather a fact that's becoming broadly understood. As you are aware, the State of Alaska contracted with Bering Point, formerly KPMG Consulting, to produce the Telecommunications Policy Study and Assessment for the State of Alaska, which was submitted to the Department of Administration in November 2002. The report concluded that the local telephone competition, which forces incumbent local telephone companies to lease their network to competitors at the low cost pricing, 'potentially imposes a financial burden on incumbents and may artificially support competitors at the same time.'

The RCA, by means of the interconnection terms it imposed on ACS, has done exactly that. A recent press release by Standard and Poors addresses the downgrade of ACS's corporate credit rating as being, 'based on competitive pressures that have materially weakened ACS's business profile, impaired operating performance and resulted in credit measures.'

The press release further explains, 'The rating on ACS reflects the company's position as the leading local exchange carrier in Alaska offset by heavy competition in the local retail access line business due to low

regulatory, mandated, local resale loop rates to the company's local network a narrow growth market with limited growth opportunities and high acquisition capital spending related debt levels.'

Clearly, we're not alone in our judgment that the RCA has impaired ACS's ability to raise capital. The state must assure that the RCA does not destroy the economic viability of Alaska's largest local telephone company providing the last mile connection to three out of four of Alaska's consumers. ACS urges the Legislature to move cautiously in your deliberations on the RCA extension and to properly sequence your decisions. In addition to a general review of the RCA structures and procedures, Alaska's policy makers must carefully review the commission's ongoing role in the administration of the Telecommunications Act of 1996. This was an important consideration at the beginning of this legislative session. It's been magnified considerably by the FCC's decision to delegate further authority to the states on February 20. As the RCA goes forward to accept the broad new delegation it has received from the FCC, it should have the benefit of clear policy guidance that's lacking in the FCC's ruling.

Then once the legislature has provided that guidance, the second matter of reauthorizing the commission can be decided. On behalf of Alaska Communications Systems, Mr. Chairman, I thank you for this opportunity to comment.

CHAIR BUNDE thanked him for joining the committee.

1:52 p.m.

SENATOR SEEKINS asked if the Darby Report is available to the public.

MR. CARSON replied that it is and that he had copies for committee members.

SENATOR SEEKINS said he also wanted to see the Telecommunications Policy Study and the FCC report. He asked if ACS put a new line in his house in Anchorage and it cost \$10, whether [ACS] would be required to lease it to their competitor for less than that.

MR. CARSON replied yes and explained that in Fairbanks they have imbedded costs, which is an historical cost based on audited records. For 2001, the cost was \$33.51 per month per line. The Telecommunications Act suggests that ACS look forward at what it would cost to build that same line today (rather than taking an historical look). Some of the FCC rules have suggested that the commissioners look at an efficient hypothetical network. That rate would be in the area of \$36. The forward-looking economic rate that was established for Fairbanks by the RCA was \$19.19. So, on average, when a new subdivision goes in, it costs ACS around \$30 plus to actually build and maintain that on a monthly basis whereas must lease it to the competitor under mandate by the RCA at \$19, which gives a cost of goods sold advantage to the competitor.

SENATOR SEEKINS asked how they could go to the capital markets and borrow money on that model.

MR. CARSON said that is the problem they are wrestling with. The Darby Report strongly recommends that incentives to invest should be a key policy of the State of Alaska. If you take away the return on investment, there is no incentive to continue to invest.

CHAIR BUNDE asked if he thought the Telecommunications Act is the problem and that the RCA is simply applying the law.

MR. CARSON replied that broad guidelines had been issued relative to forward looking economic cost pricing (TELRIC), but not specific to any one state. The states have discretion to determine how the elements should be priced, such as the local loop or telephone that connects a person's home or business to the central office.

He believes that the intent of Telecommunications Act was to use some mechanisms to open markets to competition initially. Once it is opened, as in Anchorage where they have barely 50% of the market, those kinds of considerations have to be changed and it has to be a policy driven change.

SENATOR SEEKINS asked if ACS had presented that case to the RCA, but still felt compelled to persist with that regulation.

MR. CARSON replied yes and elaborated that ACS is involved in a proceeding to try to get new rates established for Anchorage.

SENATOR FRENCH asked how many employees ACS has.

MR. CARSON replied 1,150.

2:02 p.m.

MS. PAT DAVIDSON said Legislative Budget and Audit recommended a two-year extension given the significant statutory changes that were put into place last year. Most of LBA's recommendations were the same as in prior years and were operational in nature. A twelve-month time frame didn't give enough time for the agency to take actions that were required to fix them. She suggested that the RCA come to the legislature if they need some clarification.

MS. MARIE DARLIN, AARP, stated support for SB 72. She said people in this state need to have an RCA to go to with their utility problems. She didn't see how the RCA could get everything done by June 30. She concluded, "Doing nothing would not be a good way to go."

MR. ERIC YOULD, Executive Director, ARECA, said he was also speaking for Golden Valley, Chugach Electric, Anchorage Municipal Light and Power, Homer and Seward. He explained that his members decide what issues are important to them so that he can articulate those issues to the legislature. ARECA has different problems than the telephone utilities - more in the area of getting the job on time and cost to the general public. Recently, the Chugach rate case took more than two years to complete and cost the utilities \$5 million. "That's much too much process, too much regulation, too much time."

MR. YOULD said as a result of the special session last year, his utilities were looking to the task force that was appointed to address some of the problems, but that task force was never put in place. His group tried to come up with some statute changes they could eventually give to the task force that would make the agency more efficient and passed Resolution 3-17, which basically calls for a one-year sunset extension. It also calls for a white paper that further articulates some of their concerns with the RCA and contains a one-page summary of things they would like to see. The Governor saw the list and dealt with some of the issues administratively. The bottom line is that LB&A recognizes the need for a two-year extension and the governor is asking for four. He said ARECA is willing to work for a four-year extension if there is a sincere effort to recognize the problems of the electric utility and adopt some of

the changes it feels are necessary. They do not want the RCA to go away.

MS. DANA TINDALL, GCI, said she supports extending the RCA for a full four years.

Since last year there have been two new appointments, the legislature reaffirmed the RCA for one year with timelines for the proceedings that had yet to play out to see how well they've worked. Many of those timelines, by the way, were requested by ARECA. GCI believes that it is now time to trust the RCA to deal with the very complex issues before it and let it get on with business.

Telecom has very complicated issues. To get an idea of how complicated they are, all you have to do is watch Wall Street and watch them try to predict what the FCC was going to do last week. Folks' stocks were rising and falling on the predictions and most of them were wrong. The FCC did make a decision; they did not put out an order. I will get to that in a minute.

At any time the RCA has a large number of proceedings before it. In our industry there are specific federal rules and regulations that the RCA is required to follow for the pricing of network elements that competitors lease. There are also specific rules on the availability of those network elements. That has not changed under the new FCC ruling.

What the FCC did is they divided up the market. For the very large, high capacity broad band lines (DSL) there is a nationwide presumption that those lines will not have to be made available any longer by the incumbent local telephone company to a competitor. The state commissions have 90 days to rebut this national presumption. This is not an issue as far as I know for our state commission because GCI does not lease any high capacity lines from ACS, nor do we plan on it. For the most part, we have built all of our own network except for the last line to the home, the copper residential and small business line and soon we will be off that and we will be on our own cable network. For those copper residential lines there has been no change and the FCC did not take up pricing of those lines.

For the switching element, the residential switching element, the FCC has said there is a nationwide presumption that the incumbent telephone company must continue to make those available. These are the guidelines Mr. Carson said are needed. They are there. The FCC has said there is a presumption there and the state commissions have nine months to determine whether or not that national presumption, that burden of proof, if you will, is consistent with what they are experiencing in their own state. It sounds very complicated.

GCI doesn't lease the switching element from ACS. It's not a big issue. I'm sure the RCA will run a proceeding. They're required to run a proceeding, but it won't change anything about the competitive landscape in Alaska. GCI leases the last loop to the home for the next two to three years. After that we will be on our own network. We are investing in telecommunications in Alaska, in network infrastructure.

Mr. Carson talked about the pricing of those lines. The FCC hasn't taken that up in this proceeding. They are scheduled to take it up next year. There are very specific rules and regulations for how those lines are to be priced. It's called total element long run incremental cost (TELRIC). Economists know that the long run is a hypothetical network, the most efficient and least cost network and that's what those lines are required to be priced at by the FCC. There are all kinds of national models and all kinds of consultants getting rich building models to do this pricing structure. The RCA is required to run an arbitration to determine the inputs for those models and that's all. Other than that, they are required to price at TELRIC. It's all very complicated; it's a complicated industry. It would be difficult, I think, for the legislature to try to stand in the place of the RCA and try to make those decisions itself. We have to have a state commission to make those decisions and for the stability of the industry.

As far as where ACS's loop costs have resulted in the pricing of those...

TAPE 03-6, SIDE B

MS. TINDALL continued:

The ACS is required to charge us, GCI, for those loops, are high from a nationwide perspective. So, although, Mr. Carson was able to cite one bond rating report, if you look state by state at the different loop rates, ACS prices are actually quite high. I'm happy to answer any questions you have.... For the stability of the industry, because these issues are so complex, because a state regulatory commission is necessary to protect consumers, GCI respectfully requests the legislature to extend it four more years.

CHAIR BUNDE asked her to explain what switching elements are.

MS. TINDALL explained:

The local telephone network is much more complicated than simply the copper line to the home. When Mr. Carson gives you numbers about what ACS costs are versus GCI's cost, they are figuring out their total cost for the network on a per customer basis and they're simply allocating the cost of the loop that GCI pays to them as GCI's cost. That's incorrect.

In order to carry a telephone call, there is a switch; there is feeder cable throughout the community that branches out into the networks to nodes and then from there, there's loops that go into the home. There's also all kinds of overhead and signing customers up and customers used to pay every time they called their monopoly telephone company - a \$5 service charge every time they called them. We pay those now to ACS in the form of recurring charges. There are all kinds of costs involved. The switching element was an important cost for the FCC and what the FCC was concerned about, because that turns out to be a big national issue. It's not an issue in Alaska because GCI does not lease that element. We have all of our own switches and we have all of our own feeder cable. It's fiber and we have everything, all of our own nodes, except for the last loop to the home. So, the FCC decision was pretty much about that switching element.

I don't think AT&T leases the switching element. I believe they are on resale, but they can speak to that when it's their turn.

SENATOR SEEKINS asked if she was talking about the two new members to the commission when she mentioned two new appointments.

MS. TINDALL replied yes, but they supported the RCA last year so the two new appointments are not the reason they support the commission this year. She added, "GCI supports the RCA because we believe it's doing a good job."

SENATOR SEEKINS asked who the two appointments are.

MS. TINDALL replied Dave Harbour and Mark Johnson. There are five commissioners altogether.

SENATOR FRENCH asked how many employees GCI has.

MS. TINDALL replied that they have about 1,200.

MR. MIKE FELIX, President, AT&T Alascom, told members:

As you know, AT&T Alascom has a long history of providing telecommunications services to the state of Alaska, in fact, the longest history of any interexchange carrier in the state today. It is from those very roots and having witnessed the broad changes in technology and market shift over the years that we would like to offer our perspective and respectfully make some requests for the legislature to consider.

It seems to me that both telecom service providers and policy-makers alike have a two-fold obligation to the constituents of this state. Those are ensuring that basic telecom services remain affordable to everyone in the state and providing a regulatory environment that fosters continued investment in the state telecom infrastructure, thereby ensuring that advanced services will reach to all parts of the state.

In the early days, Alascom was the only long distance carrier in Alaska and as such the regulated monopoly. Regulations were put in place to ensure that Alascom did not misuse its monopoly power in pricing its

services to consumers. In 1991, when intrastate long distance competition was initiated, additional regulations were developed to ensure that Alascom did not misuse its monopoly power to subvert competition as well. At the same time new entrants to the long distance market were granted broad and significant freedoms and even though the market was highly competitive in 1995 when AT&T bought Alascom, for the most part, it bought a company regulated as though it were a monopoly. As we all know, the regulations governing utilities with a legal monopoly work in two directions. They protect the consumer from unreasonable prices on one side of the equation and they ensure a reasonable return for the regulated entity on the other side. Without a reasonable return, companies do not invest and services, therefore, do not advance.

Many of the regulations, which restrict AT&T Alascom today, are vestiges of that monopolistic environment I spoke of previously only in this highly competitive marketplace they do not serve as an incentive for investment. They only serve to add cost and thereby provide a disincentive for investment. As far as protection of the consumer on prices, we have almost 20 years of empirical evidence in the long distance market in the U.S. to show that competition serves the consumer well. In 1984, when AT&T was first broken up, the average discounted corporate minute was around \$.45. Today, the average discounted corporate minute is under \$.045. That's a whole order of magnitude swing and yet, during that same time period the long distance industry went from approximately \$9 to \$10 billion to about \$90 to \$110 billion in revenue. It was deregulation of the industry and the management of competition that spurred investment and in 1995 when AT&T fell below 60 percent market share in the Lower 48, the FCC ceased regulating AT&T as the dominant carrier and deemed the market for long distance as competitive.

And yet, here in Alaska where AT&T Alascom now has 42 percent of the long distance business and shrinking and our largest competitor, GCI, has 46 to 48 percent of the long distance business and growing, AT&T Alascom is still considered the dominant carrier despite a four-year attempt to get relief from this

regulation at the RCA. This regulation adds substantially to our cost structure for tracking, journalization and reporting. It also adds regulatory process that our competitors don't have that keeps us from being competitive in the marketplace. The whole situation really begs a definition for dominance. Additionally, with the increased costs and inability to compete effectively because of outdated regulations, our ability to attract capital and invest in the network is severely hamstrung.

I believe that over the next 12 to 18 months, this state must wrestle with some difficult issues of telecom regulation. At stake is the very survival of an infrastructure that's struggling to keep up with the rest of the country. In a true free market, there is less regulation, not more, and competition, not regulation, becomes the force to shape the market. I would ask you to carefully and thoughtfully consider the market dynamics at work here and the definition of broader market issues such as dominance and competition. I would also ask you to carefully consider your role in mandating an environment that has less regulation, not more, in order to create and maintain incentives to invest in the modern telecommunications infrastructure that all Alaskans desire.

As you consider SB 72 reauthorizing the RCA, please know that AT&T Alascom could support legislation, which would extend the RCA for another 2-4 years, however, as we stated last fall, only if the RCA is truly committed to bringing about regulatory reform. Status quo is not an option, if you intend to have a healthy, competitive telecom market and infrastructure in Alaska. We are in the process of drafting appropriate language to assist the legislature in defining dominance and will be submitting it for your consideration shortly.

SENATOR FRENCH asked if there are other long distance competitors in the state besides GCI and AT&T Alascom.

MR. FELIX replied yes and that there are other smaller interexchange carrier competitors in rural Alaska and ACS.

SENATOR SEEKINS said it sounded like he didn't think the RCA did a wonderful job and didn't deserve a four-year extension.

MR. FELIX said that was right. He thought the RCA needed market definitions as guidelines to enact policy.

SENATOR FRENCH asked if it is true that the FCC is going to defer to the states on more issues and that dominance was one of them.

MR. FELIX replied that dominance was addressed in the 1990s and he thought the process they used should be revisited.

SENATOR STEVENS asked what the implications were for Alaska if the disincentive for investment continued.

MR. FELIX replied that the capital budget within AT&T 5 to 6 years ago was \$12 billion per year and that has been cut to \$3 billion. Separate subsidiaries within AT&T now contend with each other for those capital dollars. If he can't show how to earn a return on the dollars, they go elsewhere within the AT&T network where they can own sufficient return.

SENATOR STEVENS asked him to explain what was included in capital investment.

MR. FELIX elaborated that when AT&T bought this network in 1995, it was not young. A new satellite was built in 2000 for \$160 million and that did not include an aging ground station network, which will require substantial capital investment over the next few years to upgrade and to reach rural Alaska.

CHAIR BUNDE asked Mr. Abbott to address the concern of timeliness.

MR. ABBOTT responded that had been a problem in the past and the RCA has made considerable effort to speed up the whole process. At the same time, the RCA is trying to beat down its infamous backlog. When the current commission began, it had over 800 dockets waiting for them. They are now down to 203 and that's probably as low as they are going to get. The case that Mr. Yould brought up is not as simple as some people would like to make it. A lot of parties wanted to take longer, but he is sensitive to providing due process to all the parties that are interested. The RCA deals with many things on a much more rapid basis, but they need to work on how to do the process of discovery now that they are caught up.

CHAIR BUNDE said he understood and asked if there is anything the legislature could do to help expedite the process and reduce the backlog.

MR. ABBOTT replied that he would like to wait to see how the rules they implemented last year work.

CHAIR BUNDE asked what the RCA does to deal with outdated regulations.

MR. ABBOTT replied that the RCA has two ways of dealing with them. First, if a commissioner sees things that need to change, the commission can start a process. Second, someone from the public can ask for changes to the commission's regulations. It's a public process and the RCA could probably work faster without it, like the legislature, but the RCA wants adequate comment from everybody who is concerned.

CHAIR BUNDE said it appears that the RCA is applying current FCC regulations, which pleases some telephone utilities and displeases others. He asked how much flexibility the RCA has in applying the regulations and when the new regulations will be put in place.

MR. ABBOTT replied that the recent vote by the FCC was very contentious and he thought it would take them three months to actually get the regulation out so the RCA could see how much it impacts Alaska. He thought the TELRIC would have the biggest impact. The telecommunications industry is constantly changing and the RCA just regulates the copper wire portion of it, not cable or wireless.

CHAIR BUNDE asked again how much flexibility the RCA has now in applying FCC regulations.

MR. ABBOTT replied it has flexibility, but he couldn't give a clear explanation of it.

CHAIR BUNDE said some people feel that the RCA has chosen to require ACS to sell its service at less than cost and he asked him to respond to that.

MR. ABBOTT replied that the RCA does not do anything arbitrarily. There is an arbitrator and the RCA reviews what he says and then the decision goes to the court.

CHAIR BUNDE asked what the RCA's rate of success has been in the courts.

MR. ABBOTT replied that it had one decision returned, which was a procedural question on whether or not the RCA needed to hold a hearing. The RCA didn't think it had the authority to step into a contract between two willing parties and the court said it did.

CHAIR BUNDE asked if the [RCA rulings on] rate issues have been upheld by the courts in general.

MR. ABBOTT replied yes.

SENATOR DAVIS asked if the dominant carrier issue is before him and how long it would take to address.

MR. ABBOTT replied that issue is not in front of the commission now, although it was in the past.

SENATOR DAVIS said Mr. Felix's testimony made it sound like AT&T is waiting for the RCA to rule on that issue and he even had language to suggest.

MR. ABBOTT replied that he hadn't seen any suggested language.

SENATOR DAVIS asked if that issue was before them, would it take a long time to address since the RCA's backlog is so low now.

MR. ABBOTT replied that it would go right out for comment and take 3 to 8 months.

SENATOR SEEKINS asked what baseball arbitration is.

MR. ABBOTT explained that if both parties can't agree on an issue, they sit down and simply give it their last best pitch so to speak and the arbitrator will pick the one that best meets the regulation or guidelines.

SENATOR SEEKINS asked if it's correct that they have changed that process.

MR. ABBOTT replied that they aren't using it right now, but it's generally a lot more expeditious to use it.

SENATOR SEEKINS asked if there would be any difference in the functioning of the RCA if the Senate granted it a two or a four-year extension.

MR. ABBOTT replied that it wouldn't impact the way the RCA does business, but he thought for the stability of the organization the four-year extension would be better.

SENATOR SEEKINS asked if he thought the legislature should adopt a wait and see attitude before it goes for the long term, like they are with some of their issues.

MR. ABBOTT replied the legislature needs to keep pressure on the RCA.

SENATOR FRENCH asked how the RCA's workload is compared to the workload of other public utility commissions in comparably sized states.

MR. ABBOTT replied that he couldn't give a good estimate on that, but he offered to do some research.

SENATOR FRENCH replied that he would appreciate a base line comparison.

CHAIR BUNDE thanked everyone who joined them and adjourned the meeting at 3:00 p.m.