

**ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE**

March 6, 2003

1:39 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. 72

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

MOVED CSSB 72(L&C) OUT OF COMMITTEE

PREVIOUS ACTION

SB 72 - See Labor and Commerce minutes dated 2/25/03.

WITNESS REGISTER

Ms. Nan Thompson, Executive Director
Regulatory Commission of Alaska
701 East Eighth Ave., Ste 300
Anchorage AK 99501

POSITION STATEMENT: Supported SB 72.

Ms. Pat Davidson
Legislative Auditor
Division of Legislative Budget and Audit
PO Box 113300
Juneau AK 99811-3300

POSITION STATEMENT: Commented on SB 72.

Ms. Kristi Catlin
AT&T Alascom
210 E. Bluff Dr.
Anchorage AK 99501

POSITION STATEMENT: Commented on SB 72.

ACTION NARRATIVE

TAPE 03-9, SIDE A

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at 1:39 p.m. Present were Senators Ralph Seekins, Gary Stevens, Bettye Davis, Hollis French and Chair Con Bunde.

SB 72-EXTEND REGULATORY COMMISSION OF ALASKA

CHAIR CON BUNDE announced SB 72 to be up for consideration.

MS. NAN THOMPSON, Executive Director, Regulatory Commission of Alaska (RCA), said she prepared remarks to respond to issues raised at the last meeting and to provide members with information about the agency. She supports the governor's bill that reauthorizes the agency for four years. She explained that every state in the nation has a regulatory agency to insure that utility services are available at reasonable prices to its citizens. Markets transitioning to competition are very different and the RCA assures that services are fairly priced and reliable during and after transitions. She continued:

Timing is everything in this process. The utilities want less regulatory oversight immediately in a transitional market and consumers are often frustrated when they can't count on us to resolve billing and service quality problems with the cellular Internet providers. We strive to strike the appropriate balance and to constantly adjust the level of regulation as the markets develop.

Because the telecommunications industry and their lobbyists have played out the "phone wars," as everyone calls them in your halls, I'll use that industry as an example and try to put some of what you've been hearing from them in perspective. The reason there is competition in the telecommunications industry is because in 1996 Congress...gave the states enormous responsibility in the Telecom Act to transition monopoly markets to competition markets because they recognized that markets vary by state and that national rules wouldn't get the job done. The larger local markets in Alaska are ahead of the rest

of the country in the transition to competition. We got a head start because Ma Bell never provided service in Alaska. All the state had to go through was the telecommunications 271 process, the [indisc.] Act. That act is designed to insure that the incumbent carrier network is open to competitors before the local company can enter the long-distance business. We skipped that step and the three to five years it took most states to complete it and went directly to the next step, which is arbitrating interconnection agreements.

Just after the Telecom Act was passed, GCI filed a petition for interconnection and asked us to set prices for leasing parts of the incumbent's networks. The APUC, as it was then called, finished that process even before the FCC adopted regulations telling the state commissions how to set prices. The APUC's board acknowledged that the FCC was in the process of setting national pricing rules and invited either party to ask them to revisit the results after those rules were clear. That request has come in and the RCA is now in the process of redoing prices for the Anchorage market.

It's important for you to know that the controversy you see here about the appropriate level of continued regulation and the best way to set prices is being played out in almost every state nationwide and in the courts.

MS. THOMPSON said Verizon took the argument that the FCC went too far in leasing its network to competitors to the U.S. Supreme Court. The Supreme Court said the FCC correctly interpreted the Telecom Act. Verizon said investment incentive was being destroyed, but the court noted that competitors were making significant investments. (Verizon v. FCC, 122 S.Ct.1646, 2002)

She explained that the FCC defined the costing mechanism as what it would cost for another efficient carrier to replace the incumbent's network with the best available technology, not what the incumbent spent or would spend to rebuild an existing network. Costs are very different than regulators historically thought them to be.

SENATOR HOLLIS FRENCH asked if this relates to testimony the committee heard last week.

MS. THOMPSON explained the testimony the committee heard last week was about costs. The Supreme Court opinion also addressed that subject and paralleled some arguments the committee heard last week. She continued with her statement:

The agency's appeal record tells you that we are doing our job well. As an administrative agency, we don't make the law; we apply it. If we are not applying it correctly, parties may appeal to state or federal court and ask them to set us straight. The RCA has issued hundreds of final orders since we started in July 1999. So far, sixteen have been appealed. The agency's decisions have not yet been reversed, although there are several appeals pending. In one case the court remanded a case to us with instructions to hold a hearing before making a decision, but none have reversed a substantive decision. That track record should tell you that we are successfully analyzing the facts presented to us and issuing decisions that are consistent with legal precedents and supported by the facts in the record. We make decisions based on evidence presented through a process designed to insure that all parties' rights are protected, not on rhetoric.

Consumers win when there is competition. I agree with Mike Felix when he told you last week that competition serves the customer well. You need look no further than your own phone bill for evidence. Your local and long distance rates are low and you have the option to purchase many additional services that were not available five years ago. I hope that competition will soon bring high-speed Internet access to all residents of the state of Alaska.

The RCA does more than settle phone wars. We administer the Power Cost Equalization Program (PCE). We are reviewing our PCE regulations in response to a resolution from ARECA to improve the reliability of the information we use to administer the program and to increase efficiency amongst the program's beneficiaries. We also review tariff prices for pipelines to insure that those who ship to destinations in Alaska pay just and reasonable rates.

We also review costs incurred by providers of monopoly services - water, sewer, electric and gas - to insure that customers pay a fair price for the services they receive. We set rules in other markets that are transitioning to competition, such as refuse in some parts of the state and the long distance market statewide. We just finished modifying our regulations to make it easier for long distance carriers that serve only a small part of the market to sell their services to Alaskan consumers.

Our regulatory oversight changes as markets change. Knowledge of the way service is provided is important to regulating it correctly. In the local telephone markets, as soon as a competitor has entered the market we allow the incumbent to lower their prices in response to market pressures without cost justification. It is only rate increases that must be supported by financial proof before they are allowed. The rules for how much notice a long distance carrier has to give the RCA and its customer are eased when a competitor enters the market.

Responsible deregulation is a moving target. The standards for when less regulatory oversight is required vary by industry and market. It is our job to figure out the complexities and best options. We carefully review any petitions by utilities to remove unnecessary regulatory requirements. I look forward to seeing Alascom's effort to define market dominance. I look forward to seeing their proposal on that. We will need to carefully balance their desire to be less regulated in competitive markets with the fact that they provide the only telecommunications link to the rest of the state for many of our rural communities.

I offer a few final notes to respond to things we heard last week and others. First, about the infamous backlog - it is gone. The chart I distributed shows the change since 1999, which has been dramatic. This was accomplished with a lot of hard work by dedicated staff and commissioners. Our caseload is now stabilized with around 200 open dockets. We have met the deadlines imposed by the Legislature last year. We hope to be able to focus on some of the important policy issues that arise in markets transitioning to

competition this year. We have an open proceeding on changes to the competitive local market rules.

Second, our budget - all of the money used by the RCA comes from utility ratepayers through regulatory cost charges. We get no general fund money.

Third, the reports you got last week - the legislative auditor spent time in our office and is familiar with our mission. I commend their report to you. The study that was commissioned by the Department of Administration has some helpful background on the telecommunications industry in our state. The recently released Darby report is the work of three individuals, not the seven contemplated by the statute, and did not include any input from the RCA. It can hardly be called a comprehensive study of the agency when they didn't speak to us. Many of the recommendations are for actions that we have already begun that the author could have learned by researching on our website.

I encourage you to let this agency continue to do its job. Participation in the sunset reauthorization process is time-consuming for the agency and detracts from our ability to handle cases. The Legislature has the option any year to redirect our mission. I urge you to reauthorize the agency for four years so we can get back to work.

CHAIR BUNDE asked if she thought the RCA should be split up to deal with different industries.

MS. THOMPSON acknowledged that the idea was discussed last year, but the determination was that the RCA wouldn't be as efficient as they are now. She added:

Even though we're regulating different industries, we're still doing basically the same thing, which is understanding how a utility's cost structure operates and how they provide services to customers. What you would lose is the efficiencies that we see across different industries.... In our state sometimes the utilities themselves offer more than one type of service.... Alaska Power Telephone provides both telephone and electric....

CHAIR BUNDE highlighted the fact that the RCA does not operate on general fund money and it's the Legislature's job to make sure it is as efficient as possible.

SENATOR RALPH SEEKINS noted that Mr. Felix testified that although AT&T is still considered the dominant carrier, its long-distance market is shrinking while GCI has 46 to 48 percent of the long-distance business and it is growing. He then asked Ms. Thompson for her definition of a dominant carrier.

MS. THOMPSON replied that it's important to distinguish which long distance market Mr. Felix was talking about - the intrastate or the interstate - because the RCA has jurisdiction over one and the FCC has jurisdiction over the other. She pointed out that the FCC is in the process of looking at its rules for dominant and non-dominant carriers as well. She then advised that her definition might relate to market share and with who owns the equipment over which the service is provided.

SENATOR SEEKINS said that AT&T is still considered the dominant carrier despite a four-year attempt to get relief from the regulation at the RCA. He asked if the RCA tried to define a dominant carrier.

MS. THOMPSON replied that she thought Mr. Felix was talking about the proceeding that has been pending before the FCC for four years. It has to do with a waiver of certain tariffing reforms that the FCC imposes because of their dominance. Before last year's statutory change that prevents the RCA from talking to the carriers, AT&T Alascom filed a petition [before the FCC] for waiver of certain tariffing requirements. The RCA initially objected, as did GCI. The FCC encouraged all interested parties to talk and the RCA is doing that through a more formal process. She said the FCC hasn't had a proceeding open to change a dominant/non-dominant rule for four years.

SENATOR SEEKINS asked if she was saying that Mr. Felix is confused and there has been no effort to try to change this.

MS. THOMPSON opined that one of them is confused. The RCA had a proceeding that closed three or four months ago that looked at the inter-exchange market carrier rules, and that might have contained some issues related to the ones he brought up.

SENATOR SEEKINS stated that that's why he is confused.

MS. PAT DAVIDSON, Legislative Auditor, joined the committee.

CHAIR BUNDE asked if a two-year extension is for a full two years or whether the RCA would begin to perform its sunset activities after the first year.

MS. DAVIDSON explained that if the commission is extended for a two-year period, it wouldn't go into the wind-down year until 2006. She continued, "So, it would be two full years of operation, plus the additional one year wind down."

She agreed with Senator Bunde that the same thing would happen with a four-year term.

CHAIR BUNDE said some changes have taken place within the RCA since the audit and asked Ms. Davidson if she would recommend the two-year extension if the audit were performed today.

MS. DAVIDSON replied that she recommended a two-year extension because she was unable to give the committee a feel for how the changes are taking place and impacting the utilities or the public. She added that a process is in place for the RCA to report on the timelines it missed and that process could be enhanced as a way of keeping track of the RCA's progress.

SENATOR THERRIAULT said the committee wants to be mindful of the resources the LBA expends and asked if they talked about a shorter date.

MS. DAVIDSON said it would take at least two years before LBA could evaluate any changes. She suggested considering a change in the scope of the audit, but she did not think LBA would be able to answer the big questions that might come up until the changes have been in place for some time. She pointed out that the LBA's 2003 workload is heavy compared to other years and she suggested that an alternative would be an enhanced reporting system so the Legislature could look at and have additional measures of potential impact.

SENATOR THERRIAULT asked if it would help balance the LBA's workload to have the extension for three years.

MS. DAVIDSON replied that would be fine, but she wanted to be sure the Legislature is kept informed, because the RCA is undergoing significant changes.

CHAIR BUNDE announced an at-ease from 2:13 to 2:17 p.m.

MS. KRISTI CATLIN, Director of Government Relations, AT&T Alascom, clarified three points:

First, the market share of 42 percent was taken from the telecommunications study and although it's not stated explicitly in the study, it is our understanding that this is a statewide market share that includes both intrastate and interstate inter-exchange long distance operations. For clarification, our intrastate market share is approximately 47 percent for intrastate only.

The second point of clarification is that a man made a comment that dominance is linked to the requirement to provide service to a community, which it is in the statute. The language that we have drafted and that is currently being reviewed internally would explicitly retain the carrier of last resort responsibility unless or until the RCA would decide otherwise. The carrier of last resort responsibility requires Alascom to provide service to every community in the state. So, our definition of dominance would not affect that.

And then, finally, the proceeding that Mr. Felix was referring to was an RCA proceeding. It was the market structure proceeding. It addressed dominance and the commission found that we had not provided enough information to make a ruling on that at the time. The proceeding was closed in April of last year. And if you have any questions, I would be happy to answer them.

CHAIR BUNDE thanked her for sharing her views and announced that the committee members had an amendment before them.

SENATOR SEEKINS moved amendment 1 that would delete "2007" and insert "2006" on page 5, line 1. That would result in a three-year extension of the sunset for the RCA.

SENATOR DAVIS objected for the purpose of discussion. She asked for his rationale.

SENATOR SEEKINS explained that if the auditors don't have enough information to evaluate the RCA then he is nervous about trying to substitute his lack of information for their complete audit.

SENATOR DAVIS said she appreciates his concern, but she couldn't see where three years would make that much difference and the same thing could be said of a four-year extension. The telephone companies that are complaining about the RCA have made it seem like there's a war between the companies. She opined that Alaska should have as many telephone utilities as the population can afford. If the phone companies are having problems, they need to work them out. She supported the governor's recommendation for a four-year extension.

SENATOR SEEKINS responded that it wasn't the telephone wars that brought him to his decision. Eric Yould, of ARECA, told the committee that the RCA has serious problems that involve time process encumbrances and he recommended a one-year extension.

SENATOR DAVIS reminded Senator Seekins that he was not in the Legislature last year, at which time some legislators recommended that the RCA be sunsetted altogether. She said the Legislature couldn't solve the telecommunication problems, but the RCA could if it is given the opportunity.

CHAIR BUNDE said he is inclined to reach a compromise, but what solidified the issue for him is that he doesn't want to overburden the RCA and in two years the RCA will have a significant challenge reviewing numerous utilities. He asked if there was continued objection to amendment 1.

SENATOR DAVIS maintained her objection.

CHAIR BUNDE called for a roll call vote. Senators Stevens, Seekins, French and Bunde voted in favor; Senator Davis voted against and amendment 1 was adopted.

SENATOR SEEKINS motioned to pass CSSB 72 (L&C) from committee with individual recommendations and the attached fiscal note. Chair Bunde asked for a roll call vote and the motion passed with all members voting in favor.

CHAIR BUNDE adjourned the meeting at 2:30 p.m.