3-8-88

Meeting

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4931

DISTRICT 10
BOX 111038
ANCHORAGE, ALASKA 99511
(907) 349-2192

CHAIRMAN
Special Committee on
Telecommunications

MEMBER
Labor and Commerce
State Affairs
Finance—Subcommittee Administration

Representative H. A. "Red" Boucher

HOUSE SPECIAL COMMITTEE ON TELECOMMUNICATIONS

AGENDA

March 8th, 1988

3:30 pm

Meeting convenes.

Introduction of Committee members.

A. CSHB97 An act relating to deregulating cable television.

B. Presentation by Kip Goodland of IBM on educational offerings by IBM.

MAC "RED

Original sponsor: Taylor

IN THE HOUSE

BY THE HOUSE SPECIAL COMMITTEE ON TELECOMMUNICATIONS

CS FOR HOUSE BILL NO. 97 (Telecommunications)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to cable television."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 42.05.711(k) is amended to read:

(k) A utility which furnishes cable television service is exempt from the provisions of this chapter other than AS 42.05.651 and 42.05.800 - 42.05.850 [AS 42.05.221 - 42.05.281] unless 25 percent of the subscribers or 1,000 subscribers, whichever is less, petition the commission for regulation.

* Sec. 2. AS 42.05 is amended by adding new sections to read:

ARTICLE 11. CABLE TELEVISION REGULATION.

Sec. 42.05.800. PERMIT REQUIREMENTS. (a) A cable operator may not provide cable service without a permit. The commission shall issue a permit to a cable system that meets the requirements of this section. The permit is to ensure that the cable operator provides satisfactory quality of service.

(b) The commission shall adopt regulations to establish standards for engineering, equipment, system design, layout, and design calculations that a cable system must meet to be eligible for a permit.

(c) The commission may not issue a permit to a cable system unless the system designates at least 10 percent of its channel capacity for public, educational, or governmental access. The cable operator may not exercise editorial control over the use of channel capacity under this subsection. However, the cable operator may restrict

materials that are obscene or otherwise unprotected by the federal and state constitution. The commission shall adopt regulations under which

(1) a cable operator may use the designated channel capacity to provide other services if the designated capacity is not being used for the purposes designated; and

(2) use under (1) of this subsection shall cease.

Sec. 42.05.810. PERMIT DURATION AND FEE. (a) A permit issued under AS 42.05.800 is valid until the earliest of

(1) five years from the date of issue;

(2) the sale of the cable system;

(3) a major change to the equipment or design of the cable system; or

(4) a significant extension of the cable system.

(b) The commission shall establish by regulation a permit application fee.

Sec. 42.05.820. PENALTY. A cable operator who fails to provide public, educational, or governmental access in violation of AS 42.05.-800(c) or who operates substandard equipment in violation of a regulation adopted under AS 42.05.800(b) is liable for a civil fine of $100 for each day of operation in noncompliance.

Sec. 42.05.850. DEFINITIONS. In AS 42.05.800 - 42.05.850

(1) "affiliate," when used in relation to a person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, the person;

(2) "cable operator" means a person or group of persons who

(A) provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in the cable system; or

(B) otherwise controls or is responsible for, through any arrangement, the management and operation of the cable system;

(3) "cable service" means

(A) the transmission to subscribers of video programming or other programming service; and

(B) subscriber interaction that is required for the selection of video programming or other programming service;

(4) "cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, that is designed to provide cable service that includes video programming or other programming service and that is provided to multiple subscribers within a community; the term does not include a facility

(A) that serves only to retransmit the television signals of one or more television broadcast stations;

(B) that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless the facility uses a public right-of-way;

(C) of a common carrier or local exchange telephone utility subject, in whole or in part, to regulation under AS 42.05.010 - 42.05.712;

(D) of an electric utility used solely for operating its electric utility systems; or

(E) that serves fewer than 10 subscribers;

(5) "channel" means a portion of the electromagnetic frequency spectrum that is used in a cable system and that is capable of delivering a television channel, as television channel is defined by the commission by regulation.

5-0452A

Introduced: 2/2/87
Referred: House Special Committee on Telecommunications and Labor & Commerce

IN THE HOUSE BY TAYLOR

HOUSE BILL NO. 97

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to deregulating cable television."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 42.05.711(k) is amended to read:

(k) A utility which furnishes cable television service is exempt from the provisions of this chapter [OTHER THAN AS 42.05.221 - 42.05.281] unless 25 percent of the subscribers petition the commission for regulation.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 97
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to deregulating cable television
Sponsor: Taylor
Requester: Red Boucher

Agency Affected: Commerce & Econ. Dev.
BRU: Alaska Public Utilities Commission
Components: Operations

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: (Attach a separate page if necessary.)

If this legislation is adopted, the decrease in regulatory activity will reduce a relatively insignificant amount of agency work load. Given the nearly 25% reduction in staff resources already absorbed by the Alaska Public Utilities Commission, a further reduction in staffing would not be expected as a result of the changes proposed in this bill.

Prepared by: T. S. Moninski II, Exec. Director
Phone: 276-6222
Division: Alaska Public Utilities Commission
Date: February 2, 1988

Approved by Commissioner: J. Anthony Smith for Libby Marshall
Date: _____
Agency: Department of Commerce and Economic Development

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

0787D/020388a

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

MEMORANDUM February 9, 1987

SUBJECT: SB 92 (Regulation of cable television service utilities)

TO: Senator Lloyd Jones

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have asked for an opinion on whether SB 92 is effective to preclude a municipality from regulating a cable television service utility under AS 29.35.060 and 29.35.070. In my opinion, the answer is that the bill precludes municipal regulation.

The bill does not affect the status quo as to municipal regulation. Under AS 42.05.711(1),

> A person, utility, or cooperative that is exempt from regulation under AS 42.05.711 (a) or (d) - (k) is not subject to regulation by a municipality under AS 29.35.060 and 29.35.070.

Cable television utilities are exempt from regulation under AS 42.05.711(k). Therefore they are not subject to regulation by a municipality under AS 29.35.060 or 29.35.070.

It is possible that some confusion exists because AS 29.35.060 does not repeat the reference to exemption from regulation under AS 42.05.711 but AS 29.35.070 does. Both of these sections were enacted in the municipal code in 1985, sec. 10, ch 74, SLA 1985, and AS 42.05.711(1) was amended by the code to incorporate the references to those two statutes in sec. 68. Therefore they should all be read together to create consistency if possible. There should be little difficulty in accepting the specific exemption from AS 29.35.070 granted under AS 42.05.711(1).

If I may be of further assistance, please advise.

TC:csh
c7/048

RESEARCH QUESTIONS and ANSWERS

HB 97

QUESTIONS: How does APUC determine who gets a certificate and what are the APUC guidelines for giving certificates? How does APUC deal with RIGHT OF WAY and COMPETITION issues?

ANSWERS: There are two major criteria that APUC looks at to determine the fitness of a cable company to receive certification.

The first is the financial health of the organization. APUC tries to determine whether or not the company has the financial wherewithal to provide service in a responsible manner.

The second set of criteria is of a technical nature designed to protect the public from shoddy products and services. The engineering staff of APUC reviews the plans provided by the cable company to determine the level and quality of service that the company intends to provide. After receiving certification, and putting their system into operation the cable company must provide APUC with engineering data that proves they have built the system to specifications and that it is working properly.

These are the guidelines that are used when APUC is dealing with competing requests for certification by two or more cable companies. The company with the best financial outlook and the most impressive plan is the one that receives certification.

There is no statute or rule that says the APUC can only grant one cable certificate per community. It has been APUC's policy that in the name of efficiency it is better to have only one company per community.

QUESTION: What is the significance of Rep. Taylor's remarks about amendments to Title 29? Does it deal with municipality regulation of cable TV?

ANSWER: As Title 29 now stands, if HB 97 were to pass, cable television companies would be totally deregulated. Municipalities could not franchise the companies. (See letter of opinion from Teresa Cramer) This would open the market place to competition. This does not mean the companies are totally free to cross and dig up rights of ways indiscriminately. They would still have to comply with whatever municipal statutes apply in their areas.

QUESTION: Who regulates cable TV now? and what aspects of cable TV are regulated?

ANSWER: Currently, cable companies in Alaska are regulated by the APUC and to some extent by the municipalities. The only aspect of regulation that the APUC addresses is that of certification (as addressed above). The only other form of regulation deals with the rights of way and falls under the municipalities jurisdiction.

QUESTION: What is the significance of "25% of subscribers" in current law?

ANSWER: In AS 42.05.711(k), it states that a cable company can be exempt from regulation until and unless 25% of its clients petition the commission for regulation. This 25% figure is used many times in APUC rulings and was arrived at as being a fair percentage of a companies clientele for cases such as this - requiring fair and objective, public input to the commission, regarding one of its regulatees.

QUESTION: What is the downside of ending APUC regulation of cable TV?

ANSWER: Regulation by the APUC is designed to weed out financially unstable companies, or companies that may intend to use substandard equipment. The intent is to protect the public from being bilked by unstable, unregulated companies installing equipment of unknown quality.

In the absence of APUC regulation, the regulation of Cable TV would be limited to municipality decisions concerning righ of ways (telephone poles, underground cables). Issues such as competition, consumer protection and safe operating procedures would not be addressed except in an indirect way through the discretion of the municipality in its decisions on rights of way.

Another problem that has not been addressed is that some of the cable companies in Alaska agreed to provide certain services to Alaska (eg., Educational channels) as part of their certification by the APUC. Some argue that if HB 97 were to pass, these agreements would be no longer valid. This would disrupt many years of work and many ongoing programs.

Official Business

COMMITTEE: House Special Committee on Telecommunication

DATE: March 8-84

Subject of meeting: An Act relating to deregulating Cable Television

SIGN-IN

NAME	ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Lee R Daniher	5808 Lake Wa Blvd, Suite 40C Kirkland, Wa. 98033-4110	(206) - 822-0252	General Manager Alaska CableVision	YES
Betty Philbin			" "	NO
Craig Lyon	Capitol Rm. 24.	465-4841	Rep. Pettyjohn	NO
Susan Knowles	420 L Street #100 Anchorage, Ak 99501	276-6222	Commissioner A.P.U.C.	yes
Ross Hammock Ross Hammock	3161 CHANNEL DR. JUNEAU, AK.	586-3320	District Manager CODE CABLEVISION	NO
Kip Goodland	801 W. 10th St Juneau AK 99801	586-8610	IBM	yes

*PLEASE GIVE FULL NAME, ADDRESS & PHONE NUMBER!

TELECONFERENCE PARTICIPATION

SPONSOR (H) Telecommunications

DATE/TIME 3/6 3:30pm

SUBJECT CS HB 97 - Cable TV

LIO'S
(moderator)

	TESTIFY	OBSERVE
ANCHORAGE	Marty Robinson Charles McBride Edie Lynch	
[redacted]	Robert Penzenik Tom Kentton	
BETHEL ( )		
DELTA JUNCTION * ( )		
DILLINGHAM * ( )		
FAIRBANKS ( )		
GLENNALLEN * ( )		
JUNEAU ( )		
KETCHIKAN ( )		
KODIAK ( )		
KOTZEBUE ( )		
MAT-SU ( )		
NOME ( )		

	TESTIFY	OBSERVE
PETERSBERG * ( )		
SITKA ( )		
SOLDOTNA ( )		
VALDEZ * ( )		
LTC'S		
HOMER		
WRANGELL		
OFFNETS		
OFF1		
OFF2		
OFF3		
OFF4		
OFF5		
OFF6		

VTS'S ON BACK

* SESSION ONLY

VTS'S	W	U	O	TOTAL		W	U	O	TOTAL
AMB - AMBLER					MET - METLAKATLA				
ANA - ANAKTUVUK PASS					MOS - MOSQUITO LAKE				
AND - ANDERSON					NAK - NAKNEK				
ANG - ANGOON					NEN - NENANA				
CAN - CANTWELL					NEW - NEWHALEN				
CHS - CHISTOCHINA					NIK - NIKISKI				
CHI - CHITINA					NOR - NOORVIK				
COP -)PPER CENTER					NOT - NORTH TONSINA				
COR - CORDOVA					NOW - NORTHWAY				
CRA - CRAIG					PEL - PELICAN				
DOT - DOT LAKE					PTH - POINT HOPE				
EAG - EAGLE					SAV - SAVOONGA				
FTY - FT. YUKON					SDP - SAND POINT				
GAK - GAKONA					SEW - SEWARD				
GAL - GALENA					SLW - SELAWIK				
GAM - GAMBELL					SHS - SHISHMAREF				
HNS - HAINES					SLA - SLANA				
HEA - HEALY					SKG - SKAGWAY				
HOO - HOONAH					STP - ST. PAUL				
HPB - HOOPER BAY					TOG - TOGIAK				
HYD - HYDABURG					TOK - TOK				
KAK - KAKE					OOK - TOOKSOOK				
KAT - KAKTOVIK					UAK - UNALASKA				
KEN - KENNY LAKE					UNK - UNALAKLEET				
KLA - KLAWOCK					WAI - WAINWRIGHT				
MEN - MENTASTA					YAK - YAKUTAT				

Alaska Public Utilities Commission

Comments on CS for HB97 (Telecommunications)

Work Draft

March 2, 1988

Section 1:

Section 1 of the bill effectively reduces the number of subscribers required to petition for regulation of the larger cable television (CATV) utilities. The Commission believes that the proposed change is reasonable but, by making it easier to petition for regulation, may ultimately have implications for the Commission's workload and budget.

This section also exempts CATV service from all of AS 42.05, except the new permitting scheme (Section 2). The Commission would request that its cost allocation authority under AS 42.05.651 be preserved and listed in the statutory sections applicable to CATVs. The Commission relies on two basic resource pools to perform its duties: in-house personal services and contractual services. The costs of the latter are initially funded out of the program receipts portion of the Commission's budget and subsequently charged to the affected utilities after a proceeding is over (AS 42.05.651). In order to be able to implement CS for HB97 (Telecommunications) with minimum general fund impact, it is essential that the Commission retain the cost allocation authority necessary to continue its access, as needed, to contractual services.

Section 2:

The bill proposes to substitute a CATV permit system for the current certificate of public convenience and necessity requirement. In order for the Commission to comment on this proposal, it will be necessary for it to set forth certain assumptions on how it believes the system would work. If these assumptions are not compatible with the legislative intent of this section, then it may be necessary for the Commission to modify some of its conclusions with respect to the substance and fiscal impact of the bill.

The Commission's assumptions are as follows:

(1) The eligibility standards for CATV permits are limited to engineering or technical facets of the system. There will be no investigation of the other elements of fitness and ability (e.g. financial, managerial, etc.) which are currently required under the certification process.

(2) Any applicant which meets the eligibility standards and designates 10 percent of its channel capacity for public, educational, and governmental access will be issued a permit. Thus, there is no limit to the number of permits that may be issued for a particular area and no need to compare applicants in issuing a permit or permits for that area.

(3) Given the assumption in (2) above, the permit attaches to the CATV provider, not the area, so the renewal process will be a relatively straight-forward assessment of continuing compliance with the initial permitting criteria and of quality of service performed during the preceding five-year permit period.

(4) The Commission will rely primarily on complaints from affected subscribers or public, educational, and governmental access users to monitor compliance with the permit and to initiate penalty proceedings.

Given the foregoing assumptions, the Commission believes that, overall, the proposed permit scheme is preferable to the status quo for the following reasons.

First, the permit process facilitates entry into the CATV business. The Commission has previously expressed its concern with the existing system of creating de facto monopolies that are not subsequently regulated. Since the permit procedure will be less costly and complicated than a certification proceeding among competing applicants, the process itself will no longer be a disincentive to having multiple CATV providers. Competition will depend solely on the economics and technical feasibility of having more than one CATV utility in an area.

What is not clear, however, under the legislation is whether or not a permit holder has an obligation to serve all customers desiring CATV service in its designated area. This is the case under a certificate but may not be workable if a competitive marketplace results under the permit scheme.

Second, channel capacity for public, educational, and governmental access is assured under the proposed legislation. Historically, dedication of channels for these purposes has arisen in the context of trying to garner community support for a particular competing application and was then required by the Commission as a condition of the prevailing applicant's certification. Making public, educational and governmental access a requirement for a permit establishes clear guidance that dedication of such

channel capacity is desirable as a matter of uniform state policy.

Third, the quality of CATV service is monitored on an on-going basis and evaluated at least at five year intervals. The Commission is presently limited in both resources and statutory ability to oversee quality of service unless it deteriorates to such an extreme level that the costly, legally complicated process of revoking a certificate becomes feasible.

This additional level of public protection, however, will have an impact on the Commission's existing workload. It is anticipated that there will a regular, material increase in the work of the consumer protection and engineering staffs to monitor quality of service and to handle initial and renewal permits. As indicated earlier, there presently is no institutionalized oversight of service quality outside of extreme situations. In addition, once a certificate is granted, there is no renewal or other procedure for evaluating the on-going CATV operation. While the renewal process is not anticipated to be controversial, it should nonetheless be a rigorous examination of performance under the existing permit. Thus, the engineering and consumer protection personnel will assume additional duties under this bill. Since the latter individual is already overcapacity with existing duties, it will be necessary to request an additional Consumer Protection and Information Specialist in order to implement this bill. An increase in the Commission's program receipts budget for allocable contractual services is also anticipated.

With respect to the definitions included in Section 2, the Commission suggests that the terms "video programming" and "other programming service" be added to eliminate any possible misinterpretation of what is meant by "cable service" (see 47 U.S.C.A. § 522(11) and (16)(West Supp. 1987)). In addition, if the intent of subsection (C) under the definition of "cable system" is to preclude a CATV operator from offering any telephone service, it may be appropriate to restate that provision as follows: (C) or service of a common carrier or local exchange telephone utility subject, in whole or in part, to regulation under AS 42.05.010 - 42.05.712.

As a final note, it will be necessary for the Legislature to determine how the transition from certificates to permits should be handled. For example, would all existing certificate holders be grandfathered under the permit system? It would be particularly helpful to the Commission in managing its workload that any transition plan stagger the expiration dates of the new five-year permits, so that not all CATV permits would be subject to renewal at the same time.

Original sponsor: Taylor

IN THE HOUSE BY THE HOUSE SPECIAL COMMITTEE ON TELECOMMUNICATIONS

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FIFTEENTH LEGISLATURE - SECOND SESSION

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(D) of an electric utility used solely for operating its electric utility systems; or

(E) that serves fewer than 10 subscribers;

(5) "channel" means a portion of the electromagnetic frequency spectrum that is used in a cable system and that is capable of delivering a television channel, as television channel is defined by the commission by regulation