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Economic Deregulation and Customer Choice: Lessons for the Electric Industry

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Executive Summary

Policymakers and regulators are engaged in an ongoing debate about introducing customer choice in electric service. The most comprehensive legislative proposals envision a market in which all customers could choose their electricity suppliers. Electric utilities would no longer have monopoly rights to sell electricity to particular groups of customers. Instead, they would become transporters of electricity, and they could also compete in the generation marketplace. The price of the electricity would no longer be regulated, although the price of transportation still would be.

During the past two decades, numerous industries with many economic similarities to electricity have already undergone price and entry deregulation in at least part of the industry. The most significant include natural gas, telecommunications, airlines, trucking, and railroads. Like electricity, these are "network" industries. Suppliers and customers are connected via a network of pipes, wires, air routes, roads, or rails, and the decisions of one network user can affect the ability of others to use the network.[1] The experience of these five industries can therefore serve as a guide in the debate over customer choice in electricity.[2] A review of the evidence reveals several broad conclusions about the effects of deregulation, and each conclusion carries with it a policy implication.

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[1] Because of this fact, analysis of these five industries is more relevant to the electricity debate than that of nonnetwork industries that were deregulated at similar times, such as oil production, stock brokerage, or savings and loans.

[2] We are hardly the first to notice the similarities between electricity and other deregulated industries. In August 1996, the National Regulatory Research Institute released a report whose substantive findings largely agree with ours (Costello and Graniere 1996).

Summary of Trends Following Regulatory Change

Industry	% Real price reduction after... 2 years	5 years	10 years	Annual value of consumer benefits due to deregulation
Gas	10-38% (1984-86)	23-45% (1984-89)	27-57% (1984-94)	N.A.*
Long Distance Telecom	5-16% (1984-86)	23-41% (1984-89)	40-47% (1984-94)	$5 billion
Airlines	13% (1977-79)	12% (1977-82)	29% (1977-87)	$19.4 billion
Trucking	N.A.**	3-17% (1980-85)	28-58%*** (1977-87)	$19.6 billion
Railroads	4% (1980-82)	20% (1980-85)	44% (1980-90)	$9.10 billion

Note: All figures are real, in $1995. Consumer benefit figures in the last column measure *total* consumer benefits, including both price reductions and changes in service quality.

Source: For price reductions, see Appendix and/or text of study for data. Consumer benefit figures are from Crandall (1991), Morrison and Winston (1995), and Winston et. al. (1990).

N.A*: For natural gas, no controlled studies quantify the separate effect of deregulation on gas prices. Winston (1993, 1274-75) speculates that the consumer benefits exceeded economists' predereguiation predictions, which were in the range of $2-4 billion in 1995 dollars. If gas prices had remained at 1984 levels, consumers would have paid $50-60 billion more for gas in 1995.

N.A.**: For trucking, no studies have documented the effects for the first couple of years.

***No trucking figure is available for 1980-90; figure quoted is for 1977-87, from Corsi (1994). Because regulation made it difficult to cut trucking rates, the bulk of these rate reductions occurred after 1980.

- **Finding: Deregulation and customer choice lower prices.**

In each of the five industries, prices paid by customers fell significantly as a result of deregulatory reforms. Within the first two years of deregulation, prices had fallen by 4-15 percent, and sometimes more for certain groups of customers. Within 10 years, prices were at least 25 percent lower, and sometimes close to 50 percent lower. Of course, not all of these changes were due to changes in the regulatory regime, but scholarly studies consistently show that regulatory reform created billions of dollars worth of consumer benefits. Consumers gained substantially—not just because of rate reductions, but also because of improvements in the quality of service. All broad consumer groups shared in the price reductions, though some benefited more than others.

Policy implication: *Competition is desirable.*

Policymakers concerned about consumers should open electric service to competition, deregulate rates, and promote consumer choice as quickly as possible.

- **Finding: Deregulation and customer choice align service quality with customer desires.**

The only declines in service quality attributable to deregulation or regulatory reform occurred when regulation previously limited customer choice, forcing customers to pay premium prices for gold-plated service. Crucial social goals like airline safety, reliability of gas service, and reliability of the telecommunications network were maintained or improved by deregulation and customer choice.

Policy implication: *Service quality is no excuse for delay.*

Concerns about reliability and other aspects of service quality are reasons to expedite regulatory reform. Under deregulation, service quality choices will enable consumers to select the services that best meet their needs.

- **Finding: Consumers have experienced genuine benefits, not just reallocation of costs among customer classes.**

Regulatory reform is not a zero sum game; it has generated genuine gains for consumers and society as a whole. It is possible to find narrowly defined groups of customers in special circumstances who paid somewhat higher prices after deregulation, but the gains to the vast majority of consumers far outweighed the effects on these small groups.

Consumers gained for two reasons. First, deregulation or regulatory reform aligned prices more closely with costs, leading to a more efficient use of resources by both firms and customers. Second, firms faced greater incentives to adopt cost-reducing or quality-enhancing innovations in technology, marketing, and business strategy, which often were not predicted beforehand.

Policy Implication: *Transition costs are no excuse for delay.*

Based on the experience in other industries, electricity regulatory reform should produce gains well in excess of the transition costs. Therefore, the presence of transition costs is no excuse for delaying or avoiding reform.

- **Finding: The lower the barriers to customer choice, the greater benefits customers receive.**

Rates fell faster in parts of the market where regulators permitted greater customer choice. In telecommunications, for example, long-distance rates fell faster in the interstate market than the intrastate market, because state regulators have been less tolerant of competition and price cutting. Similarly in the airline industry, during the 1970s proponents made a powerful case for deregulation by showing that tickets were less expensive on the less heavily regulated intrastate routes of Texas and California.

Policy Implication: *Choice for* **all** *customers for all competitive services will provide the most benefits.*

The best way to let all customers reap the benefits of competitive electric service is to let all customers choose their electricity suppliers. Policy proposals that deregulate only the wholesale electricity market, or allow only large customers to choose their suppliers, are thus inferior from a consumer perspective. For similar reasons, states that refuse to allow competition from out-of-state suppliers do their own citizens a disservice.

- **Finding: Competitive markets continue to evolve in response to consumer needs.**

Although prices fell noticeably in response to deregulation, adjustment to the new, deregulated environment was far from immediate for incumbent firms. Regulation affects not just the structure of incentives facing a firm, but also its corporate culture—the shared assumptions about what types of activities generate business success. Regulation can change relatively quickly, but corporate culture often changes slowly, and so corporate strategies may also adjust slowly to the deregulated environment. For the five industries in this study, significant changes and adjustments are occurring even after 10 years. Benefits of regulatory reform continued to accrue long after the market was first opened.

Even if some firms adjust quickly to the deregulated environment, that environment changes much more quickly than the regulated environment. The industries in this study did not move from a "monopoly equilibrium" to a new "competitive equilibrium." Rather, they moved from a fairly stable regulated environment to an evolutionary environment in which competitive rivalry continually forces producers to improve their performance. Since it is unlikely that firms will ever stop learning, and consumers are never satisfied with the status quo, a stable equilibrium is extremely unlikely.

The five industries in this study present a plethora of examples of innovations that were not foreseen or planned beforehand. These include natural gas hubs, airline hub-and-spoke

systems, and a multitude of types of new services and customer-premises equipment in telecommunications. Such developments should give pause to anyone who claims to be able to predict either the likely or the optimal market structure.

Policy implication: ***Open and competitive markets should be allowed to evolve.***

Legislators and regulators should resist the temptation to elaborately plan either the structure of markets or the transition process. The temptation to overplan takes many forms, including mandates that power must be bought and sold through a central "POOLCO" and proposals that would restrict the range of contracts that generators can make with customers.

In any move toward greater reliance on markets, transition problems must be addressed. But the significant ones where government must play a role, such as those dealing with transition costs, involve the assignment or reassignment of property rights to various market participants. The proper role of policy is not to "design market mechanisms" but to create and protect a framework of property rights that allows market institutions to evolve on their own.

ATTITUDES TOWARDS COMPETITION IN THE ELECTRIC INDUSTRY

February 1998

Chugach Electric

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INTRODUCTION AND

METHODOLOGY

INTRODUCTION AND METHODOLOGY

This project was conducted between February 9th and 15th, 1998. One thousand four hundred registered voters in the Municipality of Anchorage participated in the study. A sample size of 1,400 yields a maximum margin of error of ±2.62% at 95% confidence. In other words, we can be 95% sure that our results differ from their true population proportions by no more than 2.62% on either side.

Respondents were drawn randomly from registered voters lists generated to produce voter households that had voted in the General Election in 1996. The respondents were screened to ensure their status as utility decisionmaker in the household, and the ensure the household paid their own electric bills.

Fielding was conducted by telephone from our centralized facility in Anchorage. Collected data has been data entered, verified, checked for accuracy and coded, and processed using SPSS, a standard statistical package for survey research. The elements of this report include the questionnaire in its final form, collated with the frequency results for each question, and a crosstabulation section that breaks the sample down into core groups.

One hundred respondents were surveyed from each of the 14 Legislative House Districts in Anchorage, numbered 10 to 23. These House Districts paired into 8 Senate Districts, lettered E to L, with District 10 and District 23 not paired with other Anchorage districts.

Quality control measures were taken to ensure as high a response rate as possible for this study. These included supervision of interviewers, repeated callbacks, calling at various times of day and evening, over the course of the fielding period. As a result, we can be very confident of the accuracy of results within the statistical margin of error.

QUESTIONNAIRE AND

FREQUENCIES

ATTITUDES TOWARDS COMPETITION IN THE ELECTRIC INDUSTRY

IVAN MOORE RESEARCH
TEL: 278-4600

Hello, my name is _____ and I'm calling for Ivan Moore Research, an Anchorage marketing research firm. We are conducting an Anchorage area public opinion survey concerning your household's utility services that should take no more than a few minutes. Your opinions are important to us, and we'd really appreciate your participation. (PAUSE)

S1. Is this a residential telephone?

IF "YES", CONTINUE...
IF "NO", TERMINATE...

S2. I need to speak with the person in your household who pays your utility bills, or who makes decisions about utility services. Would that be you?

IF "YES", CONTINUE...
IF "NO", ASK FOR PERSON...

S3. Do you pay your own electric bill or do you have a landlord that pays it for you?

IF "YES", THEN PROCEED...
IF "DON'T PAY ELECTRIC BILL/LANDLORD PAYS", THEN TERMINATE...

1. Which company provides your household with its electric service, Chugach Electric or ML+P?

	FREQUENCY	PERCENT
CHUGACH	1016	72.6%
ML+P	384	27.4%

OK, across the country, efforts are underway to allow individual customers to choose their electric provider. In Alaska, both the Legislature and Public Utilities Commission are now reviewing this issue. I'd like to ask you a few questions to see how you feel about this topic.

2. First, do you think that customers should have the right to choose which company they buy their electric power from?

	FREQUENCY	PERCENT
YES	1272	90.9%
NO	76	5.4%
DON'T KNOW	52	3.7%

3. Do you think competition in the electric industry would result in lower electric prices?

	FREQUENCY	PERCENT
YES	1032	73.7%
NO	233	16.7%
DON'T KNOW	135	9.6%

4. Do you think competition in the electric industry would result in better services?

	FREQUENCY	PERCENT
YES	1017	72.7%
NO	247	17.7%
DON'T KNOW	135	9.7%

5. If you could get better services or lower prices from a different power provider, would you want to be able to switch?

	FREQUENCY	PERCENT
YES	1276	91.1%
NO	80	5.7%
DON'T KNOW	44	3.2%

6. If a legislator were to vote in favor of allowing customers to choose their power supplier, would that make you feel more positive or more negative toward that legislator?

	FREQUENCY	PERCENT
MORE POSITIVE	904	64.6%
MORE NEGATIVE	71	5.1%
NO DIFFERENCE	425	30.3%

The following questions are for statistical purposes only.

7. In what year were you born?

	FREQUENCY	PERCENT
18-39	445	31.8%
40-47	332	23.7%
48-57	327	23.4%
58+	296	21.2%

(Mean = 47.7 years)
(Median = 45.8 years)

8. Of the people currently living in your household, how many are children or adolescents aged 18 or under?

	FREQUENCY	PERCENT
None	766	54.7%
One	222	15.9%
Two	273	19.5%
Three or more	139	9.9%

(Mean = 0.89 children)

9. Are you married or single?

	FREQUENCY	PERCENT
MARRIED	1079	77.1%
SINGLE	321	22.9%

10. GENDER...

	FREQUENCY	PERCENT
MALE	700	50.0%
FEMALE	700	50.0%

Thankyou very much for your help. Goodbye.

THE FOLLOWING VARIABLE WAS RECORDED FROM THE VOTER LIST:

	FREQUENCY	PERCENT
House District 10	100	7.1%
House District 11	100	7.1%
House District 12	100	7.1%
House District 13	100	7.1%
House District 14	100	7.1%
House District 15	100	7.1%
House District 16	100	7.1%
House District 17	100	7.1%
House District 18	100	7.1%
House District 19	100	7.1%
House District 20	100	7.1%
House District 21	100	7.1%
House District 22	100	7.1%
House District 23	100	7.1%

THE FOLLOWING VARIABLE WAS COMPUTED FROM THE PREVIOUS VARIABLE:

	FREQUENCY	PERCENT
Senate District E	100	7.1%
Senate District F	200	14.3%
Senate District G	200	14.3%
Senate District H	200	14.3%
Senate District I	200	14.3%
Senate District J	200	14.3%
Senate District K	200	14.3%
Senate District L	100	7.1%

THE FOLLOWING VARIABLE WAS CALCULATED FROM THE GENDER AND MARITAL STATUS VARIABLES:

	FREQUENCY	PERCENT
Married Males	552	39.4%
Married Females	528	37.7%
Single Males	148	10.6%
Single Females	172	12.3%

THE FOLLOWING VARIABLE WAS CALCULATED FROM THE AGE, MARITAL STATUS AND CHILDREN VARIABLES:

	FREQUENCY	PERCENT
Young Singles	73	5.2%
Adult Singles	167	11.9%
Single Parent	80	5.7%
Young Couple	71	5.1%
Mature Couples	454	32.4%
Young Family	261	18.7%
Mature Family	292	20.9%

CROSSTABULATION TABLES

RIGHT TO CHOOSE?

Row Percents

	RIGHT TO CHOOSE?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
ELECTRIC PROVIDER:				
Chugach	91.3%	5.2%	3.5%	72.6%
ML+P	89.8%	6.1%	4.1%	27.4%
LOWER PRICES?				
Yes	96.3%	1.6%	2.1%	73.7%
No	68.7%	24.4%	6.9%	16.7%
Not sure	87.5%	2.2%	10.3%	9.6%
BETTER SERVICES?				
Yes	97.7%	1.2%	1.1%	72.7%
No	69.1%	22.8%	8.0%	17.7%
Not sure	79.2%	5.2%	15.5%	9.7%
WANT TO BE ABLE TO SWITCH?				
Yes	94.3%	3.3%	2.4%	91.1%
No	47.6%	36.5%	15.9%	5.7%
Not sure	70.0%	10.8%	19.2%	3.2%
EFFECT ON LEGISLATOR:				
More positive	98.9%	1.1%		64.6%
More negative	35.4%	52.7%	11.9%	5.1%
No difference	83.2%	6.7%	10.2%	30.3%
AGE OF RESPONDENT:				
18-39	96.9%	1.7%	1.4%	31.8%
40-47	91.4%	4.3%	4.4%	23.7%
48-57	87.5%	7.8%	4.7%	23.4%
58+	85.0%	9.7%	5.3%	21.2%
NUMBER OF CHILDREN:				
None	88.3%	6.6%	5.1%	54.7%
One	93.4%	3.8%	2.7%	15.9%
Two	92.2%	5.7%	2.1%	19.5%
Three or more	98.4%	.8%	.8%	9.9%
MARITAL STATUS:				
Married	90.6%	5.9%	3.5%	77.1%
Single	91.7%	4.0%	4.3%	22.9%
GENDER OF RESPONDENT:				
Male	91.2%	6.5%	2.3%	50.0%
Female	90.6%	4.3%	5.1%	50.0%
Total	90.9%	5.4%	3.7%	100.0%

	RIGHT TO CHOOSE?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
MARITAL STATUS BY GENDER:				
Married Males	91.0%	7.1%	1.9%	39.4%
Married Females	90.2%	4.6%	5.2%	37.7%
Single Males	91.8%	4.5%	3.8%	10.6%
Single Females	91.6%	3.6%	4.8%	12.3%
FAMILY STATUS:				
Young Single	95.8%	1.5%	2.8%	5.2%
Adult Single	88.5%	4.5%	7.0%	11.9%
Single Parent	94.7%	5.3%		5.7%
Young Couple	100.0%			5.1%
Mature Couple	85.2%	9.3%	5.5%	32.4%
Young Family	96.0%	2.5%	1.6%	18.7%
Mature Family	92.1%	4.9%	3.0%	20.9%
LEGISLATIVE HOUSE DISTRICT:				
House District 10	84.1%	8.9%	7.0%	7.1%
House District 11	96.3%	3.7%		7.1%
House District 12	93.9%	2.3%	3.8%	7.1%
House District 13	85.3%	9.7%	5.0%	7.1%
House District 14	95.7%	2.1%	2.1%	7.1%
House District 15	92.8%	3.0%	4.2%	7.1%
House District 16	92.2%	5.9%	1.9%	7.1%
House District 17	92.9%	4.4%	2.7%	7.1%
House District 18	88.0%	7.5%	4.5%	7.1%
House District 19	90.7%	2.9%	6.4%	7.1%
House District 20	86.5%	7.2%	6.4%	7.1%
House District 21	91.0%	5.2%	3.8%	7.1%
House District 22	91.2%	4.9%	3.8%	7.1%
House District 23	91.7%	8.3%		7.1%
LEGISLATIVE SENATE DISTRICT:				
Senate District E	84.1%	8.9%	7.0%	7.1%
Senate District F	95.1%	3.0%	1.9%	14.3%
Senate District G	90.5%	5.9%	3.6%	14.3%
Senate District H	92.5%	4.4%	3.1%	14.3%
Senate District I	90.5%	6.0%	3.6%	14.3%
Senate District J	88.6%	5.0%	6.4%	14.3%
Senate District K	91.1%	5.1%	3.8%	14.3%
Senate District L	91.7%	8.3%		7.1%
Total	90.9%	5.4%	3.7%	100.0%

LOWER PRICES?

Row Percents

	LOWER PRICES?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
ELECTRIC PROVIDER:				
Chugach	74.7%	16.2%	9.1%	72.6%
ML+P	71.1%	17.9%	11.0%	27.4%
RIGHT TO CHOOSE?				
Yes	78.1%	12.6%	9.3%	90.9%
No	21.1%	74.9%	3.9%	5.4%
Not sure	42.1%	31.0%	27.0%	3.7%
BETTER SERVICES?				
Yes	84.9%	7.4%	7.8%	72.7%
No	35.7%	59.8%	4.5%	17.7%
Not sure	59.2%	7.8%	33.0%	9.7%
WANT TO BE ABLE TO SWITCH?				
Yes	76.9%	13.8%	9.3%	91.1%
No	33.3%	55.0%	11.7%	5.7%
Not sure	53.5%	31.0%	15.5%	3.2%
EFFECT ON LEGISLATOR:				
More positive	86.0%	7.2%	6.8%	64.6%
More negative	23.6%	70.2%	6.2%	5.1%
No difference	56.0%	27.8%	16.1%	30.3%
AGE OF RESPONDENT:				
18-39	83.4%	10.9%	5.7%	31.8%
40-47	73.7%	13.3%	13.0%	23.7%
48-57	67.0%	20.7%	12.3%	23.4%
58+	66.5%	24.7%	8.7%	21.2%
NUMBER OF CHILDREN:				
None	69.4%	20.0%	10.6%	54.7%
One	76.5%	14.1%	9.4%	15.9%
Two	80.9%	10.6%	8.5%	19.5%
Three or more	78.8%	14.1%	7.0%	9.9%
MARITAL STATUS:				
Married	73.7%	16.9%	9.4%	77.1%
Single	73.7%	15.9%	10.4%	22.9%
GENDER OF RESPONDENT:				
Male	73.1%	17.8%	9.1%	50.0%
Female	74.3%	15.5%	10.2%	50.0%
Total	73.7%	16.7%	9.6%	100.0%

	LOWER PRICES?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
MARITAL STATUS BY GENDER:				
Married Males	73.2%	18.3%	8.5%	39.4%
Married Females	74.2%	15.4%	10.4%	37.7%
Single Males	72.6%	16.0%	11.3%	10.6%
Single Females	74.5%	15.9%	9.6%	12.3%
FAMILY STATUS:				
Young Single	83.6%	12.4%	4.0%	5.2%
Adult Single	68.6%	19.0%	12.4%	11.9%
Single Parent	75.1%	12.7%	12.1%	5.7%
Young Couple	79.0%	12.6%	8.3%	5.1%
Mature Couple	65.9%	22.8%	11.3%	32.4%
Young Family	84.3%	10.2%	5.5%	18.7%
Mature Family	75.1%	14.7%	10.2%	20.9%
LEGISLATIVE HOUSE DISTRICT:				
House District 10	63.5%	23.2%	13.3%	7.1%
House District 11	75.3%	18.4%	6.4%	7.1%
House District 12	80.7%	10.3%	9.0%	7.1%
House District 13	67.0%	20.8%	12.2%	7.1%
House District 14	76.1%	13.7%	10.2%	7.1%
House District 15	72.5%	22.8%	4.6%	7.1%
House District 16	80.4%	14.5%	5.1%	7.1%
House District 17	77.3%	14.2%	8.5%	7.1%
House District 18	67.1%	25.9%	7.0%	7.1%
House District 19	76.9%	6.6%	16.5%	7.1%
House District 20	63.4%	16.8%	14.8%	7.1%
House District 21	70.3%	15.7%	14.0%	7.1%
House District 22	85.0%	8.9%	6.0%	7.1%
House District 23	71.6%	21.2%	7.2%	7.1%
LEGISLATIVE SENATE DISTRICT:				
Senate District E	63.5%	23.2%	13.3%	7.1%
Senate District F	78.0%	14.3%	7.7%	14.3%
Senate District G	71.5%	17.3%	11.2%	14.3%
Senate District H	76.5%	18.7%	4.8%	14.3%
Senate District I	72.2%	20.1%	7.7%	14.3%
Senate District J	72.6%	11.7%	15.7%	14.3%
Senate District K	77.7%	12.3%	10.0%	14.3%
Senate District L	71.6%	21.2%	7.2%	7.1%
Total	73.7%	16.7%	9.6%	100.0%

BETTER SERVICES?

Row Percents

	BETTER SERVICES?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
ELECTRIC PROVIDER:				
Chugach	73.5%	17.5%	9.0%	72.6%
ML+P	70.4%	18.2%	11.4%	27.4%
RIGHT TO CHOOSE?				
Yes	78.1%	13.4%	8.4%	90.9%
No	16.4%	74.3%	9.3%	5.4%
Not sure	20.8%	38.4%	40.8%	3.7%
LOWER PRICES?				
Yes	83.7%	8.5%	7.8%	73.7%
No	32.1%	63.4%	4.5%	16.7%
Not sure	58.6%	8.3%	33.1%	9.6%
WANT TO BE ABLE TO SWITCH?				
Yes	76.7%	14.3%	9.0%	91.1%
No	22.3%	63.4%	14.3%	5.7%
Not sure	48.4%	30.8%	20.8%	3.2%
EFFECT ON LEGISLATOR:				
More positive	84.6%	8.4%	6.9%	64.6%
More negative	19.4%	75.1%	5.5%	5.1%
No difference	56.3%	27.6%	16.2%	30.3%
AGE OF RESPONDENT:				
18-39	81.4%	11.1%	7.4%	31.8%
40-47	74.4%	14.7%	10.9%	23.7%
48-57	69.3%	21.1%	9.6%	23.4%
58+	61.3%	26.9%	11.8%	21.2%
NUMBER OF CHILDREN:				
None	67.8%	21.7%	10.5%	54.7%
One	75.9%	13.2%	10.9%	15.9%
Two	78.6%	14.2%	7.2%	19.5%
Three or more	82.9%	9.3%	7.8%	9.9%
MARITAL STATUS:				
Married	73.7%	17.5%	8.8%	77.1%
Single	69.3%	18.1%	12.6%	22.9%
GENDER OF RESPONDENT:				
Male	72.2%	19.2%	8.6%	50.0%
Female	73.1%	16.2%	10.7%	50.0%
Total	72.7%	17.7%	9.7%	100.0%

	BETTER SERVICES?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
MARITAL STATUS BY GENDER:				
Married Males	72.2%	19.5%	8.3%	39.4%
Married Females	75.3%	15.5%	9.3%	37.7%
Single Males	72.4%	17.9%	9.7%	10.6%
Single Females	66.6%	18.3%	15.2%	12.3%
FAMILY STATUS:				
Young Single	79.8%	12.5%	7.7%	5.2%
Adult Single	63.1%	21.9%	15.0%	11.9%
Single Parent	72.5%	15.2%	12.3%	5.7%
Young Couple	81.2%	13.0%	5.8%	5.1%
Mature Couple	65.5%	24.5%	10.1%	32.4%
Young Family	81.1%	11.2%	7.7%	18.7%
Mature Family	78.0%	13.5%	8.5%	20.9%
LEGISLATIVE HOUSE DISTRICT:				
House District 10	58.9%	25.7%	15.4%	7.1%
House District 11	78.4%	18.4%	3.2%	7.1%
House District 12	73.7%	16.6%	9.7%	7.1%
House District 13	62.5%	24.7%	12.9%	7.1%
House District 14	72.5%	18.3%	9.2%	7.1%
House District 15	71.3%	19.0%	9.7%	7.1%
House District 16	80.2%	15.8%	4.0%	7.1%
House District 17	75.5%	13.8%	10.7%	7.1%
House District 18	73.3%	19.4%	7.3%	7.1%
House District 19	78.6%	10.4%	11.0%	7.1%
House District 20	63.3%	18.3%	18.3%	7.1%
House District 21	70.3%	18.6%	11.1%	7.1%
House District 22	84.2%	9.0%	6.8%	7.1%
House District 23	74.8%	19.2%	5.9%	7.1%
LEGISLATIVE SENATE DISTRICT:				
Senate District E	58.9%	25.7%	15.4%	7.1%
Senate District F	76.0%	17.5%	6.4%	14.3%
Senate District G	67.5%	21.5%	11.0%	14.3%
Senate District H	75.7%	17.4%	6.9%	14.3%
Senate District I	74.4%	16.6%	9.0%	14.3%
Senate District J	70.9%	14.4%	14.7%	14.3%
Senate District K	77.2%	13.8%	8.9%	14.3%
Senate District L	74.8%	19.2%	5.9%	7.1%
Total	72.7%	17.7%	9.7%	100.0%

WANT TO BE ABLE TO SWITCH?

Row Percents

	WANT TO BE ABLE TO SWITCH?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
ELECTRIC PROVIDER:				
Chugach	92.0%	5.2%	2.8%	72.6%
ML+P	88.9%	7.0%	4.1%	27.4%
RIGHT TO CHOOSE?				
Yes	94.6%	3.0%	2.4%	90.9%
No	55.5%	38.2%	6.3%	5.4%
Not sure	58.9%	24.5%	16.5%	3.7%
LOWER PRICES?				
Yes	95.1%	2.6%	2.3%	73.7%
No	75.3%	18.8%	5.9%	16.7%
Not sure	88.0%	6.9%	5.1%	9.6%
BETTER SERVICES?				
Yes	96.1%	1.7%	2.1%	72.7%
No	74.0%	20.4%	5.5%	17.7%
Not sure	84.8%	8.4%	6.8%	9.7%
EFFECT ON LEGISLATOR:				
More positive	97.4%	.7%	1.8%	64.6%
More negative	45.5%	43.8%	10.7%	5.1%
No difference	85.4%	9.8%	4.8%	30.3%
AGE OF RESPONDENT:				
18-39	95.8%	1.9%	2.3%	31.8%
40-47	91.5%	5.1%	3.4%	23.7%
48-57	92.5%	4.9%	2.6%	23.4%
58+	82.3%	12.9%	4.9%	21.2%
NUMBER OF CHILDREN:				
None	88.8%	7.5%	3.7%	54.7%
One	90.8%	5.4%	3.8%	15.9%
Two	95.7%	2.6%	1.7%	19.5%
Three or more	95.7%	2.1%	2.2%	9.9%
MARITAL STATUS:				
Married	92.1%	5.3%	2.6%	77.1%
Single	87.8%	6.9%	5.3%	22.9%
GENDER OF RESPONDENT:				
Male	91.0%	5.9%	3.1%	50.0%
Female	91.2%	5.5%	3.3%	50.0%
Total	91.1%	5.7%	3.2%	100.0%

	WANT TO BE ABLE TO SWITCH?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
MARITAL STATUS BY GENDER:				
Married Males	91.8%	5.8%	2.4%	39.4%
Married Females	92.5%	4.8%	2.7%	37.7%
Single Males	88.3%	6.0%	5.7%	10.6%
Single Females	87.4%	7.7%	4.9%	12.3%
FAMILY STATUS:				
Young Single	95.3%	3.1%	1.6%	5.2%
Adult Single	82.3%	10.4%	7.3%	11.9%
Single Parent	92.3%	3.2%	4.5%	5.7%
Young Couple	96.3%	3.7%		5.1%
Mature Couple	89.0%	7.8%	3.3%	32.4%
Young Family	95.9%	1.1%	3.0%	18.7%
Mature Family	92.7%	5.7%	1.7%	20.9%
LEGISLATIVE HOUSE DISTRICT:				
House District 10	95.0%	2.9%	2.1%	7.1%
House District 11	96.8%	2.4%	.8%	7.1%
House District 12	87.2%	10.8%	2.0%	7.1%
House District 13	88.3%	6.6%	5.0%	7.1%
House District 14	87.4%	4.0%	8.5%	7.1%
House District 15	87.7%	6.3%	5.9%	7.1%
House District 16	94.2%	2.8%	3.0%	7.1%
House District 17	95.1%	3.8%	1.1%	7.1%
House District 18	90.4%	8.3%	1.3%	7.1%
House District 19	90.2%	5.8%	4.0%	7.1%
House District 20	86.0%	7.4%	6.6%	7.1%
House District 21	87.8%	10.2%	2.0%	7.1%
House District 22	99.0%	1.0%		7.1%
House District 23	90.8%	7.2%	2.0%	7.1%
LEGISLATIVE SENATE DISTRICT:				
Senate District E	95.0%	2.9%	2.1%	7.1%
Senate District F	92.0%	6.6%	1.4%	14.3%
Senate District G	87.9%	5.3%	6.8%	14.3%
Senate District H	91.0%	4.6%	4.4%	14.3%
Senate District I	92.8%	6.0%	1.2%	14.3%
Senate District J	88.1%	6.6%	5.3%	14.3%
Senate District K	93.4%	5.6%	1.0%	14.3%
Senate District L	90.8%	7.2%	2.0%	7.1%
Total	91.1%	5.7%	3.2%	100.0%

EFFECT ON LEGISLATOR

Row Percents

	EFFECT ON LEGISLATOR:			Total
	More positive	More negative	No difference	Col %
	Row %	Row %	Row %	
ELECTRIC PROVIDER:				
Chugach	65.8%	4.8%	29.4%	72.6%
ML+P	61.3%	5.9%	32.8%	27.4%
RIGHT TO CHOOSE?				
Yes	70.2%	2.0%	27.8%	90.9%
No	13.2%	49.6%	37.2%	5.4%
Not sure		16.4%	83.6%	3.7%
LOWER PRICES?				
Yes	75.3%	1.6%	23.1%	73.7%
No	27.9%	21.5%	50.6%	16.7%
Not sure	45.8%	3.3%	50.9%	9.6%
BETTER SERVICES?				
Yes	75.2%	1.4%	23.5%	72.7%
No	30.9%	21.7%	47.4%	17.7%
Not sure	46.4%	2.9%	50.7%	9.7%
WANT TO BE ABLE TO SWITCH?				
Yes	69.0%	2.5%	28.4%	91.1%
No	8.2%	39.4%	52.5%	5.7%
Not sure	37.2%	17.2%	45.6%	3.2%
AGE OF RESPONDENT:				
18-39	75.0%	2.2%	22.8%	31.8%
40-47	62.1%	4.6%	33.3%	23.7%
48-57	62.0%	5.4%	32.6%	23.4%
58+	54.5%	9.7%	35.8%	21.2%
NUMBER OF CHILDREN:				
None	59.7%	6.1%	34.2%	54.7%
One	70.4%	4.7%	24.9%	15.9%
Two	69.7%	4.0%	26.3%	19.5%
Three or more	72.0%	2.4%	25.6%	9.9%
MARITAL STATUS:				
Married	64.3%	4.9%	30.8%	77.1%
Single	65.6%	5.7%	28.8%	22.9%
GENDER OF RESPONDENT:				
Male	64.0%	6.7%	29.3%	50.0%
Female	65.1%	3.5%	31.4%	50.0%
Total	64.6%	5.1%	30.3%	100.0%

	EFFECT ON LEGISLATOR:			Total
	More positive	More negative	No difference	Col %
	Row %	Row %	Row %	
MARITAL STATUS BY GENDER:				
Married Males	62.5%	6.4%	31.1%	39.4%
Married Females	66.1%	3.4%	30.5%	37.7%
Single Males	69.8%	7.5%	22.6%	10.6%
Single Females	61.9%	4.0%	34.1%	12.3%
FAMILY STATUS:				
Young Single	68.5%	4.3%	27.2%	5.2%
Adult Single	59.3%	6.3%	34.4%	11.9%
Single Parent	76.1%	5.5%	18.5%	5.7%
Young Couple	74.0%		26.0%	5.1%
Mature Couple	56.2%	7.3%	36.6%	32.4%
Young Family	75.5%	2.6%	22.0%	18.7%
Mature Family	64.4%	4.7%	30.9%	20.9%
LEGISLATIVE HOUSE DISTRICT:				
House District 10	54.3%	8.5%	37.2%	7.1%
House District 11	66.8%	3.7%	29.5%	7.1%
House District 12	64.7%	.9%	34.4%	7.1%
House District 13	56.4%	6.9%	36.7%	7.1%
House District 14	72.8%	4.3%	23.0%	7.1%
House District 15	57.3%	3.0%	39.7%	7.1%
House District 16	69.9%	4.1%	26.0%	7.1%
House District 17	68.2%	4.2%	27.6%	7.1%
House District 18	60.6%	8.8%	30.6%	7.1%
House District 19	71.1%	3.2%	25.7%	7.1%
House District 20	59.0%	7.9%	33.2%	7.1%
House District 21	68.5%	6.7%	24.8%	7.1%
House District 22	68.3%	3.1%	28.6%	7.1%
House District 23	66.1%	6.2%	27.6%	7.1%
LEGISLATIVE SENATE DISTRICT:				
Senate District E	54.3%	8.5%	37.2%	7.1%
Senate District F	65.7%	2.3%	32.0%	14.3%
Senate District G	64.6%	5.6%	29.9%	14.3%
Senate District H	63.6%	3.6%	32.9%	14.3%
Senate District I	64.4%	6.5%	29.1%	14.3%
Senate District J	65.0%	5.5%	29.5%	14.3%
Senate District K	68.4%	4.9%	26.7%	14.3%
Senate District L	66.1%	6.2%	27.6%	7.1%
Total	64.6%	5.1%	30.3%	100.0%

Electric Power Competition In Alaska

Testimony of Michael C. Dotten
Shareholder, Heller, Ehrman, White & McAuliffe

Before the
Senate Labor and Commerce Committee

Alaska Legislature

My name is Michael Dotten and I am a shareholder in the law firm of Heller, Ehrman, White & McAuliffe. For the last 20 years I have been involved in the electric power and natural gas industries, first as a regulator as an Assistant Attorney General assigned to the Idaho Public Utilities Commission and then, as lead rate counsel for Bonneville Power Administration, a large federally owned electric utility that sells 50 percent of the power in the Pacific Northwest and provides 80 percent of the region's bulk transmission. For the last 15 years, I have been in private practice representing large consumers of natural gas and electricity, utilities, independent power producers, and cogenerators. I recently represented Columbia Steel Casting Co., Inc. as plaintiff in a successful Federal antitrust lawsuit against Portland General Electric Company, its incumbent electric utility on grounds that the utility unlawfully monopolized sales of electric power in Portland, Oregon.

Portland General filed a Petition for Certiorari with the United States Supreme Court and we await a decision by the Supreme Court as to whether it will grant review.

My practice has included work in 16 states. Many of those states today permit competition in the sale of electric power in one manner or another. Electric power service consists of three parts: generation (or power), transmission (to move electric power to load centers at high voltage) and distribution (lines that take power from high voltage to stepped down voltage and then over wires to businesses and homes). In the west, the states of California, Nevada, Oregon, Washington, and Montana all have fairly extensive state-wide or pilot programs offering customers a choice in their electric power suppliers. Distribution utilities remain monopolies, but there is competition to provide electric power to all classes of consumers, and prices are dropping.

In other words, Alaska would not be alone in providing its consumers with a choice in allowing competitive access to electric power suppliers. If Alaska fails to do so, however, it will handicap itself from attracting new industry.

I come before you today to describe why I believe current Alaska law not only permits, but mandates competition in the sale of electric power. I am also here to reassure you that Alaska law permits the Alaska Public Utilities Commission to create monopoly electric power distribution territories where it concludes duplication of facilities would be harmful to the public interest.

Free enterprise is the foundation of our country's economic philosophy. In the words of the United States Supreme Court, "antitrust laws are the magna carta of free enterprise. They are as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to our fundamental personal freedoms." [*US v. Topco*, 405 US 596, 610 (1972)].

Despite this country's historical commitment to free enterprise, the belief arose that some utilities are natural monopolies. Because of the tremendous capital investment that some utility systems require, and technological barriers to entry, it made no sense to have companies compete. Instead, some (but not all) states granted utilities a protected monopoly in return for regulated rates and services. However, as described below, this right to monopolize is not absolute and unfettered. The federal courts have increasingly held that, even in industries where monopolization has historically been permitted, as competition becomes

technologically and economically feasible, monc olization may become unlawful. In those circumstances the Courts will take a harder look at whether monopolization is sanctioned by the state.

Given the importance of the antitrust laws in preserving free enterprise, it is not surprising that the courts in this country that apply and interpret the antitrust laws are reluctant to create exceptions to those laws. The Court of Appeals for the Ninth Circuit (the Circuit in which Alaska is located) has held that immunity from the antitrust laws is "disfavored, much as are repeals [of the antitrust laws] by implication because of Congress's 'overarching and fundamental policies' protecting competition." *Columbia Steel Casting Co., Inc. v. Portland General Electric Company*, 111 F.3d 1427, 1436 [1] This rule applies even in the electric power industry which many people previously consider to be a "natural monopoly."

As this body is aware, electric power is gradually undergoing the same deregulation and is subject to the same competitive forces that have reduced consumer costs in the airline, telecommunications, natural gas, railroad and trucking

[1] The Ninth Circuit cited for these fundamental propositions the cases *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 636 (1992) and *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389, 398-99 (1978).

industries. As with many industries, the Federal courts are being used as vehicles by frustrated consumers to obtain competitive pricing from electric utility suppliers. To ward off these challenges to their monopolization and to defend themselves against claims for monopoly pricing, electric utilities seek to use a variety of exceptions to the normal application of the antitrust laws. Despite the courts' general reluctance to permit exceptions to the antitrust laws, some exceptions have arisen. One of those exceptions, called "the state action doctrine," arose, not from statutes, but from Federal court holdings. In the 1943 case of *Parker v. Brown*,[2] the Supreme Court determined that the antitrust laws were never intended to interfere with states implementing state policy. The Court recognized that states must have latitude to formulate regulatory policies that may be inherently anticompetitive. Accordingly, the Court ruled in *Parker v. Brown* that the states acting in their sovereign capacity are immune from the antitrust laws.

Subsequent decisions extended that immunity to private parties acting pursuant to expressly established state regulatory policies. Those decisions developed a test for state action immunity that balances state sovereignty against the judicial policy against implied immunities to the antitrust laws. That test was

[2] 317 U.S. 341 (1943).

formally articulated in the case of *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc. ("Midcal")* 445 U.S. 97 (1980). That decision holds that anticompetitive conduct is not immune from the antitrust laws unless that conduct is "clearly articulated and affirmatively expressed as state policy" to displace competition with regulation and "second, the policy must be actively supervised by the State itself." *Midcal*, 445 U.S. at 105. In other words, the state legislature acting in its sovereign capacity may sanction certain anticompetitive conduct on the part of state officials or private actors, but that sanction must be unmistakable. It cannot be implied in the statutes, nor can it arise *de facto* from the inaction of administrative agencies.

Even though municipalities are arms of the state, the Supreme Court has held that "before a municipality will be entitled to the protection of the state action exemption from the antitrust laws, it must demonstrate that it is engaging in the challenged activity pursuant to a clearly expressed state policy." *Town of Hallie v. City of Eau Claire*, 471 U.S. 34 (1985).

The question for the Legislature, in light of this background is: to what extent does Alaska law clearly articulate and affirmatively express a policy to displace competition for retail sales of electric energy with regulation? The answer makes

engineering, economic and policy sense and is based on a straightforward reading of Alaska law. AS 42.05.221 (d) reads as follows:

> In an area where the commission determines that two or more public utilities are competing to furnish identical utility service and that this competition is not in the public interest, the commission shall take appropriate action to eliminate the competition and any undesirable duplication of facilities. This appropriate action may include, but is not limited to, ordering the competing utilities to enter into a contract that, among other things, would:
>
> (1) delineate the service area boundaries in each of those areas of competition;
>
> (2) eliminate existing duplication and paralleling to the fullest reasonable extent;
>
> (3) preclude future duplication and paralleling;. . . .

Note that the foregoing approach does not "clearly articulate and affirmatively express" Alaska's intent to permit monopolization of electric power sales. It merely evidences the state's intent (after appropriate findings are made) to eliminate duplication and paralleling of distribution (and potentially transmission) facilities--the only facilities that could be "parallel."

Even if it can be said that a state public utility commission acquiesced in a utility's maintenance of monopoly electric sales, that is not sufficient to insulate the utility from private antitrust liability to consumers who seek access to competitive

markets. Federal Courts are willing to view antitrust immunity through the lens of an evolving technological and economic world. A monopoly insulated from liability when competition is technologically or economically impractical may find itself unprotected when competition becomes feasible. I offer the following real-world examples:

Do you recall the days when we all dialed our calls over black rotary telephones owned by the local exchange company? The local exchange companies claimed (correctly for years) that permitting phones produced by others to be connected to their lines would disrupt service. They claimed that the phone system needed to be a seamless web to assure adequate service. Gradually, however, alternative telephone handset and equipment providers convinced the federal courts and regulatory bodies that they could supply telephones that would be perfectly compatible with the local exchange companies' wires and switches.

Later, in the case of *MCI Communications Corp. v. AT&T Co.*, 708 F.2d 1081 (7th Cir.) *cert. denied,* 464 U.S. 891 (1983) and its progeny, the Federal courts concluded AT&T had misused its essential facility to eliminate competition, that long distance service did not need to be part of a vertically integrated monopoly and the Court ordered the breakup of AT&T. Today, we are seeing competition for

dial tone service. Why? Because each of these steps in breaking up a vertically-integrated monopoly became feasible from a technological and economic perspective. The Federal courts merely applied antitrust law to assure that monopolies were not needlessly perpetuated.

We have seen the beginnings of this evolution in the electric power industry as well. In *Cantor v. Detroit Edison Company*, 428 U.S. 579 (1976) the United States Supreme Court held that Detroit Edison was not insulated from antitrust liability for carrying out a program that allowed consumers to receive free replacement light bulbs from the utility. Suit was filed by a drug store owner who complained that the program constituted an unprotected restraint of trade. The Supreme Court found that the utility was not insulated under the state action doctrine from liability, even though the Michigan Public Service Commission had approved the tariffs that established the bulb replacements and thereby approved the program by implication. In effect, the free replacement of light bulbs, which had taken place since 1886, was part of a vertical monopoly that was no longer technologically or economically necessary.

Today, it is no longer technologically or economically required for electric utilities to provide vertically integrated monopoly generation, transmission and

distribution service--there are technologically and economically feasible alternatives. As the Supreme Court said of electric utilities in *Cantor*:

> There is no logical inconsistency between requiring such a [utility] firm to meet regulatory criteria insofar as it is exercising its natural monopoly powers and also to comply with antitrust standards to the extent it engages in business activity in competitive areas of the economy.

Cantor v. Detroit Edison Company, 428 U.S. at 596.

To the same effect, the Supreme Court held that insurance companies that might be insulated from antitrust liability under the federal McCarran-Ferguson Act are not immune from related activity that is subject to competition. *Group Life & Health Insurance Company et al. v Royal Drug Company*, 440 U.S. 205 (1979).

AS 42.05.221(d) does clearly articulate and affirmatively express the state's intent to permit monopolization of distribution facilities when necessary to prevent what the Alaska Public Utilities Commission finds to be harmful duplication of facilities. But that is as far as the Alaska statutes go. Whether the Alaska statutes would permit the vertically integrated monopolization of service when there was no technologically or economically feasible competition for the sale of electric power is now a moot question. Now that there are technologically and economically feasible alternatives to the sale of electric power over distribution lines that form a natural

monopoly, it is clear that neither federal nor state law will insulate a utility that seeks to monopolize sales of electric power over those lines from federal antitrust liability. As they have many times in the past, the federal courts will afford private litigants a remedy against monopolization that is not clearly articulated and affirmatively expressed as the state's own policy. Even if a state public utility commission has acquiesced in monopoly sales of electric power, that will not insulate the utilities. As the Ninth Circuit Court of Appeals recently said in *Columbia Steel Casting Co., Inc. v. Portland General Electric Company*:

> As a matter of law, then, neither the 1974 Order nor any other subsequent orders of the OPUC [Oregon Public Utilities Commission] amend the 1972 Order to clarify that Order as an expression of state policy to displace competition with regulation. At best, these orders recite that the utilities have stopped competing with each other within territories they have defined. As our court has said, mere "state authorization, approval, encouragement, or participation in restrictive private conduct confers no antitrust immunity." *Phonetele, Inc. v. American Tel. & Tel. Co.*, 664 F. 2d 716, 736 (9th Cir. 1981) (quoting *Cantor v. Detroit Edison Co.*, 428 U.S. 579, 592-93, 96 S. Ct. 3110, 3118-19, 49 L.Ed. 2d 1141 (1976), cert denied, 459 U.S. 1145, 103 S.Ct. 785, 74 L.Ed.2d 992 (1983).

Columbia Steel Casting Co., Inc. v. Portland General Electric Company, 111 F.3d 1427, 1441-42 (9th Cir. 1997).

This opinion is not "out there" in isolation. A federal district court judge in Idaho recently reached a similar result in the case of *Snake River Valley Electric Association v. PacifiCorp*, (Civil No. 96-0308-E-BLW, April 25, 1997, District of

Idaho) (interlocutory review denied by the U.S. Court of Appeals for the Ninth Circuit). Although I am proud of the result in the *Columbia Steel* case, I believe it reflects a straightforward application of the Supreme Court's test in the *Midcal* case.

We are not here today to challenge the notion of natural monopolies. We agree that some utility service cannot reasonably be duplicated and AS 42.05.221(d) affords the Alaska Public Utilities Commission the authority to bar duplication and paralleling of distribution and transmission facilities. But the tremendous changes that have occurred in the past few years in the electric industry have now made it feasible for sales of electric power to be scheduled across lines owned by third parties. That is the essence of competition that is taking place in the lower 48. For the last couple of years utility pilot programs have proven that electric power sales can be decoupled (or "unbundled") from distribution and transmission service, and consumers can be afforded substantial savings from the resulting competition. Alaska's utility statutes are not a bar to competitive sales of electric power that are now technologically and economically feasible. Neither are they a defense to challenges under the federal antitrust laws of those utilities that seek to block access to competition. I can assure you from my own experience that larger consumers of electric power are willing to use the antitrust laws, where necessary, to challenge

anticompetitive conduct by utilities. Businesses that increasingly compete in the world economy have no tolerance for higher prices paid to utilities that seek to protect themselves from competition.

We are not here advocating that legislation is necessary to allow competition to proceed, either. Electric utilities in this state have no lawful alternative but to permit competition to proceed. If the legislature or the Alaska Public Utilities Commission do not act to define how competition is to proceed, then a Federal court judge (as in the *Columbia Steel* and *Snake River* cases) may define the manner in which competition must go forward. All it would take to put the resolution of this question before a federal judge is a plaintiff who believes they have a sufficient stake in encouraging competition in electric power sales.

In addition to private litigation, the United States Department of Justice, through its Antitrust Division has become increasingly more active in the electric power arena. In 1997 the Justice Department filed suit against Rochester Gas and Electric Corporation (RG&E) in the United States District Court for the Western District of New York challenging the anticompetitive aspects of a contract entered into between RG&E and the University of Rochester in which RG&E promised to provide electricity to the University in return for the University's promise not to use

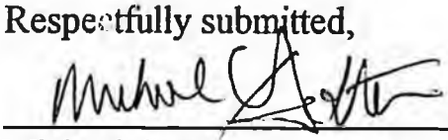
cogeneration to compete with RG&E. After a federal judge refused to dismiss the complaint, on February 20 of this year, RG&E and the Justice Department entered into a stipulation and submitted a consent judgment to the Court by which RG&E voluntarily surrendered the right to enforce the provisions eliminating competition in the sale of electric power from its agreement and prohibiting LG&E from "entering into or enforcing a covenant or agreement not to compete in the retail sale of electricity with any competitor."

Finally, I want to describe why competition is worth the effort. The Brookings Institution published, in 1997, a study entitled "*Economic Deregulation and Customer Choice: Lessons for the Electric Industry.*" The study reveals that in the natural gas, long distance telecom, airlines, trucking, and railroad industries, deregulation (and competition) resulted in real price reductions in the short term (2 years) the medium term (5 years) and the long term (10 years) with the price reductions getting larger over time. The study also reports that all classes of customers (not just large industrial customers) enjoyed substantial savings in each of these industries. A table, revealing the results is attached to this testimony.

I appreciate the opportunity to address you. The changes that will take place in the electric power industry in the next few years will create many new

opportunities. If Alaska does not impede market access and moves swiftly to encourage competition, it will enjoy a relative competitive advantage in attracting new business to the state as the savings resulting from competitive markets become available sooner, rather than later.

Respectfully submitted,



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SPONSOR STATEMENT
HB 335

"An Act replacing the Uniform Child Custody Jurisdiction Act with the Uniform Child Custody Jurisdiction and Enforcement Act; and amending Rules 4 and 62, Alaska Rules of Civil Procedure, and Rule 205, Alaska Rules of Appellate Procedure."

HB 335, The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) addresses the problem of interstate child custody. This act is intended to give swift, sure enforcement of court's order custody or visitation, inexpensively and in most cases.
without a lawyer.

Our current statute, known as The Uniform Child Custody Jurisdiction Act (UCCJA) has not been revised since 1968. The new Act, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), revises what is currently in statute and adds needed enforcement provisions.

HB 335 is advantageous for custodial and non-custodial parents. It addresses modern communications, domestic violence orders, the kidnapping act and other problems that frequently occur. The UCCJEA will also prevent the confusion and delay that occurs when parents or guardians must try to comply with conflicting court orders from different states.

The revised UCCJEA adds enforcement provisions. The current statute causes a parent with a valid visitation or custodial order to go through a long and expensive process to get an order enforced. The time and expense created by the process allows for indefinite delays in the enforcement of a custody or visitation order. These delays often result in a custodial parent waiting months or years to see their child. The revised UCCJEA allows a person with a valid order to register the order, give a certified copy to the other court, and for the court to hold a quick hearing to decide whether to honor the order or to decide if the order needs to be modified in the home state (original state of issue).

Another problem that the UCCJEA addresses is the difference in paperwork and timeframes between states. Our current statute allows each state to use different paperwork and time frame requirements for enforcement of orders. The revised UCCJEA makes the paperwork and time frame requirements the same in all states. The intention is to allow parents to do the necessary paperwork without hiring a lawyer and bearing the associated costs.

HB 335, the UCCJEA, is important for those who will be involved in custody disputes. Children will benefit from the security it will give them and parents will not be able to manipulate court orders in an effort to gain custody of a child or just keep a child from seeing the other parent.

January 26, 1998

Sectional Summary of HB 335 (Replace Uniform Child Custody Jurisdiction Act (UCCJA) with the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA))

Section 1. Makes technical amendments to replace existing UCCJA section numbers with the new UCCJEA section numbers.

Section 2. Enacts the Uniform Child Custody Jurisdiction Act.

Article 1. Jurisdiction.

Proposed AS 25.30.300. Sets mandatory standards for initial child custody jurisdiction of the Alaska court. Places a priority for "home state" of a child to assume jurisdiction over the child custody case. Existing UCCJA provides for independent and concurrent bases of jurisdiction.

Proposed AS 25.30.310. Sets standards for exclusive, continuing jurisdiction to make a child custody determination.

Proposed AS 25.30.320. Sets standards for the Alaska court's jurisdiction to modify a child custody determination.

Proposed AS 25.30.330. Sets standards for the Alaska court to exercise temporary emergency jurisdiction in extraordinary circumstances. Requires communication with the other state to resolve the emergency, protect the safety of the parties, and determine a period for the temporary order.

Proposed AS 25.30.340. Provides standards for notice and opportunity to be heard to parents and other specified persons in a child-custody proceeding. Alaska law governs who is entitled to notice. Recognizes that Alaska law governs obligations to join persons as parties and rights of persons to intervene as a party.

Proposed AS 25.30.350. Concerns procedures for simultaneous proceedings in courts of different states.

Proposed AS 25.30.360. Establishes procedures for an Alaska court to decline jurisdiction if the Alaska court determines that it is an inconvenient forum for the child custody determination and that a court of another state is in a better position to make the custody determination, taking into consideration the relative circumstances of the parties.

Proposed AS 25.30.370. Sets standards for an Alaska court to decline jurisdiction because of wrongful conduct, such as kidnapping a child.

Proposed AS 25.30.380. Specifies the information for parties to a child custody proceeding to submit to the Alaska court. Information includes child's address for the last five years and other proceedings that could affect the current proceeding. Each party has a responsibility to keep the information current with Alaska court. The section allows the court to protect the information against disclosure to protect the health, safety, or liberty of a party or child.

Proposed AS 25.30.390. Concerns the requirements of appearance of the parties and child in child-custody proceedings. This represents no major change to existing UCCJA.

Article 2. Enforcement.

Proposed AS 25.30.400. Allows an Alaska court to enforce an order made under the Hague Convention as if the order was a child custody determination.

Proposed AS 25.30.410. Requires an Alaska court to enforce an out-of-state order if the order was issued in substantial conformity with this chapter.

Proposed AS 25.30.420. Allows an Alaska court to issue a temporary visitation order to enforce a visitation schedule in an out-of-state order or to make provisions under the original order that did not have a specific visitation schedule (i.e., reasonable visitation). This order may include make-up or substitute visitation.

Proposed AS 25.30.430. Sets simple procedures for requesting registration of out-of-state child custody determinations. Allows a person seeking to contest the validity of a registered order to request a hearing on specified grounds.

Proposed AS 25.30.440. Allows Alaska court to grant relief for a registered out-of-state child custody determination that is available in Alaska court. A registered out-of-state order is not modifiable by Alaska court unless an Alaska court would have jurisdiction to modify it under this chapter.

Proposed AS 25.30.450. Requires Alaska court enforcing an out-of-state order to communication to another state court if the Alaska court determines that a proceeding to modify the out-of-state order is pending.

Proposed AS 25.30.460. Sets out procedure and requires an Alaska court to give expedited enforcement of an out-of-state child custody determination. Provides procedures for a hearing and limited defenses to enforcement of the out-of-state order

Proposed AS 25.30.470. Establishes that Alaska law sets procedures for service of petition for enforcement and order under the chapter.

Proposed AS 25.30.480. Establishes the scope of inquiry of Alaska court in enforcing an out-of-state child custody determination order. If a child would be endangered by enforcement of the order, the Alaska court could assume emergency jurisdiction under other provisions of the chapter.

Proposed AS 25.30.490. Establishes an exceptional remedy in emergency situations to allow the Alaska court to issue a warrant to take physical custody of the child, if the child is immediately likely to suffer serious physical harm or be removed from Alaska.

Proposed AS 25.30.500. Allows the Alaska court to award prevailing party costs, fees, and expenses to the extent authorized by court rules, unless the other party establishes that the award would be clearly inappropriate

Proposed AS 25.30.510. Requires Alaska courts to enforce and not modify enforcement orders issued by other states.

Proposed AS 25.30.520. Authorizes court calendar priority for appeals of enforcement orders to the extent allowed for other civil appellate cases. Precludes the Alaska enforcing court from staying an enforcement order pending appeal, unless the Alaska court enters a temporary emergency order because of risk of serious mistreatment or abuse of the child.

Proposed AS 25.30.590. Provides definitions for petitioner and respondent

Article 3. Miscellaneous Provisions.

Proposed AS 25.30.800. Lists proceedings governed by other law than UCCJEA such as adoptions.

Proposed AS 25.30.810. Provides procedures for international applications of this chapter to child custody determinations and foreign countries if the child custody law of the foreign country does not violate fundamental principles of human rights.

Proposed AS 25.30.820. Defines the binding effect of a child custody determination under this chapter made by an Alaska court.

Proposed AS 25.30.830. Establishes a priority for expedited court consideration of a jurisdiction issue in a child custody proceeding.

Proposed AS 25.30.840. Provides standards for notice to persons outside of Alaska for Alaska court to have jurisdiction over the child custody proceeding.

Proposed AS 25.30.850. Establishes participation in a custody proceeding does not, by itself, give the Alaska court jurisdiction over any issue for which personal jurisdiction is required. Establishes limited immunity for certain individuals while present in Alaska to participate in the proceeding.

Proposed AS 25.30.860. Establishes standards for communication between courts concerning a proceeding arising under this chapter.

Proposed AS 25.30.870. Establishes standards for taking testimony in another state for the child custody proceeding. Recognizes electronic means as an appropriate method for taking the testimony in another state.

Proposed AS 25.30.880. Establishes standards for cooperation between courts on child custody proceedings covered by this chapter and preservation of court records.

Article 4. General Provisions.

Proposed AS 25.30.901. Allows the court to give consideration to promote uniformity of the law in applying and construing the chapter.

Proposed AS 25.30.903. Provides a severability clause to allow remainder of chapter to remain effective, if a provision is found invalid.

Proposed AS 25.30.909. Provides definitions for key terms

Section 3. Amends the statutory short title to reflect the Uniform Child Custody Jurisdiction and Enforcement Act.

Section 4. Repeals provisions of Uniform Child Custody Jurisdiction Act.

Section 5. Provides notice of provisions to amend Rule 4 Alaska Rules of Civil Procedure regarding service in certain court actions.

Section 6. Provides notice of provisions to amend Rule 62. Alaska Rules of Civil Procedures and Rule 205. Alaska Rules of Appellate Procedures, by prohibiting a stay, pending appeal, under certain circumstances.

Section 7. Provide an applicability section for the chapter to address new motions in child custody proceedings.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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March 26, 1998

Honorable Robin Taylor, Chair
Senate Judiciary Committee
State Capitol
Juneau, Alaska 99801

Re: HB 355: Uniform Child Custody Jurisdiction and Enforcement Act

Dear Senator Taylor:

The Department of Law requests an early scheduling of a Senate Judiciary Committee hearing on HB 355 (Uniform Child Custody Jurisdiction and Enforcement Act).

The bill is important for enforcing the custody and visitation rights of Alaska children and to update Alaska's interstate child custody jurisdiction law.

If you need more information, please let me know.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

Deborah E. Behr

By: Deborah E. Behr
Assistant Attorney General

DEB:jn

cc: Alaska Uniform Law Commissioners

Hon. Con Bunde, Chair
House Health, Education and Social Services Committee

Pat Pourchot, Legislative Director
Office of the Governor

Chrystal Smith, Legal Administrator
Department of Law

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB 335

Revision Date (Note if correction)
Dept. Affected Law
Title "...replacing the Uniform Child Custody Jurisdiction Act with the Uniform Child Custody Jurisdiction and Enforcement ..."
BRU Civil Division
Component Human Services
Sponsor House HESS Committee
Requester House HESS Committee
Component Senal No. 2208

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

HB 335 replaces the current Uniform Child Custody Jurisdiction Act with the Uniform Child Custody Jurisdiction and Enforcement Act. This bill primarily concerns custody disputes between private parties, and will not impact the Department of Law.

Prepared by Joan M. Kasson Phone 465-5370
Division Attorney General's Office Date 1/26/98
Approved by Commissioner Bruce M. Botelho, Attorney General Date 1/26/98
Agency Department of Law

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

November 17, 1997

Honorable Mike Miller
Honorable Gail Phillips
Alaska State Capitol
Juneau, Alaska 99801

Dear President Miller and Speaker Phillips:

On behalf of Alaska's delegation to the National Conference of Commissioners on Uniform State Laws, I submit this year's annual report.

I. HISTORY OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

In August, 1892, the first National Conference of Commissioners on Uniform State Laws (ULC) convened in Saratoga, New York, three days preceding the annual meeting of the American Bar Association. By 1912, every state was participating in the ULC. The Territory of Alaska joined the conference that year.

The ULC is a confederation of states. It arose out of the concerns of state government for the improvement of the law and for better interstate relationships. Its sole purpose has been, and remains, service to state government and improvement of state law.

II. THE OPERATION OF THE ULC

The National Conference is convened as a body once a year. It meets for a period of eight days, usually in mid-summer. In the interim period between the annual meetings, drafting committees composed of commissioners meet to supply the working drafts that are considered at the annual meeting. At each annual meeting, the work of the drafting committees is read and debated. Each Act must be considered over a substantial period of years. No Act becomes officially recognized as a Uniform Act until the National Conference is satisfied that it is

ready for consideration in the state legislatures. It is then put to a vote of the states, during which each state caucuses and votes as a unit.

A small staff located in Chicago operates the national office of the ULC. The national office handles meetings arrangements, publications, legislative liaison, and general administration for the ULC. The total staff numbers only seven people.

The ULC maintains relationships with several sister organizations. Official liaison is maintained with the American Bar Association, which contributes an amount each year to the operation of the ULC. Liaison is also maintained with the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures on an ongoing basis. Liaison and activities may be conducted with other associations as interests and activities necessitate.

III. ANNUAL MEETING

The 1997 annual meeting of the National Conference of Commissioners on Uniform State Laws was held July 25 - August 1 in Sacramento, California. The meeting attendees considered draft Acts amending Articles 2 and 9 of the Uniform Commercial Code; proposed new Article 2B of the Uniform Commercial Code; Uniform Interstate Child Custody Jurisdiction and Enforcement Act; Uniform Principal and Income Act; Uniform Management of Public Employee Retirement Systems Act; and Uniform Guardianship and Protective Proceedings Act. (See attached short summaries briefly describing each Act.)

The conference approved the Uniform Interstate Child Custody Jurisdiction and Enforcement Act; the Uniform Principal and Income Act; the Uniform Management of Public Employment Retirement Systems Act; and the Uniform Guardianship and Protective Proceedings Act. Alaska commissioners served on the Uniform Instate Child Custody Jurisdiction and Enforcement Act Committee and Uniform Principal and Income Act Committee.

This work will benefit many Alaskans, since the state's enactment of the Uniform Acts will aid interstate commerce and investment and the enforcement of visitation orders across state lines. Also, the work will aid in the resolution of legal issues arising from electronic commerce, especially transactions made over the internet. Alaska business should benefit directly from the conference work in making these transactions more easily legally enforced. These issues have been of interest to the Alaska State Legislature and the executive branch.

IV. ACTIVITIES OF THE ALASKA COMMISSIONERS

A. The Alaska Commissioners are:

The Honorable Jay Rabinowitz (retired chief justice of Alaska Supreme Court and life member of the ULC)

Art Peterson (lawyer, private practice, and life member of the ULC)

Jerry Kurtz (lawyer, private practice)

Grant Callow (lawyer, private practice)

Deborah Behr (lawyer, Assistant Attorney General)

B. The Alaska associate member is Tamara Brandt Cook (lawyer, Director of Division of Legislative Legal and Research Services)

C. The ULC committee assignments for Commissioners from Alaska are:

Art Peterson	-	member of paternity Act drafting committee; member of family law study committee; and member of legislative committee
Deborah Behr	-	member of enforcement of custody and visitation laws stand-by committee; and member of family law study committee
Jerry Kurtz	-	member of principal and income stand-by committee; and member of pension funds study committee
Grant Callow	-	member of committee to reverse Uniform Rules of Evidence; and member of ULC committee on scope and program
Jay Rabinowitz	-	member of native law study committee

D. Alaska Commissioners hold regular telephone conference meetings during the year.

E. Alaska Commissioners attending the 1997 ULC Annual Meeting in Sacramento were:

Art Peterson
Jerry Kurtz
Grant Callow
Deborah Behr

F. In the year 1997, the Alaska Commissioners made several legislative appearances, in person or by teleconference, to explain HB 178 - Uniform Commercial Code, article 5 (letters of credit); SB 154 - Uniform Family Support Act amendments; and SB 198 - Uniform Partnership Act.

V. Recommendation for Passage During 1998 Legislative Session:

The Alaska Uniform Law commissioners are recommending passage during the 1998 legislative session of the following matters: (A) update of the Uniform Partnership Act (SB 198); (B) the Uniform Commercial Code, article 5 (HB 178); and (C) Uniform Child Custody Jurisdiction and Enforcement Act.

Sincerely,

Deborah E. Behr
Alaska Uniform Law Commissioner

DEB:ng

Attachment

cc: Gene N. Lebrun, President
National Conference of Commissioners
on Uniform State Laws

National Conference of Commissioners on Uniform State Laws

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Chicago, Illinois 60611
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NEW UNIFORM STATE LAW AIMS AT OVERCOMING OBSTACLES TO ENFORCING CHILD CUSTODY DETERMINATIONS

Uniform Enactment Nationwide Crucial to Its Effectiveness

When state legislatures around the country were enacting the original Uniform Child Custody Jurisdiction Act (UCCJA) in the late 1970s and early 1980s, the hope was that uniformity nationwide would eliminate interstate parental child-snatching. UCCJA was designed to prevent a fairly common legal standoff of the day, whereby one parent gained legal custody of a child in one state, and the other parent managed to take the child to a "haven state" in search of a court willing to change the initial lawful custody order.

The quest to curb parental child-snatching was intensified in 1980 with the signing of the Parental Kidnapping Prevention Act (PKPA) by President Carter. This federal law was primarily meant to give states the basic rules for them to recognize child custody decisions made under the UCCJA as part of their constitutional obligations under the "full faith and credit" clause of the U.S. Constitution.

By 1983 UCCJA, a product of the Uniform Law Commissioners (ULC), had been enacted in all 50 states, the District of Columbia, and Puerto Rico. Despite some difference with the PKPA, these statutes have been effective at eliminating the kind of forum shopping in child custody cases that plagued the courts in prior decades. Yet according to a study by the U.S. Department of Justice, in 1988 the abductors of 163,200 children—nearly one half of an estimated 354,100 children abducted by parents or family members in the U.S. that year—took the children across state lines, concealed them, or prevented contact.

Among the obstacles enabling parents to obtain conflicting custody orders from courts in different states has been a lack of uniformity in state enactments of the UCCJA and court opinions interpreting that statute. In addition, some unfortunate differences between the PKPA and the UCCJA have hindered effective child custody orders.

Now, after two years of drafting and deliberation, the Uniform Law Commissioners have approved a new Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) that is available for enactment by every state legislature. Uniform enactment nationwide is crucial to its effectiveness.

"The new law significantly eliminates the conflicts and problems which surround interstate custody and visitation cases," say Marian P. Opala, chairman of the drafting committee. UCCJEA erases the differences between its predecessor UCCJA and the PKPA and other federal statutes, and

makes changes necessary after almost 30 years of inconsistent court interpretations.

Most importantly, it covers new territory as well, including provisions for enforcing interstate custody orders, an issue the original UCCJA did not address. The enforcement provisions are aimed at the continuing problems of child abduction, concealment and evasion when parents and families are at war with each other.

The original act authorized four different bases for jurisdiction and did not provide for home state priority. Like the federal law, the new act prioritizes home state jurisdiction, defining it as the state in which a child lived with a parent, or a person acting as parent, for at least six consecutive months immediately before the beginning of a child custody proceeding. If there is more than one child custody order, therefore, the one from the child's home state is the one that gets enforced.

The new act further provides that a state which makes the initial custody determination has continuing exclusive jurisdiction, so long as a party to the original custody determination remains in that state. Continuing exclusive jurisdiction was not a provision in the original UCCJA, although the federal PKPA later recognized the concept. The order of a state with continuing exclusive jurisdiction is entitled to be enforced in every other state. No other state can modify the order unless the first state relinquishes jurisdiction to the courts of another state, because they can do a better job of adjudication.

UCCJEA also clarifies how and when emergency jurisdiction should be used, allowing a court to take temporary jurisdiction (e.g. child abuse orders or domestic violence orders of protection) even though it does not have grounds for taking permanent jurisdiction. This provision extends the emergency jurisdiction provision of the UCCJA to include abuse of a parent or sibling of an abducted child as grounds.

New to the UCCJEA is an expedited process to enforce interstate child custody and visitation determinations. As documented in an extensive study by the American Bar Association's Center on Children and the Law, *Obstacles to the Recovery and Return of Parentally Abducted Children (1993)*, neither the UCCJA nor the PKPA provides for enforcement of child custody orders. It was assumed that local law would be adequate for enforcement of out-of-state orders. Time has proved the error of that assumption.

Drafters of the new act recognized the need for swift enforcement for a left-behind parent who seeks to have a child custody order enforced. If enforcement does not happen quickly, the child may be lost permanently. Drafters chose an extremely swift remedy along the lines of habeas corpus: the child must be produced before the court. And if the enforcing court is concerned that the parent will flee or harm the child, a warrant to take physical possession of the child is available.

In this and other respects, the act accomplishes for custody and visitation determination the same certainty that has occurred in interstate child support law with the promulgation of the Uniform Interstate Family Support Act.

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UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

- A Summary -

INTRODUCTION

In 1968, the Uniform Law Commissioners promulgated the Uniform Child Custody Jurisdiction Act (UCCJA). By 1981, every state had adopted this Uniform Act. This Act was designed to defeat kidnapping of children by non-custodial parents, who took their children from state to state in the hope of finding a court that would issue a favorable custodial order modifying or contradicting the court order that made them non-custodial parents. This practice was perceived as wide-spread in the decades before the promulgation of this important Uniform Act. The UCCJA operates upon novel principles that 1) establish jurisdiction over a child custody case in one state; and, 2) protect the order of that state from modification in any other state, so long as the original state retains jurisdiction over the case. If a non-custodial parent cannot take a child to another state and petition the court of that state for a favorable modification of an existing custody order, the incentive to run with the child is greatly diminished.

In 1981, Congress adopted the Parental Kidnapping Prevention Act (PKPA) for much the same purpose. The peculiarities of prior law, allowing easy modification of custody orders, were largely peculiarities in the interpretation of the Full Faith and Credit Clause of the Constitution of the United States. The Parental Kidnapping Prevention Act was an effort, largely, to put the weight of full faith and credit behind the principles of the Uniform Child Custody Jurisdiction Act. But there are some differences between the two acts, rooted in disagreements over application of jurisdictional principles. There are two main differences. The UCCJA does not give first priority to the "home state" of the child in determining which state may exercise jurisdiction over a child custody dispute. The PKPA does. The PKPA also provides that once a state has exercised jurisdiction, that jurisdiction remains the continuing, exclusive jurisdiction until every party to the dispute has exited that state. The UCCJA simply states that a legitimate exercise of jurisdiction must be honored by any other state until the basis for that exercise of jurisdiction no longer exists. In practice, there is much congruity between the two acts, but enough differences to confuse the adjudication and settlement of child custody disputes in certain cases.

Neither the UCCJA nor the PKPA address another important issue, interstate enforcement of child custody orders (including visitation provisions).. Although resolution of jurisdictional problems has greatly diminished the problem of parental kidnapping, this destructive practice has by no means ceased to exist. States initiated criminal penalties for parental kidnapping, but such drastic measures have failed to eliminate the practice. Criminal penalties are, perhaps, too draconian and therefore little used. So the salutary steps taken in 1968 and 1981 need to be further augmented.

In 1997, the Uniform Law Commissioners have drafted a new Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). It does two very important things. It reconciles UCCJA principles with the PKPA. It adds interstate civil enforcement for child custody orders. These two broad strokes will make kidnapping by non-custodial parents much more difficult.

HOME STATE PRIORITY

In the UCCJA, there are four principles, or bases, for taking jurisdiction over a child custody dispute. These are child's home state, significant connection between state and some contestants to a dispute, emergency jurisdiction when the child is present and the child's welfare is threatened; and presence of the child in the event there is no other state with another sound basis for taking jurisdiction. It was always assumed the great majority of disputes would be resolved in the child's home state, but the home state has no particular priority over any other state with one of the other bases for taking jurisdiction. (The term "taking jurisdiction" simply means that a state's courts have a good reason for summoning the contestants to come before them to adjudicate the dispute no matter where they reside. If there is jurisdiction, the court's orders are valid and enforceable.)

From the beginning the state that is the home state of the child was thought to be the state with the best information for adjudicating the child's custody in the best interests of the child. But it was also assumed that once a court took jurisdiction on any acceptable basis, that state should be able to proceed without spending contestants' time and money while sorting out the issue of which state has the best access to the evidence before adjudicating the dispute.

But the drafters of the PKPA took the opposite position, regarding "home state" as so significantly better than the other jurisdictional grounds, that it should always be the priority ground. Under the PKPA the home state always has the first opportunity to take jurisdiction.

The UCCJEA now supports the PKPA position. Any state that is not the "home state" of the child will defer to the "home state," if there is one, in taking jurisdiction over a child custody dispute. Temporary emergency jurisdiction may be taken, but only long enough to secure the safety of the threatened person and to transfer the proceeding to the home state, or if none, to a state with another ground for jurisdiction.

CONTINUING EXCLUSIVE JURISDICTION

The UCCJEA also provides for continuing exclusive jurisdiction. If a state once takes jurisdiction over a child custody dispute, it retains jurisdiction so long as that state, by its own determination, maintains a significant connection with the disputants or until all disputants have moved away from that state. In contrast, the UCCJA allows jurisdiction to shift if one of the grounds for taking jurisdiction ceases to exist. Thus, if a state takes jurisdiction over a child custody dispute because that state is the home state of the child, and the child subsequently establishes a new home state, jurisdiction can shift to the new home state, even if one parent remains in the child's original home state. The UCCJEA would not allow the jurisdiction to shift in this fashion, keeping it in the original home state so long as the parent remained there.

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Under the UCCJA, grounds for taking emergency jurisdiction are on an equal footing with the other grounds for taking jurisdiction, including the "home state" of the child. If the child is present in a state and there is evidence of abandonment or abuse to or mistreatment of the child, that state can take jurisdiction under the UCCJA.

The UCCJEA provides for temporary emergency jurisdiction, that can ripen into continuing jurisdiction only if no other state with grounds for continuing jurisdiction can be found or, if found, declines to take jurisdiction. The child's presence and its abandonment, mistreatment or abuse still trigger the taking of emergency jurisdiction, but threats to siblings or a parent also can trigger the taking of emergency jurisdiction. Because of the priority given to the home state of the child, the home state will most often be the state from which continuing jurisdiction is exercised.

The impact of these changes in the UCCJEA from the UCCJA is to reinforce the impact of the PKPA. Priority for home state jurisdiction, continuing exclusive jurisdiction and temporary emergency jurisdiction mean that orders made pursuant to the UCCJEA will have the full weight of the Full Faith and Credit Clause of the U.S. Constitution behind them.

ENFORCEMENT OF CUSTODY AND VISITATION ORDERS

The UCCJEA also adds enforcement provisions to the jurisdictional provisions. Interstate enforcement of custody and visitation decrees in any form in which they issue has been frustrating. The UCCJEA requires a state to enforce a custody or visitation order from another state that conforms substantially with this Act. An order from a state that has continuing exclusive jurisdiction, therefore, will have its order enforced.

One enforcement procedure is reminiscent of procedures for enforcement under the Uniform Interstate Family Support Act for interstate spousal and child support orders and the Uniform Enforcement of Foreign Judgments Act, which governs the enforcement of any civil order from another state in an enacting state. The basic procedure is to register the out-of-state order. If the registration is not contested, the registered order may be enforced by any means available to enforce a domestic order. This would ordinarily mean using the contempt powers of the court to assure that the custody or visitation order is honored by the parent subject to it.

There is an expedited remedy, however, that also is available. Upon receiving a verified petition, the court orders the party with the child to submit to an immediate hearing, the next judicial day unless impossible, for enforcement. The court may rule with respect to enforcement at the hearing, although there are provisions to allow for extended hearing and standards to contest enforcement. This remedy operates much like habeas corpus, in which the body subject to the writ must be presented immediately to the court for disposition.

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CONCLUSION

It is not possible to cover all the details of the UCCJEA in a short summary. The best that it can do is point out the impact of major provisions. The UCCJEA does much more to update and streamline the original UCCJA, which was promulgated in 1968. It will provide much better relief for parents and children who suffer from interstate child-custody disputes, and ought to be adopted in all the states as soon as possible.

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

- A Summary -

INTRODUCTION

In 1968, the Uniform Law Commissioners promulgated the Uniform Child Custody Jurisdiction Act (UCCJA). By 1981, every state had adopted this Uniform Act. This Act was designed to defeat kidnapping of children by non-custodial parents, who took their children from state to state in the hope of finding a court that would issue a favorable custodial order modifying or contradicting the court order that made them non-custodial parents. This practice was perceived as wide-spread in the decades before the promulgation of this important Uniform Act. The UCCJA operates upon novel principles that 1) establish jurisdiction over a child custody case in one state; and, 2) protect the order of that state from modification in any other state, so long as the original state retains jurisdiction over the case. If a non-custodial parent cannot take a child to another state and petition the court of that state for a favorable modification of an existing custody order, the incentive to run with the child is greatly diminished.

In 1981, Congress adopted the Parental Kidnapping Prevention Act (PKPA) for much the same purpose. The peculiarities of prior law, allowing easy modification of custody orders, were largely peculiarities in the interpretation of the Full Faith and Credit Clause of the Constitution of the United States. The Parental Kidnapping Prevention Act was an effort, largely, to put the weight of full faith and credit behind the principles of the Uniform Child Custody Jurisdiction Act. But there are some differences between the two acts, rooted in disagreements over application of jurisdictional principles. There are two main differences. The UCCJA does not give first priority to the "home state" of the child in determining which state may exercise jurisdiction over a child custody dispute. The PKPA does. The PKPA also provides that once a state has exercised jurisdiction, that jurisdiction remains the continuing, exclusive jurisdiction until every party to the dispute has exited that state. The UCCJA simply states that a legitimate exercise of jurisdiction must be honored by any other state until the basis for that exercise of jurisdiction no longer exists. In practice, there is much congruity between the two acts, but enough differences to confuse the adjudication and settlement of child custody disputes in certain cases.

Neither the UCCJA nor the PKPA address another important issue, interstate enforcement of child custody orders (including visitation provisions).. Although resolution of jurisdictional problems has greatly diminished the problem of parental kidnapping, this destructive practice has by no means ceased to exist. States initiated criminal penalties for parental kidnapping, but such drastic measures have failed to eliminate the practice. Criminal penalties are, perhaps, too draconian and therefore little used. So the salutary steps taken in 1968 and 1981 need to be further augmented.

In 1997, the Uniform Law Commissioners have crafted a new Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). It does two very important things. It reconciles UCCJA principles with the PKPA. It adds interstate civil enforcement for child custody orders. These two broad strokes will make kidnapping by non-custodial parents much more difficult.

HOME STATE PRIORITY

In the UCCJA, there are four principles, or bases, for taking jurisdiction over a child custody dispute. These are child's home state, significant connection between state and some matter vital to a dispute, emergency jurisdiction when the child is present and the child's welfare is threatened, and presence of the child in the event there is no other state with another sound basis for taking jurisdiction. It was always assumed the great majority of disputes would be resolved in the child's home state, but the home state has no particular priority over any other state with one of the other bases for taking jurisdiction. (The term "taking jurisdiction" simply means that a state's courts have a good reason for summoning the contestants to come before them to adjudicate the dispute no matter where they reside. If there is jurisdiction, the court's orders are valid and enforceable.)

From the beginning the state that is the home state of the child was thought to be the state with the best information for adjudicating the child's custody in the best interests of the child. But it was also assumed that once a court took jurisdiction on any acceptable basis, that state could be able to proceed without spending contestants' time and money while sorting out the issue of which state has the best access to the evidence before adjudicating the dispute.

But the drafters of the PKPA took the opposite position, regarding "home state" as so significantly better than the other jurisdictional grounds, that it should always be the primary ground. Under the PKPA the home state always has the first opportunity to take jurisdiction.

The UCCJEA now supports the PKPA position. Any state that is not the "home state" of the child will defer to the "home state," if there is one, in taking jurisdiction over a child custody dispute. Temporary emergency jurisdiction may be taken, but only long enough to secure the safety of the threatened person and to transfer the proceeding to the home state, or if none, to a state with another ground for jurisdiction.

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March 27, 1998

Honorable Robin Taylor
Chair, Senate Judiciary Committee
Alaska State Legislature
Room 30, State Capitol
Juneau, Alaska 99811

HAND DELIVERED

Re: HB 335 (Uniform Child Custody Jurisdiction and Enforcement Act)

Dear Senator Taylor:

I understand that HB 335 is now in your committee. I want to make sure that you know of my support for this bill, and I urge you to schedule it for an early hearing.

As I'm sure you already know, this bill revises the 1968 Uniform Child Custody Jurisdiction Act, which was adopted in every state. That Act and this revision are products of the National Conference of Commissioners on Uniform State Laws. Besides generally updating the original Act and addressing issues that have been litigated under it, this new version brings the substance of the old one into compliance with the federal Parental Kidnapping Prevention Act. A major feature of this revision is its limitation of child custody jurisdiction to one state, thus greatly streamlining the procedures and avoiding complications (such as conflicting orders in different states) that negatively affect the children and their families. Another major feature is this version's addition of enforcement provisions for child custody orders.

It is anticipated that this revision will sweep the country as the original version did. Therefore, it is necessary for Alaska to keep up with developments in the law and to provide this protection to our children and families.

So I strongly urge a "do pass" recommendation from your committee. Thank you for considering these comments.

Yours truly,

Art Peterson

Arthur H. Peterson
Uniform Law Commissioner
for Alaska

SUPPORTING
DOCUMENTS

WHY STATES SHOULD ADOPT THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

The Uniform Child Custody Jurisdiction Act (UCCJA), approved by the Uniform Law Commissioners (ULC) in 1968 and the law in every state, has been revised. The new act, the Uniform Child Custody Jurisdiction and Enforcement Act, goes much further than simply updating the UCCJA. It also contains provisions on the enforcement of custody orders, an issue the original UCCJA did not address, and it eliminates differences between the uniform act and the federal Parental Kidnapping Prevention Act.

There are a number of reasons why every state should adopt the Uniform Child Custody Jurisdiction and Enforcement Act.

ENHANCED RULES FOR CUSTODY DETERMINATIONS

- *Updated Home State Provisions.* The new act gives prioritization to the home state as a ground for taking jurisdiction.

- *Continuing Exclusive Jurisdiction.* A new provision has been added which provides that a state which makes the initial custody determination has continuing exclusive jurisdiction so long as a party to the original custody determination remains in that state. A state with continuing exclusive jurisdiction is the only state which can modify a custody order. If it determines that another state has a more significant connection to the child, it may relinquish its authority.

- *Emergency Jurisdiction.* The new act clarifies the provisions regarding emergency jurisdiction, allowing a court to take jurisdiction even though it is not the home state, if the child is present in the state and has been abandoned or is subjected to or threatened with mistreatment or abuse. An order issued by a court with emergency jurisdiction is temporary.

NEW ENFORCEMENT PROVISIONS

- *Expedited Enforcement Hearings.* At an enforcement hearing, a petitioner only needs to show a certified copy of the custody determination to be enforced, evidence of a violation by the respondent, and show the remedy sought. The court will then decide whether the remedy sought should be granted.

- *Enhanced Court Remedies.* If the enforcing court is concerned that the parent who has physical custody of the child, will flee or harm the child, a warrant to take physical possession of the child is available.

- *Duty to Enforce.* The new act provides that a court has the duty to enforce a custody determination of another state. However, a child custody order of another state is not subject to modification.

UNIFORMITY

This act will provide uniformity of law, necessary in a time when the mobility of the American public makes it imperative to have laws regarding child custody determinations uniform from state to state.

Lack of uniformity muddies the child custody waters in many ways: it increases the costs of the enforcement action; it decreases the lack of certainty of outcome; and it often turns enforcement of a child custody or visitation order into a long and drawn out process. Every state should act quickly to adopt the Uniform Child Custody Jurisdiction and Enforcement Act.

SENATE COMMITTEE REPORT

DATE: 3/25/98

FURTHER:

DATE TURNED IN TO OFFICE: 4-27-98

Judiciary Committee considered HOUSE BILL NO. 335

"An Act replacing the Uniform Child Custody Jurisdiction Act with the Uniform Child Custody Jurisdiction and Enforcement Act; and amending Rules 4 and 62, Alaska Rules of Civil Procedure, and Rule 205, Alaska Rules of Appellate Procedure."

and recommends:

[ ] be **replaced** with _____ CS _____(_____)

[ ] adopt **previous** _____ CS _____(_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR#_____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
Ellis	X				
Miller	X				
Pearce	✓				
CHAIR: Adam Taylor	X	*CHAIR:*			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
LAW - CIVIL - HUMANITIES	2-6-98	✓	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

[ ] **APPROPRIATION -- no fiscal note**

***include fiscal notes accompanying Governor's bill**