

OVERSIGHT

HEARING:

FIBER OPTIC

RIGHTS-OF-

WAY

FIBER OPTIC RIGHTS-OF-WAY LEGISLATIVE COMMUNICATION

- 2/23/98 Letter to Commissioner John Shively from Senators Sharp and Pearce and Representatives Hanley and Therriault urging prompt processing of pending right-of-way applications under existing standards and in a manner the department has historically priced such usage.
- 3/11/98 Letter to Finance Cochairs from Governor agreeing with the use of existing standards and historically used pricing methods based on fairness and predictability, current land values, fostering of competition and business in Alaska and conformance with the federal Telecommunications Act of 1996.
- The Governor strongly urged the Legislature to hold public hearings to review rights-of-way policies and stated intention to withhold action on pending applications until April 24; thereafter, he would proceed unless the Legislature passed legislation or clearly indicated its desire to alter current policies.
- 3/23/98 Hearing held by House Special Committee on Telecommunications. After review of current rights-of-way laws and policies, committee stated intention not to take any further action and made no recommendations to the Administration.
- 4/6/98 Letter from Speaker Phillips to Governor urging equal treatment for all competing fiber optic proposals and urging Governor to not issue permits under the pricing methodology set forth by the Governor in his 3/11/98 letter to the Finance Cochairs.
- 4/15/98 Letter to Speaker Phillips from Governor clarifying differences in statutes and policies between various state agencies and entities, reiterating the compliance of the Governor's approach with the federal act and encouraging the Legislature to take legislative action if there was a desire for a single rate for state rights-of-way.
- 4/24/98 Letter to Speaker Phillips from Governor regarding "Sense of the House" motion, again urging formal legislative action, and reiterating his public policy objectives: 1) Quality telecommunications service at lowest price, 2) Establish state policy through an open public process, and 3) promote development of telecommunications infrastructure.

TONY KNOWLES
GOVERNOR

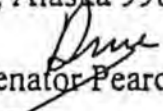


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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 11, 1998

The Honorable Senators Drue Pearce, Bert Sharp,
The Honorable Representatives Mark Hanley and Gene Therriault
Alaska State Legislature
State Capitol Building
Juneau, Alaska 99801-1182


Dear Senator Pearce:

My administration has been reviewing our approach to granting rights-of-way across state land for fiber-optic projects. This is a rapidly growing issue in today's age of technology and I welcome legislative involvement.

Your letter of February 23 to Commissioner John Shively urges the administration to promptly consider pending requests for rights-of-way across state land for fiber-optic projects under existing standards and historically used pricing methods. I agree. This approach makes sense from several standpoints:

- Several right-of-way applications have been submitted and under consideration for months. Telecommunication companies have assumed rights-of-way would be granted under the state's longstanding policies in this area. Maintaining these current policies would ensure fairness and predictability in state governmental actions.
- The current process accurately reflects present right-of-way land value estimates.
- The current approach recognizes the value of providing state lands for infrastructure development that benefits many Alaskans and Alaska businesses.
- The current process provides for competition through reasonable rates and non-exclusive rights-of-way.
- The current process meets the terms of the federal Telecommunications Act of 1996 that provide that barriers not be created to competitive entry; that rights-of-way actions be competitively neutral and non-discriminatory; and that compensation for rights-of-way be fair and reasonable.

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The procedure we would continue to use for most state lands, including submerged lands, is authorized in AS 38.05.850. It requires the Department of Natural Resources (DNR) to establish a reasonable rate or fee schedule which is contained in regulation (11 AAC 05.010(e)). The fee for a non-exclusive private right-of-way is an annual rent of \$100 per acre, or six cents per linear foot based on an average right-of-way width of 25 feet. For certain high-value lands such as designated state park lands we could require a different fee structure for a special park use permit to reflect the higher land values and mitigation involved in crossing park lands.

DNR current regulations could also allow the State to value the right-of-way based on its use. DNR estimates that this method would result in a higher fee.

I believe choosing the lower fee is consistent with state policy to encourage development of important infrastructures for Alaska. The expansion of fiber optic capacity will be a vital component in building a 21st century economy.

Balancing maximum revenues with the compelling public interest in making rights-of-way available and promoting infrastructure growth presents a significant public policy issue. For this reason, I strongly urge the legislature to hold public hearings to review the leasing and permitting of rights-of-way across state lands.

I plan to withhold action on the pending applications until after April 24 in order to give the legislature proper time for a review of the right-of-way process. Unless the legislature passes legislation or clearly indicates its desire to alter the current rights-of-way policy, we would take action on the pending applications using the current procedures after that date.

Sincerely,


Tony Knowles
Governor

cc: President Mike Miller
Speaker Gail Phillips
Rep. Brian Porter, Chair Special House Committee on Telecommunications

HOUSE SPECIAL COMMITTEE ON TELECOMMUNICATIONS

March 23, 1998

4:06 p.m.

COMMITTEE CALENDAR

STATE RIGHT-OF-WAY ACCESS FOR FIBER OPTIC PROJECTS

TAPE(S)

98-3, SIDES A & B

98-4, SIDE A

CALL TO ORDER

Representative Porter, Chairman, convened the overview session of the House Special Committee on Telecommunications at 4:06 p.m.

PRESENT

Committee members present at the call to order were Representatives Porter, Berkowitz, Dyson, James and Ivan. Representative Kemplen was also in attendance.

SUMMARY OF INFORMATION

JOHN SHIVELY, Commissioner, Department of Natural Resources (DNR), talked about the state's responsibilities for leasing fiber optic rights-of-way as being divided among six state entities: DNR lands, state parks, DOT/PF, Alaska Railroad, University of Alaska and the Mental Health Trust.

JOHN AYERS, President, e'Net Limited, discussed fair pricing for right-of-way access on state land.

KIM JACOBS, Director, World Net Communications, Inc., addressed concerns regarding the 47-cents-per-linear-foot price his company has been and is paying for access with the egregiously low 6-cents-per-linear-foot price being currently suggested.

MARK FOSTER, President, ATU Long-Distance, Inc., feels access to rights-of-way for fiber optic cable should be fair and consistent.

KEN LANCASTER, President, Alaska Rural Electric Cooperative Association (ARECA), read ARECA's resolution opposing fees for utility use of rights-of-way.

TOM WALDOCK, Administration, Enstar Natural Gas Company, believes it is vitally important for the state's fee schedule to be reasonable, predictable and consistent for all utilities.

JOHN JENSEN, Right-of-Way Agent, Department of Transportation and Public Facilities (DOT/PF), gave an overview of DOT/PF's fee policy structure.

JAMES ROWE, Director, Alaska Telephone Association, hopes for local companies, essentially separate, to be fiber optically connected across Alaska in the future.

DANA TINDALL, SR., Vice President of Legal and Regulatory Affairs, GCI, stressed the telecommunications build-out and infrastructure as a critical factor to the state's economic development.

LAURIE HERMAN, External Affairs Director, AT&T/Alascom, said rights-of-way across state land for fiber optics cable projects should be granted under existing state standards.

SCOTT HAWKINS, Economist, supports the Administration's policy of keeping right-of-way access on public lands consistent and reasonably priced.

BILL SHEFFIELD, President and CEO, Alaska Railroad Corporation, acknowledged that they have an exclusive contract with World Net for 25 feet of right-of-way but offered that they have six more 25-foot tracts yet available for lease.

The remainder of the meeting was open for committee members and legislators present to offer their thoughts and suggestions.

COMMITTEE ACTION

The committee took no action.

ADJOURNMENT

The meeting was adjourned at 6:00 p.m.

NOTES:

A total of 13 hard-copy handouts were made available to this committee. Some documents are the written testimony of testifiers, some are handouts, and the rest are documents provided in the days following this meeting that were requested to be incorporated herein. Attached is a contact list for those testifiers outside of the Administration.

This meeting was recorded and handwritten log notes were taken. A copy of the tapes and log notes may be obtained by contacting the House Records Office at 130 Seward Street, Suite 211, Juneau, Alaska, 99801-1182, (907) 465-2214, or after adjournment of the second session of the Twentieth Alaska State Legislature, in the Legislative Reference Library.

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UNFINISHED BUSINESS

Representative Kott moved and asked unanimous consent that the following be adopted as the Sense of the House:

"The most rational and responsible approach to leasing fiber optic rights-of-way on state lands is by fair market appraisal.

We strongly urge the administration to convene a task force of the state's principle public land managers (DOTPF, University of Alaska, DNR Parks, DNR Lands, Mental Health Trust, Alaska Railroad Corp.) to evaluate and coordinate the basic methodology for determining market value of rights-of-way for these purposes and provide guidelines to insure fairness and consistency. Furthermore, this task force should report back to the Legislature no later than the 1st day of the 1999 legislative session on the state's rights-of-way leasing and pricing policies for fiber optics and any necessary legislation to fulfill the goals outlined.

It is not our intent to delay anyone's entry into the marketplace and we urge the administration to grant early entry permits that include market appraisal pricing methodology (as done for the MFS project), unless specifically prohibited by statute, in the interim until a rational well thought out policy has been established."

Representative Porter objected.

Representative Ryan placed a call of the House.

An amendment was offered by Representative Dyson:

In the first sentence, following "appraisal": Insert "consistent with public policy and public needs"

Representative Dyson moved that the amendment be adopted.

Representative Ryan lifted the call.

Representative Hanley placed a call of the House and lifted the call.

The Speaker stated that, without objection, the House would recess until 5:30 p.m.; and so, the House recessed at 1:42 p.m.

AFTER RECESS

The Speaker called the House back to order at 5:51 p.m.

A second quorum call showed 34 members present. Representative Kelly had been previously excused from a call of the House (page 3204).

**UNFINISHED BUSINESS
(Continued)**

Representative Dyson moved and asked unanimous consent to withdraw the amendment. There being no objection, it was so ordered.

Representative Kott moved and asked unanimous consent to withdraw the Sense of the House. There being no objection, it was so ordered.

Representative Kott moved and asked unanimous consent that the following be adopted as the new Sense of the House:

"Having been asked by the Administration for policy guidance, the most rational and responsible approach to leasing fiber optic and other rights-of-way on state lands is by fair market appraisal consistent with public policy and public need determinations.

We urge the Administration to convene a task force of the state's principle public land managers (DOTPF, University of Alaska, DNR Parks, DNR Lands, Mental Health Trust, Alaska Railroad

Corp.) to evaluate and coordinate the basic methodology for determining market value of rights-of-way for these purposes and provide guidelines to insure fairness and consistency. Furthermore, this task force should report back to the Legislature no later than the 1st day of the 1999 legislative session with recommendations for the leasing and pricing policies for rights-of-way and any necessary legislation to fulfill the goals outlined.

It is not our intent to delay anyone's entry into the marketplace and we urge the Administration to grant early entry permits. In the interim, until a rational well thought out policy has been established, we urge the Administration to include in any right-of-way permit agreement a provision allowing a rate based upon the subsequent establishment of a valuation methodology consistent with public policy and public need determination."

Representative Hanley moved that the new Sense of the House be referred to the House Special Committee on Telecommunications.

The question being: "Shall the new Sense of the House Establishing a Task Force on the Fiber Optic Plan be referred to the House Special Committee on Telecommunications?" The roll was taken with the following result:

Refer to the House Special Committee
on Telecommunications
New Sense of the House
Establishing a Task Force
on the Fiber Optic Plan

YEAS: 10 NAYS: 27 EXCUSED: 3 ABSENT: 0

Yeas: Bunde, Davis, Green, Hanley, Hodgins, Hudson, Mulder, Porter, Rokeberg, Therriault

Nays: Austerman, Barnes, Berkowitz, Brice, Cowdery, Davies, Dyson, Elton, Foster, Grussendorf, Ivan, James, Joule, Kemplen, Kohring, Kookesh, Kott, Kubina, Martin, Masek, Moses, Nicholia, Ogan, Phillips, Ryan, Sanders, Williams

Excused: Croft, Kelly, Vezey

And so, the motion failed.

An amendment was offered by Representative Davies:

In the last sentence, following "methodology":
Insert "based on fair market value"

Representative Davies moved and asked unanimous consent that the amendment be adopted. There being no objection, it was so ordered.

Representative Green moved that the new Sense of the House as amended be deferred to April 24, 1998.

The question being: "Shall the new Sense of the House as amended be deferred to April 24, 1998?" The roll was taken with the following result:

Defer to April 24, 1998
New Sense of the House amended
Establishing a Task Force
on the Fiber Optic Plan

YEAS: 10 NAYS: 27 EXCUSED: 3 ABSENT: 0

Yeas: Bunde, Green, Hanley, Hodgins, Hudson, Moses, Mulder, Porter, Rokeberg, Therriault

Nays: Austerman, Barnes, Berkowitz, Brice, Cowdery, Davies, Davis, Dyson, Elton, Foster, Grussendorf, Ivan, James, Joule, Kemplen, Kohring, Kookesh, Kott, Kubina, Martin, Masek, Nicholia, Ogan, Phillips, Ryan, Sanders, Williams

Excused: Croft, Kelly, Vezey

And so, the motion failed.

The question being: "Shall the new Sense of the House as amended (Establishing a Task Force on the Fiber Optic Plan) be adopted?" The roll was taken with the following result:

New Sense of the House amended
Establishing a Task Force
on the Fiber Optic Plan

YEAS: 28 NAYS: 9 EXCUSED: 3 ABSENT: 0

Yeas: Austerman, Barnes, Berkowitz, Brice, Cowdery, Davies, Davis, Dyson,
Elton, Foster, Grussendorf, Ivan, James, Joule, Kemplen, Kohring, Kookesh,
Kott, Kubina, Martin, Masek, Nicholia, Ogan, Phillips, Porter, Ryan, Sanders,
Williams

Nays: Bunde, Green, Hanley, Hodgins, Hudson, Moses, Mulder, Rokeberg,
Therriault

Excused: Croft, Kelly, Vezey

And so, the new Sense of the House as amended was adopted.

Sec. 38.05.850. Permits.

- (a) The director, without the prior approval of the commissioner, may issue permits, rights-of-way, or easements on state land for roads, trails, ditches, field gathering lines or transmission and distribution pipelines not subject to AS 38.35, telephone or electric transmission and distribution lines, log storage, oil well drilling sites and production facilities for the purposes of recovering minerals from adjacent land under valid lease, and other similar uses or improvements, or revocable, nonexclusive permits for the personal or commercial use or removal of resources that the director has determined to be of limited value. The commissioner, upon recommendation of the director, shall establish a reasonable rate or fee schedule to be charged for these uses, subject to the exception for nonprofit cooperative associations specified in (b) of this section. In the granting, suspension, or revocation of a permit or easement of land, the director shall give preference to that use of the land that will be of greatest economic benefit to the state and the development of its resources. However, first preference shall be granted to the upland owner for the use of a tract of tideland, or tideland and contiguous submerged land, that is seaward of the upland property of the upland owner and that is needed by the upland owner for any of the purposes for which the use may be granted.
- (b) The fee charged for a right-of-way approved under (a) of this section shall be waived by the commissioner if the right-of-way is for a transmission or distribution line established by a nonprofit cooperative association organized under AS 10.25 for the purpose of supplying electric energy and power, or telephone service, to its members, and the waiver is considered by the commissioner to be in the best interests of the state.
-

11 AAC 05.010

- (e) Except as provided in (f) of this section, this subsection is the department's schedule of standard user fees for certain surface land use authorizations and for material sales for public projects under AS 38. It does not apply to authorizations whose rental or use fee is fixed by statute or based on an appraisal of fair market value. If a revocable-at-will authorization is revoked without cause, the unused portion of the annual use fee for the authorization is refundable, prorated on a monthly basis. A fee based on acreage applies to each acre or fractional acre. The fees covered by this subsection are as follows:
- (1) land use permit under AS 38.05.850 for floating caretaker housing for a facility whose operator is a qualified regional association under AS 16.10.830 , an annual fee of \$200;
 - (2) land use permit under AS 38.05.850 for noncommercial use of a structure or facility that is or can be occupied, other than a use described in (1) of this section, such as a family's hunting camp, a tent camp used to support a non-profit scientific research project, a military training camp, a floathouse or mobile home used as the owner's private residence, or a floathouse used to provide caretaker housing for a noncommercial or non-profit operation, including a non-profit mariculture operation, the annual fee is the largest of the following applicable fees:
 - (A) if the facility is removed after a period of less than six months, \$250;
 - (B) if the facility remains in place six months or more, \$500;
 - (C) if the occupied site is five or more acres, a fee based on the director's estimate of the fair market value of the use or, at the applicant's option and expense, based on an appraisal of the fair market value of the use;
 - (3) land use permit under AS 38.05.850 for commercial use of a structure or facility that is or can be occupied, such as a floating logging camp, caretaker's housing adjacent to a log storage site, a floating lodge, or a guide's or outfitter's camp, the annual fee is the largest of the following applicable fees:
 - (A) if the facility is removed after a period of less than six months, \$350;
 - (B) if the facility remains in place six months or more, \$650;
 - (C) if the facility is used for a commercial recreational purpose, such as a floating lodge or a guide's or outfitter's camp, and at the director's discretion, either a variable fee of 2.5 percent of the gross receipts attributable to the use of the permit site or a flat fee as follows:
 - (i) if the facility is removed after a period of less than six months, \$350;
 - (ii) if the facility is removed after a period of six or more months, but less than eight and a half months, \$650;

- (iii) if the facility remains in place for more than eight and a half months, \$1,000;
 - (D) if the occupied site is five or more acres, a fee based on the director's estimate of the fair market value of the use or, at the applicant's option and expense, based on an appraisal of the fair market value of the use;
- (4) land use permit under AS 38.05.850 for noncommercial use of a structure or facility not covered by (1) or (2) of this subsection, such as a private mooring buoy, float, or dock, a weir, a boat ramp, a loading ramp for snowmachines or horses, or an archery target range operated on a nonprofit basis, an annual fee of \$100;
- (5) land use permit under AS 38.05.850 for commercial use of a structure or facility not covered by (3) of this subsection, such as a commercial mooring buoy, fish holding pen, log storage, A-frame logging, or equipment staging area for a construction project, an annual fee of \$250 for the first acre, plus \$100 for each additional acre;
- (6) land use permit under AS 38.05.850 authorizing early entry onto a prospective surface leasehold for
 - (A) site development, an annual fee equal to the director's estimate of the prospective rental; or
 - (B) site analysis that involves alteration to the land (including brushing, clearing, or excavating for percolation tests), an annual fee of \$100 for each acre;
- (7) land use permit under AS 38.05.850 for grazing livestock, a fee per head month that is 70 percent of the head-month grazing fee for the western states determined under Chapter 2238 of the Forest Service Manual (effective March 1, 1991), published by the United States Forest Service, United States Department of Agriculture, with a minimum charge of \$100 per year for each permit;
- (8) other land use permit under AS 38.05.850 for a use not covered by (1) - (7) of this subsection that does not hinder other public use, such as moving heavy equipment across state land, no fee;
- (9) other land use permit under AS 38.05.850 for a use not covered by (1) - (7) of this subsection that may interfere with public use, an annual fee of \$50 per acre with a \$100 minimum;
- (10) personal use cabin permit under 11 AAC 65, an annual rental fee of \$100;
- (11) private right-of-way or easement under AS 38.05.850 for
 - (A) a non-exclusive use, an annual fee of \$100 per acre, but no less than \$200;
 - (B) an exclusive use, an annual fee equal to the director's estimate of the yearly fair market rental value;

- (12) public right-of-way or easement under AS 38.05.850 for a road, trail, or airstrip, a one-time fee of \$50 per acre unless otherwise provided in a reciprocal right-of-way agreement;
- (13) public right-of-way or easement under AS 38.05.850 for a utility, a one-time fee of 10 cents per linear foot;
- (14) aquatic farmsite permit under AS 38.05.856 , an annual fee of \$250 for the first acre, plus \$100 for each additional acre, unless the permit also authorizes housing of personnel, in which case the fee is as provided in (3) of this subsection;
- (15) interagency land management assignment to a state agency, for
 - (A) a site that will be open to public use and where no significant capital investment will be made, no charge;
 - (B) a site not covered by (A) of this paragraph, a one-time fee of \$3,000 or seven percent of the fair market value, whichever is less;
 - (C) amendment of an existing interagency land management assignment, an additional fee determined by the director, but not more than \$3,000 or seven percent of the fair market value added as a result of the amendment;
 - (D) inspection of a site to determine compliance with the terms of the interagency land management assignment, either \$100 or the division's actual expenses, in the director's discretion;
- (16) sale of materials to a federal, state, or municipal agency for use in constructing, reconstructing, or maintaining a public project
 - (A) for the first 5,000 cubic yards of materials to be used on the project, no charge; each year of maintenance on an ongoing basis constitutes a separate project;
 - (B) for each cubic yard of materials beyond 5,000 cubic yards, the base fee listed in the annual base price schedule established under 11 AAC 71.090 .
- (17) commercial-use permit for recreation-related commercial uses within the recreation rivers system
 - (A) a flat rate fee of \$150 if the permit holder is a state resident, or \$450 if the permit holder is not a state resident; "state resident" is determined by applying the definition set out in (C) of this paragraph; plus
 - (B) on or after January 1, 1997, an additional fee, if applicable, as follows:
 - (i) five percent of the total gross revenues from fees charged to drop-off clients who are transported to a recreation river and who remain there unaccompanied by the permit holder or an employee of the permit holder;

- (ii) a fee of \$5 per day per client accompanied during use of a recreation river by the permit holder or an employee of the permit holder;
 - (iii) a fee of \$2 for each day's rental of a non-motorized boat, and \$3 for each day's rental of a motorized boat, on a recreation river; no fee is required under this clause if client fees described in (i) or (ii) of this paragraph include rental of a boat;
- (C) for the purposes of this paragraph, "state resident" means a person who holds a current Alaska business license; submits an application for a permit under AS 41.23 under the name appearing on that license; has maintained a place of business within the state staffed by the applicant or an employee of the applicant; is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident under AS 01.10.055 , or is a partnership and all partners are residents under AS 01.10.055 ; and if a joint venture, is composed entirely of ventures that qualify as state residents under this subparagraph;
- (18) commercial-use permit for a commercial camp within the recreation rivers system, an annual fee determined as in (3)(C) of this subsection, plus 20 percent, in addition to applicable fees under paragraph (17) of this subsection.

Fiber Optic Choices

1. Charge a set fee per foot for rights of way:
 - low - .06/foot (\$100/acre assuming a 20 foot wide row)
 - high - .50/ft
2. Set the fee for use of the right of way based on an appraisal of:
 - value of the land - low
 - value of the use - higher
3. Give access to the right of way for minimal cost in order to encourage infrastructure development and participate in the success by charging a fee based on:
 - profitability - % of gross profits
 - capacity - x per use of and industry standard

A Methodology for evaluating capacity.

Design a "Capacity Surcharge Matrix". Today a common communications element between, copper, fiber optic, microwave, cellular, satellite, etc.. is called a T-1 or DS1. Using this bench mark the vendor would pay \$x per every T-1/DS1 that the installed cable(s) are capable of providing.

ONE Strand of Fiber Optic is capable of x simultaneous T1/DS1 connections:

OC48 = 1344, OC36=1008, OC24=672, OC18=504, OC12=336,
OC9=252, OC3=84, OC1=24

ONE Bundle could contain 6, 18,,,48,xxx Fiber Optic strands.

The Pipe or Conduit holds x bundle(s). Bundle equals y fibers, Strand(s) transmit at OCxx rates = number of possible T1-DS1s.

e.g.) One 1.5" pipe(conduit) X 2 (48 Strand Bundles) X OC12 = 32,256 T1/DS1s
One 1.5" pipe(conduit) X 2 (48 Strand Bundles) X OC48 = 129,024 T1/DS1s

Option 1 - Monthly T1-DS1 Surcharge Rate:

Periodically (6 months) survey 3 to 6 communications providers and develop the average commercial cost of a T1/DS1. Multiply that cost by the established rate, giving the per month charge.

e.g. Average T1/LS1 \$30 per month, 1% equals \$.30 per month per T1/DS1.
\$.30 times the OC48 capacity would equal \$403.20 per fiber strand.

Option 2 - Monthly rate vendors charge the state:

Instead of surveying commercial rates, use the rate the occupant vendors charge the State for T1/DS1 service. This would encourage the vendors to keep the State rates as low as possible, thus helping the State O&M Budgets as well as revenue generating.