

3RD SPEC.

SESSION

RCA

June 12 - 13

2002

Water Systems Services

P.O. Box 233368

Anchorage, Alaska 99523-3368

Tel (907) 346-1901

Fax (907) 346-1169

June 13, 2002

Senator John Cowdry
716 W 4th Suite 530
Anchorage, Alaska 99501

Re: RCA reauthorization and amendment to AS42.05.

Dear Legislator,

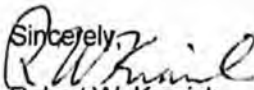
Water Systems Services is a small business providing Certified Operator services to small class A water systems in the Anchorage area. Typical class A small water systems are mobile home parks, home owner's association owned systems, schools, and apartment buildings. Recently we received a notice of inquiry from the RCA regarding proposed regulation of small public water and sewer systems. (Docket R-02-4) Although it is technically within their mandate to regulate systems down to ten customers, they have not chosen to do so in the past. (There are well over 1000 such systems in Alaska.) ADEC has been the primary regulatory agency for such systems, and in our view, has done an excellent job. Times have changed however, and through the terms of the Drinking water act of 1996 and subsequent amendments, EPA has mandated that states require small water systems to prove their technical, financial, and managerial (TFM) "capacity" to own and operate their systems. It will be a monumental task for DEC to asses and ensure that systems attain and maintain "capacity" but we are vigorously opposed to the involvement of RCA in any regulatory capacity that duplicates DEC's effort. Although they may be able to provide DEC with valuable assistance, we can see no potential consumer benefit from another layer of regulation by the RCA.

As a practical matter however, DEC's funding must increase for it to accomplish all the tasks mandated by the Drinking Water Act of 1996, as enforced by EPA. Loss of primacy would be the disastrous result if DEC could not perform as mandated due to lack of funding.

Enclosed is a copy of our response to the RCA for your review. To summarize, it is our view that regulation of small water systems by RCA would essentially duplicate DEC's mandate, greatly increasing expense to both the State and the consumers RCA is tasked to protect.

We hereby petition that when RCA is reauthorized, AS42.05 be amended to only regulate "for profit" and large co-op and municipal water and sewer systems. Furthermore, we hereby petition increased funding for DEC to assist small water systems across the state into compliance with the TFM requirements of the Drinking Water Act.

If we can help in any way please contact us.

Sincerely,

Robert W. Kranich

Owner

Enclosed: Page 1 RCA docket R-02-4
Water Systems Services Comments to RCA

Water Systems Services

P.O. Box 233368

Anchorage, Alaska 99523-3368

Tel (907)-346-1901

Fax (907)-346-1169

May 23, 2002

Regulatory Commission of Alaska
701 W. 8th Ave, Suite 300
Anchorage, Alaska 99501

Re: Docket R-02-4 - Regulation of small Public Water and sewer systems- comments

Ladies and Gentlemen:

Thank you for the opportunity to provide my comments on your plans to regulate small water and sewer systems. First let me state my credentials:

- Owner of Water Systems Services, an organization that provides operation and maintenance services for 24 small water systems in Anchorage and vicinity.
- Registered Civil Engineer with 35 years experience in the field of water system design, consulting and O&M for urban as well as bus:n systems.
- Part owner of a small (65 customer) water utility regulated by RCA.
- Served on several committees assisting ADEC in drafting of new regulations, including initial development of their Capacity Development Program.

As a professional in the field of public water system operation and maintenance, it is my opinion that, notwithstanding the language of AS42.05, the logical and practical purview of RCA as it relates to the regulation of public water and sewer systems should be narrowly drawn to cover three general areas.

1. Regulation of the financial aspects of for-profit utilities that provide monopolistic utility service.
2. Adjudication of situations regarding service area overlap.
3. Regulation of large co-operative or municipally owned utilities which by democratic process have chosen RCA regulation.

I fail to see either the prudence or the necessity of RCA regulation for other systems which could loosely be categorized as follows:

1. Systems owned by democratic organizations such as co-operatives, homeowner's associations, and small municipal or village governmental organizations. The operation of these types of systems should be regulated by democratically elected boards who answer directly to ratepayers.
2. Commercial enterprises that provide water or sewer service as an incidental part of their overall service such as mobile home parks, or apartment complexes. In these cases market forces will control the overall rate structure of which water and sewer service is a minor portion of their overall service.

My rationale is as follows:

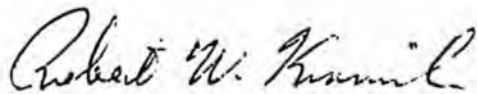
1. ADEC is already mandated to regulate the technical, financial and managerial (TFM) capacity of public water systems. Requiring the systems to deal with another agency and bureaucratic structure to effectively duplicate ADEC's efforts would cause unnecessary confusion, conflict and expense and would ultimately dilute the effectiveness of regulatory efforts. ADEC's regulation combined with common democratic processes should be adequate to protect the customers.
2. ADEC's regulatory style is much more user friendly for small operators than RCA's. DEC's approach is to assist the utility organization to compliance whereas RCA's style is more in keeping with it's primary role of protecting against abuses of large monopolistic organizations. ie. RCA's style is more formal and intimidating, often requiring services of legal and financial specialists to navigate the system.
3. I believe the drafters of AS42.05 had no concept of the size "net" they were casting as it relates specifically to regulation of water and sewer utilities. If the letter of the law were followed, all 647+/- class "A" systems would require RCA oversight as well as a fair portion (those systems having less than 15 but more than 10 customers) of the 1940+/- class "C" systems currently registered in the state. Since you presently only regulate approximately 70+/- water systems, that would constitute at least a 10 fold increase in that portion of your operation. All to duplicate an effort already tasked to DEC.

Conclusions:

1. AS42.05 should be amended to limit the types of water and sewer systems subject to regulation to those outlined above.
2. RCA should provide whatever support and expertise that DEC may require to fully develop their TFM Capacity Program, but small utilities must not be required to deal with both agencies except where absolutely necessary. I recognize that ADEC has much to do to prepare for that role, but I believe it can be done better with the assistance of RCA rather than duplication by RCA. Furthermore, it will ultimately be the utility customers themselves who have to foot the bill for the increased effort required to comply with both ADEC and RCA.

Thank you for considering this opinion. If I can be of further assistance I would be pleased to continue dialogue on this topic.

Sincerely,



Bill Kranich
Owner

Cc Kevin Kleweno, ADEC

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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Consideration of Regulations
for Public Water and Sewer Systems and
Application Forms for a Certificate of Public
Convenience and Necessity for Small Public
Water or Sewer Systems

R-02-4
ORDER NO. 1

ORDER ISSUING NOTICE OF INQUIRY, ESTABLISHING SCHEDULE
FOR PUBLIC COMMENTS AND HEARING, AND ISSUING
APPLICATION FORM FOR COMMENT FOR A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY FOR SMALL PUBLIC
WATER OR SEWER SYSTEMS

BY THE COMMISSION:

Summary

In this Order we initiate an inquiry to develop regulations for small public water and sewer systems. We also seek comments on a proposed application form for a certificate of public convenience and necessity for a public water or sewer system, with the possibility of developing additional forms. We discussed the need for regulations for public water and sewer systems and the proposed application form at our public meeting on April 10, 2002, and we decided to seek public input. Comments are due by 4:30 p.m., July 1, 2002, and reply comments are due by 4:30 p.m., July 31, 2002. A public hearing will be held August 20, 2002.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

Senate Judiciary Committee
Interim Report
Hearings on Possible Restructuring of the Regulatory Commission of Alaska
June 12-13, 2002
Anchorage Alaska

Unless it is reauthorized by statute, the Regulatory Commission of Alaska (the "RCA") will cease to exist on June 30, 2003. AS 44.66.010(a)-(b). Beginning July 1, 2002, the RCA enters a "wind down" year during which, according to a June 11, 2002 opinion of the Legislative Affairs Agency, the RCA may continue to exercise all of its current functions.

On June 12-13, 2002, the Senate Judiciary Committee held hearings in Anchorage on whether the public's interest best lies in summarily reauthorization the RCA during the upcoming special session, or doing so instead next year, in due course, after the legislature has had the opportunity to fully debate any serious policy concerns raised during these hearings.

Eighteen witnesses testified before the Committee, and those witnesses left these four dominant impressions:

- o There is near unanimity among Alaska's utilities that the RCA suffers from serious process problems. Significant regulatory issues, once they are brought before the Commission, tend to result in unnecessarily prolonged and expensive adjudications. Witness-after-witness stressed that the RCA has great difficulty managing these kinds of cases;
- o There is a widespread perception among Alaska's utilities (including electric, water and sewer, pipeline and telecommunications companies) that RCA procedures are unfair; that the RCA frequently engages in improper *ex parte* communications with staff; and that smaller utilities cannot compete in the high-cost regulatory environment that the RCA has created;
- o Substantive issues involving competition and universal service are likewise in need of a full and open legislative debate. Testimony, for example, raised a substantial question as to whether the RCA is endangering universal telecommunications service in Alaska's rural areas; and
- o There appears to be no legal or practical reason that would require the legislature to summarily "reauthorize" the RCA in advance of addressing these and other concerns.

Witness testimony included the following:

Dr. Harold Furchthott-Roth is a former FCC Commissioner who was extensively involved in the drafting of the federal Telecommunications Act of 1996. Dr. Furchthott-Roth testified that Alaska has allowed moneys under the federal Universal Service Fund, which is intended to benefit rural telephone service, to be diverted to urban states. He

also believes that the RCA has imperiled universal rural telephone service in Alaska by: (i) using a cost model that is biased against Alaska in setting rural network service fees; and (ii) revoking special federal statutory protections for rural phone service without making the required findings that the revocation was warranted. This latter action, Furchthott-Roth said, violated a ruling by the federal 8th Circuit Court of Appeals that was binding on all the federal circuits, and which the United States Supreme Court has declined to review. Finally, Dr. Furchthott-Roth testified that existing federal assistance programs, such as the rural Universal Service Fund, would not be jeopardized during the RCA's "wind-down" year;

Joe Griffith (General Manager); Bruce Davison (Pres. Of the Board of Directors); and Eugene Bjornstad (Retired General Manager)—Chugach Electric Association. The Chugach witnesses testified that its ratemaking proceedings have become bogged down in expensive "discovery" procedures, with no firm end in sight. In one case (which has been pending since July, 2001, and for which Chugach expects a final decision in about 18 months), Chugach has been required to produce over 57,000 documents in just two of the four scheduled rounds of discovery. Chugach officials testified that the RCA has been unable to control the discovery process; has been unwilling to decide issues with any finality; and has not been sensitive to the economic cost of indefinitely-suspending new rates while these multi-year adjudications drag on. Chugach, for example, is losing an estimated \$222,000 monthly in new tariffs that remain suspended while Chugach awaits a hearing. Chugach also noted the reluctance of regulated utilities to criticize the RCA publicly—a theme repeated by several other of the utility witnesses;

Jeanne McPherran. Ms. McPherran is a retired APUC/RCA Associate Attorney who supervised the Commission's paralegals. Ms. McPherran testified that the Commission has created controversy by soliciting *ex parte* recommendations from its staff on the disposition of rate filings, without giving the affected utilities either timely notice or the opportunity to cross examine staff. Ms. McPherran also testified that: (i) while the RCA had adopted certain decisional deadlines, those timelines could be, and are, extended for whatever the Commission believes is "good cause"; and (ii) the Commission has not required some classes of utilities to pay the cost of tariff review, effectively forcing other utilities to subsidize the protected classes. Finally, Ms. McPherran recalled that, from a practical standpoint, the APUC handled its own "wind-down" year without material disruption of agency functions;

Dave Stancliff. Mr. Stancliff testified that the RCA has no standards for deciding which water systems it wishes to regulate. Based on personal experience, Mr. Stancliff believes that this creates a serious potential for abuse, where individual systems can be targeted for arbitrary regulation for political reasons;

Eric Yould—Alaska Rural Electric Cooperative Association. This Association, which represents 90% of the wholesale electric generation capacity in the state, reluctantly supports a 1-2 extension of the RCA, because it believes that some extension is political inevitable. However, Mr. Yould testified that he concurred with Chugach Electric's assessment of the delays and expense associated with practice before the RCA, and

endorsed a series of reforms, including firm procedural deadlines, simplified RCA processes and a hard look at areas potentially ripe for deregulation;

Steve Konn-AKPIRG. Mr. Konn supported a continuation of the Commission, but also supports a wide-ranging legislative debate on RCA policies. He believes that the rapidly-changing nature of Alaska's utilities warrants aggressive legislative oversight, and he expressed particular concern with assuring universal service to all Alaskans and effective citizen advocacy before the RCA;

Kristi Katlin—Alascom. Alascom supports continuation of the Commission, but also believes that an in-depth study of Alaska telecommunications policy is overdue;

Jack Rhyner—Telalaska. Telalaska also supports continuation of the RCA, and asked that the legislature assure itself that (as Dr. Furchtgott-Roth testified) Universal Service Fund payments would continue during any wind-down year. He echoed the concern over *ex parte* communications between the RCA and its staff, and believed that the RCA commissioners needed to be more insulated from *ex parte* influences;

Earl Ausman. Mr. Ausman, an engineer, stated that his client has been attempting to license a small hydro power plant since 1996. He urged that the legislature create enforceable deadlines for RCA action;

Dan Dieckgraeff—Enstar. Enstar supports reauthorization, and believes that it should be done now in order to provide stability to financial markets. Mr. Dieckgraeff believed that needed reforms could be accomplished in other than the designated "sunset" review years;

George Gordon—Utility Services of Alaska. From the point of view of the wastewater disposal industry, the RCA is not performing satisfactorily. Even routine tariff filings take excessive time (one rate case is six months old, and not even a prehearing conference has been held); practice before the commission is very expensive; and the RCA does not seem to recognize that delay translates into lost revenue and lost opportunity. Mr. Gordon reiterated the concern that utilities feel over a possible backlash from publicly criticizing the RCA;

The RCA Commissioners—Nanette Thompson (Chair), Bernie Smith, Patricia DeMarco, Will Abbott and James Strandberg. Ms. Thompson, speaking for the Commission, cited statistics showing a decline in agency caseload—to under 400 now, from 500 in 1999. The RCA, she added, handled most new tariff filings in about 45 days and most consumer complaints in less than 15 days. Ms. Thompson did acknowledge that the Commission does invoke the "good cause" exception to suspend new tariffs beyond the six months otherwise allowed by law (58 times, according to Committee records), and that that an unknown number of dockets which the RCA counts in its case-closing statistics are relatively minor (including, for example, applications to install a pay phone). Ms. Thompson acknowledged that she did not obtain the other Commissioners' approval for a recent letter in which she warned of adverse consequences of a "wind-down" year, and

Commissioner Smith testified that he disagreed with that letter and did not believe that those adverse consequences need occur.

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair
Sen. Dave Donley, Vice-Chair
Sen. John Cowdery
Sen. Gene Therriault
Sen. Johnny Ellis



State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: 465-3922

Senate Judiciary Committee

REVISED AGENDA

Wednesday, June 12, 2002

1:00 P.M.

Anchorage Legislative Information Office

1. Call to Order
2. Testimony by Harold Furchtgott-Roth – Expert Witness
3. Testimony by Red Boucher, Board Member/Chugach Electric
4. Testimony by Joe Griffith, General Manager/Chugach Electric
5. Testimony by Jeanne McPherren
6. Testimony by Patricia Clark
7. Testimony by others who may be called by Committee.
8. Adjournment

Note: The Committee will try to adjourn by 4:30 P.M.

R. Reyn

Aurora : X 2870
321-4654

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair
Sen. Dave Donley, Vice-Chair
Sen. John Cowdery
Sen. Gene Therriault
Sen. Johnny Ellis



State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: 465-3922

Senate Judiciary Committee

REVISED AGENDA

Thursday, June 13, 2002
10:00 A.M.

Anchorage Legislative Information Office

1. Call to Order
2. George Gordon/Golden Heart Utilities and College Utilities
3. Testimony by Commissioners of Regulatory Commission of Alaska
4. Testimony by Ron Duncan, President/GCI
5. Testimony by ACS
6. Testimony by others who may be called by Committee.
7. Public testimony if time allows.
8. Adjournment

The committee will try to adjourn by 4:30 P.M.



**Requested Items of the Senate Judiciary Committee
June 12 and June 13
RCA Hearings**

Chugach Electric Association:

1. Copy of the written testimony by Joe Griffith.

762-4709
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will
email
6-14-02

RCA:

1. Name of AG for the RCA that testified for the record.
2. Need 1 additional file packet (4 given to committee) for the official record.
3. Nan – written testimony to Senator Cowderys office. → Requested from Dawn Bishop 6-14-02 10 AM
4. Copy of 8th Circuit Court Ruling – Burden of Proof. (Sen Taylor)
5. Nan – Copy of check written to GCI for services received. (Sen Cowdery)
6. Nan – email communications about upcoming RCA special session and or hearings. (Sen Taylor)
7. Examples of advice / and information given re: GCI to ACS, and ACS to GCI (Sen Taylor)
8. Copies of all Commissioners Ethical Disclosure Statements (Sen Cowdery)
9. Ideas and Suggestions from the individual Commissioners on the following:
 - a) Please submit possibilities on how to streamline timeliness factors. (Sen Donley)
 - b) What could be done as a penalty or deterrent for not getting a case finished within a 2-year time frame? (Sen Donley)
 - c) More information on the 2 cases mentioned where utilities may not have been charged uniformly for the work related to their case. (Sen Donley)
 - d) RCA to provide suggestions and recommendations on how to improve the commission, before the next hearing date of June 20, 2002. To be submitted to Senator Cowderys office for the Senate JUD Committee. (Senator Taylor)

General Comments:

1. General Comments to be submitted to Senator Cowderys office for the Senate JUD Committee. (Senator Taylor)

Subject: For the Mailsheet[Fwd: TA146-489]
Resent-From: records_rca@rca.state.ak.us
Date: Mon, 20 May 2002 08:58:39 -0800
From: Robin Boysen <robin_boysen@rca.state.ak.us>
To: RCA - Records & Filing <records_rca@rca.state.ak.us>

GCI

Subject: RE: TA146-489
Date: Mon, 20 May 2002 08:54:30 -0800
From: Jennifer Robertson <jrobertson@gci.com>
To: 'Robin Boysen' <robin_boysen@rca.state.ak.us>

Thank you for the information. Since there is no pending TA meeting. Will you let me know which way this TA goes?

Thanks! Jennifer

-----Original Message-----

From: Robin Boysen [mailto:robin_boysen@rca.state.ak.us]
Sent: Friday, May 17, 2002 3:12 PM
To: Jennifer Robertson
Subject: TA146-489

1. I was reviewing this filing with Lori and she suggested that you might want to know that ACS recently has been restricting their TLS bandwidth availability. In two different filings they basically made 1.5 unavailable as well as 20 and 50 kbps. Though we are actually glad to see more available at the lower levels available to customers, we thought you should be aware of the trend.

2. As I mentioned before, I believe that the sentence under Early Termination of Term Commitment referring to 9.9% termination finance charge does not clearly state what the 9.9% charge is on. At this point I would have to recommend suspension of that aspect of the tariff, pending clarification.

Enjoy the sun!!! robin

[Fwd: RE: notes from testimony]

Subject: [Fwd: RE: notes from testimony]
Date: Fri, 14 Jun 2002 16:21:55 -0300
From: Annette Deal <Annette_Deal@Legis.state.ak.us>
Organization: Alaska State Legislature
To: Lynne Collins <Lynne_Collins@legis.state.ak.us>

The AT&T Alascom - day 1 testimony of Kristi Caitlin.

----- Original Message -----

Subject: RE: notes from testimony
Date: Fri, 14 Jun 2002 16:22:44 -0800
From: "Catlin, Kristi" <KCatlin@alascom.att.com>
To: "'Annette Deal'" <Annette_Deal@Legis.state.ak.us>


<<TESTIMONY K Final.doc>>

-----Original Message-----

From: Annette Deal [mailto:Annette_Deal@Legis.state.ak.us]
Sent: Thursday, June 13, 2002 8:51 AM
To: kcatlin@alascom.att.com
Subject: notes from testimony

Hello Kristi -
I was wondering if you would be able to forward me your
comments from
yesterdays Senate Judiciary hearing.

Thank you,
Annette Deal
Staff to Senate Members
269-0224

	TESTIMONY K Final.doc	Name: TESTIMONY K Final.doc Type: WINWORD File (application/msword) Encoding: base64 Download Status: Not downloaded with message
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Jun 13 02 01:08p

FBX LEGIS INFORMATION
WEAVER BROS FAIR

FAX NO. 9074563346
907 456 6479

Sen Records
P. 01
p. 1

456-3346



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Judiciary
Committee on RCA Committee Name Dated 6-13-02
Bill / Subject

SIGNED:

Paul Sannes

Testifier

Communities of Naystack, Chatham & Ocean Summit
Representing

1121 Benthal Dr. E. Iuka, AK 99712

Address / Phone Number

H-369-2323 W-456-7704

Testimony of Lois C. Sannes

Sen. Robin Taylor

During the year of 1999 I filed a petition to the RCA for EAS from Summit Telephone Company and ACS (at the time (PTI)

I did not receive any support from the PAS as they stated they were understaffed and lacked funding. I wrote and filed all of the required motions by reading the Alaska Administrative Code, Title III and was successful in showing a community of interest existed and the EAS was granted. During this Docket # U-99-97 the issue of poor quality of service was addressed and 40 letters of testimony were filed.

EAS was in effect February 2001. By September and October 2001 many of my neighbors began complaining to me regarding poor service. On advice of Agnes Pitts everyone began noting dates, times and types of problems. I also experienced the same problems and wrote a letter in January 2002 stating the ongoing problems of no dial tone, cross talk, dropped calls and people calling Summit Telephone customers hearing a ring, but the customer doesn't hear a ring or if it does ring it will ring once and when the phone is picked up you will hear a fast busy signal. These problems have existed since 1997, with complaints on file.

The RCA responded to my letter and asked Summit Telephone Company to respond by Feb. 19th 2002. Summit Telephone responded by blocking all calls to internet servers to only the BETRS customers and making them a long distance call. Summit has written two letters to their customers ordering a limitation of calls to 20 minutes. Summit Telephone stated that high use of internet was to blame for the problems. The problems existed before we had electricity and computers and the same problems still exist after the blocking of internet calls.

I wrote another letter with support of neighbors and I filed a motion to include the parties of U-99-97 in the new docket U-02-017. My motion was denied. A waiver was granted on order #7 (EAS) docket #U-99-97 allowing Summit Telephone to block certain numbers and although Summit Telephone stated to the RCA an emergency did not exist the RCA still allows Summit Telephone to limit the duration of calls and to monitor calls.

I asked for help from the PAS, again too busy, understaffed and no money, I did not get any.

I decided to go to Juneau to look for help with issues. It appears to me that the RCA does not follow the Alaska Administrative Code and does not require the utilities to follow the code. I spoke with Ron Clark and asked for help. I have given a list to the RCA of the violations of the Alaska Administrative Code by Summit Telephone, but the RCA supports the violations such as monitoring calls, limiting duration of calls, refusal of service, not providing a dial tone and not providing local service as ordered in docket # U-99-97 order #7 granting EAS. Mr. Clark did contact the Legal Dept. and Lew Crnig. After speaking with Ron Clark, Lew Craig did edit a motion that I had to file.

In a letter of February 2002 I was instructed to file all future correspondence to docket # U-02-017. I did file a motion to include parties and that was denied. The next motion filed was a Motion for Reconsideration and returned as the address I had been told to use by the RCA was the old address and the forwarding had expired. It was returned after more than a two week delay. I was then told that I needed to file a petition for leave to accept my late filed petition for reconsideration. I have not had any response.

It is difficult, if not impossible for the public to address issues with the RCA and it appears that the RCA only responds to the needs of the utility. I am only familiar with these two mentioned dockets and I understand why the public becomes complacent and continues to endure extremely poor quality of

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Jun 13 02 01:38p

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FAX NO. 9074563346
307 456 6479

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service. The first docket took over 18 months; this second has been ongoing for 6 months. I am not paid, nor do I get reimbursement for my expenses or loss of time from work. As an individual representative of the public, I should not have to be familiar with the Administrative Code, Title III to try to get better service. Help should be available. If changes were to made I would hope that the needs of the public would be addressed and that help would be readily available to citizens attempting to get an EAS established and that issues of poor service would be heard and a follow up would be done.

Thank you for your time and consideration.

Lois C. Sannes

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair
Sen. Dave Donley, Vice-Chair
Sen. John Cowdery
Sen. Gene Therriault
Sen. Johnny Ellis



State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: 465-3922

Senate Judiciary Committee

SENT VIA FACSIMILE JUNE 7, 2002

June 7, 2002

TO: HAROLD FURCHTGOTT-ROTH

The Senate Judiciary Committee of the Alaska State Legislature is holding hearings regarding the early re-authorization of the Regulatory Commission of Alaska on June 12 and 13, 2002. These hearings will be held in the Anchorage Legislative Information Office located at 716 W 4th Avenue, Suite 200, Anchorage, Alaska.

The Senate Judiciary Committee respectfully invites you to appear at 1:00 P.M. on Wednesday, June 12, 2002, to give testimony and answer questions from the committee regarding this early re-authorization.

We would appreciate your response to this invitation by close of business on Monday, June 10, 2002. Please send your response via phone to 1-877-463-3873; via fax to 1-907-225-0713, or via e-mail to Senator_Robin_Taylor@legis.state.ak.us.

Sincerely,

A handwritten signature in cursive script that reads "Robin L. Taylor".

Senator Robin L. Taylor, Chair

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair
Sen. Dave Donley, Vice-Chair
Sen. John Cowdery
Sen. Gene Therriault
Sen. Johnny Ellis



State Capitol
Juneau, AK 99801-1192
(907) 465-3717
Fax: 465-3922

Senate Judiciary Committee

SENT VIA FACSIMILE JUNE 7, 2002

June 7, 2002

**TO: G. NANETTE THOMPSON, CHAIR
REGULATORY COMMISSION OF ALASKA**

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Sincerely,

A handwritten signature in cursive script that reads "Robin L. Taylor".

Senator Robin L. Taylor, Chair

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair
Sen. Dave Donley, Vice-Chair
Sen. John Cowdery
Sen. Gene Therriault
Sen. Johnny Ellis



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Juneau, AK 99801-1182
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Senate Judiciary Committee

SENT VIA FACSIMILE JUNE 7, 2002

June 7, 2002

**TO: JAMES STRANDBERG, COMMISSIONER
REGULATORY COMMISSION OF ALASKA**

The Senate Judiciary Committee of the Alaska State Legislature is holding hearings regarding the early re-authorization of the Regulatory Commission of Alaska on June 12 and 13, 2002. These hearings will be held in the Anchorage Legislative Information Office located at 716 W 4th Avenue, Suite 200, Anchorage, Alaska.

The Senate Judiciary Committee respectfully invites you to appear at 10:00 A.M. on June 13, 2002, to give testimony and answer questions from the committee regarding this early re-authorization.

We would appreciate your response to this invitation by close of business on Monday, June 10, 2002. Please send your response via phone to 1-877-463-3873; via fax to 1-907-225-0713, or via e-mail to Senator Robin Taylor@legis.state.ak.us.

Sincerely,

A handwritten signature in cursive script that reads "Robin L. Taylor".

Senator Robin L. Taylor, Chair

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair
Sen. Dave Donley, Vice-Chair
Sen. John Cowdery
Sen. Gene Theriault
Sen. Johnny Ellis



State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: 465-3922

Senate Judiciary Committee

SENT VIA FACSIMILE JUNE 7, 2002

June 7, 2002

**TO: WILL ABBOTT, COMMISSIONER
REGULATORY COMMISSION OF ALASKA**

The Senate Judiciary Committee of the Alaska State Legislature is holding hearings regarding the early re-authorization of the Regulatory Commission of Alaska on June 12 and 13, 2002. These hearings will be held in the Anchorage Legislative Information Office located at 716 W 4th Avenue, Suite 200, Anchorage, Alaska.

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Senate Judiciary Committee

SENT VIA FACSIMILE JUNE 7, 2002

June 7, 2002

**TO: PATICIA DeMARCO, COMMISSIONER
REGULATORY COMMISSION OF ALASKA**

The Senate Judiciary Committee of the Alaska State Legislature is holding hearings regarding the early re-authorization of the Regulatory Commission of Alaska on June 12 and 13, 2002. These hearings will be held in the Anchorage Legislative Information Office located at 716 W 4th Avenue, Suite 200, Anchorage, Alaska.

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Sincerely,

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Senator Robin L. Taylor, Chair

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair
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Sen. Johnny Ellis



State Capitol
Juneau, AK 99801-1182
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Senate Judiciary Committee

SENT VIA FACSIMILE JUNE 7, 2002

June 7, 2002

**TO: BERNIE SMITH, COMMISSIONER
REGULATORY COMMISSION OF ALASKA**

The Senate Judiciary Committee of the Alaska State Legislature is holding hearings regarding the early re-authorization of the Regulatory Commission of Alaska on June 12 and 13, 2002. These hearings will be held in the Anchorage Legislative Information Office located at 716 W 4th Avenue, Suite 200, Anchorage, Alaska.

The Senate Judiciary Committee respectfully invites you to appear at 10:00 A.M. on June 13, 2002, to give testimony and answer questions from the committee regarding this early re-authorization.

We would appreciate your response to this invitation by close of business on Monday, June 10, 2002. Please send your response via phone to 1-877-463-3873; via fax to 1-907-225-0713, or via e-mail to Senator_Robin_Taylor@legis.state.ak.us.

Sincerely,

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Senator Robin L. Taylor, Chair

ALASKA STATE LEGISLATURE

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Sen. John Cowdery
Sen. Gene Therriault
Sen. Johnny Ellis



State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: 465-3922

Senate Judiciary Committee

SENT VIA FACSIMILE JUNE 7, 2002

June 7, 2002

**TO: JOE GRIFFITH, GENERAL MANAGER
CHUGACH ELECTRIC**

The Senate Judiciary Committee of the Alaska State Legislature is holding hearings regarding the early re-authorization of the Regulatory Commission of Alaska on June 12 and 13, 2002. These hearings will be held in the Anchorage Legislative Information Office located at 716 W 4th Avenue, Suite 200, Anchorage, Alaska.

The Senate Judiciary Committee respectfully invites you to appear at 1:30 P.M. on Wednesday, June 12, 2002, to give testimony and answer questions from the committee regarding this early re-authorization.

We would appreciate your response to this invitation by close of business on Monday, June 10, 2002. Please send your response via phone to 1-877-463-3873; via fax to 1-907-225-0713, or via e-mail to Senator_Robin_Taylor@legis.state.ak.us.

Sincerely,

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Senator Robin L. Taylor, Chair

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair
Sen. Dave Donley, Vice-Chair
Sen. John Cowdery
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Sen. Johnny Ellis



State Capitol
Juneau, AK 99801-1182
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Senate Judiciary Committee

SENT VIA FACSIMILE JUNE 7, 2002

June 7, 2002

**TO: RED BOUCHER, BOARD OF DIRECTORS
CHUGACH ELECTRIC**

The Senate Judiciary Committee of the Alaska State Legislature is holding hearings regarding the early re-authorization of the Regulatory Commission of Alaska on June 12 and 13, 2002. These hearings will be held in the Anchorage Legislative Information Office located at 716 W 4th Avenue, Suite 200, Anchorage, Alaska.

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We would appreciate your response to this invitation by close of business on Monday, June 10, 2002. Please send your response via phone to 1-877-463-3873; via fax to 1-907-225-0713, or via e-mail to Senator_Robin_Taylor@legis.state.ak.us.

Sincerely,

A handwritten signature in cursive script that reads "Robin L. Taylor".

Senator Robin L. Taylor, Chair

ALASKA STATE LEGISLATURE

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Sen. Johnny Ellis



State Capitol
Juneau, AK 99801-1182
(907) 465-3717
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Senate Judiciary Committee

SENT VIA FACSIMILE JUNE 7, 2002

June 7, 2002

**TO: RON DUNCAN, PRESIDENT
GCI**

The Senate Judiciary Committee of the Alaska State Legislature is holding hearings regarding the early re-authorization of the Regulatory Commission of Alaska on June 12 and 13, 2002. These hearings will be held in the Anchorage Legislative Information Office located at 716 W 4th Avenue, Suite 200, Anchorage, Alaska.

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We would appreciate your response to this invitation by close of business on Monday, June 10, 2002. Please send your response via phone to 1-877-463-3873; via fax to 1-907-225-0713, or via e-mail to [Senator Robin Taylor@legis.state.ak.us](mailto:Senator_Robin_Taylor@legis.state.ak.us).

Sincerely,

A handwritten signature in cursive script that reads "Robin L. Taylor".

Senator Robin L. Taylor, Chair

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STATE OF ALASKA

(907) 465-3887 or 465-2450
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Mail Stop 3101

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MEMORANDUM

June 10, 2002

SUBJECT: Boards and commissions affected by failure of the legislature to extend their existence under the Sunset Law, AS 44.66.

TO: Senator Robin Taylor

FROM: Jack Chenoweth
Assistant Revisor of Statutes



This is by way of response to direction given in our Friday phone conversation.

The Sunset Law, AS 44.66, derives from ch. 149, SLA 1977, and became effective September 16, 1977. In the intervening 25 years, by my calculations, 10 different boards and commissions listed in the chapter, on 13 different occasions, have terminated under AS 44.66.010(a), functioned through part or all of the succeeding wind-down year as authorized under AS 44.66.010(b), and, during that year, had their existences continued by later legislative action. This tally is made without reference to the professional and vocational boards and commissions regulated under AS 08, a chapter that has separately operating "sunset" provisions.

I

A June 21, 1994, opinion of the attorney general identifies "five different Title 44 boards and commissions, on seven different occasions, [that] have expired under AS 44.66.010(a) and functioned during the succeeding year under [AS 44.66.010(b)]." Through that date, the opinion identifies those AS 44.66 boards and commissions as follows:

- *The Alaska Transportation Commission* expired on June 30, 1979, functioned during the succeeding year, and was continued by the legislature in 1980. Sec. 1, ch. 115, SLA 1980. (This agency was eventually terminated by an initiative. 1983 Initiative Proposal No. 2, sec. 6.)

- *The Alcoholic Beverage Control Board* also expired on June 30, 1979, functioned during the succeeding year, and was continued by the legislature in 1980. Sec. 11, ch. 131, SLA 1980.

Senator Robin Taylor
June 10, 2002
Page 2

-- The *State Board of Parole* has expired twice, June 30, 1980, and June 30, 1982, functioned during the succeeding years, and was continued by the legislature in 1981 and 1983, respectively. Sec. 1, ch. 32, SLA 1981; Sec. 1, ch. 20, SLA 1983.¹

-- The *Alaska Code Revision Commission* expired June 30, 1985, functioned during the succeeding year, and was continued by the legislature in 1986. Sec. 1, ch. 121, SLA 1986. This commission expired again on June 30, 1993, and was not extended by the legislature in the 1994 legislative.²

-- The *Alaska Women's Commission* has a more convoluted legislative history. It expired on June 30, 1987, functioned during the succeeding year, but was not continued by the legislature in 1988. On June 23, 1988, Governor Cowper signed Administrative Order No. 1.0 establishing the Interim Women's Commission in the Office of the Governor. The order took effect July 1, 1988, so that there would be no time gap between the discontinued Alaska Women's Commission and the Interim Women's Commission. Under the order, the Interim Women's Commission was to remain in existence until the adjournment of the next legislative session. In 1989, the legislature extended the duration of the Interim Women's Commission to June 30, 1989, and reestablished the Alaska Women's Commission, effective July 1, 1989, as a continuation of the Interim Women's Commission. In 1993, the Governor, by Executive Order No. 84, merged the Women's Commission with the Alaska Commission on Children and Youth to create a new Alaska Human Relations Commission in the Governor's Office.

The circumstances that prompted the attorney general opinion inquiry adds a sixth board and an eighth instance: In 1994, the then-*Alaska Public Utilities Commission* was scheduled for termination, with an existing "wind-down" year set for July 1, 1994 - June 30, 1995. The commission was extended during the 1995 session. Sec. 12, ch. 1, SLA 1995.

II

That attorney general opinion summary covered the years through 1994. Beginning in 1995, then, it appears that four additional Title 44 boards and commissions, on as many as five different occasions, have expired under AS 44.66.010(a) and functioned during the succeeding year under AS 44.66.010(b).

¹ Taking into consideration that the State Board of Parole was caught up in a wind-down period when the attorney general opinion was authored, that board has actually expired three times. The existence of the State Parole Board, then in a wind-down year following its termination effective June 30, 1993, was continued during the 1994 session. Sec. 5, ch. 44, SLA 1994.

² Statutory references to the Alaska Code Revision Commission were repealed in the 1995 Revisor's Bill. See sec. 33, ch. 23, SLA 1995.

Senator Robin Taylor
June 10, 2002
Page 3

-- The former *Older Alaskans Commission*, subsequently redesignated as the Alaska Commission on Aging, was scheduled for termination June 30, 1993, with an existing wind-down year set to end June 30, 1994. The life of the commission, as renamed, was continued during that wind-down year by sec. 10, ch. 131, SLA 1994.

-- The *Hazardous Substance Spill Technology Review Council* established under AS 46.13.100 - 46.13.130 and AS 46.13.900 expired June 30, 1994, operated for one wind-down year, was extended during that wind-down year by sec. 9, ch. 93, SLA 1995 through June 30, 1995, expired on that date, theoretically functioned during the following fiscal year to conclude its affairs, and was not continued by the legislature.³

-- The *Citizens' Review Panel for Permanency Planning* under former AS 47.14.400 was also scheduled for termination June 30, 1994, with an existing wind-down year set to end June 30, 1995. The life of the panel was continued during that wind-down year by sec. 1, ch. 5, SLA 1995. Before reaching the revised termination date, the panel was abolished by 1997 legislation establishing a "Citizens' Foster Care Review Board."

-- The *Board of Storage Tank Assistance* established in AS 46.03.360 was scheduled to terminate June 30, 2000. During the 1999 legislative session, the scheduled termination date was moved to June 30, 1999, thus putting the board into a wind-down year through June 30, 2000. See sec. 1, ch. 70, SLA 1999. Then, during the 2000 legislative session, the termination date was amended to June 30, 2001. Sec. 1, ch. 125, SLA 2000. The board thus has again functioned during the current state fiscal year in a wind-down mode. In SB 115, the board is continued by the legislature for another year through June 30, 2003; the extension bill is before the governor for signature.⁴

JBC:pjc
02-089.pjc

³ Subsequently, statutory references to the council were repealed in the 2000 Revisor's Bill, sec. 102, ch. 21, SLA 2000.

⁴ In addition to the preceding, in each of the following instances, the named board or council expired and presumably functioned during the wind-down year to conclude its affairs, but the legislature made a conscious decision not to extend its life:

-- The *Tourism Coordinating Committee* of former AS 44.33.122 expired June 30, 1993, enjoyed authority to operate for one further year, and was not continued by the legislature; statutory references to the committee were repealed in the 1995 Revisor's Bill, sec. 33, ch. 23, SLA 1995.

-- The *Citizens' Foster Care Review Board* established under AS 47.14.200 expired on June 30, 2000, enjoyed authority to function during the following year through June 30, 2001, and, so far as I have been able to determine, has not been continued by the legislature.

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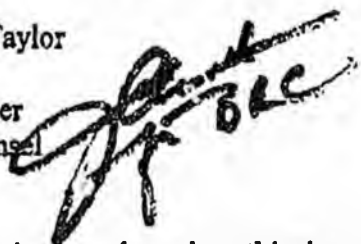
MEMORANDUM

June 6, 2002

SUBJECT: Ethical standards applicable to members of the Regulatory Commission of Alaska (Work Order No. 22-LS1843)

TO: Senator Robin Taylor

FROM: Barbara R. Craver
Legislative Counsel



You asked several specific questions in regard to the ethical standards applicable to members of the Regulatory Commission of Alaska.

1. What ethical standards apply to members of the Regulatory Commission of Alaska (RCA)?
 2. What changes could be made to the ethical standards applicable to the RCA?
 3. What ethical restrictions do other states place on utility regulatory boards?
-
1. What ethical standards apply to members of the Regulatory Commission of Alaska (RCA)?

The RCA is an independent agency within the Department of Community and Economic Development. AS 42.04.010. Commissioners of the RCA are public officers and are subject to the Executive Branch Ethics Act. ¹ AS 39.52. RCA commissioners are also

¹ Sec. 39.52.110. Scope of code.

(a) The legislature reaffirms that each public officer holds office as a public trust, and any effort to benefit a personal or financial interest through official action is a violation of that trust. In addition, the legislature finds that, so long as it does not interfere with the full and faithful discharge of an officer's public duties and responsibilities, this chapter does not prevent an officer from following other independent pursuits. The legislature further recognizes that

- (1) in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without personal and financial interests in the decisions and policies of government;
- (2) people who serve as public officers retain their rights to interests of a personal or financial nature; and
- (3) standards of ethical conduct for members of the executive branch need to distinguish between those minor and inconsequential conflicts that are

Senator Robin Taylor
June 6, 2002
Page 2

subject to the Public Official Financial Disclosure Act.² AS 39.50. The Executive Branch Ethics Act prohibits a public officer from using an official position for personal or financial benefit. The Public Officer Disclosure Act focuses more specifically on the type of financial interests which might pose an apparent or actual conflict of interest for a public officer.

To the extent that you are concerned with the standards imposed on commissioners in the course of administrative hearings, provisions in the Executive Branch Ethics Act would

unavoidable in a free society, and those conflicts of interests that are substantial and material.

(b) Unethical conduct is prohibited, but there is no substantial impropriety if, as to a specific matter, a public officer's

(1) personal or financial interest in the matter is insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officer belongs; or

(2) action or influence would have insignificant or conjectural effect on the matter.

(c) The attorney general, designated supervisors, hearing officers, and the personnel board must be guided by this section when issuing opinions and reaching decisions.

² Sec. 39.50.010. Findings and purpose.

(a) It is declared by the people of the State of Alaska that the purposes of this chapter are:

(1) to discourage public officials from acting upon a private or business interest in the performance of a public duty;

(2) to assure that public officials in their official acts are free of the influence of undisclosed private or business interests;

(3) to develop public confidence in persons seeking or holding public office, enhance the dignity of the offices and make them attractive to citizens who are motivated to public service; and

(4) to develop accountability in government by permitting public access to information necessary to judge the credentials and performance of those who seek and hold public office.

(b) The people of the State of Alaska declare that:

(1) public office is a public trust that should be free from the danger of conflict of interest;

(2) the public has a right to know of the financial and business interests of persons who seek or hold public office;

(3) a compelling state interest requires that candidates for office and office holders disclose their personal and business financial interests;

(4) reasonable disclosure requirements do not violate an individual's right to privacy when the individual seeks or holds public office and a compelling state interest in the disclosure exists; and

(5) reasonable disclosure requirements do not have the effect of chilling the exercise of the right of a qualified person to seek or hold public office.

Senator Robin Taylor

June 6, 2002

Page 3

generally prohibit a commissioner acting as a hearing officer from performing that function improperly.³ RCA commissioners can be removed by the governor for cause. AS 42.04.020(e).

Under the adjudication provisions of the Administrative Procedure Act:

³ AS 39.52.120. Misuse of official position.

(a) A public officer may not use, or attempt to use, an official position for personal gain, and may not intentionally secure or grant unwarranted benefits or treatment for any person.

(b) A public officer may not

(1) seek other employment or contracts through the use or attempted use of official position;

(2) accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the state;

(3) use state time, property, equipment, or other facilities to benefit personal or financial interests;

(4) take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest;

(5) attempt to benefit a personal or financial interest through coercion of a subordinate or require another public officer to perform services for the private benefit of the public officer at any time; or

(6) use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for partisan political purposes; this paragraph does not prohibit use of the governor's residence for meetings to discuss political strategy and does not prohibit use of the communications equipment in the governor's residence so long as there is no special charge to the state for the use; in this paragraph, "for partisan political purposes"

(A) means having the intent to differentially benefit or harm a

(i) candidate or potential candidate for elective office; or

(ii) political party or group;

(B) but does not include having the intent to benefit the public interest at large through the normal performance of official duties.

(c) In addition to other provisions of this section, a public officer who is a member of the Board of Fisheries or the Board of Game may not act on a matter before the board if the public officer has not disclosed in the manner set out in AS 39.52.220 all personal or financial interests in a business or organization relating to fish or game resources.

(d) In this section, when determining whether a public officer is considered to be performing a task on government time, the attorney general and personnel board shall consider the public officer's work schedule as set by the public officer's immediate supervisor, if any. A public officer other than the governor and lieutenant governor who, during the work days, engages in political campaign activities other than minor, inconsequential, and unavoidable campaign activities shall take approved leave for the period of campaigning.

Senator Robin Taylor
June 6, 2002
Page 4

The functions of hearing officers and those officers participating in decisions shall be conducted in an impartial manner with due regard for the rights of all parties These officers . . . may not engage in interviews with, or receive evidence or argument from, a party, directly or indirectly, except upon opportunity for all other parties to be present. . . .

AS 44.62.330. However, the RCA is specifically exempt from portions of the Administrative Procedure Act which govern the conduct of administrative adjudications under AS 42.05.161(a).⁴ The commission is directed to adopt regulations consistent with the standards of due process of law for the practice and procedures of the RCA. AS 42.05.151(b). The regulations adopted by the RCA do not contain any specific standards for the conduct of the commissioners or hearing officers relevant to impartiality and *ex parte* contacts. 3 AAC 48. (Practice and Procedure.)

One specific area of concern in your request is the standards applicable to *ex parte* contacts of a commissioner with a party or witness involved in a hearing before that commissioner. There is nothing specific in the procedures applicable to RCA matters which specifically forbids *ex parte* contacts. However, AS 42.05.151(b) clearly directs the RCA to conduct its affairs consistent with the standards of due process of law. A hearing officer improperly having *ex parte* contacts raises due process issues. An *ex parte* communication is generally regarded as a violation of due process. Louisiana Pac. Corp. v. Koons, 816 P.2d 1379, 1382 (Alaska 1991).⁵

2. What changes could be made to the ethical standards applicable to the RCA?

There are provisions which apply to other boards and commissions with administrative adjudications to ensure the impartiality and forbid *ex parte* contacts. Although existing law would probably be sufficient to support a removal for cause if an RCA commissioner were to violate the due process rights of a party being heard by the commission, here are a few of the provisions which could be added to the statutes governing the RCA to make

⁴ AS 42.05.161. Application of Administrative Procedure Act.

(a) The administrative adjudication procedures of AS 44.62 (Administrative Procedure Act) do not apply to adjudicatory proceedings of the commission except that final administrative determinations by the commission are subject to judicial review under that Act as provided in AS 42.05.551(a).

(b) AS 44.62 (Administrative Procedure Act) applies to regulations adopted by the commission. [This statute was adopted in 1970.]

⁵ A member of a worker's compensation hearing board initiated a conversation with two party's witnesses regarding some collateral issues after a hearing. The court found that *ex parte* communications with a member of an adjudicatory board are a violation of the fundamental standards of due process.

Senator Robin Taylor
June 6, 2002
Page 5

the standards for the impartiality of commissioners while conducting hearings more explicit:

a. From the Administrative Procedure Act:

AS 44.62.630. Impartiality. The functions of hearing officers and those officers participating in decisions shall be conducted in an impartial manner with due regard for the rights of all parties and the facts and the law, and consistent with the orderly and prompt dispatch of proceedings. These officers, except to the extent required for the disposition of ex parte matters authorized by law, may not engage in interviews with, or receive evidence or argument from, a party, directly or indirectly, except upon opportunity for all other parties to be present. Copies of all communications with these officers shall be served upon all parties.

b. Hearings before the Local Boundary Commission:

3 AAC 110.500. LIMITATIONS ON ADVOCACY. (a) Unless otherwise ordered by the chairperson of the commission, for good cause shown, no document, letter or brief will be accepted for filing and consideration by the department or the commission except in accordance with the procedures, timeframes, hearings and meetings specified in 3 AAC 110.400 - 3 AAC 110.660.

(b) A member of the commission is prohibited from ex parte contact and communication with any person except the staff of the commission, concerning a matter pending before the commission that has been filed as a petition, from the date the petition was first submitted to the department through the last date available for the commission's reconsideration.

c. Hearings on revenue matters:

15 AAC 05.030. FORMAL HEARINGS

...
(d) A hearing officer may not communicate with a party, directly or indirectly, regarding a case unless notice and opportunity to participate is given to all parties. A hearing officer may communicate with a party without notice and opportunity for all other parties to participate if the communication involves a procedural matter and the other parties have verbally or in writing waived notice and participation. A verbal waiver may be communicated directly to the hearing officer or through an opposing party. A party conveying a waiver of another party to the hearing officer must first declare that the subject matter of the communication was discussed with the other party and the other party expressly authorized the communication. A hearing officer who receives an ex parte

Senator Robin Taylor
June 6, 2002
Page 6

communication in violation of this subsection may be disqualified if necessary to eliminate the effect of the communication.

In addition, some guidance is offered in the Judicial standards found in the Code of Judicial Conduct:

Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

...
(7) A judge shall accord to every person the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications or other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except as allowed by this Section. A judge shall make reasonable efforts to see that law clerks and other court staff carrying out similar functions under the judge's supervision do not violate the provisions of this Section.

(a) A judge may initiate or consider an ex parte communication when expressly authorized by law to do so.

(b) When circumstances require, a judge may engage in ex parte communications for scheduling or other administrative purposes, provided that:

(i) the communications do not deal with substantive matters or the merits of the issues litigated,

(ii) the judge reasonably believes no party will gain a procedural or tactical advantage because the communication is ex parte, and

(iii) the judge takes reasonable steps to notify all other parties promptly of the substance of the ex parte communication and, when practicable, allows them an opportunity to respond. This subsection does not apply to ex parte communications by law clerks or other court staff concerning scheduling or administrative matters.

(c) If all the parties have agreed to this procedure beforehand, either in writing or on the record, a judge may engage in ex parte communication on specified administrative topics with one or more parties.

(d) A judge may consult other judges and law clerks or other court staff whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

Senator Robin Taylor
June 6, 2002
Page 7

(c) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

3. What ethical restrictions do other states place on utility regulatory boards?

In the interest of responding to your request in a timely manner, I will provide the results of my research on the ethical standards for utility regulatory boards in other states in a separate memorandum. Prior to proceeding with that research, I would like to talk to you to see if I can focus my research on the ethical issues of most concern to you. It may also be that the information in the memorandum is adequate to assist you, without reference to other states. I will call you to follow up on this portion of your request.

BRC:pjc
02-087.pjc

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STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101


State Capitol
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MEMORANDUM

June 11, 2002

SUBJECT: Wind-down year of the Regulatory Commission of Alaska - scope of authority (Work Order No. 22-LS1845)

TO: Senator Robin Taylor

FROM: Barbara R. Craver
Legislative Counsel 

You have asked what functions the Regulatory Commission of Alaska (RCA) can perform in the "wind-down year" following its termination and how much discretion it has to determine the scope of its actions during that year. You provided a letter dated May 20, 2002, from G. Nannette Thompson, Chair of the RCA to you ("RCA letter"). You also attached a copy of a memorandum from the Attorney General to Commissioner Paul Fuhs, dated June 21, 1994 ("AG memo").

The RCA is terminated on June 30, 2002, by AS 44.66.010(a)(4). AS 44.66.010(b) provides that "[u]pon termination, a commission listed in (a) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs." While the RCA continues to operate, its existence in the final year after it has failed to be continued is for the purpose of bringing its activities to a close. AS 44.66.060 provides that any claim against a board is not extinguished by the termination of the board. Under AS 42.05, the Public Utilities Regulatory Act, there is no other statutory guidance as to what the Board is to do in its "wind-down" year. It is our position that the statutes governing the RCA do not curtail the performance of any of its functions during its wind-down year.

As stated in the 1994 AG memo, several boards subject to Title 44 have been terminated and have gone into a wind-down year. That memo was updated by Jack Chenoweth in a memo dated June 10, 2002, a copy of which is attached. The AG memo states that it has been the administration's practice to advise agencies in their wind-down year to continue to operate fully. The advice and practice since 1979 is that an agency's powers are not curtailed during the wind-down year.

As noted in the AG memo, the "wind-down" language used in AS 08.03.020(a) for the termination of regulatory boards specifically provides "[d]uring this period, termination does not reduce or otherwise limit the powers or authority of each board." This is of interest when compared to the language used in AS 44.66. Because the language in AS 44.66.010(b) does not contain the additional phrase found in AS 08.03.020 the

Senator Robin Taylor
June 11, 2002
Page 2

implication is that the powers and authority of boards and commissions in AS 44.66.010 are more limited during the wind-down period. The AG memo concludes after an extensive review of legislative history that it can find no reason for the difference, and that the sponsor of the bill did not intend that the agencies covered by Title 44 be treated differently than Title 8 agencies during the wind-down year. As a matter of practice, the AG memo states that several Title 44 agencies have continued business as usual during their wind-down year.

We agree with the conclusion found in the AG memo:

[T]he impact of AS 44.66.010(a)(4) on the Alaska Public Utilities Commission [now the RCA] is to impose an additional duty to prepare for closing, but not to eliminate the commission's power to conduct its regulatory functions. The Commission should comply with the sunset law by preparing for the exigency that it may be required to cease all activities, lay off all staff and close its doors at the end of the next fiscal year. We suggest the commission should examine the time demands and completion dates of its current workload, determine what additional investigations can be accomplished by the end of the sunset year, develop a plan to conclude as many matters as possible before the end of the year, and publicize plans to wind down and phase out by June 30, 1995. We emphasize that how to do this is within the commission's discretion since the statutes offer little guidance.

The RCA has considerable discretion to determine how it can best prepare for complete cessation of its work, while at the same time continuing to fulfill its regulatory duties. Some diminution in "business as usual" would be understandable. The RCA letter identifies several proposed actions for the RCA in its wind-down year. The agency has the discretion to carry out its statutory responsibilities consistent with the expectation that it will cease to exist after June 30, 2003. Whether the proposed actions are reasonable or not are questions of fact that are beyond my expertise.

If I may be of further assistance, please advise.

BRC:pjc
02-090.pjc

Enclosure

cc: John Tillinghast



June 10, 2002

The Honorable Robln Taylor
Chair, Senate Judiciary Committee
Alaska State Senate
State Capitol, Room 121
Juneau, Alaska 99801-1182

Dear Mr. Chairman:

I am writing this letter on behalf of Chugach Electric Association's Board of Directors and its 60,000 members to express our appreciation for your willingness to address the current problems that exist with the Regulatory Commission of Alaska's (RCA) ratemaking processes. As we have shared with you during prior conversations, Chugach Electric Association, Inc. (Chugach) is frustrated with the current process. There are three primary problems we wish to outline:

1. The Commission takes way too long to make decisions - A hearing on Chugach's 1998 Test Year rate case was held in September, 2001, and the decision was not issued until six months later. Chugach's 2000 Test Year general rate case was filed in July, 2001 - we are unlikely to have a decision within 18 months.
2. The Commission does not control its proceedings well - over 57,000 pages of discovery to five parties each have been disclosed thus far after two rounds of discovery in our pending rate case. There are four rounds of discovery scheduled.
3. The Commission considers the same issues in multiple proceedings (issues never seem to go away) - in our current case, the Commission is considering a financing issue it has considered twice before.

The message we are sending is that the existing process is quite inefficient and our members are not getting much value from the regulatory processes before the RCA. Chugach members pay for the RCA in their monthly electric bill through the regulatory cost charge. In addition, base electric rates are also impacted by this inefficiency (that is, costs are driven up by the expenses of outside counsel and the staggering costs of discovery). The Chugach Board of Directors has an obligation to its members to assure that costs incurred are for the benefit of its members. The current high costs of regulation and more importantly, the diversion of key staff resources, are benefiting no one.

Chugach is not the only electric utility that has concerns with the RCA. Eric Yould, Executive Director of ARECA, stated in a recent letter to House Finance Co-Chairman Eldon Mulder: "...the regulatory process is still broken and must be fixed. The present process costs the electric utility industry much time and ... money to run the regulatory gauntlet."

Jun. 11 2002 11:27AM P2

PHONE NO. :

FROM :

Communications Systems;

907 207 8850

USA BROADCASTING

JUN-10-02 8:13PM;

Page 3/3
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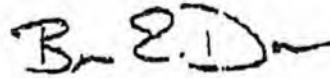
Honorable Robin Taylor
Chair, Senate Judiciary Committee

June 10, 2002
page 2

We concur with Mr. Yould's comments and welcome the Committee's involvement. Addressing the ineffectiveness of the RCA's current regulatory process will benefit all of our constituents. We believe there are solutions to the problems we are encountering, but steps must be taken now to start the process.

If you have any questions regarding this letter, please do not hesitate to contact me or Joe Griffith, Chugach's General Manager. We would be happy to meet and further discuss this important matter at your convenience.

Sincerely,



Bruce Davidson
President, Board of Directors

Comments by Joe Griffith
Senator Taylor's Committee
Sunset Review of RCA
June 12, 2002

Good afternoon. My name is Joe Griffith. I am the General Manager of Chugach Electric Association. Though I was just recently appointed to this position, before that I was Executive Manager overseeing regulatory matters.

Chugach is a member-owned cooperative consisting of 60,000 retail members. Chugach also sells power wholesale. The result is that Chugach supplies most of the electric power for the Anchorage area, almost all of the power for the Matsu Valley and Kenai Peninsula areas, and supplies substantial amounts of power to the Fairbanks area. It is important to note that as a cooperative, our members elect the directors that sit on our Board of Directors. And, they have elected well. We have dedicated and knowledgeable directors with considerable professional expertise which meet over 25 times a year, ensuring that they keep very close track of our members' interests.

The message I bring to you today is simple: our members are not getting good value from the regulatory processes before the RCA. Chugach continues to have serious difficulties with the regulatory process before the RCA.

Before I elaborate on that message, let me say that it is with considerable trepidation that I appear before you. Many would say that it is a fool's errand to complain publicly about an agency that has such absolute power and authority over every aspect of each of our utility's operations. This agency sets the prices at which we sell our services. It sets the terms of our service. It has virtually unlimited investigative authority and ultimately, in extreme circumstances, has the authority to take on management authority at the company.

But despite the risks, we feel we owe it to our members to give you the benefit of our experience. However, I want to stress that what we have to say is offered in the spirit of constructive criticism and we trust and hope that it will be accepted that way.

Let me tell you a little about our experience which is, of course, unique. With a few notable exceptions, when we are actually able to get a decision, we are generally happy with the narrow result. It's getting a result that is the problem. There are three points I want to make in this regard:

First, the Commission takes far too long to make decisions. Let me give you a couple of examples.

- 1) A rate case was opened in 1996. A hearing was held in September, 2001, and a decision was issued six months later in March, 2002. This rate review process is over 6 years old and still open.

- 2) The 2000 Test Year general rate case was filed in July, 2001, and we are unlikely to have a decision before 18 months has passed.

Second, the Commission does not control its proceedings well. In excess of 60,000 pages of discovery have been disclosed thus far after two rounds of discovery. There are four rounds of discovery scheduled.

Third, the Commission has a tendency to make the least final decision possible in many circumstances. The result is that issues don't go away. In our current rate case, the Commission is considering a financing issue it has considered twice before. The Commission confronted the issue once in a separate docket opened to decide whether to investigate the claim. It closed the docket, finding no basis for investigation, but allowed consideration of the issue in the case I just mentioned that has been open for six years. They rejected the claim again in that case, but now it's back in the 2000 Test Year case. The Commission seems to have trouble with the issue of finality. As I said, the Commission sets prices at which we can sell our services, but once they have set the price and we have sold the service, the Commission asserts it has the right to and actually does go back in time to change that price. You can imagine trying to run a business when you can't know whether the revenues you receive are going to be taken back years later.

In conclusion, Chugach looks to the Commission to perform its role. We think they have an important role in Alaska. In a sense, we are a customer of the RCA. From our perspective, one of its main functions is to adjudicate cases which come before it. The RCA has become ineffective in performing this function.

Chugach has and will continue to participate in good faith and try to make work whatever regulatory structure the legislature determines is best, but the current situation is not good for our members. We currently pay \$365,475 to fund a regulatory process that adds little value and costs the members hundreds of thousands of dollars annually and, more importantly, diverts the considerable talents of my staff on work which benefits no one, for example in our 2000 Test Year rate case, we have already expended over 6,000 staff hours and we still have months to go. We need to expedite and improve the process.

Possible Questions

1. What do you recommend?
2. Why does a coop with an elected board need regulatory oversight?
3. Does Chugach (or other coops or munis) need to be regulated?

*TESTIMONY
SENATE JUDICIARY COMMITTEE
JUNE 12 2002*

TESTIMONY OF:

KRISTI CATLIN
DIRECTOR, GOVERNMENT RELATIONS
AT&T ALASCOM

Chairman Taylor, Senators. Good Afternoon.

I would like to begin by thanking you for the opportunity to supplement the record on HB333. For the record, my name is Kristi Catlin, and I am the Director of Government Relations for AT&T Alascom.

AT&T Alascom supports the Telecommunications Study currently being let by the Department of Administration designed to examine the telecommunications market in Alaska. An unbiased study will help give the legislature and the commission guidance in developing telecommunications policy in Alaska. We support the reauthorization of the Commission, because this commission is well educated on the issues and represents stability and continuity. And we support gaining a commitment from the Commission to deal with critical issues affecting the telecommunications market at this vital time in our history. The market is changing and regulation must change with it, and at a pace.

AT&T Alascom believes that this Commission is in the best position to help us because of their longevity in studying the issues over which it regulates, but let's not mistake a vote for the Commission to mean that we support every Commission decision. We do not. However, the Commission is well informed, and it appears to make every effort to follow the law as it understands it.

The complex telecommunications market is only one of the fields that RCA commissioners regulate. As you know, they also wrestle with water, sewer, electric, gas, garbage and pipeline. Understanding all elements takes time. Quite frankly, the prospect of educating another commission is daunting, especially when this one is just gaining its own wings. There are times when drastic measures, such as Sun-setting a commission, are necessary. We do not believe that this is one of them.

It is important to understand that, with the current state of telecommunications and market forces in this state, re-appointing a new commission would not necessarily serve the best interests of the process. Critical decisions must be made this year, otherwise the telecommunications infrastructure of this state will be in serious jeopardy. Re-appointing another commission will only extend the time to educate the commission; and to then get quality, considered opinions and decisions made on behalf of the telecommunications providers of this state, and ultimately Alaska consumers.

TESTIMONY OF KRISTI CATLIN
SENATE JUDICIARY COMMITTEE
JUNE 12, 2002
PAGE 2

It is imperative that this Commission not mistake our support of their re-appointment for a vote to leave market structure and regulation the way it has been for the last four years. We think the Commission is in the best position, with the aid of an un-biased market study, to help us sort through the policy issues of the past; get an understanding on competition and market forces that is based in reality; and set a direction for the future that protects the interests of the citizens they serve, as well as ensure the viability of the companies that provide those services.

What is clear to us is this: the best way to get the problems addressed is to (1) reauthorize this Commission, (2) get the study done, and (3) obtain a commitment from the Commission to deal with the tough telecommunications market issues in its first year.

This concludes my comments. I would be happy to entertain your questions.

Testimony of Harold W. Furchtgott-Roth

Before the Judiciary Committee
Alaska Senate
June 12, 2002

I. Personal Background

My name is Harold W. Furchtgott-Roth. I am a visiting fellow at the American Enterprise Institute for Public Policy Research (AEI) in Washington, D.C. where I am writing a book on the Telecommunications Act of 1996.

From November of 1997 through May of 2001 I served as a Commissioner of the Federal Communications Commission (FCC). In that capacity, among other responsibilities, I reviewed, deliberated, and voted on all matters before the FCC. These matters included common carrier issues including many relevant to the Regulatory Commission of Alaska, Alaska Communications Systems (ACS), GCI, and all other common carriers in Alaska.

I have worked for many years as an economist. From 1995 to 1997, I served as Chief Economist of the House Committee on Commerce where, among other responsibilities, I was one of the principal staff members helping to draft the Telecommunications Act of 1996. From 1988 to 1995, I served as a senior economist for Economist Incorporated where I worked on econometric matters in regulatory, antitrust, and commercial litigation cases. These cases included many matters in the broadcast, cable, and telecommunications industries. From 1984 to 1988, I served as a research analyst for the Center for Naval Analyses where I conducted quantitative studies and analyses on behalf of the Department of the Navy.

6/12/2002

From 1981 to 1982, I had a graduate student fellowship to serve as a research assistant at the Department of Energy. From 1978 to 1979, I served as an assistant analyst at the Congressional Budget Office. In the summers of 1980, 1977, and 1976, I served as an intern at the Office of Management and Budget, the Department of Labor, and the Senate Appropriations Committee, respectively.

My academic research concerns economics and regulation. I am the coauthor of three books: *Cable TV: Regulation or Competition*, with R.W. Crandall, (Washington, DC: The Brookings Institution), 1996; *Economics of A Disaster: The Exxon Valdez Oil Spill*, with B.M. Owen, D.A. Argue, G.J. Hurdle, and G.R. Mosteller, (Westport, Connecticut: Quorum books), 1995; and *International Trade in Computer Software*, with S.E. Siwek, (Westport, Connecticut: Quorum Books), 1993. I am a frequent commenter on matters before the Federal Communications Commission, and my opinion pieces have been published by daily newspapers including the *Wall Street Journal*. I have testified on many occasions before committees of the U.S. Senate and House of Representatives. My statements as a commissioner at the FCC have been cited by federal courts.

I received an S.B. in economics from the Massachusetts Institute of Technology in 1978 and a Ph.D. in economics from Stanford University in 1986. I was a research fellow at the Brookings Institution from 1983 to 1984.

I submit this testimony in my individual capacity, and not on behalf of the American Enterprise Institute or any other organization.

II. Purpose of testimony

I am honored to be invited to appear before this committee. As I will describe later, I have a great attachment to the State of Alaska. I understand that the purpose of this hearing is the reauthorization of the Regulatory Commission of Alaska (RCA). I have come not to tell you what to do. Your duty is to your constituents, not to the federal government, much less private citizens from other states.

But I can share with you my experiences in the telecommunications sector, my familiarity with the FCC and federal communications law, my disappointment in how the Telecommunications Act has been implemented around the country. I can offer a framework that may be helpful to the RCA. I can try to answer any questions you may have.

I have advised ACS in the past. I have a great regard for the company and its management. My views are not necessarily the views of ACS. My views are my own. I have offered advice to companies afflicted by all manner of regulations, competitors and incumbents, broadcasters and cable companies alike. Much of America is a battleground between large Regional Bell-Operating Companies (RBOCs) on the one side and formerly large competitive carriers on the other. I am not a partisan in these fights. I have no view as to which companies should succeed or fail, nor do I believe that that is a proper issue for government to contemplate. I have not come to say bad things about GCI or any other company. I have only the utmost respect for private businesses trying to make a profit.

III. Foundations of law and economics

I do have consistently strong views about one matter: laws should be followed, by private parties, and even more so by the government. Property, contracts, and liability rules are the building blocks of all economic activity. If they are predictable and enforceable by private parties, economies thrive. If they are not enforceable, or if only at the discretion of the government, economies flounder.

To an economist, competition is about using property, contracts, and assets to provide services to customers as efficiently as possible, with an awareness that other firms are doing the same; it is not about competing to see who can curry the most favor with a government agency to hobble other firms in the market. The typical advice I give to companies is not so much about how to succeed in business as about how to convince the government to follow the law. Sadly, it is an all too common problem. Most regulatory problems have their origin not in bad business behavior by private parties, nor even so much in bad laws or bad regulations, but rather in the unwillingness of government agencies to follow the very laws entrusted to them.

Over the years, I have worked closely with the states and state officials including governors, legislators, and regulators. From education to the environment, from roads to public safety, most government in America is at the state and local level. You have an enormous responsibility. The Nobel Laureate Milton Friedman wrote eloquently in *Capitalism and Freedom* about the close relationship between free markets and political liberty. In the same book, he also emphasized the importance of having as many political decisions as possible made at the decentralized levels of government closest to the

electorate. Such a framework of government, as is America's, is the most conducive to free enterprise.

Every state is looking for more investments. An investment is nothing more and nothing less than a contract for property. Where the rights to property are eroded, where the rights to contracts are limited, investments will decline. This is not the result of complicated economics. It is simply common sense.

IV. Relevant Alaska background

As an FCC Commissioner, I visited Alaska in July 1998 and in May 2000. I traveled around the state meeting with state officials, municipal officials, industry representatives, tribal councils, teachers, and anyone I could possibly meet with. And I met with the state regulatory commissioners. I traveled with Commissioner Jim Posey in 1998 and with Nan Thompson in 2000. I gave a few speeches, but mostly I came to listen and to learn. I traveled to cities such as Anchorage, Fairbanks, Juneau, and Ketchikan. I traveled to small towns such as Whittier, Galena, and Dillingham. I traveled to villages such as Tanana, Nuiqsit, Deadhorse, Huslia, Aniak, and smaller settlements without names. For all I have seen of Alaska, I am grateful. Yet I have seen very little of the state, not nearly enough.

As an FCC commissioner, I took a special interest in Alaska. Partly, it was the kindness and interest of Senator Stevens and his staff took to be sure that I understood some of the problems of your great state. But having visited Alaska, it was hard not to take an interest in it.

I have traveled much of the world. I have met many people. But there are few places I yearn more to see than Alaska. Alaskans are fortunate people. You live in some of the most beautiful and majestic land in the world. I have no delusions that life here is easy. To the contrary, your life is a daily challenge. Climate, geography, remoteness, and darkness conspire to make life less comfortable and less convenient than the sedentary life available to us in the Lower 48. It is in part the difficulty of life here in Alaska that both attracts and shapes rugged individualists, people who look to themselves to solve most of their problems.

To see Alaska is to see the future of the United States. This is where new opportunities lie. This is where growth will occur. This is where new investments will be made and new jobs created. Economic growth will come to Alaska not just because of beauty and natural resources. Laws must make sense as well, laws that protect property and contract interests.

V. An apparent success story

At first blush Alaska is the great success story of the Telecommunications Act of 1996. Residents in the largest communities have choices for local, long-distance, and broadband access services. Telecommunications prices have fallen. More the 50 percent of Anchorage residents use a competitive service. Universal service continues in rural areas.

Beneath the surface is a different story. Yes, consumers have choices, but it is competition primarily for different providers on the same network, not competing networks. Moreover, a government agency compels one private party to provide services

to another private party at rates determined not by negotiation but by state central planning. Investment decisions are distorted by government decisions, all of which erode incentives to invest. Some private companies are in financial distress directly as the result of government decisions. Throughout, there are legitimate concerns about process, about whether laws are followed, about whether government agencies feel compelled to follow the law.

Which is the real story about telecommunications in Alaska: the one on the surface or the one below the surface, or perhaps both or neither? Has the role of the RCA been to champion private decisions about the use of property and contracts? Or has the RCA role been to determine the outcomes of transactions between private parties? If so, have those determinations been as minimally invasive as possible consistent with the law? Has the RCA done as the Legislature would choose, or are there areas where it could be predictably improved? No simple answers are available. Those are judgments that you alone can make. I can offer some advice on how to frame the issues, and share a few observations on specific issues that I follow.

VI. A framework for examining government institutions

I am currently writing a book on the implementation of the Telecommunications Act of 1996. In the course of writing the book, I thought much about how to evaluate laws and government institutions. In my view, the Telecommunications Act of 1996 has been grossly misinterpreted. The obvious question is: What can or should be done about it? The answer is not obvious.

Misapplication of laws, broken laws, and poor exercises of judgments: these are not exceptional events in either the public or private sector. They go together with the brilliant insights, the fortunate guesses, the hard work and efforts that make up daily life. Institutions and laws can do a perfect and wonderful job, and still be rationally phased out. For example, at the end of every war, military forces are demobilized rather than kept on indefinite active duty.

On the other hand, a poorly performing law or institution may still be better than no institution. Government agencies that might plausibly have had an opportunity to detect and stop the terrorists last year may have performed below hopes, but it does not necessarily follow that they should all be abolished.

How can the effectiveness and longevity of public laws and institutions be evaluated? In my book, I focus on three forms of liberty that public laws and institutions should protect: political liberty (the public's choice and control of their government); economic liberty (individual's relationships for economic relationships for property and contracts with other individuals); and what I term administrative liberty (an individual's freedom from abusive treatment by government). I use these three areas of liberty to evaluate the Telecommunications Act of 1996. While the Act reflects progress on the first two forms of liberty, it has had substantial failings in administrative liberty.

Questions that the legislature might consider are as follows:

Political liberty: Has the RCA been responsive to the legislature and to the people of Alaska?

Economic liberty: Has the RCA respected and enforced property and contract rights of private parties in Alaska consistent with relevant laws? Has the RCA enforced liability

rules for those who violate property or contract rights? Are the cumulative economic and social benefits of RCA decisions greater or lesser than the cumulative costs of the decisions?

Administrative liberty: Has the RCA interpreted relevant laws with the clearest, most predictable meanings in a manner than can withstand judicial review? Are processes predictable, expeditious, and consistent with administrative law? Has the RCA treated all parties before it equally and fairly within the law? Have parties before the RCA felt at liberty to appeal unfavorable rulings without fear of retribution?

I know the answer to some of these questions in the context of the FCC, but I do not pretend to know the answers to these questions for the RCA. I hope that this framework may be of some use to you as you consider the RCA.

VII. The strengths of Alaska state government

It is easy to point to the failings of government and government officials. Each of us is human and fallible. Whether in private life or in public office, none of us is beyond reproach. None of us would willingly submit to microscopic review of our every move, our every motive. Each of us has made a great many mistakes. We do not become perfect or beyond reproach merely by entering public office. No matter our intentions or efforts, we still make mistakes. The mistakes of the FCC, many of which I contributed to, are legion. It is an imperfect institution. I am familiar with the strengths and weaknesses of the FCC; I am far from familiar with the same detail for the RCA.

At the same time, it would be inappropriate for a legislative body to turn a blind eye to the possibility of improving government. Laws are made by legislators, and the

purpose of laws is to make improvements where they can obviously be made. My first job in government was for Congress. I hold the legislative body to be the highest form of government. Yours is a solemn undertaking.

Despite the sentiments of those who live on the Potomac, I firmly believe that all of the wisdom of America is not to be found in Washington, DC. Indeed, I often find that views of proper government improve with distance from Washington; it is no surprise to me to find that the good people of the Alaska legislature have developed two brilliant innovations in government management.

Sunset provisions

The first innovation is the sunseting of authority for government agencies. Other than legislatures, government institutions need not be permanent. The institutions of the federal government change over time with awkward transitions. New institutions are occasionally required, much as President Bush last week called for a new cabinet agency for homeland security. But as new institutions are required, the need for existing ones can wither away. Some institutions remain for decades beyond any reasonable purpose. Thus, if the federal Interstate Commerce Commission had been abandoned years before its ultimate demise, the United States would not have been the worse for it.

In the past 25 years, sunset provisions have been inserted into Congressional legislative language, but usually just for specific sections or provisions. The Telecommunications Act of 1996 has several sunset provisions. Sunset provisions have three clear purposes: (1) legislators believe that a provision need not necessarily remain in place indefinitely; (2) the duration of the provision may depend on information that

will only be revealed in the future, not at the time of the initial legislation; and (3) legislators today may wish to establish the relevant tests and procedures, including burden of proof, to continue a provision beyond an established date. Of course, a future legislature has the prerogative of writing a new law to extend the authority, but that is based on the legislative authority and burden of the new legislature.

Alaska has extended the concept of a sunset for a specific section of statute for a sunset of authorization for an entire agency. Presumably, the Alaska legislature believed that, at some future date, the regulatory commission as currently constituted may no longer be necessary. The exact information necessary to continue the RCA was not known at the time of the original legislation, but the burden of proof to continue the agency was clearly placed on the state legislature. That is presumably the purpose of this hearing.

To sunset an agency is not an unnatural event; it is not the end of the world. Alaska has direct experience with the closing of a regulatory agency. No calamity resulted. Federal funds to the state did not cease. Universal service remained in place.. The former regulatory agency was immediately replaced by a new agency. The new agency was known to be governed by a specific sunset provision. The new agency knew that it was accountable to the legislature and would be periodically evaluated.

Even if Alaska had not created a new regulatory agency, the rights and obligations of carriers and citizens of Alaska under federal communications law would not have ended. The Communications Act of 1934 and The Telecommunications of 1996 do not place unfunded mandates on the state of Alaska or any other state. The state alone chooses whether to fund a regulatory agency to implement those provisions of the Act

which are reserved for state control. If the state chooses not to fund such an agency, or if a state agency were to decline to perform such activities, the FCC is obligated to perform them. It is not without precedent. Within the past two years, the Virginia Corporation Commission refused to arbitrate a Section 252 contract under the Telecommunication Act. The FCC was forced to provide the arbitration.

Practical cost-benefit analysis

The second innovation of Alaska in the area of good government is a practical cost-benefit analysis of telecommunications regulation as it effects the economic environment in the state of Alaska. Government activity is for a broader good; it is not an end unto itself. Moreover, there must be, and are, ways of measuring how well government performs regulation.

Measuring performance of government activity is not a novel idea. In education, for example, President Bush and others have emphasized measuring the academic performance of students as a means of evaluating the effectiveness of education programs. It is a simple concept, but one that is applied to surprisingly few government programs. At the federal level, there are no such evaluations for telecommunications regulation. I believe that federal communications regulation would be much more accountable and effective if there were periodic evaluations of efficacy.

The evaluation of the Alaska telecommunications industry will provide the state legislature with much of the information that it may need in evaluating the sunset review of the RCA.

VIII. The Telecommunications Act of 1996

I may be one of the last people in America who believes passionately in the Telecommunications Act of 1996, who believes that it would work if it were properly implemented. I believe in all of the provisions of the Act including Section 251 with its unbundled network elements, and I believe in the deregulatory provisions of Sections 10 and 11. I don't believe that the government can pick and choose which sections and which words of a law to implement, and choose to ignore the rest. Such an implementation renders the democratic process of legislation meaningless.

Sadly, much of the implementation of the Telecommunications Act of 1996 has not happened. I am writing a book about how it has not been implemented properly and the dire consequences not just for the telecommunications sector, but for democracy and government as well.

For the past six years, the federal government has misinterpreted many sections of the Telecommunications Act of 1996. Some states have made similar mistakes. The courts, slowly but surely, are correcting the mistakes of the government. But the damage has largely been done. Unlawful and unpredictable regulation has helped to wipe out an entire generation of investment. Badly burned in the past, investors shun this sector today.

Part of the Act has been properly interpreted, particularly where the government has properly followed statutory instructions to get out of the way. One example is cable rate regulation. From 1993 through 1996, the federal government embarked on a futile effort to make consumers better off by regulating cable rates. A consistent finding in economic history is that rate regulation does not work. When consumer rates are

regulated, investment declines, quality suffers, and consumers ultimately are harmed. Such was the case in cable. The Telecommunications Act of 1996 ended this experiment and, predictably, cable investment and quality of service recovered with the end of rate regulation for cable companies around America, including GCI. This result is entirely consistent with my own empirical research as published in my 1996 book of cable rate regulation.

Let me briefly review some parts of the Telecommunications Act of 1996. It is a painful review because it has been badly handled by the FCC.

1. Open local exchange markets, except in rural areas, to competition (Section 251-254);
2. Use of contracts, not tariffs or regulations, for transactions between and among carriers (Section 252);
3. Introduce the use of unbundled network elements (UNEs) through contract mechanisms (Section 251-252);
4. Place the burden of proof on the FCC to continue regulation in the presence of competitive markets (section 11);
5. Local markets deregulated largely under state supervision (Sections 252-252).

Sadly, important parts of Sections 251-252 were misinterpreted by the FCC, and the courts have been sorting through the damage over the past few years.

The Act also establishes the principle of universal service, particularly for rural and high cost parts of the country

6. Section 254 of the Act contains specific statutory direction on universal service;
7. The section was written for the benefit of small telephone companies in largely rural states such as Alaska;
8. While universal service is one of the Act's objectives, implicit subsidies are supposed to be made explicit;
9. Rural telephone companies were exempted from the UNE unbundling obligations until it could be shown that terminating the exemption would not be "unduly economically burdensome" or inconsistent with the Act's provisions for universal service.

IX. The FCC: an agency unsympathetic to rural America

Over the years, I have come to the reluctant conclusion that the FCC has great disdain for rural America in general and small telephone companies in particular. I reach this conclusion not as an avid partisan on behalf of small rural telephone companies. To the contrary, during the drafting of the Telecommunications Act of 1996, I was the lead staffer for the House trying to limit in size and scope Section 254. In helping to negotiate the language with Senate staffers, I learned all too well exactly what the language of the Act said, and exactly what the Senate, which largely prevailed in conference, meant.

The FCC followed neither the statutory language nor the intent of the Senate—a large targeted program to small rural telephone companies—nor the wishes of the House: a small, manageable program. Instead, the FCC developed its own program. I have followed these programs with great interest not out of any inherent sympathy to small telephone companies but rather out of a sense moral indignation at watching a government agency, seemingly intent on harming small businesses in America, systematically circumvent a law carefully crafted by a legislative body. Like many regulated entities at the FCC, small telephone have avoided litigating their mistreatment for fear of retribution.

Few sections of the Act have been as misconstrued as Section 254. Seven years ago, universal service was less than a \$2 billion program funded with implicit subsidies, almost entirely targeted at small telephone companies in rural America. Today, universal service is over \$5 billion with an explicit fee contribution system. The funding mechanism is broken with the tax base, interstate revenue, shrinking. The net result is a death spiral of increasing rates on interstate telecommunications services to support ever-expanding universal service expenditures. I mention this program because it is particularly important to Alaska, and the state regulatory authorities have failed to challenge the FCC's poor implementation.

Use universal service to address problems outside of rural America

Almost all of the growth in universal service expenditures since 1996 has been outside of rural America. The primary beneficiaries of Section 254 have not been Alaska but rather California and other large urban states. The section was usurped for political

purposes to support an unsuccessful presidential campaign. The Schools and Libraries program remains, siphoning \$2.25 billion to largely urban school districts in politically important states. In addition, the FCC managed to broker a deal between large RBOCs and long distance carriers to create a new universal service program to help large RBOCs under the euphemistically entitled CALLS program. Thus, in the name of promoting universal service under Section 254, the FCC doles out \$700 million annually to support large carriers outside of Alaska whose primary areas of operation are in the nation's largest metropolitan areas.

Some small percentage of the Schools and Libraries money finds its way to Alaska and other rural states, but in no sense has the program been targeted to rural America or used to help small telephone companies in rural America. The FCC, in coordination with some state agencies, has in fact used the universal programs to put financial pressure on small telephone companies, making additional funds available only to new carriers.

What happened to the intended beneficiaries of Section 254, the small telephone companies of America? All other requests for universal service from schools and libraries and large RBOCs were dealt with expeditiously by the FCC. But the FCC decided to delay deciding how to address the intended beneficiaries of universal service. Instead, it invented two new mechanisms intended to punish rural America. One was the Joint-Board Rural Task Force. It would take years to make a recommendation, valuable time that would be lost for small companies, but not for schools and libraries or large RBOCs. The other was a universal service computer cost model so outrageously bad that

the only plausible explanation for its existence was to insult the intelligence of anyone working in the area of universal service.

The model that does not work

It is worth a few moments to describe just how bad this model was and is. In its initial inception, it took 180 hours to run in its entirety with all of its so-called optimization routines. That run would result in a calculation of a unbundled network element price for every central office in the Lower 48, not that the FCC had any particular reason to calculate all of this information.

Keep in mind today that most computer models take at most a few tenths of a second to run: not 18 seconds, not 180 seconds, not 1.8 hours, not 18 hours, and certainly not 180 hours. That is more than one week with a computer running around the clock. Indeed, I suspect that you would have to pay a premium to find a computer programmer willing to risk his or her professional reputation to write a program that takes 180 hours to run. A program that takes that long obviously does not work. For much of my tenure at the FCC, I went around the country listing the "model that doesn't work" as exhibit A in describing the hostility of the FCC towards rural America including states such as Alaska.

I can't say for certain why the model was first developed. I do not believe that it was for the purpose of distributing universal service funds. Nor do I believe it was for the purpose of estimating UNE rates in Alaska. Yet those are two of the unintended uses for the model. It was used for the CALLS program to distribute the \$700 million to large RBOCs. In one of the first runs of the model, BellSouth in Kentucky was to receive tens

of millions of dollars. Practically all of that money disappeared in the next run of the model. When a model takes more than a week to run, it is not surprising that it is hard to get all of the kinks out. What the model said one month would change the next. It was embarrassing for the FCC.

Qwest, US West at the time, opposed the model because the model said that US West did not deserve any universal service support. Imagine: no universal service for the RBOC serving the Rocky Mountain states and the Great Plains, but plenty of support for Verizon in the Middle Atlantic States and New England. But it was clear at that the time that the FCC ran the model several times, adjusting inputs with the specific purpose of getting money to the "right" states, rather than having all of the money go to Mississippi, which was the result of some of the earliest runs.

The Rural Task Force

Someone at the FCC had the cynical idea of using the "model that doesn't work" to distribute universal service payments not just to the RBOCs but to small telephone companies. Perhaps they wouldn't know any better.

The Rural Task Force included representatives from companies that historically mistrusted each other. In other words, the Task Force was designed to fail. Miraculously, in part because of the leadership of Commissioner Bill Gillis of Washington State, the Task Force did not end in the apparently intended complete deadlock.

When I met with Jack Rhyner in Alaska in 1998, he was disillusioned about the Rural Task Force. He said that the FCC staff had given the RTF its instructions, and

those instructions were to find the appropriate input values for the "model that doesn't work" so that the FCC could use the model to allocate universal service funds to small telephone companies. Moreover, it was clear that the primary purpose of using the "model that doesn't work," aside from juvenile mischief of testing the intelligence of rural Americans, was to cut the size of federal support for small telephone companies, including those in Alaska.

Mr. Rhyner was not happy, and neither was I. I told Jack that the Rural Task Force was not appointed to be the lap dog for the FCC staff. I told him that he was appointed to represent the interests of his company and rural America, and that those were unlikely to intersect with the interests of the FCC staff. I worked closely with members of the RTF, including Jack Rhyner, with one overriding objective: to be certain that the Rural Task Force did not recommend the use of the universals service cost model. Chris McLean, head of the Rural Utility Service of the Department of Agriculture, went to great trouble to develop specific examples of how the model did not work with mountainous geography or bodies of water. The model was never written for Alaska, where peculiar terrain and geography are the norm rather than the exception.

The Task Force and some members of the Joint Board on Universal Service met here in Anchorage in May of 2000. I had the honor of addressing that group and telling them as politely as I could that it would be a grave mistake to use this model for any purpose. Ultimately, despite intense pressure from the bureaucracy at the FCC to use the "model that doesn't work," the Rural Task Force did not recommend its use for universal service allocations for small companies.

The RCA made an ill-advised choice

Two years ago, I had reason to believe that the Rural Task Force had put the stake in the heart of the use of the "model that does not work" in rural America. I was wrong. Despite the fact that the model optimizes based on information for the Lower 48 States, and does a poor job of that, the RCA has incredibly selected the "model that does not work" to estimate UNE rates for the formerly designated rural areas of Juneau and Fairbanks. No doubt, the juvenile pranksters on the FCC staff are rolling with laughter; they pulled a fast one on rural America, and the most rural state, Alaska, fell for the prank.

Doubtlessly, the model must have improved in the past year or two. But the parentage and history of the model is so bad and offensive that I wonder why anyone would choose to use it. I would not have expected any state to adopt this model, least of all Alaska and Hawaii, the two states specifically excluded in the development of the model.

X. RCA has further compounded FCC hostility towards, and disdain for, rural America

Let me briefly describe six additional examples where the FCC has misinterpreted the universal service provisions of the Telecommunications Act of 1996 systematically to the disadvantage of small rural telephone companies. In each instance, RCA decisions have systematically compounded the FCC mistakes, perhaps to the detriment of Alaska.

1. Designation of eligible telecommunications carrier (ETC)

The Act gives clear authority to States and States alone to designate ETCs. But an ETC must be capable of serving an entire area, and be capable of being designated as a carrier of last resort when a non-ETC carrier is unwilling to serve an area. The FCC has occasionally and improperly tried to insinuate itself into these designation decisions. As a carrier of last resort, an ETC must have its own facilities, not relying on other facilities. The issue of whether UNEs count as one's own facility is a semantic issue, but for these purposes of universal service, it is difficult to classify them as owned facilities. RCA compounded this situation by designating GCI as an ETC in areas of Alaska where its phone service would be entirely based on UNEs, someone else's facilities. Implicitly, that someone else is the party that is only possible carrier of last resort, the only possible eligible telecommunications carrier.

2. *Awarding of universal service funds to non-ETCs*

Section 254 limits universal service awards to ETCs. This was an inconvenient statutory limitation for the FCC which wanted to award funds to school districts and other entities under the Schools and Libraries Program. The FCC avoided the statutory language, which led to the award of SLC funds to many entities in Alaska and around the United States, few of which were truly ETCs.

A state regulatory commission might have challenged the FCC decision and stated that it alone has the authority to determine which entities are ETCs, and thus which entities would receive SLC funds. Neither the APUC nor RCA chose this path.

3. *Awarding of universal service funds for purposes other than investment in plant and equipment*

Section 254 is quite clear that universal service funds are to be used for investments in plant and equipment. The words of the statute must have some meaning, but the FCC has refused to give them meaning. A State commission committed to the statute could insist that ETCs used federal USF funds to invest in plant and equipment. Neither the RCA nor other state commissions has done that.

4. *Removal of exemptions from Section 251 obligations*

Under the Act, rural carriers are exempted from some Section 251 obligations. That exemption can be removed by a state regulatory commission if the commission can make certain showings. The RCA removed the rural exemptions from the Juneau and Fairbanks study areas, but without the RCA making the statutory showings. Both federal courts and the FCC are consistent in the interpretation that the state commission bears the burden of proof in such a decision. The apparently improper action of the RCA is currently in litigation.

5. *Using federal USF to support a carrier whose costs are substantially below the national average.*

FCC rules limit rural universal service subsidies to carriers whose loop costs are roughly 15 percent above the national average. The UNE cost structure in Fairbanks is below the national average, yet, based on an RCA ETC designation, GCI will receive

federal rural universal service support. This is a perversion of the federal universal service support program.

6. *Waiver for use of SLC funds for non-educational purposes*

Commission rules are quite specific that funds received for the Schools and Libraries program must be used exclusively for educational purposes. In the past year, the RCA lobbied the FCC for a waiver of this rule so that schools and libraries funds could be used for non-educational purposes in rural Alaska where broadband services are not commercially available.

Broadband is important to American communities, particularly small communities in the Alaska bush. A waiver could have equally well been sought, and perhaps obtained, to get funds for commercially available broadband services through the rural universal service program. Such funds would have gone to eligible telecommunications carriers, not just the recipients of funds for educational programs. Paradoxically, the RCA efforts, while getting broadband services to some communities, has the effect, intended or not, of putting financial pressure on small telephone companies which now have no viable business plan to bring broadband services to communities where federally-subsidized programs are in place.

XI. Facilities based-competition

Competition and deregulation are the parallel goals of the 1996 Act. Competition means letting the market, not government, determine the use of resources. Competition does not mean multiple carriers all riding the same network. Indeed, Section 271 of the

Act, which provides for the FCC to review whether competition in a state is sufficient to permit an RBOC to enter long-distance services, first calls on the FCC to examine the state of *facilities-based* competition. Multiple carriers all using the same facilities is an interesting idea, but it does not fall under the heading of competition.

I have been told that some government officials in this great state have been ill-advised on this specific matter. Any suggestion that the purpose of the Act is to prevent or in any way limit investment in new equipment or duplicating networks reflects is simply wrong.

What is the "correct" rate to charge for residential service or for unbundled network elements? I don't know. As I mentioned earlier, practically all empirical economic research finds rate regulation to be counterproductive. As such, there is no "correct" rate that can be set by coercion.

This is not an obscure economic theory. It is the standard result presented in practically every introductory economics textbook. In every regime that sets prices, whether Communist Cuba or World War II America, one observes shortages, long queues, and hoarding of some goods; other goods have plentiful supply but few transactions. In the former case, prices are set below what most producers are willing to supply the product. For all but a few situations, price is set below the market-clearing price. Both incumbent and potential suppliers are discouraged from expanding production because such production at regulated prices would lead to economic and financial losses. If prices were not set, practically all consumers would be better off because they could predictably purchase all they want at the prevailing price. For many such goods, a black market develops to sell goods at prices below the regulated rate. But

such black market transactions are inferior to an unregulated transaction because they lack many of the contractual safeguards, such as insurance and warranties, that characterize unregulated transactions.

In the latter case, prices are set above market-clearing prices. Here, producers expand production, but sales are illusory because are unwilling to pay the regulated rate. For many such goods, a black market develops to sell goods at prices above the regulated rate. But such black market transactions are inferior to an unregulated transaction because they lack many of the contractual safeguards, such as insurance and warranties, that characterize unregulated transactions. Again, consumers would be much better off without the price regulation.

In a market without price regulation, no demand goes unmet between willing buyers and willing sellers. One need not visit Havana to see the harms of price regulation. Last September in Anchorage, I visited a brand new residential development in Anchorage. It is near both ACS and GCI switches. Yet neither company was willing to wire the new development for telephone service at the regulated rates made available by the RCA. GCI did, however, wire the community for cable service. The decision not to wire the community at regulated rates for phone service was not based on heartlessness or mean-spiritedness or any form of social disorder. Rather, the decision, like practically all business decisions, represented a rational view of business behavior: businesses do not willingly make investments for which there is not possibility of financial return. The companies have investors, and these investors would be harmed if the companies had made an unwise investment.

It is impossible to say that the residents of this residential community benefited from this regulatory decision of the RCA. If, alternatively, RCA had compelled either ACS or GCI to wire the residential community for telephony service, the residential consumers might have been momentarily better off, but the company investors would have been worse off as a result of government coercion. Such coerced investments have in fact been required of ACS in many residential developments, only to see most if not all the residential customers subscribe with GCI.

The benefits to residential consumers of coerced corporate investment may be short-lived. Companies have little incentive to maintain or upgrade coerced investment. As in the case of Cuba and other countries that have followed price regulation, corporate investment dries up altogether. The next residential development may have no company left with investors willing to make unprofitable investments.

GCI has a modern, two-way coaxial cable plant in Anchorage. Like other cable companies around America, GCI faces a choice to provide competitive phone service. It can use its own plant to provide pure facilities-based competition. Or it can lease loops or an unbundled network element platform to provide service on the incumbent network. If UNE rates were subject to negotiated prices, one would expect to find a result familiar to anyone who negotiates a contract for service: negotiated rates would roughly reflect cost of service, and the competitive carrier would use its own network in neighborhoods where its costs of providing service is less than the cost of incumbent, and the competitive carrier would lease facilities where the incumbents costs were substantially lower than its own. (The negotiated rates would in fact reflect costs and option value of assets because the incumbent could not set a monopoly rate when the competitor has the

alternative of using its own network in which fixed costs are already sunk. Moreover, at negotiated rates above its cost structure, the incumbent is more profitable to lease its service than not. It can even be mutually profitable for the competitive cable carrier to lease its facilities where it has a lower cost structure than the incumbent.)

The empirical observation of 100% leasing by GCI of incumbent facilities in Anchorage is puzzling. If rates were freely negotiated, this is consistent with the hypothesis that the GCI plant and equipment is uniformly more costly than the ACS system. Rates in Anchorage were not freely negotiated, and it is impossible to tell much about the relative costs of the plant and equipment.

The Supreme Court has upheld the authority of the FCC to set regulated pricing standards for unbundled network elements. But price regulation, under Section 252, should only be a last resort. Negotiation between private parties should be the primary method of setting rates under Section 252.

XII. Deregulating Anchorage

Regardless of how it occurred, the residential market share of the competitive carriers in Anchorage of over 50 percent is unique in America. The two principles cited in the preamble to the Telecommunications Act of 1996 are competition and deregulation. If Anchorage isn't ripe for deregulation and allowing market forces to work, no city in America is or ever will be. Alaska has the opportunity to fulfill the vision of the Act and deregulate telecommunications services in Anchorage.

XIII. Conclusion

Over the coming days and weeks, you will hear from many different parties about the reauthorization of the RCA. No doubt, that information will not all be the same. Much will be contradictory; some will be tedious and incomprehensible; some will make perfect sense.

Some will urge a quick decisions. Others will urge caution and circumspection. Some will point the finger of blame at one company. Others will point to another company. Others will single out individuals for blame.

In negotiations, whether with children or government agencies, there is always a grave threat if you don't do exactly as you are requested. Threats are the common denominator of negotiations. A great many people will threaten some dire consequence if you do not follow their advice precisely. Consumers will be hurt. Businesses will shut down. Individuals will lose their jobs. The federal government will take over Alaska. Your worst nightmares will be conjured before your very eyes. I cannot speak to other possible threatened outcomes, but as far as federal communications law and federal universal support to Alaska, there is no need for you to rush to judgment; no bad outcome will result regardless of your decisions.

You alone will have to sort out the conflicting claims. Perhaps you know the right answer today and come to an expeditious resolution of this matter. If not, you will have much information to weigh, with some people screaming at you to make a quick decision on an extraordinarily complicated matter. You may reasonably wish to hear the results of the state-sponsored study on the health of the telecommunications industry in Alaska.

The proper answer on timing for the legislature is not what is convenient for others; the proper timing is what is convenient for the legislature. Do not be rushed to judgment if you need more time; do not be slowed to judgment if you have sufficient information to decide.

It seems you have four broad choices: (1) cease to have a state regulatory agency; (2) reauthorize the RCA in its present form; (3) reauthorize the RCA with statutory modifications; or (4) abandon the RCA and create a new state regulatory agency. In evaluating these options, I have proposed reliance on the three principles of liberty: political liberty, economic liberty, and administrative liberty.

I have great confidence that the decision you make will be the right one. My confidence is not based on any prior knowledge of what you may decide, but rather it is based on a belief in democracy in America. You, as the state legislature, are the democratic law-making institution in Alaska. We all make mistakes. In a non-democratic government, governmental mistakes are not corrected, and government ultimately fails. In a democracy, the mistakes of government are reviewed, and where particularly troublesome, they are corrected. That is the purpose of this hearing.

Thank you for your kind invitation to appear here today. I will be happy to answer any questions that you may have.



ARECA

Alaska's Electric Association

"Electric Service for 556,000 Alaskans"

May 8, 2002

The Honorable Robin Taylor
Chairman, Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Subject: Sunset Date for the RCA: HB 333 and SB 253

Dear Senator Taylor,

Attached herewith is a resolution passed by my Board of Directors regarding the sunset date for the RCA. In short, the electric utility industry supports a two-year sunset date for the RCA as opposed to the four-year sunset contained in HB 333 and SB 253. In addition, we strongly support the time-line amendments contained in HB 333. ARECA is the prime author of these amendments.

Please call upon me if you have any other questions on our position regarding the RCA.

Sincerely,

Eric P. Yould
Executive Director



ARECA

Alaska's Electric Association
"Electric Service for 556,000 Alaskans"

Resolution 02-19

A Resolution Supporting Legislation to Conditionally Extend the Life of the Regulatory Commission of Alaska for Two Years

Regulated utilities depend on the RCA for prompt and fair regulatory decisions. Since its establishment, the RCA continues to struggle with its workload. The RCA has created an additional load of work for itself by initiating dockets and inquiries without having first cleared the backlog of old matters. The RCA must work to resolve cases decisively and finally.

ARECA supports the extension of the life of the RCA for only two additional years contingent on an explicit legislative requirement that the RCA complete the activities described below:

- Establish a dialogue with regulated utilities to discuss reform of the regulatory process.
- Prepare an annual report to the legislature addressing the following:
 1. How the RCA will reduce the backlog of cases and other matters pending before it.
 2. How the RCA can revise its processes to assure that fewer issues must be tried in trial-type proceedings.
 3. How deadlines for adjudication and other approval processes can be incorporated in RCA procedures to produce better and timelier decisions.
 4. Identify areas for which the RCA is currently responsible for regulation that provide the highest public benefit and areas in which regulation produces lower public value.
 5. Recommend areas of regulatory oversight that may be eliminated.

Adopted: February 22, 2002

Reauthorization of the Regulatory Commission of Alaska (RCA)

Subject: Reauthorization of the Regulatory Commission of Alaska (RCA)

Date: Fri, 7 Jun 2002 11:38:54 -0800

From: e_anderson@telalaska.com

To: nanette_thompson@rca.state.ak.us

**CC: Senator_Robin_Taylor@legis.state.ak.us, Senator_Dave_Donley@legis.state.ak.us,
Senator_John_Cowdery@legis.state.ak.us, Senator_Gene_Therriault@legis.state.ak.us,
Senator_Johnny_Ellis@legis.state.ak.us**

Commissioner Thompson and Senate Judiciary Committee members:

A hard copy of the following letter will be mailed to you next week.

Sincerely,

Everette Anderson
Administrative Office Manager
TelAlaska

June 6, 2002

The Honorable Robin Taylor, Chair
Senate Judiciary Committee
Alaska State Legislature
State Capital, MS 301
Juneau, AK 99801-1182

Re: Reauthorization of the Regulatory Commission of Alaska (RCA).

Dear Senator Taylor:

When we met in March, I expressed my concerns and my unequivocal support for the reauthorization of the Regulatory Commission of Alaska (RCA) for two major reasons: the loss of full and timely receipt of Universal Service Fund support for affordable telephone service and the possible derailment of an effort to address staff issues that have inhibited the performance of the RCA and its predecessor, the Alaska Public Utilities Commission (APUC). For the telephone industry, a primary concern is certification to receive Universal Service Support (USF). The state regulatory body must certify each local telephone company as an eligible telecommunications carrier annually to receive USF. This year, for Alaska, USF was nearly \$75 million. These funds are applied directly to the cost of providing local service and are the only reason local rates remain affordable in high cost areas. With the exception of Anchorage, every other community in the State of Alaska benefits from these funds. Without these funds, it is quite likely that there would be no affordable phone service outside Anchorage, Fairbanks and Juneau. Without a state regulatory body to certify the local telephone companies, we would have to individually apply to the FCC for certification. This process could well jeopardize part or all of this funding.

Additionally, there are two organizations the Alaska Exchange Carriers Association (AECA) and the Alaska Universal Service Administrative Company (AUSAC), whose continued operation and administration may be called into question if the state regulatory body goes into wind-down. While these organizations are private nonprofit corporations, the courts have nevertheless ruled that they are extensions of the state regulatory body. AECA administers the collection and distribution of \$30 million per year in access charges, again for the small telephone companies outside of Anchorage, Fairbanks and Juneau. AUSAC administers the collection and distribution of \$1.9 million in state universal service funding (AUSF) which pays for "life line and link up" programs for low income households

Reauthorization of the Regulatory Commission of Alaska (RCA)

throughout the state. It is not clear how these organizations would function without a state regulatory body or what their legal obligations are within the frame work of a wind-down year. The uncertainty and possible legal entanglement again places a sizable portion of the small telephone companies' revenues and continued service to low income households at risk.

In RCA Chair Thompson's May 20th letter to you she provided a laundry list of her legal obligations once the agency enters a wind-down year. There are two items which are especially disturbing. Chair Thompson, at the very least, places in question whether or not the RCA will have the resources available to conduct the USF certification in 2002. Timing is critical, there are no second chances if we must apply directly to the FCC. We must have as much lead time as possible with the as yet unknown FCC processes.

The other issue that concerns me as a rural provider is the cessation of work on regulation dockets. In my opinion, an extensive part of the problem with the APUC and now the RCA, is with the "staff" and how it functions. During the Second Session of the Twenty-Second Legislature, Chair Thompson testified before several Committees that she would deal with this problem through regulation for the Public Advocacy Section of the Commission. True to her word, the RCA opened Docket R-02-2 by the end of May. While it is never certain that any agency will truly reform itself from within, the opening of this docket at least provides for that opportunity in this case. If the RCA is not reauthorized and goes into a wind-down year, all work on this docket will cease, thus, delaying the resolution of what truly has been the fundamental underlying problem of the state regulatory body for 20 years or more. The creation of a new commission by the next Governor and Legislature, presuming a new slate of commissioners, could delay resolution of this problem for several more years.

This letter is intended to restate my strong support for reauthorization of the RCA because of the risk its disruption carries for rural Alaskans and the companies that serve their communications needs. Dissolution and the interim wind-down of the agency threatens Universal Service Support. Without that support it is quite likely that there will be no affordable phone service available outside of Anchorage, Juneau and Fairbanks. Certification of companies to receive USF support will transfer to the FCC through lengthy and obscure procedures that will certainly stall and probably reduce available funds. An additional concern is derailing the RCA Chair's effort to address the underlying staff problem through an existing docket. This issue is long overdue for attention and I fear that it will languish during the wind-down.

I understand that an old Attorney General's opinion was floated during the legislative session, that the regulatory body could conduct business as usual in a wind-down year, on the premise that we have been through all of this before and it is not a major concern. Let me point out that it is obvious Chair Thompson does not subscribe to that opinion. When the APUC went through wind-down, state commissions had not been given the responsibility to certify eligibility to receive USF support. For reasons that I am unaware of, at that time no one had considered the question of AECA and AUSAC continued operation.

My concern is that in order to make whatever gains you intend, harm will result in fundamental areas that affect communications services in rural Alaska and the companies providing those services. I urge you to reconsider your position and support efforts to reauthorize the RCA.

Sincerely,

Jack Rhyner, CEO
TelAlaska



PROVIDING ADMINISTRATIVE SERVICES TO
COLLEGE UTILITIES CORP. AND GOLDEN HEART UTILITIES, INC.

June 19, 2002

Senator Robin L. Taylor, Chair
Senate Judiciary Committee
PO Box 1441
Wrangell, AK 99929

RE: RCA SUNSET SPECIAL SESSION

Dear Senator Taylor:

As the date for the special session regarding the sunset of the Regulatory Commission of Alaska (RCA) approaches, the issues surrounding the extension or sunset of the RCA appear to be more, rather than less, complicated.

I testified before the Senate Judiciary Committee hearing in Anchorage last week in support of a one year extension of the RCA. I also had the opportunity to observe other witnesses. These hearings demonstrated that many utilities, and not just utilities from one sector of the utility industry, believe that legislative and administrative changes may be necessary to improve the RCA. However, I am concerned that legislative changes, conceived and/or enacted in haste during a special session, may not be well thought out.

Therefore, in an attempt to provide a solution to the dilemma I suggest the following:

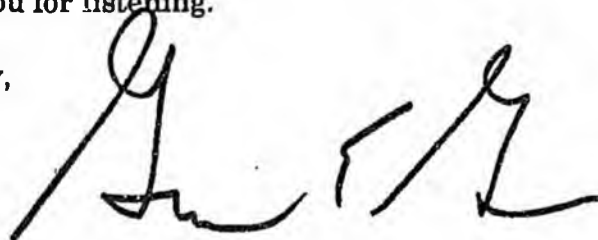
1. Extend the Commission for one year.
2. Hold off on any legislative changes to the RCA.
3. Form a work group to assist LB&A in continuing and expanding their audit of the Commission. The goal being to come up with legislative and administrative changes for the next legislature to consider. The work group should be comprised of industry and Commission representatives, and other stakeholders.

Letter to Senator Robin L. Taylor
June 19, 2002
Page 2

This is the least complex, safest, and most logical approach to addressing this difficult and politically charged issue at this time. Efforts to fix the problems identified by the testimony should be reserved for the regular legislative session, and given the due consideration and public debate they deserve.

Thank you for listening.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Gordon", written over a light blue horizontal line.

George E. Gordon,
President/CEO

cc: Governor Tony Knowles
Senator Rick Halford, Senate President
Representative Brian Porter, Speaker of the House
All Legislators



UTILITY SERVICES OF ALASKA, INC.

PROVIDING ADMINISTRATIVE SERVICES TO
COLLEGE UTILITIES CORP. AND GOLDEN HEART UTILITIES, INC.

S. Records
File

Sunset Talking Points

My name is George E. Gordon. I am the President/CEO of Utility Services of Alaska, a service company that provides administrative and customer service to two regulated water and wastewater utilities. I am also the President/CEO of Golden Heart Utilities and College Utilities Corporation, who are regulated by the RCA and provide water and wastewater service to the entire Fairbanks area.

1. Our utilities, Golden Heart and College Utilities, do appreciate the effort Sen. Taylor has devoted to this issue. Perhaps the concerns that the utility industry has will not be lost in the crush of legislative business.
2. This testimony is not to be considered approval of how the Commission has been conducting its business.
3. There are several common threads when talking to other utilities.
 - a. General dissatisfaction with how RCA is operating
 - b. Tremendous reluctance to publicly speak out. There is a fear that expressing criticism or supporting sunset could result in negative regulatory action.
 - c. There appears to be a lack of concern or awareness on the part of the Commission of the problems created by their actions (or inactions) for utilities, i.e., no dialogue.
 - d. ARECA resolution #02-19 seems to be right on point with many RCA issues.
4. Our utilities reluctantly support a one-year (or even slightly shorter) extension.
 - a. However, in the short run, a sunset may exacerbate the procedural problems.
 - b. In this one year extension there must be concerted effort, with industry participation, to address RCA problems and fashion a remedy.
 - c. An extension of longer than one year will not create an environment in which effective change will occur.

5. What do we see as the major problems:
 - a. It takes too long to get action or a decision.
 - i. CS for HB 333 (finance), and the time frames incorporated in that bill, are simply too long. This bill authorizes by statute the Commission's inefficiencies.
 - ii. There does not appear to be a recognition on the part of the Commission that delay translates into lost revenue or lost opportunity for growing utilities.
 - iii. Our utilities continue to experience substantial delay in processing relatively routine tariff changes.
 - b. This business of just issuing orders out of the blue and prompting Reconsideration motions has got to stop.
 - c. RCA orders, inquiries, and requests for action in response to Commission staff or PAS causes a great deal of time spent over non-issues.
 - d. There is no one for the utility to talk to and no way to carry on a dialogue.
 - i. Form is elevated over substance.
 - ii. This creates a lack of ability to fully define issues and focus on the process.
 - iii. Ex Parte should not be a problem, just schedule a hearing with all parties, **but allow discussion.**
 - e. Because of the foregoing, the process is simply too expensive.
 - f. There is no feeling that the process is fair.
 - i. While some will say that this is just dissatisfaction with RCA decisions, I disagree. With my 35 years of experience, I recognize you win some and lose some. But there must be a belief that the process works, before adverse results can be accepted.

6. What do we see as potential solutions that need to be examined in the one-year extension?
 - a. Creation of a new position of executive director
 - b. Reshape PAS and define its mission
 - i. Is it there as a consumer advocate or to be objective?
 - c. More hearing officers (even contract hearing officers) and the ability to disqualify a hearing officer, just like parties can disqualify a judge.
 - d. Shorter time frames (not longer) for requiring the Commission to do its work. If the commission can't get its work done with the staff it has, require it to demonstrate that and give it the resources it needs.
 - e. Consider a mechanism for the solicitation of anonymous comments so a full and frank discussion can occur.

S. Records

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(907) 479-3118
Fax (907) 474-0619



June 11, 2002

Wesley E. Carson
President & Chief Operating Officer
wcarson@acsalaska.com

Senator Robin L. Taylor, Chairman
Senate Judiciary Committee
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

RE: Judiciary Committee Review of the Regulatory Commission of Alaska

Dear Senator Taylor:

On behalf of Alaska Communications Systems (ACS), I wish to express appreciation for the strength and resolve you demonstrated during the recent legislative session on the matter of the proposed reauthorization of the Regulatory Commission of Alaska (RCA). We believe, as you do, that the State would benefit from a more thorough consideration of the regulatory policies affecting Alaskan utilities. Some wish to portray the matter as a simple one. Unfortunately, it is extremely complex. And so, while I apologize for the length of the discussion that follows, we believe an intelligent and thorough review of the regulatory situation in the State requires this level of detail and more.

ACS supported the legislature's action last year to allocate funding for a study of Alaska's telecommunications industry. Inasmuch as that study has still not been undertaken, the Judiciary Committee's review of RCA reauthorization is of great importance to the industry. The RCA's regulatory authority certainly extends beyond ACS and the telecommunications industry. However, we believe our situation offers the most compelling justification for the proposition that the regulatory status quo is unacceptable.

We contend that ACS has suffered greater economic harm than any other Alaskan utility as a direct result of the policies and orders of this Commission. Frankly, we are convinced that ACS will be in serious financial jeopardy, such that we will be unable to continue to build and maintain Alaska's primary local telephone network, if the RCA is permitted to proceed with its current regulatory direction.

The actual current and potential future harm for ACS is serious, but what must be of greater concern for the Judiciary Committee is ultimately the harm to the State of Alaska and to its citizens. No state in the Union is more dependent upon telecommunications than is Alaska. Quality of life for Alaskans and the economic strength of the State require a modern, well-maintained telecommunications infrastructure. If the regulatory regime in Alaska discourages investment in the network, as it now does, Alaska and Alaskans will be the losers.

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June 11, 2002
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Many of the issues ACS has with the RCA are consistent with themes we have heard from telecommunications, sewer and water, and electric industry representatives. Protracted and expensive rate case proceedings, unreasonably burdensome discovery demands, lack of due process, etc., are problems that impact many, if not all, of the regulated utilities. There is a real dollar cost to all of us in terms of compliance and delays.

Our gravest concerns, however, are unique to ACS as the State's largest provider of local telephone service. Of the more than 20 incumbent local exchange companies (ILECs) providing telephone service in Alaska, only the ACS companies have been required to engage in "interconnection competition," which has also resulted in the only terminations of a "rural exemption" in the State. Interconnection competition occurs when a competitive local exchange company (CLEC), such as GCI, is allowed to lease portions of the ILEC's network so as to compete for customers without having to risk its own capital to build facilities. Such competition may be required by a state commission under the Telecommunications Act of 1996 (Telecom Act).

The ACS Local Exchange Companies

ACS owns and operates four ILECs that are subject to State regulation. Each of these companies holds a certificate of public convenience and necessity to operate as a public utility in the State; is subject to regulatory approval for setting local service rates; and has "carrier of last resort" obligations, meaning the RCA can require these ILECs to build plant and provide service to customers within the certificated service areas.

In a sense, the "quid pro quo" for the RCA's imposition of such regulatory control over the ILECs is the State commission's use of its regulatory authority to assure each ILEC a "reasonable rate of return" on its investment. The primary sources of revenue for these companies are:

- retail rates, established by the RCA and paid by consumers for local service;
- unbundled network element (UNE) loop rates, established by the RCA and paid by GCI to lease the element of the ACS network that connects a customer with a central office;
- intrastate access charges, established by the RCA and paid by interexchange companies (i.e., long distance carriers) for use of the local network to originate and terminate in-state long distance calls;
- interstate access charges, established by the Federal Communications Commission (FCC) and paid by interexchange companies for interstate long distance calls; and,
- federal subsidies from the Universal Service Fund to support high cost service areas.

The four ACS local telephone companies subject to RCA regulation are:

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- ACS of Alaska, Inc., serving Juneau, Douglas, Sterling, Ft. Wainwright and Eielson.
- ACS of Anchorage, Inc., serving the Anchorage and south to Girdwood.
- ACS of Fairbanks, Inc., serving Fairbanks and surrounding areas.
- ACS of the Northland, Inc., serving North Pole and communities in the interior; Kenai/Soldotna and communities on the Kenai Peninsula; Kodiak, Sitka and communities throughout Southeast; and bush communities, including on the Aleutian Chain and the Pribilof Islands.

All of these companies, with the exception of ACS of Anchorage, Inc., were designated as "rural" under the Telecom Act. The rural designation was extended to companies serving areas that are expensive to serve and which receive federal subsidies from the Universal Service Fund (USF). The Telecom Act seeks to protect companies serving high cost areas because of the complex economics and the USF subsidies supporting the construction and maintenance of loops in these areas. Under the Telecom Act, these companies were granted a "rural exemption," meaning they were not required to open their networks for interconnection absent an affirmative finding by the state regulatory commission that such competition "is not unduly economically burdensome" and is consistent with "specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."

Economic harm from RCA Actions

There are several egregious actions the RCA has taken with respect to ACS local exchange companies that have caused us the greatest economic harm. These actions, which we believe are incongruent with federal law and injurious in the long run to the Alaskan consumer, relate to terms of interconnection with competitors and to the termination of rural exemptions. Without offering a detailed analysis at this time, I would draw your attention to the following:

- ACS of Anchorage, Inc.: Our July 1, 2001 rate case filings demonstrate that our Anchorage telephone company is not earning any return on its assets. The RCA has had a number of opportunities to fulfill its obligation to permit the company to earn a reasonable rate of return, but has failed to do so.

Specifically, the RCA has not approved an appropriate and lawful interconnection rate for ACS to lease to GCI local telephone lines (the so-called unbundled network elements, or UNE loops). The initial rate approved in January 1997 was termed "temporary" by the Alaska Public Utilities Commission (APUC), as it was not based on a "forward-looking economic cost" methodology, reflecting the cost of providing the element, as required by the Telecom Act. The Act mandates that the owner of the network, the ILEC, be compensated at a rate "based on the cost ... of providing the interconnection or network element ... and may include a reasonable profit" (Telecom Act, section 252(d)(2)). The Anchorage "temporary" rate has not been in compliance with the law since January 1997.

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ACS began petitioning the RCA early in 2000 for an appropriately determined rate, arguing that the then three-year old rate of \$13.85 was so low as to effectively force ACS to subsidize GCI's competing local telephone service.

Finally, during the latter part of 2001, the RCA held a hearing in which ACS submitted extensive evidence supporting a rate at or about \$24.00. As ACS was experiencing a severe revenue deficiency, we requested an immediate "interim and refundable" UNE loop rate increase. This means that in the event a finally adjudicated rate was less than the interim rate, ACS would refund to GCI any overpayment – thereby protecting GCI from economic harm. On the other hand, if the interim rate was set too low, and the finally adjudicated rate was higher than the interim rate, ACS would have no recourse to collect the underpayments from GCI. The RCA had every reason to grant a reasonable interim rate, knowing that GCI was protected from economic harm – and that the unlawful rate in effect was then nearly four years old.

The transcript of the hearing shows that GCI made an oral representation – totally unsupported by any evidence submitted in connection with the hearing – that their models could not justify a rate greater than \$14.92. ACS submitted extensive models and data supporting a \$24.00 rate; GCI made a bald assertion that \$14.92 was the maximum they could justify. The RCA granted an interim refundable rate of \$14.92. The company (along with its predecessor, ATU) has been operating under an unlawful – and, we assert, non-compensable – rate for five and one-half years and is still waiting for the RCA to approve a final rate.

- ACS of Fairbanks, Inc. and ACS of Alaska, Inc.: Because these companies serve high cost areas, these companies were deemed "rural" under the Telecom Act and exempted from interconnection competition (i.e., granted a rural exemption). The Act seeks to protect companies serving high cost areas because of the complex economics and subsidies supporting the construction and maintenance of loops in these areas.

GCI requested in 1997 that the APUC terminate rural exemptions for Fairbanks, Juneau and other ACS rural service territories. The APUC placed the burden of proof on GCI and found that the economics of interconnection competition would be unduly burdensome on the companies. The APUC ruled that the exemption should be preserved, at least until certain market restructuring took place, including:

- re-balancing rates to eliminate or minimize implicit subsidies, whereby businesses paid more than the cost of service so that residential customers could pay less than the cost of service;
- de-averaging rates so that ratepayers in higher cost areas paid their fair share; and
- de-averaging federal universal service fund support to preserve such support for the construction and maintenance of the higher cost loops.

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GCI appealed the order and the Alaska Superior Court remanded the case back to the APUC with the instruction to place the burden of proof on the ILECs (ACS of Fairbanks, Inc. and ACS of Alaska, Inc.), consistent with a then-existing FCC rule. The APUC did so and then terminated the rural exemptions of the ILECs and ordered interconnection with GCI on June 30, 1999, its last day of business before the RCA commenced operations. ACS appealed the APUC's decision to the new RCA. Without a hearing, the RCA sustained the termination of the rural exemption.

ACS appealed the termination. In July 2000, the 8th Circuit Court of Appeals invalidated the FCC rule the Superior court had relied upon in remanding the matter back to the commission. The 8th Circuit decision, which was binding on all other circuits, held that:

- o the burden of proof must be on the CLEC, not the rural ILEC, and
- o the economic burden on the ILEC associated with competitive entry must be considered.

Obviously recognizing that the termination of the ACS of Fairbanks, Inc. and ACS of Alaska, Inc. rural exemptions had been done in a manner contrary to federal law, GCI appealed to the U.S. Supreme Court to review the 8th Circuit's ruling on these specific issues. The U.S. Supreme Court denied the GCI request, leaving the 8th Circuit's decision on these matters as the law of the land.

Yet the RCA refused to comply with the law, stating: "The 8th Circuit's ruling on the assignment of the burden of proof in a rural exemption proceeding does not persuade us to revisit that issue here.... To assign the burden of proof to the CLEC would be impractical." ACS has appealed the matter to the Alaska Supreme Court, where it is now pending review.

As a result of the termination of the rural exemption, ACS has been compelled to permit GCI to interconnect and lease UNE loops in Fairbanks and Juneau. Exacerbating the economics of forcing competition in these high cost markets, the RCA also issued an order granting GCI the right to receive the USF subsidy – specifically intended by federal law for the support of constructing and maintaining high cost loops – for every customer they take by means of a leased UNE loop. The RCA granted this windfall to GCI, despite the fact that GCI does not build or maintain any loops in these markets.

- ACS of the Northland, Inc.: The most rural and highest cost communities served by ACS lie within the certificated service territory of ACS of the Northland, Inc. Inexplicably, without any evidence in the record to support the action, the RCA this year terminated the rural exemption relative to 10 of these communities in what is referred to as the "Glacier State study area" for purposes of USF. Included among the communities affected by the termination are Ninilchik (861 access lines), Nenana (493 access lines), and Seldovia (422 access lines).

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The local loop costs in the study area average approximately \$50.00 per month. Yet the residential consumer pays a monthly rate of only \$16.30 as contribution to the Company's revenue requirement to maintain the loop and all other expenses associated with providing the service. More than half of the loop costs is supported through federal USF. Consider the implication of opening these areas to interconnection competition and, as the RCA did in Fairbanks and Juneau, granting to GCI the right to receive the USF. ACS will have neither the funds nor the incentive to build another loop in the Glacier State study area. Yet the RCA had an obligation to make an affirmative finding, supported by a record, that competition in the Glacier State study area would not be "unduly economically burdensome" and that it would not jeopardize "specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."

These are complex issues that do not lend themselves to simple explanation. However, ACS would be most grateful for the opportunity to more fully explain these situations through written and oral testimony. We believe the Judiciary Committee would find significant value in a review of these matters because the practical effect of all this is to discourage investment in the network. No rational shareholder would or should be content to have ACS make substantial investments to build state-of-the-art networks, only to have to lease them to the competition at below cost. And when the incentive for investment is destroyed, it will be the Alaskan economy and the Alaskan consumer who lose.

The hearings scheduled by the Judiciary Committee offer the opportunity to create a public record documenting these regulatory matters. ACS applauds this action by you and the Committee to review the RCA's record in the light of day. We would be pleased to contribute in whatever way you deemed appropriate.

Thank you again for your commitment to assuring a comprehensive review of the Regulatory Commission of Alaska.

Sincerely,



Wesley E. Carson

dba **DELTA**

Thomas B. Wood

P. O. Box 14

Eagle River AK 99577

907.694.9430 Office

907.227.8844

akbucket@alaska.com

S. K. ...

FAX TRANSMITTAL

Date: June 12, 2002
To: Robin Taylor – Chair Judiciary Committee
Fax #: LIO - 269.0229
Subject: Regulatory Commission Reauthorization
Pages: 1 including this page
From: Thomas B. Wood
Fax #: 907.696.2782 Cell 907.227.8844

Dear Mr. Taylor,

Please do not reauthorize the **Regulatory Commission of Alaska**.

I have on several occasions tried to get information from this bunch about my two cooperatives; Matanuska Telephone and Electric, concerning their actions against the two.

They either were uninformed or were blowing me off over the questions I had for them. I eventually did get the information directly from the cooperatives. I feel that the RCA does not have the best interests of my cooperatives in mind, but is nothing more than a partisan political group acting as a front for special interests, such as the IBEW.

I strongly urge you not to reauthorize until an in-depth investigation of their dealings for the past few years is undertaken. I do not trust the existing State Administration to do an objective investigation.

I would be happy to discuss this issue with you, but I do not have the actual dates that I called them.



OFFICE OF
THE COMMISSIONER

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 5, 2002

Senator Robin Taylor
50 Front Street, Suite 203
Ketchikan, Alaska 99901

Dear Senator Taylor:

I understand that the Alaska Legislature is conducting proceedings concerning the reauthorization of the Regulatory Commission of Alaska. I have been asked to share my perspective as a Commissioner of the Federal Communications Commission and as Chair of the Federal-State Joint Board on Universal Service on my experiences working with Chairman Nan Thompson. Without commenting on how the legislature ultimately should structure the state regulatory commission, I am pleased to comment on Chairman Thompson's contributions to federal-state processes. In short, having worked closely with Chairman Thompson over the past year, I have observed first-hand her commitment to the people of Alaska, and to Americans generally. She ably represents their interests on critical matters relating to universal service and the deployment of advanced telecommunications and information services.

The Federal-State Joint Board on Universal Service (Joint Board), which was established pursuant to section 254(a) of the Communications Act of 1934, as amended, advises the FCC in most universal service proceedings that affect state interests. The FCC often formally refers a matter to the Joint Board for its recommendation, and in other cases the state members of the Joint Board file comments or informally advise the FCC. The National Association of Regulatory Utility Commissioners (NARUC) appointed Chairman Thompson to the Joint Board, and the state members of the Joint Board elected her State Chair.

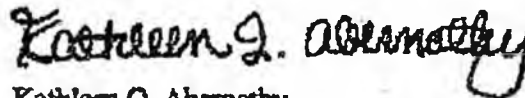
Chairman Thompson has proven an extremely effective leader and valuable colleague. Largely as a result of her organizational skills and hard work, the Joint Board is operating more efficiently than ever before. Even more importantly, from a substantive standpoint, Chairman Thompson has been a leading voice in debates over the administration of the federal universal service support mechanisms. For example, the Joint Board is presently considering whether to modify the list of services supported by the federal mechanism, how to improve the administration of the federal low-income assistance programs (Lifeline and LinkUp), and how to distribute high-cost support to

non-rural carriers. In each of these proceedings, Chairman Thompson has effectively articulated the interests of Alaska consumers.

In addition to her work on the Joint Board, Chairman Thompson has been active in collaborative federal-state efforts to promote the deployment of broadband services. Former FCC Chairman William Kennard, in conjunction with NARUC, appointed her as Chair of the Joint Conference on Advanced Services, which provides a forum for federal and state commissioners to consider a wide range of crucial policy issues. Congress directed the FCC to take steps to encourage the deployment of advanced services, and we cannot accomplish that pivotal task without working closely with our state colleagues — particularly leaders like Chairman Thompson.

In sum, Chairman Thompson is a dedicated public servant and has been a highly effective partner in federal-state policymaking efforts. I hope to have the opportunity to continue working with her in the telecommunications arena.

Sincerely,



Kathleen Q. Abernathy
Commissioner, FCC

Subject: RCA reauthorization

Date: Fri, 31 May 2002 06:32:00 -0800

From: "akpratts" <akpratts@acsalaska.net>

To: <Senator_Robin_Taylor@legis.state.ak.us>

Senator Taylor-

I currently work for ACS and live in Senator Ward's district on the Lower Hillside. Thank you for your leadership in reviewing the RCA which seems to be out of touch with both common sense and the future of the state. Please continue to press for completing the review of RCA actions re Telecom prior to re-authorization. Some of this stuff is just plain weird, like the RCA's decision to establish prices for the purpose of allowing GCI shareholders "to accumulate capital", rather than simply allowing them the opportunity to earn a return on their own invested capital.

Thank you for your continued leadership contributions to me, my family, and all Alaskans.

Subject: Robin, here is my two cents on RCA from a consumer perspective

Date: Wed, 29 May 2002 13:40:30 EDT

From: ConnAlaskaconn@aol.com

To: Senator_Robin_Taylor@legis.state.ak.us

CC: steveconn@hotmail.com, akpirg@akpirg.org

Dear Robin, since the RCA issue is not going away, I thought I'd share a few thoughts from my perspective as a person who deals with the agency for consumers with real problems. Here are a few of my concerns:

The public advocacy section has about half the staff of the other units. This means that all sides on water and sewer, cable, electric and other issues aren't fully represented with the limited resources allocated to public advocacy.

The consumer protection unit that screens consumer complaints does not bring individual complaints that seem to have broader application to the attention of the commission and doesn't use the press to draw in broader participation. Instead it leaves it to an individual consumer to go through the petition process which they rarely do and sends out only official- and often unreadable official notices about serious rate increases, etc..

Universal service funds of about 75 million come to the state when the RCA oversees their application and vouches for their use.

The program that is critical to elders, funded by this federal pot, is the Lifeline

program which allows people to call their doctor and make local calls.

The last I heard only about a third of eligible people get this special service because social service agencies and others do a lousy job putting out the word. I sent Barbara Williams of the Injured Workers Alliance (whom you heard at the bar's sunset hearing) to a meeting and she offered to be proactive with her volunteer group by reaching out to elders, mentally disabled and others about this program. She was given a cold shoulder. So some focus on whether universal service money is getting to the right people is important, and how money to get better outreach is spent should be addressed.

As to the ACS-GCI fight, there are valid points on all sides. I agreed with GCI getting to Juneau and Fairbanks because I believe in competition in the market place is good for consumers.

ACS has a point related to their infrastructure burden that could be worked out, but I have objected to its tactics- like using consumers, including developers, as pawns when they refused to expand infrastructure, bully boy tactics.

On GCI's end, cable does need more public monitoring, especially since it

gives an edge to GCI because of the internet. Raises in rates have outpaced inflation.

There is no movement on GCI's part to extend cable into parts of downtown anchorage where many small businesses operate (including us) I don't know the situation in other places.

So, are there problems- you bet. Do we need RCA? Yes, because at least it provides a modest platform for the public interest on many essential services can

be heard, things like garbage, sewer, electricity, etc. if people know it exists and if it uses its muscle to get utilities to improve its customer service. I have it on good authority, for example, that persistent complainers to ACS are put into a kind of never, never land dead zone. This is bad business practice in a competitive environment that ACS can't blame on government bureaucracy. They have a case that can and should be made to the public. ACS's tv ads make the point that they are the ones who maintain the infrastructure, but ACS never carries through with second part of their argument. Who knows why not?

Understand that the staff and commissioners are all nice people and treat us politely and professionally, but of course the problems we have and ACS has are not about how nice people are.

Thanks for hearing me out.

Subject: Re: your e-mail of 5/28 RCA

Date: Wed, 29 May 2002 16:20:51 EDT

From: Swiftaudl@aol.com

To: Senator_Robin_Taylor@legis.state.ak.us

Dear Senator Taylor,

And THANK YOU for one of the most encouraging responses we received. Maybe something positive might happen. Keep it up!

We are out of the political part of the loop here, having mail only twice a week, no news papers or TV, and limited radio. The web is not an option either as our phone system cannot process data reliably. However, I can add a few references that might make it easier for you to find supporting examples.

Our first experience with RCA was at staff level, and was file No. C-00-104. Agnes Pitts, of staff, closed this complaint on April 21, 2000, with the comment that they found "no violation of any statute, regulation of CVTC's tariff....." Now come on, to take tariff designated money without notice of billing out of a customers account for work not done, and report it on a tariffed form, is that not violating a tariff?

The second attempt was for formal hearing, and this was designated U-01-38. The Commission dismissed this complaint on the 16th of July 2001, saying that no new evidence was presented. They ignored the several letters with blatant lies or outright silly arguments. They also ignored detailed logs showing clearly that the phone system is operating very poorly. (At that time, 192 failed calls in a year, and to date, well over 300 failed and dropped calls in two years. Per line!)

We circulated a petition here, asking again, for reconsideration. This petition specifically requested an open hearing on our case # U-01-38. It was signed by 32 people, out of the forty people in the area at the time. (80%) Almost all the signers also took time to add long comments on the poor phone service.

The RCA did open a new case, U-01-102, and scheduled a teleconference hearing on Dec. 10, 2001. They absolutely refused to consider our case U-01-38 about the theft of customers money, and at the Dec. 10 hearing, specifically ordered me to shut up about it when I tried to bring it up. They allowed Mr. Rennie however, to testify, under oath, that they did not charge customers for checking CVTC equipment on complaints. Since this is just exactly what they did in our case, isn't there a word for this?

I did get a chance to speak to Mr. Abbott of RCA later, and when I asked him if that did not bother them, well, he did not actually say anything, but I got a clear feeling his attitude was "well so what?"

There is a 125 page transcript of this hearing dated Dec 12, 2001.

Now, they have ordered CVTC to keep more detailed records over a period of time. CVTC asked this period to be moved to next winter. Of course in winter, there are only a few people around to have failed calls, so they can have a much easier time to get out of reporting the actual fact that the equipment is probably "junk" as testified at the hearing. RCA readily went along with this request.

I realize, Senator Taylor, that your perspective is the overall performance, or non-performance, of RCA, while ours is more local in wrongdoing by the utility, and the RCA just condones and supports this wrongdoing.

I should add that I personally, am not making such a fuss over the bad service, as most others. I have lived in McCarthy for 47 years, and forty of those years, there was no phone within 100 miles of us. What we have is better than that. Our complaint is that the utility just takes money out of accounts without cause, and the RCA refuses to hear about it.

We also do not understand why the Ombudsman also refuses to look into this kind of abuse. Even when we pointed out to them that the issue is not just one customer squawking, but that the utility actually told us that they could not charge other customers (who complain) if they gave us our money back. So it is a larger social issue, but their refusal sounded absolute.

It is probably not practical for us to attend your hearings in June, since it is a 9 or 10 hour drive each way to ANC, so I would ask if we might be able to get a transcript of them, at some point?

I used to kind of like Wrangell, as a place to stop for fuel on some of my trips down the coast with my private airplane. Easy and interesting to just walk down town, when there was time. Less formal place than Ketchikan.

Jim Edwards
McCarthy, Alaska

Mr. Taylor, I am Jim's wife, and thought maybe the following letters would help you. I get the impression that Governor Knowles is pushing a closed session because of communication received from the offices of, Congressman Don Young, Senator Ted Stevens, Senator Georgianna Lincoln, and Representative Carl Morgans. As back up I have attached copies of the letter I wrote to Governor Knowles, who has not had to courtesy to answer me back, and the letters I received from Congressman Don Young, and Senator Ted Stevens.

Thank you for your attention in this matter,
Audrey Edwards

Office of the Governor
Tony Knowles, Governor

April 18, 2002

RE: Regulatory Commission of Alaska

Dear Governor Knowles,

Just what does a person have to do to get your Regulatory Commission of Alaska, (RCA) to do the job they were appointed to do? They ignore consumer complaints, and close the cases brought without investigating.

We had, and still have, a legitimate complaint against Copper Valley Telephone for taking monies out of our account for charges not due them. The RCA denied hearings, not once but several times without an explanation. They just will not allow the true facts to be debated, so we had to do our own research and investigation.

The utility told the RCA that we were charged because the technicians worked on Customer Owned Equipment. This is patently untrue. #1, We talked directly with the technicians that supposedly worked on our equipment. #2, They both denied working on our equipment, but only tested their own. #3, Both technicians stated that they were not aware of the monies taken from our account without billing or just cause. One of the technicians sat at our desk the entire time he was in our home, and never touched or tested any part of our equipment. He told us that he did not make out a work sheet, that when he returned to the office he was handed a ticket and was requested to sign off on it. When someone else has to do the RCA's investigation for them, and the findings are still denied, where do we turn?

Of the residents in our community, 80%, signed petitions on two different occasions, stating they were having the same problems that we were having, and that they felt we should be given a hearing. The RCA even ignored

requests from Senator Georgianna Lincoln's office and Representative Carl Morgan's office to honor a hearing. Finally, a teleconference hearing was set up for our community, but we were instructed that we were not allowed to bring up any reference to our complaint. The teleconference was set up when Mr. Rennie knew most of our residents would be gone for the winter. He also stated under oath that he was not aware of any problems with the phone service here in McCarthy. A blatant lie under oath, because all our petitions had been sent to him.

He also stated, under oath, that they did not charge customers for testing the utilities equipment. This also seems to be perjury, as that is exactly what they did to us.

So, again, I ask you, where do we turn when, "OUR Regulatory Commission will not do the investigation they are getting paid to do while sitting and taking up space in an office. In my estimation, if there are to be funds cut, maybe you should start with your RCA program, as they don't seem to do anything except collect a paycheck. We have been told no one can touch them because they are appointed and funded by you.

I won't bother sending you any of our back up material right now, as it would probably be a waste of time, but if you are truly interested in helping, and making a wrong a right, then I would be more than happy to enlighten you in the events as they have taken place.

I am hoping you will respond, but if not, then in all fairness to you, I want you to know that I will continue to publicize the issue at every chance I find, and to anyone that will listen about the way things have been run with the RCA. In addition, I will be sending this same message to, Congressman Don Young, Senators Ted Stevens, and Frank Murkowski with the hope that they will take this matter into consideration. I hope the ball will stop with you. After all, isn't that what we elect our representatives for? To help the general public from businesses taking advantage of them?

All we ever wanted was a fair hearing, and an honest investigation.

Thank you for your attention,

Audrey Edwards
McCarthy, Alaska
(907) 554-4414

cc: Honorable Donald Young, Congressman
Honorable Ted Stevens, Senator
Honorable Frank Murkowski

[Unable to display image]

[Unable to display image]

Sorry I could not get my scanner to print these letters the actual size.

Subject: (no subject)

Date: Tue, 28 May 2002 22:40:40 EDT

From: Rweimer461@cs.com

To: Senator_Robin_Taylor@legis.state.ak.us

Dear Senator:

It has come to my attention that your Judiciary Committee is holding SB2010 from passage. I have worked in Alaska since 1974 with PTI, FMUS, Alascom and Alaska Gas and Service Company. My job was regulatory affairs manager. Never did the RCA (APUC) do exactly what I recommended. Why? Simply because what I advocated as best for my company was not necessarily best for the local rate payers or the state as a whole. What ACS is advocating today is what is best for them and their shareholders--a very rational advocacy. However, their plans will *never* deliver communications services to anyone (let alone rural Alaska!) at the lowest economic cost. The competitive model is flawed when it comes to most of Alaska and cannot possibly work effectively without the RCA oversight.

I too am appalled by the appointments that Knowles has made over his last two terms but exactly how did he get there in the first place? It was the divisive bickering of Republicans that put him in office. (Him along with an equally liberal string of predecessors.) Draw together as Republicans for a change. Do something good for the state. Support SB2010.

Then work to change the make up of the RCA.

I now live in North Carolina having lost my job with FMUS after PTI took over. I supported their takeover then and now. They overspent in their acquisition binge that resulted in ACS.

Their plight is clear. They cannot afford even the semblance of competition. ACS's interests are correctly self-serving. Anything less would be a disservice to shareholders. Because of this you need the RCA.

I would be happy to work with you in any way I can. I have a strong economics background but more importantly I know the regulatory climate.

Richard M. Weimer

Communications Consulting

Dear Emily:

Hearings will be held on the EARLY EXTENTION of RCA. Nothing happens to them for 14 months if we do nothing. The New Gov. and the New legis. will have the entire session next year to decide RCA's fate if we do nothing. I'd personally rather have them take up this issue but apparently the Gov. and his GCI supporters want to force the issue NOW while they can influence the outcome for their special interests. It would take someone pretty naive to really believe that the Gov. has called this special session just for the altruistic reason of saving the RCA. Particularly since it doesn't go out of business and keeps right on taking cases and doing it's job for the next 14 months! Some think that cramming this through a special session is a good idea. I think letting the next gov. and legis. spend 4 full months coming up with good ideas for making this agency work better is a far superior concept. Ask yourself this one, what is motivating this Gov. to call this special session? Does he not trust the next gov. or the next legis. to protect his friends as strongly as he is willing to do? If I lose the Lt. Gov. race I will be back in that new legis. and if the early extention is not granted, will be working on revising the RCA to protect the consumer not this Gov.'s special interest friends. Thus I would think from your comments that you would not want me to do anything on RCA and to leave it up to new faces to have a fresh look at the problems at RCA.

The existing RCA came out of exactly such a process. The old APUC went into it's sunset year and the Legis eventually took up those concerns and created the new RCA. Why didn't that process in 1994 require a special session of the Legis? Could it possibly be that the special interests at the time did not have such a strong hold on Gov. Wally Hickel?

Sen. Robin Taylor

Emily Thatcher wrote:

I consider the open consideration of the reauthorization of the RCA by the Senate to be of utmost importance. Holding the bill in committee looks like a blatant serving of special interest rather than serving the people whom you represent. This is particularly inappropriate for someone who is interested in further statewide office. In addition, it is too late to quietly kill this bill.

I urge you to support efforts to move on the bill concerning re-authorizing the RCA . As an ordinary citizen and consumer, I benefit from competition and the RCA is essential to that end.Sincerely

Bob Solberg
bsolberg@gci.net
907-745-4310

Dear Bob:

The RCA will continue to exist and continue to protect your rates for the next 14 months whether the bill moves or not. The EARLY EXTENSION of RCA sought by the Gov. will prevent the next gov. and the next legis from taking up a full review of RCA next year as would normally happen. In fact that is exactly how the current RCA was formed. The APUC went into its wind down year and the legis took up an extensive review of that commission. Out of those efforts a new agency was created called the RCA. Wally Hickel was not owned by any special interest and he let it go through the normal process and the new gov. Tony Knowles and the new legis. created RCA. Why does this Gov. use extraordinary powers, calling a special session, just to early extend? Is it because he doesn't want the new legis. to do a searching review of this agency? Does he not trust the next bunch to protect his special friends and his special interests as strongly as he is willing to do? The RCA will continue just as it has for the last several years whether I do anything or not. Your rates will continue to be protected just as they have been in the past. It is hard for me to believe that there are any real Alaskan's who are so naive as to believe that this Gov. is going to this extreme effort just for altruistic reasons. Trust me Bob the sky isn't falling, RCA is functioning and is not threatened by me or anyone, except this Gov. who by calling attention to this issue and threatening and now calling a special session will force the legis. to do a quick and dirty look at the problems. There are problems and even the house of rep. added several pages to the Gov.'s 4 year extension bill. They put in time lines and other requirements that may be good or bad for the RCA depending upon how those things work. Chugach Elect. the largest supplier of elect in Alaska (over 60,000 homes) has consistently said Don't early extend there are major problems at the RCA! Apparently this Gov. wants us to look at those problems and in a day or two come up with solutions. Now he really doesn't want that and we both know that. He wants the RCA extended and he wants no one to address the problems. Well if he keeps forcing the issue he may get more solutions than he or his special interest friends wanted. Personally I think it is a crummy way to do business. I'd rather let the next legis take 4 months to work on these issues and come up with well reasoned ideas to make this agency function better. I'm willing to trust the next bunch to do a good job. Sadly Tony is not and that is why he is frightening people into believing that if I don't do something RCA will die. It's a total lie, but he and GCI and their partner the Anch Daily News keep telling it in the hopes that the truth won't come out before they can cram this early extension through the legis.

Sen. Robin Taylor

Bob Solberg wrote:

>
> -----Original Message-----
> From: Dana Tindall
> To: **All GCI Users
> Sent: 5/22/02 2:44 PM
> Subject: Report from the Juneau Front
>
>
>
> > All:
> >
> >As many of you have probably heard, the legislature adjourned last
> >night without taking action on the RCA re-authorization. Do not lose
> >heart! This is better than it looks. We were able to stop an
> attempt
> >by Robin Taylor, Dave Donley and Rick Halford to pass a bill that
> would
> >only authorize the RCA for three months, and would also call for a
> >special legislative council investigation into telecommunications.
> The
> >house held firm (particularly Eldon Mulder and Pete Kott) and would
> not
> >stand for it. Knowing that the Governor would call them back into
> >special session to vote on the bill, the house adjourned rather than
> >agree to a bad bill. Rick Halford and Robin Taylor are doing this on
> >behalf of ACS even though all other utilities want the RCA
> >re-authorized and Halford and Taylor cannot identify a public policy
> >reason to kill them. ACS wants the RCA terminated because they don't
> >like their decisions on competition and loop rates, even though ACS
> has
> >lost these issues on appeal. ACS has put very intense pressure on
> the
> >legislature, recruiting Bill Allen to come in and help them twist
> arms.
> >
> >The Senate is getting very frustrated with Robin Taylor and Rick
> >Halford. There was agreement on a one-year extension between the
> >Governor and the House last night, but Halford would not even present
> >it to his majority. They never got an option of deciding whether or
> >not they wanted to take the deal. When the legislature comes back in
> >on June 24, we will be starting all over again with a new bill to
> >reauthorize the commission for 4 more years. I think the Senate is
> >getting ready to revolt against Rick and Robin and will look strongly
> >at simply passing this bill over Robin and Rick's objections.
> >
> >On another note, the war with Senator Taylor has gotten very
> personal.
> >He has held at least three press conferences and given two floor
> >speeches stating that we are under ongoing investigation by the
> >Department of Justice for trying to monopolize the telecommunications
> >market. He claims that we are in bed with everyone from the Daily
> News
> >to the Governor to the majority of the legislature (at this rate, I
> >will clearly have to get a bigger bed!). The news media is not

. buying

> >it since they understand the dept of Justice was merely doing a
routine
> >investigation that we requested of potential acquisition of the MCI
> >fiber in the bankruptcy proceeding. And they also understand that
our
> >bed is just not that big.
> >
> >Since none of Senator Taylor's mud-slinging is working, he is now
> >asking for subpoena powers to investigate us and our alleged link
with
> >the Governor and the RCA. At this point, it appears that if a
majority
> >of his committee and the President of the Senate go along with this,
he
> >can subpoena us. My fear is not of what we have to hide, rather that
> >it distracts from and has nothing to do with the issue of
reauthorizing
> >the RCA. We will continue to try and focus the legislature on the
> >ball.
> >
> >During the interim period from now to June 24, we will need to thank
> >and buck up all House members to encourage them to hold the line on
> >re-authorizing the RCA fro four more years. We also need to chastise
> >any senate members for lack of action and request that they please
act
> >to re-authorize the RCA for 4 more years. Please be polite if you
> >choose to e-mail your house and senate members. Please do not e-mail
> >Robin Taylor as it will do no good and I would not want individual
> >employees to become a target for him.
> >
> >The fight is not over, things are looking good. Thanks so much to
all
> >of you for your e-mails and support. It may not look like it, but
they
> >have been working!
> >
> >Dana

-----Original Message-----

From: Karen Perdue [mailto:karen.perdue@alaska.edu]
Sent: Wednesday, May 29, 2002 9:22 PM
To: brian.rogers@alaska.edu; brogers@infoinsights.com
Subject: more on phones

a few more points and a clarification for you to consider, test out:

--ACS never testified on the sunset in the hearings in the House. If they felt so strongly that their business was at stake, why didnt they testify?

--there is a large telecommunications study that ACS lobbied to get going last year that Dept of Administration is conducting. Actually, proposals are due May 15 and about seven bidders have put together proposals. The study looks at the impact of government regulation -not just the RCA, but includes the RCA. This is the study Halford said needed to be conducted before reauthorization.

-All parties agreed to a clean one year sunset and then right before going on the floor, Halford said he forgot to mention that he wanted a "task force" to study the RCA... three house, three senata, one governor. Sounds like a witch hunt to many. This is beyond the study. This killed the deal. Very hard to get back to clean one year deal now.

ACS has at least one case at the State Supreme Court and probably one at the 9th circuit.

ACS has a big rate case pending or part still to be ruled on. Some speculation this is tactics on that. ACS alleges the RCA is delaying on rate case. Other thought is rate case was not filed until a considerable period after purchases, maybe two or three years. Also in the last month. Having to respond to political stuff is slowing the RCA's work.

Sunset laws are tight under new RCA statute. If not reauthorized ie goes into sunset as opposed to being extended under the sunset like was done several years ago means the commission must finish all business within the year. Docket of filings (from electrical and others) is expected to skyrocket on June 30 if not reauthorized or extended. Point here is the legal difference between the situation the commission is in now - simply dying away and an extension or reauthorization.

MOre later.

RCA

Dear Fe:

The RCA will not be dismantled or changed in any way if the legis does nothing this year. They will stay in existence until July 1 of 2003! They must continue to work and take new cases during that period according to a 1994 Atty. Gen's opinion. Nothing is happening to RCA. The Gov. is fixated on forcing an early extention. This forced special session may likely result in hurried decisions and major changes could result in the make up and authority of the RCA if this happens. I would rather put this war off until we have a new Gov. and a New legis. which can spend all 4 months of the next session to carefully review these matters and make such reasonable adjustments as they determine are necessary. Sadly this is the wrong time and the wrong way to cause changes in the RCA and it is being pushed by your management team. I can only assume that they see some corporate benefit in forcing this issue while Tony and Fran have the bully pulpet and can twist political arms for the benefit of GCI.

This strategy may backfire and changes may occur that are not beneficial to consumers or utility providers. I'm caught up in this, not of my choosing, but because the Gov. is forcing the issue. I intend to protect the integrity of this process and if a full review must be forced at this time then I'm going to do what I can to protect the consumers of Alaska from the power politics of these special interests.

Sen. Robin Taylor

Fe Seymour wrote:

- > Dear Senator Taylor:
- >
- > I work for GCI. I understand that dissolving the RCA will impact
- > not only my company, but all of the statewide utilities.
- >
- > This would seem to negate push for removing our only mandated
- > regulation watchdog. If there are problems or concerns regarding their
- > performance, could it be modified/improved without a complete dismantle ?
- >
- >
- > Please vote in favor of preserving the RCA.
- >
- > Sincerely,
- >

>
>
>
>
>
>
>
>
>
>

Fe` Seymour
GFCS Logistics
907-374-4387

Subject: Re: RCA

Date: Thu, 30 May 2002 17:33:33 -0800

From: "Jim Fassler" <jim.fassler@acsalaska.net>

To: "Senator Taylor" <Senator_Robin_Taylor@legis.state.ak.us>

THANK YOU for the reply!!!

I sent the same message to many other legislators. I changed a little, but hopefully they understand my frustration & will see that you are doing a good thing. I think the RCA is necessary, but they need basic economics lessons

Thanks again

Jim

----- Original Message -----

From: Senator Taylor

To: Jim Fassler

Sent: Thursday, May 30, 2002 1:43 PM

Subject: Re: RCA

Dear Jim:

Thanks for writing, as you know I'm under extreme political pressure from the Gov., GCI and their partner the Anch Daily News. I need the support of others in the legis. Please forward your e-mail to other legis. and explain to them how unfair you feel the current system is. As RCA is going to function for the next year if we do nothing, the next legis and the next gov. could easily decide this issue during the next session. The only reason that we are being forced into a special session is because Knowles and GCI see a major advantage to GCI by preventing the next gov. and legis. from taking this matter up. Get the word out every way you can -- talk radio, letters to the editor, sit down in the evening and call all of your friends. The consumers of Alaska deserve a better and fairer shake than this unbalanced playing field.

Sen. Robin Taylor

Jim Fassler wrote:

Thank you for keeping the legislation on the RCA in your desk. The only way the playing field will be leveled for ACS is to let the RCA expire.

I am an ACS employee and this is my opinion and not that of the company. There is no way that ACS can survive if it is forced to wholesale its services for less than it costs to maintain the system.

I have no problem with the RCA if they make responsible decisions. It is my opinion that we need to either replace the members of the RCA or teach them simple math.

<?xml:namespace prefix = o ns =
"urn:schemas-microsoft-com:office:office" />

I use the analogy of a 100 room motel – let's say you own it.

It costs you \$35.00 per day per room to maintain this facility. You are getting \$49.95 from your customers.

Now, I come along & want 40% of those rooms – HOWEVER, I am only going to pay \$33.00 per day & sell them for \$47.50.

By the way, after a year, I decide you must add 10 more rooms for me. I still will pay \$33.00 & your cost is still \$35.00 plus the interest you must pay to borrow the money to add these rooms.

My question – How fair is this to you?

If you wish, I can be contacted during the day at (907) 714-8748

Thanks again

Jim

Legislative Hearings

Subject: Legislative Hearings
Recent From: all_rcas@rcs.state.ak.us

The Senate Judiciary Committee has scheduled hearings on the ACA for June 11 starting at 1:30 and June 12 starting at 10 in the Anchorage LJO. To date, no witnesses have been subpoenaed and the committee has not published any information about the format of the hearings. The hearings are open to the public, and the committee may take public comments.

Craig Tillery from the AG's office, with support from Elizabeth Michelson, will represent the agency and any witnesses called from the agency. Please let them and me know if you are subpoenaed, and they will work with you on preparation for the hearing.

TO: VIC KOHRING
OF: HOUSE OF REP.

IF MY FAX IS LEGIBLE PLEASE
REMOVE. SEND TO ROBIN TAYLOR
IF YOU FEEL HE WOULD BE INTERESTED.

HE SHOULD SUBPOENA PARALEGAL: ANITA AND
STATE I KNOW DON'T WANT ANY AGO REP.
HEARING OFFICER: PATRICIA, THEY HAVE

VERY GOOD INFORMATION AND WOULD LIKE THE
OPPORTUNITY TO GIVE IT TO HIM.

PLEASE, DON'T LET ANYONE KNOW I FAXED
THIS OR LET THEM SEE THIS NOTE.

REMEMBER THE COMMISSIONERS ARE TYPICAL
JACK-UP THATS WHY SOMEONE APPOINTED
THEM: THEY WILL - REPUBLICANS INCLUDED,
LIE THROUGH THEIR TEETH TO KEEP THEIR
LUCRATIVE JOBS - THEY DON'T DO WELL.

Dear Robert:

Your letter will be added to the Judiciary committee file. Who informed you that anything bad would happen to the RCA if they were not early extended? Attorney General's opinion 1994 clearly states that RCA would be, business as usual, if the early extension is not granted. Do you have contrary information and if so from whom? As the Judiciary committee will be holding hearings in the next few weeks, before June 24, it will be important to know what you have based your conclusions upon so your response to this question is requested.

Sen. Robin Taylor
Judiciary Co. Chair

"Lindquist, Robert" wrote:

Dear Senators

I serve as Director of Regulatory Affairs for Waste Management of Alaska, a refuse company serving over 59,000 businesses and households throughout the state. Kirk Duncan, general manager of Waste Management's Alaska Division, requested that I forward to each of you an e-mail sent to Senator Halford on Monday afternoon. This e-mail expressly sets out Waste Management's sentiments regarding re-authorization of the RCA.

I look forward to hearing from any senate member to discuss further Waste Management's position on this issue.

Robert K. Lindquist
Waste Management of Alaska
6301 Rosewood Street
Anchorage, AK 99518
Tel? (907) 273-2754
Fax (866) 728-7336
Cell (907) 230-6466
*<mailto:rlindquist@wm.com>>

The information contained in this e-mail message is privileged, confidential and protected from disclosure. If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited. If you think that you have received this e-mail message in error, please e-mail the sender at rlindquist@wm.com

<<Robert.Lindquist.vcf>>

-----Original Message-----

From: Duncan, Kirk-Alaska
Sent: Monday, May 20, 2002 4:24 PM
To: 'Senator_Rick_Halford@legis.state.ak.us'
Subject: RCA Sunset Review

Dear Senator,

Waste Management is a regulated refuse utility with district offices throughout the state. We serve 59,000 residential and commercial customers from Nome to Ketchikan and from Fairbanks to Dutch Harbor, including Anchorage, Mat-Su Borough, Kenai Peninsula Borough, Kodiak Island Borough and the City and Borough of Juneau. We advocate the re-authorization of the RCA. To do otherwise will severely hamper our ability to facilitate tariff revisions that are necessary to meet the changing demands of our 59,000 customers. Accordingly, in the strongest terms, Waste Management of Alaska, Inc. is asking you and the Senate to work towards authorizing the RCA for another term.

Please feel free to distribute this email to other members of the Senate or your caucus. I look forward to hearing from you or other Senate members should you have questions regarding our position.

Thanks,

Kirk Duncan
Division Manager
Waste Management of Alaska, Inc.
6301 Rosewood Street
Anchorage, Alaska 99518
tel: (907) 273-2727
kduncan@wm.com

7/16 W. 4/14

Sen.
Records
File

Mr. Chairman and other legislators, thank you for listening to my comments this morning.

My name is Judith White. I live in Peters Creek. I retired from the State of Alaska four years ago, and for twenty years I worked for the Alaska Public Utilities. For almost two decades I was the chief of the Tariff Section. I want to assure you that I am not a disgruntled employee. During the time that I worked for the Commission, I received nothing but outstanding performance evaluations. I still have friends at the Commission. I recently recommended that another friend apply for employment at the Commission.

There is also not a doubt in my mind that the Commission is going to continue to exist in some form – next month, next year and the next year and the next year. I was an employee of the Commission the last time the Commission went into its “winddown year” and when I worked there, there was absolutely no change in the way my section did business insofar as considering tariff proposals. I have a vague recollection that there was some movement in the agency to clean up old dockets that had dragged on for years but that was a good sign in my opinion.

I do think that there are legitimate areas of Commission performance for the legislature to consider. For example, the issue of time keeping – did the Legislature previously require a time keeping system to be established? If so, was that done? If not, why not?

But I am not here this morning to criticize the Commission’s performance. I am here to speak briefly about the Regulatory Cost Charge. I would like to make three points:

First, the Regulatory Cost Charge probably violates the Alaska Constitutional provision that prohibits dedicated funds. Remember, the reason for the Constitutional provision regarding the Permanent Fund is that we had to pass a Constitutional Amendment because of the general prohibition against dedicated funds.

[Section 9.7 - Dedicated Funds. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.]

A few weeks ago, while listening to the radio, I heard a Commission representative argue that one reason for reauthorizing the Commission was that otherwise there would be budgetary implications since the Commission was funded by the regulatory cost charge.

Clearly, this Commission representative was just acknowledging a reality – the Regulatory Cost Charge is, in fact, a dedicated fund. It probably violates the letter of Alaska’s Constitution, and it absolutely violates the spirit of the Constitutional prohibition against dedicated funds.

The second point I would make is that even the Constitutional provision against dedicated funds

is not, in my mind, the major argument against the Regulatory Cost Charge. I urge the legislators to think back just a few weeks to all the controversy involved with the income tax provisions the House adopted. It was subject to huge criticism. But there were those who argued that nevertheless the income tax proposal adopted was better than a much more regressive sales tax.

Think about the Regulatory Cost Charge. It is the embodiment of all the negative aspects of a regressive sales tax. The major argument against sales taxes is that they tend to be regressive, or at least flat. States that adopt sales taxes often take steps to minimize the regressive nature of such taxes. They frequently exempt services from the excise tax. Almost always rent is exempt. Some states exempt food. Sometimes states have sales tax holidays around the time people are buying school clothes.

But in Alaska we have the Regulatory Cost Charge. We don't have an excise tax on your indoor swimming pool or your fur coat or your expensive stereo. We just tax you for the essential stuff. Tax your basic phone service. Tax that long distance call from Anchorage to your mother in Bethel. Tax the gas that heats your home. Tax that electricity that gives you light in the winter. Tax your water. Tax your sewer bill. In short, place a tax on the most essential services that individuals receive and that low income people absolutely cannot avoid. It is almost incredible to me that there are legislators in this state who argue against general sales taxes but defend the existing excise charge on fundamental utility services.

My third point is that the regulatory cost charge makes for bad government. The legislature has many priorities. The Regulatory Cost Charge gives the legislature a good excuse for not really examining the Commission's performance. The legislature has so many budgets to examine in a limited time, that it's just easier to ignore this budget because the Regulatory Cost Charge makes it possible to do so. Has the Legislature truly examined the growth of the Commission's budget or its expansion of employees at a time of declining state revenues? Is it really in the best interests of the State to increase the number of state employees who are utility regulators while decreasing the number who are state troopers or child support enforcement officials? These are the kinds of questions that do not get asked when there is a Regulatory Cost Charge. The Regulatory Cost Charge provides no incentive for an agency to be efficient - it is, in fact, a blank check.

In summary, I urge that whatever actions you take with respect to extending the Regulatory Commission of Alaska, that you rid Alaska of this terrible Regulatory Cost Charge which violates our Constitution and is terrible public policy.

Sen Records
File

ALASKA STATE LEGISLATURE
Senator Rick Halford
President of the Senate

While in Session:
State Capitol
Juneau, AK 99801-1182
907-465-4958

While in Interim:
P.O. Box 670190
Chugiak, AK 99567
907-694-4958

June 10, 2004

Commissioner James W. Duncan
Department of Administration
State of Alaska
State Office Building - 10th Floor
Juneau, Alaska 99811-0200

Dear Commissioner Duncan:

As you are aware from your 24 years of distinguished service in both the House and Senate, the State Legislature has long exercised a leadership role in the formation of telecommunications policy for Alaska. In the 1970's we established the basic framework for telecommunications regulation in the state with the Alaska Public Utilities Commission Act. At the end of the 1980's, we modified that Act to introduce competition into the long distance markets within Alaska. Two years ago, we transformed the agency which administers that Act into the Regulatory Commission of Alaska. In each case, the Legislature examined the needs of Alaskan consumers, determined what policies were required to address those needs and adopted measures promoting those policies.

The telecommunications industry continues to undergo major changes. Driven by diverse forces - technology, federal law and regulation and consumer demand - service providers confront substantial operational, organizational and financial challenges in their efforts to deal with competitors, customers and government. It is critical to the telecommunications health of Alaska that governmental policies be properly adjusted over time in order to achieve two long term goals: de-emphasizing government involvement in markets; and emphasizing consumer demand as the proper focus of private sector efforts.

The five years which have passed since the Telecommunications Act of 1996 have not seen the achievement of these goals. Notwithstanding the efforts of the Legislature, the current welter of regulatory proceedings and decisions, both state and federal, has obscured rather than clarified the telecommunications picture in the State. Thus confusion has been compounded by judicial appeals which produce opinions but not enforcement by the affected agency. The absence of clarity and certainty sends mixed signals to consumers and investors alike. Uncertainty increases business risk and discourages the investment in infrastructure upon which Alaska depends for its future. Unnecessary government involvement distracts the private sector by emphasizing regulatory manipulation at the expense of market competition.

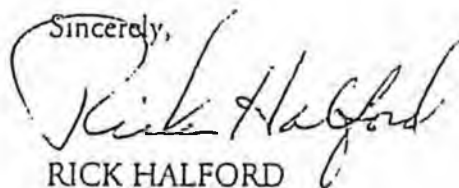
The Legislature finds that it is time, once again, to determine what policies may be appropriate to the needs of Alaskan consumers and to adopt measures promoting those policies. To do so requires first and foremost an impartial, comprehensive and expert examination and analysis of the current conditions attending the telecommunications industry and markets in the State. We need a dispassionate and insightful inquiry into five primary issues: universal service, infrastructure, investment, competition, deregulation, and agency performance. As to each area, the Legislature needs to ascertain the scope and extent of current issues and their implications for Alaska's telecommunications future. We need to know what has been done to date; what remains to be done; and the best way of formulating and implementing policies to see that it is done.

The Legislature has determined that the best way to obtain these facts and this analysis is to direct the retention of a nationally-known, outside expert in current telecommunications issues. Legislative staff resources do not embody the scope of experience and knowledge which this project requires. Existing agency personnel have not yet acquired sufficient expertise in these matters. Moreover, the agency and its previous consultants are not sufficiently disinterested parties, given current sunset provisions relating to the agency and the likelihood of further deregulatory legislation on the road to full and fair competition in open markets.

Therefore, the Legislature has appropriated funds to your Department for the purposes of securing such an outside consultant. We would expect to work closely with you and that consultant to fashion and execute a project plan directed to developing the information we need, as set out above. Where appropriate and desirable, the Legislature will undertake supporting activities, such as public hearings, to ensure the development of an adequate information base and a full record for further legislative action. I emphasize the need for true expertise and a national perspective: the uniqueness of Alaska's telecommunications environment does not equate to or justify a narrow review of Alaskan telecommunication solutions.

A properly conducted study will provide relevant information now unavailable. Armed with this information, the Legislature can assess current status and future directions for legislative action in this area. Clear policies will promote sound economic decisions by all service providers, to the ultimate benefit of Alaskan consumers. The Legislature has confidence in your Department's ability to impartially and rapidly carry out this task, and we look forward to assisting in this work as needed.

Please feel free to contact me anytime at 907.694.4958 if I can be of assistance to you on this project.

Sincerely,

RICK HALFORD

Heller Ehman White & McAuliffe LLP
550 WEST 7TH AVENUE, SUITE 1900
ANCHORAGE, ALASKA 99501-3571
TELEPHONE (907) 277-1900

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STATE OF ALASKA

REGULATORY COMMISSION OF ALASKA

Before Commissioners:

G. Nanette Thompson, Chair
Patty DeMarco
Will Abbott
Jim Strandberg
Bernie Smith

In the Matter of the Tariff Revision,
Designated as TA226-8, Filed by Chugach
Electric Association, Inc., for a Rate Increase
and Rate Redesign

U-01-108

AFFIDAVIT OF EUGENE N. BJORNSTAD

STATE OF ALASKA }
THIRD JUDICIAL DISTRICT } ss.

Eugene N. Bjornstad, being duly sworn, deposes and says:

1. I am the General Manager for Chugach Electric Association, Inc. (Chugach).

I have personal knowledge of the facts stated herein.

2. I and my direct reports have supervised much of Chugach's efforts to comply with the second round of discovery requests from Alaska Electric Generation Transmission, Inc./Homer Electric Association, Inc. and Homer Electric Association, Inc. (jointly AEG&T/HEA) and Matanuska Electric Association, Inc. (MEA).

3. At times, Chugach has had as many as 40 employees, the majority of whom are in management positions, including senior management, working on nothing but responses to discovery requests in this matter. I estimate that in excess of 1,600 hours of

Heller Ehman White & McAuliffe LP
550 WEST 7TH AVENUE, SUITE 1900
ANCHORAGE, ALASKA 99501-3571
TELEPHONE (907) 277-1900

1 employee time has been spent responding to the recent second round of discovery in this
2 matter.

3 4. Chugach has had to make available on very short notice, 11 employees,
4 including me, for depositions by AEG&T/HEA and MEA.

5 5. These deponents necessarily had to spend numerous hours away from their
6 normal duties in preparing for and attending their depositions.

7 6. In addition to the multiple first round discovery requests by the parties, and
8 including copies made for Chugach's use and one set to the Discovery Master, Chugach
9 has now made nearly half a million copies of pages responsive to discovery requests in this
10 matter. In total, the parties have now propounded a total of 184 interrogatories, 190
11 requests for production, and 13 requests for admission, in just the first two rounds of
12 discovery. Referring to U-96-37, the Commission stated, in Order No. 5 of this docket,
13 that it intended to limit the contentiousness of the case by limiting the number of discovery
14 requests. Yet the number of requests in this docket has already surpassed that of the 1998
15 Test Year matter. In the 1998 Test Year, there were 148 interrogatories and 115 requests
16 for production.

17 7. The discovery practice in this case has been extremely disruptive,
18 burdensome and expensive for Chugach. Employees are so involved with responding to
19 discovery requests that their time to tend to the normal business at hand has been
20 hampered. Tasks that have been negatively affected include: critical operational projects
21 such as the oversight of daily operation, maintenance, overhaul and planning for overhaul
22 of generation units (e.g., Bernice Lake Unit No. 4 and planning for a major outage and
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1 overhaul of Beluga Unit No. 8 in June), meaningful input into the Commission's current
2 regulatory dockets, and Chugach's G&T Line Loss Factor and Line Extension dockets.

3 8. Chugach suffers foregone potential revenues in the amount of \$221,799 for
4 each month that implementation of its requested final rates is delayed.

5
6 9. The volume of discovery and the resultant schedule adopted by the
7 Commission in Order 12 is harmful to Chugach in three ways:

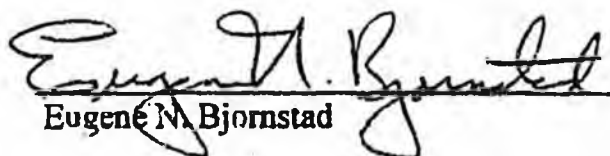
8 a. It jeopardizes obtaining a ruling from the Commission on FAS 71
9 amortization of the costs of Chugach's rate lock by calendar year end,
10 making determination of the level of Chugach's earned margins and thus
11 Chugach's accurate accounting, very difficult.

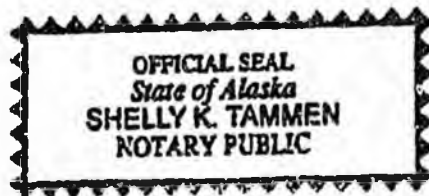
12 b. It delays collection by Chugach of the additional general rates that it had
13 forecast when it filed its case in July, 2001.

14 c. It threatens to continue to divert inordinate amounts of time of Chugach's
15 managers from important operational issues.

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18 FURTHER YOUR AFFIANT SAYETH NAUGHT.

19 The foregoing instrument was acknowledged before me this 30th day of
20 April, 2002.

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Eugene N. Bjornstad



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Notary Public for Alaska
My commission expires 9/12/05

Why Commission Reform Is Needed

A small group of Mat-Valley homeowners, in a subdivision named Crimson View, formed an association and pooled their money to build a water supply system using a common well and a DEC inspected and approved system.

A developer, who happened to have fairly substantial political influence, decided that since the water system was in place, he should be able to tap into it for expansion of an expanded phase of the subdivision he helped finance. All he needed was the help of the state utility regulatory body to accomplish the task. So the developer through his attorney, turned to the Commission in Anchorage for assistance.

A petition was filed with the Commission to declare the tiny water system a public one and therefore available for his use. The Commission then ruled that the homeowner system was public and came under their jurisdiction. The Homeowners spent the next two years in costly legal battles and political wrangling trying to save the integrity of the water system they paid for.

When DEC was asked why they approved the newly proposed water system that they had never even inspected, their answer was they don't always physically inspect water systems before approving them. Both the Commission and DEC were informed that the system the developer had installed was not up to code and that the well drilled by the homeowners would not support the new system being forced upon them.

A local legislative office got involved and determined that of the hundreds of small water systems commonly owned in Alaska, this was the only one the Commission seemed to be interested in regulating. In addition when question by staff of the legislator, the Commission declared that they could pick and choose which ones to regulate. When that legislator introduced a bill to give small water utilities the same exemption that small electric and telephone utilities now enjoy, a lobbyist in Juneau began working to kill the bill as an unofficial representative of the influential developer. The Commission maintained they had the jurisdiction to selectively regulate small water utilities.

Only after a year and a half and some fairly revealing and strong allegations of special interest and undue scrutiny by the legislative office, did the new RCA relax its involvement in the matter. This relaxation did not include a full and legal exemption by the Commission. Nor are the homeowners in Crimson view sure that the water system they installed and paid for, cannot be made available to those who might convince the Commission otherwise.

Conclusion: The RCA should not be involved in matters such as Crimson View. As a regulatory agency they have both an inherent and legal obligation for fair and impartial consideration in both the jurisdiction and application of law in all utility matters. As an organization intended for major utility regulation, the Commission should never work economic hardship and political pressure on citizens or other groups such as Crimson View.

*Jan Stanchiff
Former Chief of Staff
Rep. Scott Olson*



STATE OF ALASKA
Department Of Administration
Information Technology Group
5900 E. Tudor Road
Anchorage, AK 99507

Request For Proposals
RFP 2002-0200-3329
Date of Issue: April 16, 2002

Title and Purpose Of RFP:

Statewide Telecommunications Study Consultant

The Information Technology Group (ITG) is seeking a qualified team of experts in telecommunications to assist the State of Alaska in performing a study of the telecommunications environment in the State of Alaska.

Offerors Are Not Required to Return This Form.

IMPORTANT NOTICE: If you received this solicitation from the State's "Online Public Notice" web site, you must register with the Procurement Officer listed on this document to receive subsequent solicitations. Failure to contact the Procurement Officer may result in the rejection of your offer.

Hagen
Procurement Officer
Department Of Administration
Information Technology Group(ITG)

Andy Kline
Project Director
Department Of Administration
Information Technology Group
ITG

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SECTION ONE INTRODUCTION AND INSTRUCTIONS

1.01 Return Mailing Address, Contact Person, Telephone & Fax Numbers, Deadline for Receipt of Proposals

This Request for Proposal (RFP) and all amendments will be published on the State's "Online Public Notice" web site, accessible from the state's primary site (www.state.ak.us).

Offerors must submit one (1) Electronic copy of the proposal in Word Format to the following email address: marlys_hagen@admin.state.ak.us . Also, offerors must submit seven (7) copies of their proposal, in writing, to the procurement officer in a sealed envelope. It must be addressed as set out below.

Department of Administration
Information Technology Group
Attention: Mariys Hagen
RFP Number: 2002-0200-3329
Project Name: Telecommunications Study Consultant
5900 E. Tudor Road
Anchorage, AK 99507

Proposals must be received no later than 4:30 PM, Alaska prevailing time on May 15, 2002. Fax proposals are acceptable but not encouraged. Oral proposals are not acceptable.

An offeror's failure to submit their proposal prior to the deadline will cause their proposal to be disqualified. Late proposals or amendments will not be opened or accepted for evaluation.

PROCUREMENT OFFICER: Mariys Hagen- PHONE 907-269-5050 - FAX 907-269-5562 - TDD 907-269-5442 Email: marlys_hagen@admin.state.ak.us

PROJECT DIRECTOR: Andy Kline- PHONE 907-465-1387- FAX 907-465-3450 - TDD 907-269-5442 Email: andy_kline@admin.state.ak.us

CONTACT PERSON: Mariys Hagen- PHONE 907-269-5050 - FAX 907-269-5562 - TDD 907-269-5442 Email: marlys_hagen@admin.state.ak.us

One RFP is provided by the State. Additional RFPs may be purchased for the cost of reproduction, \$.25 per page.

1.02 Contract Term & Work Schedule

The contract term and work schedule set out herein represent the State's best estimate of the schedule that will be followed. If a component of this schedule, such as the opening date, is delayed, the rest of the schedule may be shifted by the same number of days.

The length of the contract will be from the date of award, approximately June 15, 2002, until completion, approximately Oct. 15, 2002.

The approximate contract schedule is as follows;

- [a] Issue RFP 4/16/02,
- [b] Pre-Proposal Questions Due, 4/29/02,
- [c] Answers to Pre-proposal questions provided to all prospective offerors, 5/6/02
- [d] Proposals due 5/15/02
- [e] Proposal Evaluation Committee complete evaluation by 6/1/02
- [f] State issues Notice of Intent to Award a Contract 6/2/02,
- [g] State issues contract 6/15/02,
- [h] Contract starts 6/15/02

1.03 Purpose of the Request for Proposal (RFP)

The Department of Administration, Information Technology Group (ITG) is seeking a firm with extensive national and Alaskan experience in the telecommunications field. We anticipate the need to assess the current telecommunications environment in Alaska, with attention to existing infrastructure and the regulatory environment.

The successful offeror will be a qualified consulting firm that has a proven track record of developing similar large scale studies which encompass a wide range telecommunications issues.

1.04 Budget

Department of Administration, Information Technology Group estimates a budget of up to \$300,000 for completion of this project. Proposals priced at more than \$300,000 may be considered non-responsive.

1.05 Location of Work

ITG anticipates numerous extended meetings with policy makers and other stakeholders will be required in Anchorage and Juneau and some other locations, such as Fairbanks, as required. State video and audio conference facilities will be made available for these meetings at no charge to the successful offeror.

Offerors should include in their price proposal: transportation, lodging and per diem.

1.06 Assistance to Offerors With a Disability

The State of Alaska complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, and/or special modifications to participate in this procurement should contact the Information Technology Group at one of the following numbers no later than 10 days before the date proposals are due to make any necessary arrangements.

Telephone: 907-269-5050
Fax: 907-269-5562
TDD: 907-269-5442

1.07 Required Review

Offerors should carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and objectionable material must be made in writing and received by the procurement officer at least ten days before the proposal opening. This will allow issuance of any necessary amendments. It will also help prevent the opening of a defective solicitation and exposure of offeror's proposals upon which award could not be made. Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the contracting officer, in writing, at least ten days before the time set for opening.

1.08 Questions Received Prior to Opening of Proposals

All questions must be in writing and directed to the issuing office, addressed to the procurement officer. Telephone conversations must be confirmed in writing by the interested party.

Two types of questions generally arise. One may be answered by directing the questioner to a specific section of the RFP. These questions may be answered over the telephone. Other questions may be more complex and may require a written amendment to the RFP. The procurement officer will make that decision.

All questions should be submitted in writing to the procurement officer no later than April 29, 2002. All questions will be answered on or before May 6, 2002.

1.09 Amendments

If an amendment is issued it will be provided to all known holders of the RFP.

1.10 Alternate Proposals

Offerors may only submit one proposal for evaluation.

In accordance with 2 AAC 12.830 alternate proposals (proposals that offer something different than what is asked for) will be rejected.

1.11 Right of Rejection

Offerors must comply with all of the terms of the RFP, the State Procurement Code (AS 36.30), and all applicable local, State, and federal laws, codes, and regulations. The procurement officer may reject any proposal that does not comply with all of the material and substantial terms, conditions, and performance requirements of the RFP.

Offerors may not restrict the rights of the State or qualify their proposal. If an offeror does so, the procurement officer may determine the proposal to be a non-responsive counter-offer and the proposal may be rejected.

Minor informalities that:

- ? do not affect responsiveness,
- ? are merely a matter of form or format,
- ? do not change the relative standing or otherwise prejudice other offers,
- ? do not change the meaning or scope of the RFP,
- ? are trivial, negligible, or immaterial in nature,
- ? do not reflect a material change in the work; or,
- ? do not constitute a substantial reservation against a requirement or provision,

may be waived by the procurement officer.

The State reserves the right to refrain from making an award if it determines that to be in its best interest.

1.12 State Not Responsible for Preparation Costs

The State will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal related to this RFP #2002-0200-3329.

1.13 Disclosure of Proposal Contents

All proposals and other material submitted become the property of the State of Alaska and may be returned only at the State's option. AS 09.25.110 requires public records to be open to reasonable inspection. All proposal information, including detailed price and cost information, will be held in confidence during the evaluation process and prior to the time a Notice of Intent to Award is issued. Thereafter, proposals will become public information.

Trade secrets and other proprietary data contained in proposals may be held confidential if the offeror requests, in writing, that the procurement officer does so, and if the procurement officer agrees, in writing, to do so. Material considered confidential by the offeror must be clearly identified and the offeror must include a brief statement that sets out the reasons for confidentiality.

1.14 Subcontractors

Subcontractors may be used to perform work under this contract. If an offeror intends to use subcontractors the offeror must identify in their proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

If a proposal with subcontractors is selected, the offeror must provide the following information concerning each prospective subcontractor within five working days from the date of the State's request:

- [a] complete name of the subcontractor,
- [b] complete address of the subcontractor,
- [c] type of work the subcontractor will be performing,
- [d] percentage of work the subcontractor will be providing,
- [e] evidence, as set out in the relevant section of this RFP, that the subcontractor holds a valid Alaska business license,
- [f] a written statement, signed by each proposed subcontractor, that clearly verifies that the subcontractor is committed to render the services required by the contract.

An offeror's failure to provide this information within the time set, may cause the State to consider their proposal non-responsive and reject the proposal.

The substitution of one subcontractor for another may be made only at the discretion of the project director and with prior written approval from the project director.

1.15 Joint Ventures

Joint ventures are acceptable. If submitting a proposal as a joint venture, the offeror must submit a copy of the joint venture agreement which identifies the principles involved, and their rights and responsibilities regarding performance and payment.

1.16 Offeror's Certification

By signature on their proposal, offerors certify that they comply with;

- [a] the laws of the State of Alaska,
- [b] the applicable portion of the Federal Civil Rights Act of 1964,
- [c] the Equal Employment Opportunity Act and the regulations issued thereunder by the federal government,
- [d] the Americans with Disabilities Act of 1990, and the regulations issued thereunder by the federal government,
- [e] all terms and conditions set out in this RFP,
- [f] a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury, and
- [g] that their offers will remain open and valid for at least 90 days.

By signature on their proposal, offerors also certify that programs, services, and activities provided to the general public under the resulting contract are in conformance with the Americans with Disabilities Act of 1990, and the regulations issued thereunder by the federal government.

If any offeror fails to comply with [a] through [g] of this paragraph, the State reserves the right to disregard the proposal, terminate the contract, or consider the contractor in default.

1.17 Conflict of Interest

Each proposal shall include a statement indicating whether or not the firm or any individuals working on the contract has a possible conflict of interest (e.g., employed by the State of Alaska, any association with any telecommunications company that could affect the objectivity of those individuals) and, if so, the nature of that conflict. The Commissioner, Department of Administration, reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the program to be developed by the offeror. The Commissioner's determination regarding any questions of conflict of interest shall be final.

1.18 Right to Inspect Place of Business

At reasonable times, the State may inspect those areas of the contractor's place of business that are related to the performance of a contract. If the State makes such an inspection, the contractor must provide reasonable assistance.

1.19 Solicitation Advertising

Public notice has been provided in accordance with 2 AAC 12.220.

1.20 News Releases

News releases related to this RFP will not be made without prior approval of the Commissioner of Administration and then only in coordination with the project director.

1.21 Assignment

Per 2 AAC 12.480, the contractor may not transfer or assign any portion of the contract without prior written approval from the chief procurement officer or the head of the purchasing agency.

1.22 Disputes

Any dispute arising out of this agreement will be resolved under the laws of Alaska. Any appeal of an administrative order or any original action to enforce any provision of this agreement or to obtain relief from or remedy in connection with this agreement may be brought only in the superior court for the third Judicial District of Alaska.

1.23 Severability

If any provision of the contract or agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and, the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular provision held to be invalid.

1.24 Federal Requirements

The offeror must identify all known federal requirements that apply to the proposal, the evaluation, or the contract.

SECTION TWO

STANDARD PROPOSAL INFORMATION

2.01 Authorized Signature

All proposals must be signed by an individual authorized to bind the offeror to the provisions of the RFP. Proposals must remain open and valid for at least ninety (90) days from the opening date.

2.02 Pre-proposal Conference

The State is not anticipating having a pre-proposal conference, but reserves the right to hold one if we feel the need arises. All questions about the RFP may be submitted to the procurement officer in writing on or April 29, 2002 and will be answered on or before May 6, 2002 .

2.03 Site Inspection

The State may conduct on-site visits to evaluate the offeror's capacity to perform the contract. Offerors must agree, at risk of being found non-responsive and having their proposal rejected, to provide the State reasonable access to relevant portions of their work sites. Site inspection will be made by individuals designated by the procurement officer at the State's expense.

2.04 Amendments to Proposals

Amendments to or withdrawals of proposals will only be allowed if acceptable requests are received prior to the deadline set for receipt of proposals. No amendments or withdrawals will be accepted after the deadline unless they are in response to the State's request in accordance with 2 AAC 12.290.

2.05 Supplemental Terms and Conditions

Proposals including supplemental terms and conditions will be accepted, but supplemental conditions that conflict with those contained in this RFP or that diminish the State's rights under any contract resulting from the RFP will be considered null and void. The State is not responsible for identifying conflicting supplemental terms and conditions before issuing a contract award. After award of contract:

- [a] if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and
- [b] if the State's rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or condition will be considered null and void.

2.06 Discussions with Offerors

The State may conduct discussions with offerors for the purpose of clarification in accordance with AS 36.30.240 and 2 AAC 12.290. The purpose of these discussions will be to ensure full understanding of the requirements of the RFP and proposal. Discussions will be limited to specific sections of the RFP identified by the procurement officer. Discussions will only be held with offerors who have submitted a proposal deemed reasonably susceptible for award by the procurement officer. Discussions, if held, will be after initial evaluation of proposals by the PEC. If modifications are made as a result of these discussions they will be put in writing. Following discussions, the procurement officer may set a time for best and final proposal submissions from those offerors with whom

discussions were held. Proposals may be reevaluated after receipt of best and final proposal submissions. Reevaluation will be limited to the specific sections of the RFP opened to discussion by the procurement officer.

Offerors with a disability needing accommodation should contact the procurement officer prior to the date set for discussions so that reasonable accommodation can be made.

2.07 Minimum Requirements and Restrictions

In order for their offers to be considered responsive, offerors must meet these minimum prior experience requirements:

1. Offerors must have had at least one (1) prior engagement similar in scope to that required by this RFP and completed within the last two years.
2. Offerors must have a minimum of 10 years of recent experience in the telecommunications industry in an environment comparable to Alaska's environment.

An offeror's failure to meet these minimum prior experience requirements will cause their proposal to be considered non-responsive and their proposal will be rejected.

2.08 Evaluation of Proposals

The procurement officer, or an evaluation committee made up of the procurement officer and at least two State employees, will evaluate proposals. The evaluation will be based solely on the evaluation factors set out in section seven of this RFP.

2.09 Vendor Tax ID

A valid Vendor Tax ID must be submitted to the issuing office with the proposal or within five days of the State's request.

2.10 F.O.B. Point

N/A

2.11 Alaska Business License & Other Required Licenses

At the time the proposals are opened, all offerors must hold a valid Alaska business license and any necessary applicable professional licenses required by Alaska Statute. Offerors should contact the Department of Community and Economic Development, Division of Occupational Licensing, P.O. Box 110806, Juneau, Alaska 99811-0806, for information on these licenses. Offerors must submit evidence of a valid Alaska business license with their proposal. An offeror's failure to submit this evidence with their proposal will cause their proposal to be determined non-responsive. Acceptable evidence that the offeror possesses a valid Alaska business license may consist of any one of the following:

- [a] copy of an Alaska business license;
- [b] certification on the proposal that the offeror has a valid Alaska business license and has included the license number in the proposal;
- [c] a canceled check for the Alaska business license fee;
- [d] a copy of the Alaska business license application with a receipt stamp from the State's occupational licensing office; or

(e) a sworn and notarized affidavit that the offeror has applied and paid for the Alaska business license.

2.12 Application of Preferences

Certain preferences apply to all contracts for professional services, regardless of their dollar value. The following sections contain excerpts from the relevant statutes and codes; explains when they apply; and, provide examples of how to calculate the preferences.

2.13 5% Alaska Bidder Preference 2 AAC 12.260. & AS 36.30.170

An Alaska Bidder Preference of five percent will be applied prior to evaluation. The preference will be given to a person who:

- (a) holds a current Alaska business license;
- (b) submits a proposal for goods or services under the name on the Alaska business license;
- (c) has maintained a place of business within the state staffed by the offeror, or an employee of the offeror, for a period of six months immediately preceding the date of the proposal;
- (d) is incorporated or qualified to do business under the laws of the State, is a sole proprietorship, and the proprietor is a resident of the state or is a partnership, and all partners are residents of the state;
- (e) if a joint venture, is composed entirely of entities that qualify under (a)-(d) of this subsection.

Alaska Bidder Preference Affidavit

In order to receive the Alaska Bidder Preference, proposals must include an affidavit certifying that the offeror is eligible to receive the Alaska Bidder Preference.

EXAMPLE

Sample Application 5% Alaska Bidder Preference

[STEP 1]

List the raw proposal prices and identify those eligible for preference.

| | | | |
|------------|---|---------------------|----------|
| Offeror #1 | - | Non-Alaskan Offeror | \$40,000 |
| Offeror #2 | - | Alaskan Offeror | \$45,000 |
| Offeror #3 | - | Alaskan Offeror | \$50,000 |

[STEP 2]

Calculate the amount of the 5% Alaska Bidder Preference by multiplying the Alaskan proposals by .05 and deducting that amount from the price(s).

| | | | |
|------------|---|---------------------------------|---------------------------------|
| Offeror #2 | - | $\$45,000 \times .05 = \$2,250$ | $\$45,000 - \$2,250 = \$42,750$ |
| Offeror #3 | - | $\$50,000 \times .05 = \$2,500$ | $\$50,000 - \$2,500 = \$47,500$ |

[STEP 3]

List all proposal prices, adjusted where appropriate, by the application of the Alaska Bidder Preference.

| | | | |
|------------|---|---------------------|----------|
| Offeror #1 | - | Non-Alaskan Offeror | \$40,000 |
|------------|---|---------------------|----------|

| | | | |
|------------|---|-----------------|----------|
| Offeror #2 | - | Alaskan Offeror | \$42,750 |
| Offeror #3 | - | Alaskan Offeror | \$47,500 |

[STEP 4]

Identify the lowest priced proposal. In the example, Offeror #1 (\$40,000) is lowest and would get the benefits allotted to the lowest priced proposal, provided it is a responsive and responsible proposal.

**2.14 15% Employment Program Preference
AS 36.30.250. & AS 36.30.170**

If an offeror

- ? qualifies for the Alaska Bidder Preference,
- ? is offering services through a qualified employment program; and,
- ? offers a proposal that is not more than fifteen percent higher than the lowest proposal,

the procurement officer will award the maximum number of points allocated for cost to that offeror.

EXAMPLE

15% Employment Program Preference

[STEP 1]

List the raw proposal prices and identify those eligible for preference.

| | | | |
|------------|---|--|----------|
| Offeror #1 | - | Non-Alaskan Offeror
No Employment Program | \$40,000 |
| Offeror #2 | - | Alaskan Offeror
No Employment Program | \$45,000 |
| Offeror #3 | - | Alaskan Offeror
With Employment Program | \$50,000 |

[STEP 2]

Calculate the amount of the 5% Alaska Bidder Preference by multiplying the Alaskan proposals by .05 and deducting that amount from the price(s).

| | | | |
|------------|---|---------------------------------|---------------------------------|
| Offeror #2 | - | $\$45,000 \times .05 = \$2,250$ | $\$45,000 - \$2,250 = \$42,750$ |
| Offeror #3 | - | $\$50,000 \times .05 = \$2,500$ | $\$50,000 - \$2,500 = \$47,500$ |

[STEP 3]

List all proposal prices, adjusted where appropriate, by the application of the Alaska Bidder Preference.

| | | | |
|------------|---|--|----------|
| Offeror #1 | - | Non-Alaskan Offeror
No Employment Program | \$40,000 |
| Offeror #2 | - | Alaskan Offeror
No Employment Program | \$42,750 |
| Offeror #3 | - | Alaskan Offeror
With Employment Program | \$47,500 |

[STEP 4]

Calculate the amount of the 15% Employment Program Preference by multiplying the lowest priced proposal by .15.

Offeror #1 - \$40,000 x .15 = \$6,000

[STEP 5]

List the adjusted proposal prices by the application of the Alaska Bidder Preference, and where appropriate, deduct the Employment Program Preference.

| | | |
|--------------|--|-------------------------------|
| Offeror #1 - | Non-Alaskan Offeror
No Employment Program | \$40,000 |
| Offeror #2 - | Alaskan Offeror
No Employment Program | \$42,750 |
| Offeror #3 - | Alaskan Offeror
With Employment Program | \$47,500 - \$6,000 = \$41,500 |

[STEP 6]

Identify the lowest priced proposal. In the example, Offeror #1 (\$40,000) is lowest and would get the benefits allotted to the lowest priced proposal, provided it is a responsive and responsible proposal.

2.15 10% Alaskans with Disabilities Preference AS 36.30.250. & AS 36.30.170

If an offeror

- ? qualifies for the Alaska Bidder Preference;
- ? is a qualifying entity as defined in AS 36.30.170(e); and
- ? offers a proposal that is not more than ten percent higher than the lowest proposal,

the procurement officer will award the maximum number of points allocated for cost to that offeror.

EXAMPLE

10% Alaskans With Disabilities Preference

[STEP 1]

List the raw proposal prices and identify those eligible for preference.

| | | |
|--------------|-------------------------------------|----------|
| Offeror #1 - | Non-Alaskan Offeror
Not Disabled | \$40,000 |
| Offeror #2 - | Alaskan Offeror
Not Disabled | \$45,000 |
| Offeror #3 - | Alaskan Offeror
Disabled Alaskan | \$50,000 |

[STEP 2]

Calculate the amount of the 5% Alaska Bidder Preference by multiplying the Alaskan proposals by .05 and deducting that amount from the price(s).



Offeror #2 - $\$45,000 \times .05 = \$2,250$ $\$45,000 - \$2,250 = \$42,750$

Offeror #3 - $\$50,000 \times .05 = \$2,500$ $\$50,000 - \$2,500 = \$47,500$

[STEP 3]

List all proposal prices, adjusted where appropriate, by the application of the Alaska Bidder Preference.

| | | |
|--------------|-------------------------------------|----------|
| Offeror #1 - | Non-Alaskan Offeror
Not Disabled | \$40,000 |
| Offeror #2 - | Alaskan Offeror
Not Disabled | \$42,750 |
| Offeror #3 - | Alaskan Offeror
Disabled Alaskan | \$47,500 |

[STEP 4]

Calculate the amount of the 10% Alaskans with Disabilities Preference by multiplying the lowest priced proposal by .10.

Offeror #1 - $\$40,000 \times .10 = \$4,000$

[STEP 5]

List all proposal prices, adjusted where appropriate, by the application of the Alaska Bidder Preference, and where appropriate, deduct the Alaskans with Disabilities Preference.

| | | |
|--------------|-------------------------------------|---------------------------------|
| Offeror #1 - | Non-Alaskan Offeror
Not Disabled | \$40,000 |
| Offeror #2 - | Alaskan Offeror
Not Disabled | \$42,750 |
| Offeror #3 - | Alaskan Offeror
Disabled Alaskan | $\$47,500 - \$4,000 = \$43,500$ |

[STEP 6]

Identify the lowest priced proposal. In the example, Offeror #1 (\$40,000) is lowest and would get the benefits allotted to the lowest priced proposal, provided it is a responsive and responsible proposal.

**2.16 10% Employers of People with Disabilities Preference
 AS 36.30.250. & AS 36.30.170**

If an offeror

- ? qualifies for the Alaska Bidder Preference;
- ? employs a staff that is made up of fifty percent or more people with disabilities; and,
- ? offers a proposal that is not more than ten percent higher than the lowest proposal,

the procurement officer will award the maximum number of points allocated for cost to that offeror.

EXAMPLE

10% Employers Of People With Disabilities Preference

[STEP 1]

List the raw proposal prices and identify those eligible for preference.

| | | |
|--------------|---|----------|
| Offeror #1 - | Non-Alaskan Offeror
Not Employer of Disabled | \$40,000 |
| Offeror #2 - | Alaskan Offeror
Not Employer of Disabled | \$45,000 |
| Offeror #3 - | Alaskan Offeror
Employer of Disabled | \$50,000 |

[STEP 2]

Calculate the amount of the 5% Alaska Bidder Preference by multiplying the Alaskan proposals by .05 and deducting that amount from the price(s).

| | | |
|--------------|---------------------------------|---------------------------------|
| Offeror #2 - | $\$45,000 \times .05 = \$2,250$ | $\$45,000 - \$2,250 = \$42,750$ |
| Offeror #3 - | $\$50,000 \times .05 = \$2,500$ | $\$50,000 - \$2,500 = \$47,500$ |

[STEP 3]

List all proposal prices, adjusted where appropriate by the application of the Alaska Bidder Preference.

| | | |
|--------------|---|----------|
| Offeror #1 - | Non-Alaskan Offeror
Not Employer of Disabled | \$40,000 |
| Offeror #2 - | Alaskan Offeror
Not Employer of Disabled | \$42,750 |
| Offeror #3 - | Alaskan Offeror
Employer of Disabled | \$47,500 |

[STEP 4]

Calculate the amount of the 10% Employers of People with Disabilities Preference by multiplying the lowest priced proposal by .10.

| | |
|--------------|---------------------------------|
| Offeror #1 - | $\$40,000 \times .10 = \$4,000$ |
|--------------|---------------------------------|

[STEP 5]

List all proposal prices, adjusted where appropriate, by the application of the Alaska Bidder Preference, and where appropriate, deduct the Employers of People with Disabilities Preference.

| | | |
|--------------|---|---------------------------------|
| Offeror #1 - | Non-Alaskan Offeror
Not Employer of Disabled | \$40,000 |
| Offeror #2 - | Alaskan Offeror
Not Employer of Disabled | \$42,750 |
| Offeror #3 - | Alaskan Offeror
Employer of Disabled | $\$47,500 - \$4,000 = \$43,500$ |

[STEP 6]

Identify the lowest priced proposal. In the example, Offeror #1(\$40,000) is lowest and would get the benefits allotted to the lowest priced proposal, provided, it is a responsive and responsible proposal.

2.17 Qualifying for Disability Related Preferences AS 36.30.170.

The Division of Vocational Rehabilitation in the Department of Education keeps a list of qualified employment programs, a list of entities that qualify under 36.30.170(e), and a list of persons who qualify as employers with 50 percent or more of their employees being persons with disabilities. A person or entity must be on this list at the time the bid is opened in order to qualify for a preference under this section.

As evidence of an individual's or a business' right to a certain preference, the Division of Vocational Rehabilitation will issue a certification letter. To take advantage of the employment program or disabilities preferences described above, an individual or business must be on the appropriate Division of Vocational Rehabilitation list at the time the bid is opened, and must provide the procurement officer a copy of their certification letter. Bidders must attach a copy of their certification letter to their bid. The bidder's failure to provide the certification letter mentioned above with their bid, will cause the State to disallow the preference.

2.18 Formula used to Convert Cost to Points AS 36.30.250 & 2 AAC 12.260.

The distribution of points based on cost will be determined as set out in 2 AAC 12.260 (d). The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined through the method set out below.

EXAMPLE

Formula Used To Convert Cost To Points

[STEP 1]

List the raw proposal prices and identify those eligible for preference.

| | | | |
|------------|---|---------------------|----------|
| Offeror #1 | - | Non-Alaskan Offeror | \$40,000 |
| Offeror #2 | - | Alaskan Offeror | \$45,000 |
| Offeror #3 | - | Alaskan Offeror | \$50,000 |

[STEP 2]

Calculate the amount of the 5% Alaska Bidder Preference by multiplying the Alaskan proposals by .05 and deducting that amount from the price(s).

| | | | |
|------------|---|---------------------------------|---------------------------------|
| Offeror #2 | - | $\$45,000 \times .05 = \$2,250$ | $\$45,000 - \$2,250 = \$42,750$ |
| Offeror #3 | - | $\$50,000 \times .05 = \$2,500$ | $\$50,000 - \$2,500 = \$47,500$ |

[STEP 3]

List all proposal prices, adjusted where appropriate, by the application of the Alaska Bidder Preference.

| | | | |
|------------|---|---------------------|----------|
| Offeror #1 | - | Non-Alaskan Offeror | \$40,000 |
| Offeror #2 | - | Alaskan Offeror | \$42,750 |



Offeror #3 - Alaskan Offeror \$47,500

[STEP 4]

Convert cost to points using this formula.

$$\frac{[(\text{Price of Lowest Cost Proposal}) \times (\text{Maximum Points for Cost})]}{(\text{Cost of Each Higher Priced Proposal})} = \text{POINTS}$$

The RFP allotted 40% (40 points) of the total of 100 points for cost.

Offeror #1 receives 40 points.

The reason they receive that amount is because the lowest cost proposal, in this case \$40,000, receives the maximum number of points allocated to cost, 40 points.

Offeror #2 receives 37.4 points.

$$\begin{array}{rclclcl} \$40,000 & \times & 40 & = & 1,600,000 & ? & 42,750 & = & 37.4 \\ \text{LOWEST COST} & & \text{MAX POINTS} & & & & \text{OFFEROR \#2} & & \text{POINTS} \\ & & & & & & \text{ADJUSTED BY} & & \\ & & & & & & \text{ALASKA BIDDER} & & \\ & & & & & & \text{PREFERENCE} & & \end{array}$$

Offeror #3 receives 33.7 points.

$$\begin{array}{rclclcl} \$40,000 & \times & 40 & = & 1,600,000 & ? & 47,750 & = & 33.7 \\ \text{LOWEST COST} & & \text{MAX POINTS} & & & & \text{OFFEROR \#3} & & \text{POINTS} \\ & & & & & & \text{ADJUSTED BY} & & \\ & & & & & & \text{ALASKA BIDDER} & & \\ & & & & & & \text{PREFERENCE} & & \end{array}$$

**2.19 Alaska Offeror's Preference
AS 36.30.250. & 2 AAC 12.260.**

2 AAC 12.260 (e) provides Alaska offerors a 10 percent overall evaluation point preference. Alaska Bidders, as defined in AS 36.30.170(b), are eligible for the preference. This preference will be added to the overall evaluation score of each Alaska offeror. Each Alaska offeror will receive 10% of the total available points added to their evaluation score as a preference.

EXAMPLE

Alaska Offeror's Preference

[STEP 1]

Determine the number of points available to Alaskan offerors under the preference.

Total number of points available - 100 Points

$$\begin{array}{rclcl} 100 & \times & 10\% & = & 10 \\ \text{Total Points} & & \text{Alaska Offerors} & & \text{Number of Points} \\ \text{Available} & & \text{Percentage Preference} & & \text{Given to Alaska Offerors} \\ & & & & \text{Under the Preference} \end{array}$$

[STEP 2]

Add the preference points to the Alaskan offers. There are three offerors: Offeror #1, Offeror #2, and Offeror #3. Offeror #2 and Offeror #3 are eligible for the Alaska Preference. For the purpose of this example presume that all of the proposals have been completely evaluated based on the evaluation criteria in the RFP. Their scores at this point are:

Offeror #1 - 89 points
Offeror #2 - 80 points
Offeror #3 - 88 points

Offeror #2 and Offeror #3 each receive 10 additional points. The final scores for all of the offers are:

Offeror #1 - 89 points
Offeror #2 - 90 points
Offeror #3 - 98 points

Offeror #3 is awarded the contract.

2.20 Contract Negotiations

After completion of the evaluation, including any discussions held with offerors during the evaluation, the State may elect to initiate contract negotiations. The option of whether or not to initiate contract negotiations rests solely with the State. If the State elects to initiate contract negotiations, these negotiations cannot involve changes in the State's requirements or the contractor's proposal which would, by their nature, affect the basis of the source selection and the competition previously conducted. If contract negotiations are commenced, they may be held in Anchorage, Alaska.

The offeror will be responsible for their travel and per diem expenses.

2.21 Failure to Negotiate

If the selected offeror

- 1 fails to provide the information required to begin negotiations in a timely manner; or
- 2 fails to negotiate in good faith; or
- 3 indicates they cannot perform the contract within the budgeted funds available for the project; or
- 4 the contractor and the State, after a good faith effort, simply cannot come to terms.

the State may terminate negotiations with the offeror initially selected and commence negotiations with the next highest ranked offeror.

2.22 Notice of Intent to Award (NIA) —Offeror Notification of Selection

After the completion of contract negotiations the procurement officer will issue a written Notice of Intent to Award (NIA) and send copies to all offerors. The NIA will set out the names and addresses of all offerors and identify the proposal selected for award. The scores and placement of other offerors will not be part of the NIA.

2.23 Protest

AS 36.30.560 provides that an interested party may protest the content of a solicitation (RFP).

An interested party is defined in 2 AAC 12.990(a)(7) as "an actual or prospective bidder or offeror whose economic interest might be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract."

If an interested party wishes to protest the content of a solicitation, the protest must be received, in writing, by the procurement officer at least ten days prior to the deadline for receipt of proposals.

AS 36.30.560 also provides that an interested party may protest the award of a contract or the proposed award of a contract.

If an offeror wishes to protest the award of a contract or the proposed award of a contract, the protest must be received in writing by the procurement officer within ten days of the date the Notice of Intent to Award the contract is issued.

A protester must have submitted a proposal in order to have sufficient standing to protest the proposed award of a contract. Protests must include the following information:

- [a] the name, address, and telephone number of the protester,
- [b] the signature of the protester or the protester's representative,
- [c] identification of the contracting agency and the solicitation or contract at issue,
- [d] a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents, and
- [e] the form of relief requested.

Protests filed by telex or telegram are not acceptable because they do not contain a signature. FAX copies containing a signature are acceptable.

The procurement officer will issue a written response to the protest. The response will set out the procurement officer's decision and contain the basis of the decision within the statutory time limit in AS 36.30.580. A copy of the decision will be furnished to the protester by certified mail, FAX or another method that provides evidence of receipt.

All offerors will be notified of any protests. The review of protests, decisions of the procurement officer, appeals, and hearings, will be conducted in accordance with the State Procurement Code (AS 36.30), Article 9, "Legal and Contractual Remedies".

SECTION THREE STANDARD CONTRACT INFORMATION

3.01 Contract Type

This contract is a firm fixed price contract.

3.02 Contract Approval

This RFP does not, by itself, obligate the State. The State's obligation will commence when the contract is approved by the Commissioner of the Department of Administration, the commissioner's designate, or the procurement officer. Upon written notice to the contractor, the State may set a different starting date for the contract. The State will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the State.

3.03 Standard Contract Provisions

The contractor will be required to sign and submit the attached State's Standard Agreement Form for Professional Services Contracts (form 02-093/Appendix A). The contractor must comply with the contract provisions set out in this attachment. No alteration of these provisions will be permitted without prior written approval from the Department of Law. If an offeror objects to any of the provisions in Appendix A, they must set out their objections in their proposal.

3.04 Proposal as a Part of the Contract

Part or all of this RFP and the successful proposal may be incorporated into the contract.

3.05 Additional Terms and Conditions

The State reserves the right to add terms and conditions during contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

3.06 Insurance Requirements

The successful offeror must provide proof of workers' compensation insurance prior to contract approval.

The successful offeror must secure the insurance coverage required by the State. The coverage must be satisfactory to the Division of Risk Management. An offeror's failure to provide evidence of such insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

Offerors must review form Appendix B1 (attached) for details on required coverages.

3.07 Bid Bond - Performance Bond - Surety Deposit

N/A

3.08 Contract Funding

Payment for the contract is subject to funds already appropriated and identified.

3.09 Proposed Payment Procedures

The State will make payments based on a negotiated payment schedule. Each billing must consist of an invoice and progress report. No payment will be made until the progress report and invoice have been approved by the project director.

3.10 Contract Payment

No payment will be made until the contract is approved by the Commissioner of the Department of Administration, or the commissioner's designee. Under no conditions will the State be liable for the payment of any interest charges associated with the cost of the contract.

The State is not responsible for and will not pay local, state, or federal taxes. All costs associated with the contract must be stated in U.S. currency.

3.11 Informal Debriefing

When the contract is completed, an informal debriefing may be performed at the discretion of the project director. If performed, the scope of the debriefing will be limited to the work performed by the contractor.

3.12 Contract Personnel

Any change of the project team members named in the proposal must be approved, in advance and in writing, by the project director. Personnel changes that are not approved by the State may be grounds for the State to terminate the contract.

3.13 Inspection & Modification - Reimbursement for Unacceptable Deliverables

The contractor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the project director. The State may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. Should the project director determine that corrections or modifications are necessary in order to accomplish its intent, the project director may direct the contractor to make such changes. The contractor will not unreasonably withhold such changes.

Substantial failure of the contractor to perform the contract may cause the State to terminate the contract. In this event, the State may require the contractor to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

3.14 Termination for Default

If the project director determines that the contractor has refused to perform the work or has failed to perform the work with such diligence as to ensure its timely and accurate completion, the State may, by providing written notice to the contractor, terminate the contractor's right to proceed with part or all of the remaining work.

This clause does not restrict the State's termination rights under the contract provisions of Appendix A (attached).

3.15 Liquidated Damages

N/A

3.16 Contract Changes - Unanticipated Amendments

During the course of this contract, the contractor may be required to perform additional work. That work will be within the general scope of the initial contract. When additional work is required, the project director will provide the contractor a written description of the additional work and request the contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work. Cost and pricing data must be provided to justify the cost of such amendments per AS 36.30.400.

The contractor will not commence additional work until the project director has secured any required State approvals necessary for the amendment and issued a written contract amendment, approved by the Commissioner of the Department of Administration; the Commissioner's designee.

3.17 Contract Invalidation

If any provision of this contract is found to be invalid, such invalidation will not be construed to invalidate the entire contract.

SECTION FOUR BACKGROUND INFORMATION

4.01 Background Information

The state of Alaska's landmass (over 586,412 square miles) is equivalent to one-fifth the size of the lower 48 states combined. Spanning a distance of 1,400 miles north to south, and 2,700 miles east to west, Alaska covers an extensive variety of terrain ranging from temperate island rain forests to desert-like arctic tundra. Spread across the state's vast expanse of land, Alaska's 615,000 plus citizens inhabit communities that vary from the State's largest city, Anchorage, with a population of over 250,000, to small towns and villages, many with populations of less than fifty. Only 44 of the State's 277 communities are connected by roadways. Harsh winter weather conditions routinely cut-off communities from air, sea and land transportation. Reliable cost-effective telecommunications are a necessity, not a convenience. Low population density combined with harsh weather conditions, extreme terrain, and a lack of transportation infrastructure has made it difficult to develop comprehensive, reliable and affordable telecommunication services. Telecommunications services are critical to maintaining the often-precarious lines of communications that tie communities in Alaska together.

The telecommunications industry is undergoing significant change. Driven by diverse forces – technology, federal law and regulation and consumer demand – service providers confront substantial operational organizational and financial challenges.

Policy makers in Alaska and all over the world are struggling with what the appropriate role for government is in light of industry convergence, globalization, and legislative changes. The Telecommunications Act of 1996 (Act) sought to encourage innovations in the telecommunications industry through market forces rather than through the historic paradigm of heavily regulated monopolies. The Act recognized that market forces may operate differently in less densely populated areas, and imposed additional responsibilities on state regulators in sparsely populated states. Further, the Act pre-empted the jurisdiction of state and local governments to limit the ability of any entity to provide telecommunications services. In this environment, the state of Alaska seeks guidance on what policies it should implement to make sure that all Alaskans have access to a modern telecommunications services delivered by a healthy telecommunications industry.

SECTION FIVE SCOPE OF WORK

5.01 Scope of Work

Project Objective:

The primary objective of this RFP is to contract with a firm that will provide the state with a set of recommendations, based on best practices nationwide, for a statewide framework that promotes a cost effective delivery of telecommunications services throughout Alaska. These recommendations should meet the needs of both urban and rural residents, take into account federal laws, and address the following policy goals:

- 1) Universal service of basic and advanced telecommunications services in both rural and urban areas of the state.
- 2) Innovative and cost effective deployment of publicly available advanced telecommunications infrastructure that can be shared by federal, state, and local and tribal government entities, and privately owned business to deliver services to all Alaskans.
- 3) An appropriate level of government involvement to ensure competitive neutrality and consistent service delivery to consumers.
- 4) Appropriate levels of regulation for the evolving telecommunications industry to encourage the industry to work towards these policy goals.
- 5) Consistent actions by the legislature, regulatory agencies and executive branches of the government to promote the goals of universal service, infrastructure development, competitive neutrality and appropriate levels of regulation.
- 6) Implementation of the Telecommunications Act of 1996 (Act) in Alaska in a manner that addresses its unique characteristics and needs.

ITG expects that in fulfilling this scope of work, the successful bidder will conduct a number of interviews with various stakeholders in Alaska.

5.02 Deliverables

The contractor will be required to provide the following deliverables:

- [a] general design document and Steering Committee briefing including an initial outline of final Study Document, outline of methodology and narrative of what information needs to be collected, who needs to participate in the study, and general requirements needed to fulfill terms of the contract. Due July 15, 2002.
- [b] documentation of stakeholder interview findings. Due Sept. 15, 2002.
- [c] draft Telecommunications Study document and Steering Committee briefing due Sept. 15, 2002.
- [d] final Telecommunications Study document and Steering Committee briefing due Oct. 15, 2002
- [e] document and Steering Committee briefing specifically defining opportunities for the State of Alaska with regards to the Telecommunications Act of 1996. Due Oct. 15, 2002.

Briefings may be conducted via teleconferencing if necessary and more efficient.

5.03 Work Schedule

The contract term and work schedule set out herein represent the State's desired schedule that will be followed. If a component of this schedule, such as the opening date, is delayed, the rest of the schedule may be shifted by the same number of days. However, the final schedule will be negotiated with the winning vendor.

The length of the contract will be from the date of award, approximately June 15, 2002, until completion, approximately October 15, 2002.

The approximate contract schedule is as follows:

SAMPLE WORK SCHEDULE:

- [a] State award contract 6/15/2002
- [b] Contractor provides final Planning document 10/15/02

5.04 Responsibilities of the Contractor

5.04.01 Project Management - The contractor shall provide project management for the duration of the contract. Project management activities shall include: establish and administer controls to insure that the quality of deliverables are acceptable to the State, provide and regularly update a detailed work plan and schedule; monitor project activities to ensure project schedules are met; provide weekly and monthly status reports; and participate in State meetings that are project related.

5.04.02 Preparation of Deliverables - The contractor is responsible for all aspects of deliverable preparation. The contractor is responsible for writing, printing, and delivery of draft and final Telecommunications Study documents. The contractor must provide draft copies of each written deliverable to the State's Project Manager prior to publishing a final product. The State will review the draft material as expeditiously as possible and return comments. A final project deliverable shall not be published until the State approves a draft version as ready for final publication. The contractor must provide a minimum of three (3) copies of draft and final documents. All documents must be submitted in an electronic format (Microsoft Word 97) in addition to a printed version.

5.05 Responsibilities of the State

5.05.01 Assign State Project Manager - The State will assign a Project Manager who will coordinate project activities with the Contractor. The State Project Manager will arrange specific State resources and State personnel needed to fulfill contract requirements. The State Project Manager will receive all project deliverables and coordinate their review and final acceptance by the State.

5.05.02 Provide State Resources as follows - Any information upon request from the contractor, if it's readily available, suitable work space as needed, audio and video conference facilities.

SECTION SIX PROPOSAL FORMAT AND CONTENT

6.01 General Instructions

The State discourages overly lengthy and costly proposals, however, in order for the State to evaluate proposals fairly and completely, offerors should follow the format set out herein and provide all of the information requested.

Proposals must confirm that the firm will comply with all of the provisions in this RFP, and if applicable, provide notice that the firm qualifies as an Alaskan bidder. Proposals must be signed by a company officer empowered to bind the company. An offeror's failure to include these items in the proposal may cause the proposal to be determined to be non-responsive and the proposal may be rejected.

So that the State can fairly and expeditiously evaluate all proposals, a uniform format has been established. The minimum required content for each section is described in subsequent paragraphs of this section.

The proposal shall be:

- ? Seven (7) copies submitted and labeled as specified in section 1.01
- ? One (1) electronic copy sent to marlys_hagen@admin.state.ak.us
- ? Split into two parts - a technical proposal and cost proposal; and
- ? Submitted in two sealed packages (one sealed package for the technical proposal and one sealed package for the cost proposal), marked clearly on the outside of the package with "Technical Proposal" or "Cost Proposal."

6.02 Technical Proposal Format

6.02.01 Introduction

Cover Letter: A cover letter on the offeror's letterhead signed by the responsible official in the organization certifying the accuracy of all information in the proposal and certifying that the proposal will remain valid for at least 90 days from the date it is submitted. The letter should also include the offeror's valid Alaska Business License Number.

Subcontractor and Joint Venture Information: If any portion of the work is to be subcontracted, or if the offeror is a joint venture, provide information as requested in sections 1.14 and 1.15 as applicable.

Conflict of Interest: Provide here a statement indicating whether or not the firm or any individuals who may work on the contract have a possible conflict of interest. See section 1.17 of this RFP.

Affidavit of Alaska Bidder Preference: If applicable, provide here an affidavit of the firm's qualification for Alaska Vendor/Offeror preference as outlined in section 2.13 of this RFP.

6.02.02 Understanding of the Project:

Offerors must provide a comprehensive narrative statement that illustrates their understanding of the requirements of the project and the project schedule. At a minimum the proposal shall:

Provide a statement, which demonstrates a thorough understanding of the intent of this RFP and resultant contract, the objectives and scope of the proposed contract. Offerors must demonstrate an understanding of the issues involved and any constraints that may affect the performance of services under any resultant contract. Please do not simply restate information presented in this RFP. The successful offeror will be able to demonstrate an understanding of the challenge facing the State of Alaska considerably beyond information provided here.

6.02.03 Management Approach & Project Methodology

Offerors must provide a complete description of how they intend to perform and manage the delivery of services. Since the consulting team we are seeking will likely be relatively small, each member of the team will play a critical role in the project's success. At a minimum, the proposal shall:

- 1 Describe the organization of the proposed team and each key individual assigned. Include individual staff responsibilities with lines of authority and interfaces with State staff.
- 2 Describe the proposed project management and control methodology. Include management and administrative procedures used in ensuring work is performed on a timely, cost effective and quality basis. Provide sufficient detail to demonstrate expertise in use of proven methodologies.
- 3 Describe the general work plan and proposed schedule that will be used to perform the work required.

6.02.04 Offeror Experience and Qualifications

Corporate Background: Offerors must explain why their firm is particularly suited to fulfill the requirements of this RFP. Also, include the firm's primary business, years of operation, number of employees, ownership (public company, partnership, subsidiary, etc.), years providing professional consulting services as requested in this RFP. Also provide this information for any proposed subcontractors and/or all joint venture partners, as applicable.

Relevant Experience: Offerors must describe previous engagements that the firm has performed within the last 5 years that demonstrate the firm's capability to perform the services required in this RFP; explain why these engagements are of a similar nature, size, and complexity as required by the State. Also include references of clients for whom similar work has been performed. Offerors must also describe the firm's experience in and knowledge of: (1) The Alaskan telecommunications environment including technological, geographic, regulatory, political and cultural factors, (2) project management techniques in studying the telecommunications environment in Alaska, and (3) experience in assisting other organizations (public and private sector) in performing similar studies to that contemplated by the State of Alaska.

6.02.05 Individual / Key Personnel Experience and Qualifications

The offeror must provide a list of key individuals who will perform work on this project along with an estimated number of hours that each individual will expend on the project. Resumes of key individuals (including subcontracted personnel) who will be responsible for implementing and providing the services required in this RFP must be provided. Resumes should also be included for managers, senior consulting staff, and other key staff responsible for managing the services requested in this RFP.

Resumes need to identify individuals by name and contain the individual's relevant experience citing specific projects. Resumes must clearly delineate whether the individual is employed by the offeror or a subcontractor, and how the individual meets or exceeds the minimum requirements of this RFP.

Resumes must describe the individual(s) experience in and knowledge of: (1) The Alaskan telecommunications environment including technological, geographic, regulatory, political and cultural factors, (2) project management techniques in studying the telecommunications environment in Alaska, and (3) experience in assisting other organizations (public and private sector) in performing similar studies to that contemplated by the State of Alaska.

6.03 Cost Proposal Requirements

The cost proposal shall be prepared in the format contained in the Attachments section of the RFP. The cost proposal must be sealed in a separate package and clearly marked. The cost proposal must include the following:

- ? A statement that the offeror certifies the costs contained in their cost proposal have been arrived at independently without collusion, and that, unless otherwise required by law, the price quoted has not been knowingly disclosed by the offeror prior to award, directly or indirectly to any other offeror or to any other competitor.
- ? The Offeror's Cost Proposal Form provided in the Attachments Section.

6.04 Evaluation Criteria

All proposals will be reviewed to determine if they are responsive. They will then be evaluated using the criteria set out in section seven.

SECTION SEVEN EVALUATION CRITERIA AND CONTRACTOR SELECTION

THE TOTAL NUMBER OF POINTS USED
TO SCORE THE RESPONSES IS 100

7.01 Understanding of the Project—10%

Proposals will be evaluated against the questions set out below.

- [a] How well has the offeror demonstrated a thorough understanding of the purpose and scope of the project?
- [b] How well has the offeror identified pertinent issues and potential problems related to the project?
- [c] How well has the offeror demonstrated that it understands the deliverables the State expects it to provide?
- [d] How well has the offeror demonstrated that it understands the State's time schedule and can meet it?

7.02 Management Approach and Project Methodology—25%

Proposals will be evaluated against the questions set out below.

- [a] How well does the methodology depict a logical approach to fulfilling the requirements of the RFP?
- [b] How well does the methodology match and contribute to achieving the objectives set out in the RFP?
- [c] How well does the methodology interface with the time schedule in the RFP?
- [d] How well does the management plan support all of the project requirements and logically lead to the deliverables required in the RFP?
- [e] Is accountability completely and clearly defined?
- [f] Is the organization of the project team clear?
- [g] How well does the management plan illustrate the lines of authority and communication?
- [h] Does it appear that the offeror can meet the schedule set out in the RFP?
- [i] Has the contractor offered alternate deliverables and gone beyond the minimum tasks necessary to meet the objectives of the RFP?
- [j] Is the work plan practical, logical, and consistent with the methodology and approach?
- [k] Is the proposal practical and feasible?
- [l] How realistically do the number of hours proposed by vendor fit the tasks described in the proposal?

7.03 Offeror Experience and Qualifications—15%

Proposals will be evaluated against the questions set out below.

- [a] How well has the firm demonstrated experience in completing similar projects on time and within budget?
- [b] How successful is the general history of the firm regarding timely and successful completion of projects?
- [c] Has the firm provided letters of reference from previous clients?
- [d] How reasonable are the firm's cost estimates?
- [e] If a subcontractor will perform work on the contract, how well do they measure up to the evaluation used for the offeror?
- [f] How experienced is the firm in the telecommunications industry and how recent is that experience?
- [g] Does the firm have recent experience in the Alaskan telecommunications environment?
- [h] Does the firm have recent experience in managing projects that include the types of telecommunications services described in this RFP?
- [i] Are there significant conflicts of interest that will impact how the firm will carry out the contract?

7.04 Individual / Key Personnel Experience, Qualifications - 20%

- [a] Do the individuals assigned to the project have experience on similar projects?
- [b] Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the project requires?
- [c] How extensive is the applicable education and experience of the personnel designated to work on the project?
- [d] How knowledgeable are the offeror's personnel of the local area and how many individuals have worked in the area previously?
- [e] How experienced are the personnel in the telecommunications industry and how recent is that experience?
- [f] How experienced are the personnel in the Alaskan telecommunications environment and how recent is that experience?
- [g] How experienced are the personnel in the national telecommunications environment and how recent is that experience?
- [h] Do the individuals assigned to the project have recent experience in managing projects that include the types of telecommunications services described in this RFP?

7.05 Contract Cost—20%

Overall, a minimum of 20% of the total evaluation points will be assigned to cost. The cost amount used for evaluation may be affected by one or more of the preferences set out below.

5% Alaskan Bidder Preference—See section 2.13

15% Employment Program Preference—See section 2.14

10% Alaskans with Disabilities Preference—See Section 2.15

10% Employers of People with Disabilities Preference—See section 2.16

Converting Cost to Points

The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined through the method set out in Section 2.18.

7.06 Alaska Offeror's Preference (10%)

If an offeror qualifies for the Alaska Bidder Preference, the offeror will receive an Alaska Offeror's Preference. The preference will be 10% of the total available points. This amount will be added to the overall evaluation score of each Alaska offeror.

SECTION EIGHT ATTACHMENTS

8.01 Attachments

Attachments

1. Standard Agreement Form
2. Appendix A
3. Appendix B1
4. Notice of Intent to Award
5. Proposal Evaluation Form
6. Cost Proposal Form

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

AGREEMENT FORM

Attachment 1

| | | | | |
|--|--------------------|-----------------------------------|--------------------------------|--------------------------|
| | 2. ASPS Number | 3. Financial Coding | 4. Agency Assigned Encumbrance | |
| Vendor Number | | 6. Alaska Business License Number | | |
| Contract is between the State of Alaska, | | | | |
| Department of | | Division | | hereafter the State, and |
| Contractor | | | | |
| hereafter the Contractor | | | | |
| Address | Street or P.O. Box | City | State | ZIP+4 |

- ARTICLE 1. Appendices:** Appendices referred to in this contract and attached to it are considered part of it.
- ARTICLE 2. Performance of Service:**
- 2.1 Appendix A (General Provisions), Articles 1 through 14, governs the performance of services under this contract.
 - 2.2 Appendix B sets forth the liability and insurance provisions of this contract.
 - 2.3 Appendix C sets forth the services to be performed by the contractor.
3. **Period of Performance:** The period of performance for this contract begins _____, and ends _____

Considerations:

1. In full consideration of the contractor's performance under this contract, the State shall pay the contractor a sum not _____ in accordance with the provisions of Appendix D.

When billing the State, the contractor shall refer to the Authority Number or the Agency Contract Number and send

| | |
|--|------------------------|
| | Attention: Division of |
| | Attention: |

| | | | |
|---------------------------|----------------|---|------|
| CONTRACTOR | | | |
| | Representative | Date | |
| Authorized Representative | | | |
| Employer ID No. (EIN) or | | | |
| CONTRACTING AGENCY | | Signature of Head of Contracting Agency | Date |
| | Date | | |
| Typed or Printed Name | | | |
| or | | Title | |
| | | | |

* has no effect until signed by the head of contracting agency or designee.

SA

GENERAL PROVISIONS

...endices, "Project Director" or "Agency Head" or "Procurement Officer" means the person who signs this
...the Requesting Agency and includes a successor or authorized representative.

...ncy" means the department for which this contract is to be performed and for which the Commissioner or
...ted in a signing this contract.

...rts.

...ect, in the manner and at reasonable times it considers appropriate, all the contractor's facilities and
...ct.

...progress and other reports in the manner and at the times the department reasonably requires.

...estion of fact arising under this contract which is not disposed of by mutual agreement shall be
...S 36.30.620-632.

...unity.

...nate against any employee or applicant for employment because of race, religion, color, national
...cal handicap, sex, marital status, changes in marital status, pregnancy or parenthood when the
...tion(s) do not require distinction on the basis of age, physical handicap, sex, marital status,
...ncy, or parenthood. The contractor shall take affirmative action to insure that the applicants are
...that employees are treated during employment without unlawful regard to their race, color,

...physical handicap, age, sex, marital status, changes in marital status, changes in marital status,
...ion must include, but need not be limited to, the following: employment, upgrading, demotion,
...advertising, layoff or termination, rates of pay or other forms of compensation, and selection

...The contractor shall post in conspicuous places, available to employees and applicants for
...provisions of this paragraph.

...tations or advertisements for employees to work on State of Alaska contract jobs, that it is
...at all qualified applicants will receive consideration for employment without regard to race,
...sical handicap, sex, marital status, changes in marital status, pregnancy or parenthood.

...r union or representative of workers with which the contractor has a collective bargaining
...nding a notice advising the labor union or workers' compensation representative of the
...le and post copies of the notice in conspicuous places available to all employees and

...s of this article in every contract, and shall require the inclusion of these provisions in
...ubcontractors, so that those provisions will be binding upon each subcontractor. For
...n any contract or subcontract, as required by this contract, "contractor" and
...appropriately the name or designation of the parties of the contract or subcontract,
...te efforts which seek to deal with the problem of unlawful discrimination, and with all
...tent practices under this contract, and promptly comply with all requests and
...man Rights or any of its officers or agents relating to prevention of discriminatory

...s not limited to, being a witness in any proceeding involving questions of unlawful
...or agency of the State of Alaska; permitting employees of the contractor to be
...olving questions of unlawful discrimination, if that is requested by any official or
...etings; submitting periodic reports on the equal employment aspects of present
...e contractor's facilities; and promptly complying with all State directives
...e State of Alaska to insure compliance with all federal and State laws,
...n of discriminatory employment practices.
...aternal breach of the contract.

...act, in whole or in part, when it is in the best interest of the State. The State
...sions of this contract for services rendered before the effective date of

...rt of it, or any right to any of the money to be paid under it, except with

No claim for additional services, not specifically provided in this contract, performed or furnished by the contractor, will be allowed, nor may the contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Project Director and approved by the Agency Head.

Article 8. Independent Contractor.

The contractor and any agents and employees of the contractor act in an independent capacity and are not officers or employees or agents of the State in the performance of this contract.

Article 9. Payment of Taxes.

As a condition of performance of this contract, the contractor shall pay all federal, State, and local taxes incurred by the contractor and shall require their payment by any Subcontractor or any other persons in the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by the State under this contract.

Article 10. Ownership of Documents.

All designs, drawings, specifications, notes, artwork, and other work developed in the performance of this agreement are produced for hire and remain the sole property of the State of Alaska and may be used by the State for any other purpose without additional compensation to the contractor. The contractor agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. The contractor, for a period of three years after final payment under this contract, agrees to furnish and provide access to all retained materials at the request of the Project Director. Unless otherwise directed by the Project Director, the contractor may retain copies of all the materials.

Article 11. Governing Law.

This contract is governed by the laws of the State of Alaska. All actions concerning this contract shall be brought in the Superior Court of the State of Alaska.

Article 12. Conflicting Provisions.

Unless specifically amended and approved by the department of Law the General Provisions of this contract supersede any provisions in other appendices.

Article 13. Officials Not to Benefit.

Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.

Article 14. Covenant Against Contingent Fees.

The contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, contingent fee, or brokerage except employees or agencies maintained by the contractor for the purpose of securing business. For the breach or violation of this warranty, the State may terminate this contract without liability or in its discretion deduct from the contract price or consideration the full amount of the commission, percentage, brokerage, or contingent fee.

SAF2.DOC

INDEMNITY AND INSURANCE**Article 1. Indemnification**

The Contractor shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission or negligent act of the Contractor under this agreement. The Contractor shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the Contractor and the independent negligence of the Contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Contractor" and "Contracting agency", as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the Contracting agency's selection, administration, monitoring, or controlling of the Contractor and in approving or accepting the Contractor's work.

Article 2. Insurance

Without limiting Contractor's indemnification, it is agreed that Contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the Contracting Officer prior to beginning work and must provide for a 30-day prior notice of cancellation, nonrenewal or material change of conditions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the Contractor's services. All insurance policies shall comply with, and be issued by insurers licensed to transact business of insurance under AS 21.

2.1 Workers' Compensation Insurance: The Contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The Contractor must waive subrogation against the State.

Commercial General Liability Insurance: covering all business premises and operations used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.

Commercial Automobile Liability Insurance: covering all vehicles used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.

NOTICE OF INTENT TO AWARD

| | |
|---|----------------|
| 1. Name of Program, Project, or Service (Use RFP Title) | 2. Date Issued |
|---|----------------|

| | |
|------------------------|--------------------------------|
| 3. Authority Number(s) | 4. Name of Procurement Officer |
|------------------------|--------------------------------|

This is notice of the State's intent to award a contract. The offeror, identified here as the apparent successful offeror, is instructed not to proceed until a signed contract or other written notice of award is received from the State. A firm or person who proceeds prior to receiving a signed contract or other written notice of award does so at their own risk. AS 36.30.365.

An offeror who wishes to protest this Notice of Intent must file a protest within ten (10) calendar days following the date this notice is issued. If the tenth day falls on a weekend or holiday, the last day of the protest period is the first working day following the tenth day.

The protest shall be filed with the procurement officer in writing and include the following information:

- (1) the name, address, and telephone number of the protester;
- (2) the signature of the protester or the protester's representative;
- (3) identification of the contracting agency and the solicitation or contract at issue;
- (4) a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and
- (5) the form of relief requested (AS 36.30.560 and AS 36.30.565).

| |
|--|
| 5. Name and Address of Apparent Successful Offeror |
|--|

| |
|---|
| 6. Names and Addresses of All Other Respondents (in alphabetical order) |
|---|

NOTICE OF INTENT TO AWARD ENTRY DEFINITIONS

project, program, or service.

issue date of form to all respondents).

ask Professional Services (ASPS) number assigned by the Department of Administration (DOA) for \$25,000.

officer. The person responsible for contractor selection. If there are appeals they should be on.

eror(s).

imes.

ATTACHMENT 5
SAMPLE EVALUATION FORM

All proposals will be reviewed for responsiveness and then evaluated using the criteria set out herein.

Person or Firm Name _____

Name of PEC Member _____

Date of Review _____

RFP Number _____

EVALUATION CRITERIA AND SCORING
THE TOTAL NUMBER OF POINTS USED TO SCORE THIS CONTRACT IS 100

7.01 Understanding of the Project—10%

Maximum Point Value for this Section -- 10 Points
100 Points x 10% = 10 Points

Proposals will be evaluated against the questions set out below.

[a] How well has the offeror demonstrated a thorough understanding of the purpose and scope of the project?

[b] How well has the offeror identified pertinent issues and potential problems related to the project?

[c] How well has the offeror demonstrated that it understands the deliverables the State expects it to provide?

[d] How well has the offeror demonstrated that it understands the State's time schedule and can meet it?

EVALUATOR'S POINT TOTAL FOR 7.01 _____



7.02 Management Approach and Project Methodology—25%

- Maximum Point Value for this Section -- 25 Points
100 Points x 25% = 25 Points

Proposals will be evaluated against the questions set out below.

[a] How well does the methodology depict a logical approach to fulfilling the requirements of the RFP?

[b] How well does the methodology match and contribute to achieving the objectives set out in the RFP?

[c] How well does the methodology interface with the time schedule in the RFP?

[d] How well does the management plan support all of the project requirements and logically lead to the deliverables required in the RFP?

[e] Is accountability completely and clearly defined?

[f] Is the organization of the project team clear?

[g] How well does the management plan illustrate the lines of authority and communication?

[h] Does it appear that offeror can meet the schedule set out in the RFP?

[i] Has the contractor offered alternate deliverables and gone beyond the minimum tasks necessary to meet the objectives of the RFP?

[j] Is the proposal practical and feasible?

[k] Is the work plan practical, logical, and consistent with the methodology and approach?

[l] How realistically do the number of hours proposed by vendor fit the tasks described in the proposal?

EVALUATOR'S POINT TOTAL FOR 7.02

7.03 Offeror Experience and Qualifications—15%

· Maximum Point Value for this Section -- 15 Points

100 Points x 15% = 15 Points

Proposals will be evaluated against the questions set out below.

[a] *How well has the firm demonstrated experience in completing similar projects on time and within budget?*

[b] *How successful is the general history of the firm regarding timely and successful completion of projects?*

[c] *Has the firm provided letters of reference from previous clients?*

[d] *How reasonable are the firm's cost estimates?*

[e] *If a subcontractor will perform work on the contract, how well do they measure up to the evaluation used for the offeror?*

[f] *How experienced is the firm in the telecommunications industry and how recent is that experience?*

[g] *Does the firm have recent experience in the Alaskan telecommunications environment?*

[h] *Does the firm have recent experience in managing projects that include the types of telecommunications services described in this RFP?*



[i] Are there significant conflicts of interest that will impact how the firm will carry out the contract?

EVALUATOR'S POINT TOTAL FOR 7.03



7.04 Individual / Key Personnel Experience and Qualifications—20%

- Maximum Point Value for this Section -- 20 Points
100 Points x 20% = 20 Points

Proposals will be evaluated against the questions set out below.

[a] Do the individuals assigned to the project have experience on similar projects?

[b] Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the project requires?

[c] How extensive is the applicable education and experience of the personnel designated to work on the project?

[d] How knowledgeable are the offeror's personnel of the local area and how many individuals have worked in the area previously?

[e] How experienced are the personnel in the telecommunications industry and how recent is that experience?

[f] How experienced are the personnel in the Alaskan telecommunications environment and how recent is that experience?

[g] How experienced are the personnel in the national telecommunications environment and how recent is that experience?

[g] Do the individuals assigned to the project have recent experience in managing projects that include the types of telecommunications services described in this RFP?



EVALUATOR'S POINT TOTAL FOR 7.04

7.05 Contract Cost —20%

- Maximum Point Value for this Section -- 20 Points
100 Points x 20% = 20 Points

Overall, a minimum of 20% of the total evaluation points will be assigned to cost. The cost amount used for evaluation may be affected by one or more of the following preferences.

- ? *5% Alaskan Bidder Preference*
- ? *15% Employment Program Preference*
- ? *10% Alaskans with Disabilities Preference*
- ? *10% Employers of People with Disabilities Preference*

CONVERTING COST TO POINTS

The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined through the method set out in Section 2.

EVALUATOR'S POINT TOTAL FOR 7.05 _____

7.06 Alaska Offeror's Preference 10%

- Alaska Bidders receive a 10% overall evaluation point preference.
- Point Value for Alaska Bidders in this Section -- 10 Points
100 Points x 10% = 10 Points

If an offeror qualifies for the Alaska Bidder Preference, the offeror will receive an Alaska Offeror's Preference. The preference will be 10% of the total available points. This amount will be added to the overall evaluation score of each Alaska offeror.

EVALUATOR'S POINT TOTAL FOR 7.06 (either 0 or 10) _____

EVALUATOR'S COMBINED POINT TOTAL FOR ALL SECTIONS _____

ATTACHMENT 6
OFFEROR'S COST PROPOSAL FORM

TOTAL COST TO PERFORM THE WORK REQUIRED BY THIS RFP
(Including all labor, materials and expenses)

\$ _____

By signature on this form the offeror certifies that the costs contained in this cost proposal have been arrived at independently without collusion, and that, unless otherwise required by law, the price quoted has not been knowingly disclosed by the offeror prior to award, directly or indirectly to any other offeror or to any other competitor.

Signature

Date

Printed Name

NOTICE OF INTENT TO AWARD

| | |
|--|--------------------------------|
| 1. Name of Program, Project or Service (Use RFP Title)
Statewide Telecommunications Study | 2. Date Issued
May 31, 2002 |
|--|--------------------------------|

| | |
|---|--|
| 3. Authority Number (s)
2002-0200-3329 | 4. Name of Procurement Officer
Marlys Hagen, C.P.M. <i>Marlys Hagen, C.P.M.</i> |
|---|--|

This is notice of the State's intent to award a contract. The offeror, identified here as the apparent successful offeror, is instructed not to proceed until a signed contract or other written notice of award is received from the State. A firm or person who proceeds prior to receiving a signed contract or other written notice of award does so at their own risk. AS 36.30.365

An offeror who wishes to protest this Notice of Intent must file a protest within ten (10) calendar days following the date this notice is issued. If the tenth day falls on a weekend or holiday, the last day of the protest period is the first working day following the tenth day.

The protest shall be filed with the procurement officer in writing and include the following information:

- (1) the name, address, and telephone number of the protester;
- (2) the signature of the protester or the protester's representative;
- (3) identification of the contracting agency and the solicitation or contract at issue;
- (4) a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and
- (5) the form of relief requested (AS 36.30.560 and AS 36.30.565).

Name and Address of Apparent Successful Offeror

KPMG Consulting, 400 Capitol Mall #1500, Sacramento, CA 95814

6. Names and Addresses of All Other Respondents (in alphabetical order)

** Gartner Group
3743 Coventry Drive
Anchorage, AK 99507

Healy & Company
2694 Bishop Drive #213
San Ramon, CA 94583

Jullanna Guy
1084 Potlatch Circle
Anchorage, AK 99503-1728

** Mark A. Foster and Associates
2141 Esquire Drive
Anchorage, AK 99517

National Economic Research Associates
875 North Michigan Ave #3650
Chicago, IL 60611

New Horizons Telecom, Inc.
901 Cope Industrial Way
Palmer, AK 99645-6739

Vertex Consulting Group
3329 Patriot Drive
Plano, TX 75025

** Proposer declared non-responsive due to potential conflicts of interest.

Alaska State Legislature

Chairman,
Judiciary Committee
Administrative Regulations
Revenue Committee

Vice Chairman,
Resources Committee



Senator Robin L. Taylor

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3873
Fax: (907) 465-3922

50 Front Street
Suite 209
Ketchikan, Alaska 99901
(907) 225-0088
Fax: (907) 225-0713

May 21, 2002

Mr. Parker Erkmann
Ms. Hillary Burchuk
U. S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

RE: ONGOING INVESTIGATION OF GENERAL COMMUNICATIONS, INC.

Dear Mr. Erkmann and Ms. Burchuk:

Thank you for taking the time to call my office this morning. Your call was greatly appreciated.

I respectfully request that the Department of Justice expand its current investigation of General Communications, Inc., (GCI) to include the reasons for the tremendous political pressure being brought to bear on the Alaska State legislature to continue the Regulatory Commission of Alaska, the quasi-judicial agency that regulates all utilities within this state.

The current Governor politically appointed every member of the RCA. The Governor first threatened, and then called special sessions of the Legislature to prevent any further review or study of the functions of this agency. Copies of his threatening letter to me and his Proclamations calling the Special Sessions are attached. Also attached are newspaper articles and letters from affected utilities and board members.

The Alaska Legislature appropriated \$300,000 one year ago to have this Governor's administration conduct a study on telecommunications in Alaska. That study could not have been done without reviewing and examining the unique roll of GCI and RCA and would have addressed the non-competitive, monopolistic aspects of the current situation in Alaska.

The Governor and his administration only put out the Request for proposal for the telecommunications study one month ago, with receipt of replies due May 15, 2002. The Legislature was scheduled to adjourn May 13, 2002. As the session drew to a close, the Governor and his administration, through the use of key legislators, attempted to quietly reappropriate the \$300,000 to a suicide prevention program, thus effectively killing the

District A:

Hyder • Ketchikan • Kuproanof • Meyer's Chuok • Petersburg • Saxman • Sitka • Wrangell

Mr. Parker Erkmann
Ms. Hillary Burchuk
U. S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 205300-0001
May 20, 2002
Page 2 of 2

study of telecommunications funded by the Legislature. They backed off when killing the telecommunications study came to the attention of the Legislature.

If we do not pass the Governor's RCA extension, RCA will not terminate, nor will it be slowed down on any business coming before it this next year. (see attached legal opinion by Tamara Cook) it will go into what is called a wind down year and would be terminated at the end of that year, failing legislative action next year. Failure to extend RCA this year would allow the Legislature and the people of Alaska to do a searching review of the agency next year, a review this governor obviously opposes.

Your department's ongoing investigation of both Sherman and Clayton Act compliance by GCI may uncover critical information that would significantly enhance the Alaska Legislature's examination of the forces at play which directly affect the policies to be set regarding the continuation of the RCA.

The Anchorage Daily News is a partner with GCI in "Alaska.com". (see attached press release) They each sell advertising and each share in the profits.

This Governor politically appointed every member of this board. This Governor attempted to slow down and stop any legislative investigation of telecommunications in this state. This Governor is using his office to threaten me, and has held us hostage for seven days to force this legislature to reauthorize RCA, without any review. This Governor and key legislators have close political ties to GCI.

Your attention to these issues is requested.

Sincerely,


Senator Robin L. Taylor

Encl: Letter from Governor to Senator Taylor
Proclamations for Special Session
ADN/GCI Press Release
Legal Opinion by Attorney General
Newspaper Articles
Letters from Utilities and Members

June 13, 2001

Dana Heidemann, GCI, (907) 265-5355; dheidemann@gci.com

FOR IMMEDIATE RELEASE

Daily News, GCI to launch Alaska.com web site

ANCHORAGE, AK – ALASKA.COM will become the state's most prestigious address in cyberspace under a development plan announced today by the Anchorage Daily News and GCI.

Working together with other key business partners, the state's largest news organization and Alaska's premier integrated telecommunications company will produce a portal site designed to serve both Alaskans and the worldwide audience of people interested in the state.

"This will be the complete site - for Alaskans, visitors and would-be-residents," said Mike Sexton, Daily News publisher. "Internet users will be able to read statewide news, search the classifieds, check the weather, book an airline flight, view Alaska photos, find local goods and services, plan a vacation - everything, all in one place."

ALASKA.COM, which has served as a directory of GCI's business customers, will be officially relaunched as the new ALASKA.COM "geographic portal" on August 15.

In addition to the Daily News and GCI, initial participants will include Alaska Airlines, Juneau radio station KINY, and Tanana Valley TV, owner of the CB³ and Fox television affiliates in Fairbanks. In addition, "we're actively discussing participation with a number of other companies," Sexton said.

"This agreement will combine the content and services of some of the best companies in Alaska with the unprecedented promotion of a single brand," said Ron Duncan, President and CEO of GCI.

"The strategy is simple," Sexton explained. "Combine the most complete and compelling content of any Alaska website with the most powerful promotional vehicles in the state. The Daily News is Alaska's No. 1 news and advertising organization; GCI is Alaska's top cable TV company as well as its preeminent Internet service provider."

As part of the agreement, the Daily News purchased the ALASKA.COM domain name from GCI. The newspaper's New Media Department will develop the site and coordinate the participation of other companies and organizations.

Both the Daily News and GCI will sell advertising to support the site.

One of the key elements of ALASKA.COM will be a statewide business directory. The directory will be an "electronic yellow pages," a searchable database that allows web visitors to identify vendors, find maps to businesses, and access e-mail, fax and hypertext links to businesses, with information about current sales and special offers.

"This is the future of local yellow pages," Duncan said, "comprehensive, immediate... and interactive."

ALASKA.COM will offer information organized by regions of the state, including community calendars and general information, and a searchable database of more than 200,000 newspaper stories.

The Daily News will continue to operate its popular newspaper website, sdn.com.

GCI (NASDAQ: GNCMA) is an Alaska-based integrated communications provider that delivers voice, video and data services through its fiber optic, satellite, hybrid fiber coaxial and metropolitan area network facilities. More information about GCI can be found at www.gci.com

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top of page

**Technical Proposal to Develop a Telecommunication Study for a
Statewide Policy and Feasibility Study for the State of Alaska**

KPMG Consulting, Inc. agrees to the terms, conditions and provisions included in this solicitation and agree to furnish any and all items upon which prices are offered at the price set opposite each item.

KPMG Consulting Inc.
Steven Fehr, Managing Director
400 Capitol Mall,
Suite 1500
Sacramento CA. 95814
Phone 916-554-1745
FAX 916-554-1149
Sfehr@kpmg.com



KPMG Consulting Offeror
Steven Fehr, Managing Director

Restriction on Disclosure and Use of Data

This data is furnished in connection with the proposal submittal to the State of Alaska with relation to the request for proposal for the development of a telecommunication study, and shall not be duplicated, used or disclosed in whole or in part for any purpose other than for evaluative purposes. The data subject to this restriction applies to all pages of this submittal. This restriction does not limit the Government's right to use information obtained from another source without restriction.

S.
Records
file

From:
Aack
Rhymer

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STATE OF ALASKA
THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Petition by the Public)
Advocacy Section to Adopt Regulations) Docket No. R-02-2
Regarding its Role as a Party in)
Commission Proceedings Under AS)
42.04.150)
)

Comments of the Alaska Telephone Association

The Alaska Telephone Association welcomes this opportunity to discuss
modifications to the role of the Public Advocacy Section ("PAS") and, more broadly, to
offer comments on clarifying the separation of the adjudicatory and advocacy
responsibilities of the commission.

1 **i. Introduction**

2
3 In 1999, the Alaska Legislature took a major step in overhauling the way the
4 state regulated public utilities. The Legislature created the Regulatory Commission of
5 Alaska ("Commission") "to respond to industry proposals for changes in utility services,
6 and to protect the interests of ratepayers."¹ Moreover, the Legislature understood that
7 consumers benefited not only from efficient utilities, but also from efficiency in the
8 regulatory process. Thus, the Legislature created within the Commission a separate
9 Public Advocacy Section.
10
11

12 The Legislature perceived the need for a separate PAS to "address the problems
13 created by changing APUC staff's role between advocate and advisor."² The idea for
14 Alaska's PAS came out of a study by the National Regulatory Research Institute
15 ("NRRI") recommending that the only way to bring fairness, efficiency, and uniformity to
16 Commission dockets was to create a "Chinese Wall" between advisory and advocacy
17 staff.³ Under the NRRI model, "the advisor and advocate would be separated."⁴ The
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22 ¹ Id.

23 ² House Journal, Reports of Standing Committees, May 13, 1999.

24 ³ Testimony of Sen. Drue Pearce, 99 HL&C, May 7, 1999 1526.

25 ⁴ Id. at 1400.

1 Legislature intended to avoid the *ex parte* conflicts that had kept industry and
2 Commission staff from engaging in the meaningful dialogue and negotiations that could
3 often avoid expensive and protracted litigation before the Commission.
4

5 Rather than create the legislature's intended "Chinese Wall" however, the
6 Commission has merely created a second barrier. Today, while the PAS exists to
7 represent consumers' interests, Commission Staff continues to duplicate this role. The
8 main problems inherent in the current regulatory scheme are:
9

10
11 • the Commission, through its various sections, continues to act
12 simultaneously as investigator, inquisitor, prosecutor, and adjudicator in
13 its own dockets;

14
15 • duplicate participation by the PAS and Commission staff risk inconsistent
16 and conflicting consumer advocacy positions taken by the same agency;

17
18 • expensive, protracted litigation results over matters that could be better
19 framed, and negotiated by open communication between parties lacking *ex*
20 *parte* barriers;

21
22 • increased expense and delay in the regulatory process ultimately results
23 in higher rates to consumers.

24 Continued participation by Commission staff in matters involving the PAS has
25 thus largely gutted the Legislature's 1999 reforms of their intended effectiveness.

1 Currently, the Commission is seeking proposals for a new system of handling its
2 backlog of dockets.
3

4
5 **II. Now is the time for a "sea change" in the roles of the Commission and the PAS**

6 Recognizing the problems inherent in the current system, efforts are surfacing to
7 better implement the legislative intent behind the 1999 reforms. Already the PAS has
8 responded with its own "Draft Regulations for the Public Advocacy Section."⁵
9

10 Unfortunately the PAS' proposal fails to address the above problems, seeking instead to
11 usurp Commission power and recast the PAS more as a regulator than a consumer
12 advocate.
13

14
15 Therefore industry, through groups such as the ATA, must now offer a sensible
16 and efficient model for utility regulation in Alaska. To achieve this goal, the ATA must
17 propose nothing short of a fundamental "sea change" in the way the Commission
18 operates. The goal of the ATA's proposals must be to:
19

- 20
21
 - **completely eliminate Commission Staff from the consumer advocacy role;**
22

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⁵ See In Re Request by the Regulatory Commission of Alaska Public Advocacy Section to Adopt
25 Regulations regarding the role of the Public Advocacy Section, R-02-02.

- 1 • clearly define the PAS' role as an equal party in Commission
- 2 proceedings, not a superfluous duplicate regulatory agency;
- 3
- 4 • identify and promote fiscally attractive ways to regulate public utilities.

5 Advocating a policy that will provide the much-needed restructuring of the
6 Commission, the ATA is fortunate to have a number of persuasive points on which to
7 draw. These include:

- 9 • The original legislative intent behind the creation of the PAS;
- 10
- 11 • The successful models at work in neighboring states;
- 12
- 13 • Alaska's current fiscal crisis;
- 14
- 15 • The growing realization that efficiency and healthy competition in the
16 utility industry equates with real consumer protection.

17 In creating the PAS the Legislature did not intend to create just a second,
18 superfluous regulatory body. Instead, the Legislature's goals were clearly to eliminate
19 the Commission from operating as both "advocate and advisor,"⁶ and thus to "bring
20 more uniformity to each issue."⁷ These goals can never be realized as long as
21 Commission Staff and the PAS are permitted to operate concurrently in the same
22

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24
25 ⁶ House Journal, Reports of Standing Committees, May 13, 1999

1 matters. Commission Staff must be completely removed from this process so that the
2 regulatory process can function as the Legislature intended.

3
4 Completely removing Commission Staff from the advocacy process, while a
5 major change in Alaska, is far from a revolutionary idea in neighboring states. In
6 Hawaii, for example, statutes provide that "the responsibility for advocating the interests
7 of the consumer of utility services **shall be separate and distinct from the**
8 **responsibilities of the public utilities commission and those assistants employed**
9 **by the commission.**"⁸

10
11
12 In Washington it is the "duty of the attorney general to represent and appear for
13 the people of the state of Washington and the commission in all actions and
14 proceedings" before the Commission.⁹ The advantages of regulatory participation by
15 Washington's Public Counsel Section of the Attorney General's Office are readily
16 apparent from the Public Counsel's success in reaching positive settlements with
17 utilities without undergoing protracted litigation. In a recent case, for example, a utility
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23 ⁷Pat Carter Testimony to the House Committee, 99 HL&C, May 7, 1999 at 1526.

24 ⁸ Hawaii Revised Statutes § 269.51 (2002) (emphasis added).

25 ⁹ Revised Code of Washington § 80.01.100 (2002).

1 sought to raise electricity rates by 10 percent.¹⁰ Due to a settlement reached before
2 resorting to litigation, however, the parties were able to "reduce the immediate rate
3 impact on consumers and provide assistance for those struggling to pay the rising
4 energy costs."¹¹ Clearly Alaska needs a system where industry and the PAS can work
5 together to bring settlements and well-framed issues before the Commission.
6
7

8 Perhaps most unique of all neighboring states' approaches to utilities regulation,
9 Oregon not only has a fully independent nonprofit public corporation charged with public
10 advocacy, but it receives no funding whatsoever from the state.¹² Nonetheless, since
11 1984, Oregon's Citizens' Utility Board has effectively represented the interests of
12 consumers before the state's Public Utilities Commission.
13
14

15 Even without the success stories offered by other states, the promise of a lean,
16 efficient regulatory system holds a special appeal in light of Alaska's current fiscal crisis.
17 The State of Alaska now faces a projected \$1.1 billion budget deficit.¹³ In response, the
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20 ¹⁰ See *AG Reaches Settlement with Avista Utilities to Lower Rate Increase*, available at
21 http://www.gov/agp/releases/rel_avista_022102.html (Apr. 08, 2002).

22 ¹¹ *Id.*

23 ¹² See ORS Chapter 774 (2001).

24 ¹³ Mike Chambers, *\$2.2 Billion Budget Clears House*, Anchorage Daily News, Mar. 19, 2002 at
25 B1.

1 new House budget "reduces spending in every area of government, imposing cuts on
2 environmental **and regulatory programs.**"¹⁴ Discontinuing the performance of
3 advocacy functions by Commission Staff should be a change welcomed by the current
4 Legislature.
5

6 Even more important than saving the state's money, completely removing
7 Commission Staff from the consumer advocacy role will save consumers' money. As
8 our statutory scheme allows utilities a reasonable rate of return in the determination of
9 their rates, ultimately the consumer pays for inefficient adjudication and duplicative
10 layers of government regulation.
11

12 Regulations should make clear that advisory staff's role is not one of advocacy,
13 but one of research and support for the commissioners to ensure that they have
14 adequate information upon which to make an informed decision. Information submitted
15 as part of a response should not be utilized to promote a staff position.
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20 **III. Summary**

21 In summary, the ATA wants to see regulations that

- 22 • completely eliminate Commission Staff from the consumer advocacy role;

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25 ¹⁴ Id. (emphasis added).

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- clearly define that PAS' role is as an equal party in Commission proceedings, not a superfluous duplicate regulatory agency;
- identify and promote fiscally attractive ways to regulate public utilities; and
- define the staff role as well as the PAS role in agency actions.

Dated this 28th day of May, 2002

By _____

James Rowe
Executive Director
Alaska Telephone Association
201 E. 56th, Suite 114
Anchorage, Alaska 99518

S. Records
File
From:
Jack
Rhyme

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Petition by the Public)
Advocacy Section to Adopt Regulations)
Regarding Its Role as a Party in Commission)
Proceedings Under AS 42.04.150) R-02-2
_____)

COMMENTS OF THE
ALASKA EXCHANGE CARRIERS ASSOCIATION, INC.
ON REGULATIONS FOR THE PUBLIC ADVOCACY SECTION

I. Introduction.

The Alaska Exchange Carriers Association, Inc. ("AECA"), by and through its attorneys, Brena, Bell & Clarkson, P.C., hereby respectfully submits its comments, pursuant to the Regulatory Commission of Alaska's ("Commission") Order No. R-02-2(1) which invited comments on the proposed regulation changes to the role and functioning of the Public Advocacy Section ("PAS" or "adjudicatory Staff"). In theory, the Legislature intended to transfer the advocacy functions of the Staff to a properly staffed and separate adjudicatory Staff. In practice, the advocacy functions of the Staff continue to be split between advisory Staff and an understaffed adjudicatory Staff. At its core, the proposed regulations strengthen the independence and adjudicatory role of the PAS within the Commission. Accordingly, AECA supports the

proposed regulations as a helpful first step toward fulfilling the Legislature's intention of creating a regulatory model which clearly separated the advisory and advocacy functions of Staff.

II. Legislative History.

The Legislative history associated with the creation of the PAS strongly supports the transfer of the advocacy functions of Staff to a properly staffed and separate PAS. In fact, the primary reason given by the Legislature for creating the PAS was to solve the problems inherent with having the Staff perform in the dual role of being both an advisor and an advocate. By creating the PAS, the Legislature intended to eliminate this dual role for Staff and to vest all adjudicatory functions in a properly staffed and separate PAS.

Senator Pearce was the primary sponsor of SB 133 that created both this Commission and the PAS. Senator Pearce first identified the problems caused by the dual role of Staff before the Senate Resources Committee, in which she stated:

One of the reasons you have a PUC is in rate making for utilities. The PUC is supposed to function as the entity that watches over rates for the consumers and we have an interesting, sometimes probably schizophrenic situation in that staff members who work for the PUC are in one case asked to act as the advocacy person who represents the public -- the rate payers but that same person may be asked in another case or another docket for the same commissioners to work the case for the Commission and not act -- act for the Commission, not as an advocate and so they end up trying to deal with the same commissioners in a -- in two different functions, one of which leads them to act on a more confidential basis and the other which does not and the internal audit that the PUC did said that there were some questions about how effective anybody can be when they are attempting to be working for both entities and so we took the recommendation that we would out-source the activities for the public kind of as a -- as an idea of how to get out of that kind of strange

situation. We are asking people to do two different jobs that are sometimes antagonistic.

Senate Resources Committee (April 12, 1999) at 26-27 (emphasis added).

In subsequently offering the amendment to SB 133 which created the PAS, Senator Pearce, later made the following comments to the Senate Finance Committee:

Amendment five, the public advocacy section, as I mentioned in my earlier testimony, there has been concern raised primarily by regulated utilities about the present advocacy situation in that individuals are expected to be advocates and staff of the commission at the same time and they are chosen as advocates by the executive director so the commission doesn't have control of that. . . . This amendment would establish a separate public advocacy section but within the commission staff. The section would represent the public interest in adjudicatory functions before the commission rather than the commission staff serving a dual role as both advisor and advocate. I said time and time again this dual role function has been problematic. By having a separate, semi-independent section internally within the staff, that should alleviate those problems because the people who are the advocates are always advocates, they don't often try to act as staff to the commission and the commission will be able to have their own staff to advise them on issues

Senate Finance Committee (April 29, 1999) at 13-14 (emphasis added).

Senator Pearce repeated her reasons to support the creation of the PAS in her testimony on SB 133 before the House Labor and Commerce Committee. Senator Pearce stated:

Senator Pearce: It works exactly like both the FTC and the FERC work where they have se -- and like many other commissions working in the states. There is a separate advocacy section within the commission led by an attorney and a hearing officer and they develop their record on the advocacy side and develop the arguments if an advocate is assigned to the particular docket or the particular rule making. There are people in the commission now with the expertise and they are attempting in some cases to be both advocates and advisors at the same time and there is no way

to truly separate those functions even though I think the individuals probably do the best they can to not have the conflict of interest but those are inherently conflicted activities by definition. So the NRRI report recommended we set up separate sections. Frankly, it's my feeling that if the PUC needs a few more staff in terms of some number of people to set up a separate advocacy section and gain that expertise, that is for the protection of the consumers of Alaska and that's exactly what we should do. That's the whole point of an advocacy section, is you're protecting the public.

House Labor and Commerce Committee (May 7, 1999) at 18 (emphasis added).

Before the same committee, Senator's Pearce's legislative assistant, Mr. Carter, further commented that the purpose of the PAS was to separate the advisory and adjudicatory roles of Staff. Mr. Carter commented:

What we're doing is removing -- as it works currently, the staff may work on several different items -- dockets throughout a day and they may be advisor on one and advocate on another and the NRRI report pointed it out and it's also reflected in some of the comments from staff at the end of the NRRI report that -- where they talked about trying to put this Chinese wall up in your head where you're acting as advisor to a commissioner on one hand and then you're not able to convey a message to him on a similar issue where you're acting as an advocate because you need to separate those things in an adjudicatory function but even if you could separate those things, when you come back before the commission as advisor or as advocate on rule making where you're setting regulations that affect all the cases that you work on, you certain -- it would be, I think, virtually impossible not to bring some level of bias to that depending on where your role is in that thing. So by separating out the two roles and therefore, staff as well, that's the intent is to bring some -- a little more uniformity to each issue.

House Labor and Commerce Committee (May 7, 1999) at 20 (emphasis added).

The Legislature's intention to separate the advisory and adjudicatory functions of Staff was also specifically discussed and intended with regard to the communication carrier section. In response to the question from Representative Murkowski as to whether Senator Pearce was "envisioning the same type of a separation then with regards to this communications carrier section," the response from both Mr. Carter and Senator Pearce was in the affirmative. Mr. Carter specifically responded, "And aside from the separation of the advocacy section, it's [communication carrier section] -- will largely continue to function as is." House Labor and Commerce Committee (May 7, 1999) at 22. Senator Pearce also specifically responded, "[T]he section already exists and we're not trying to further isolate those people. We are trying to isolate the advocates." House Labor and Commerce Committee (May 7, 1999) at 22-23.

III. Public Advocacy Staff and Advisory Staff Roles.

Consistent with the Legislature's clear intention, the Commission should vest advocacy functions in a properly staffed and separate PAS. To accomplish this separation between the advisory and advocacy functionality of the Staff as well as to maintain the integrity of the Commission's quasi-judicial role, the Commission should not allow advisory Staff to advocate positions and policies outside of the regulatory model envisioned by the Legislature, but should, instead, assign those advocacy functions to its PAS. This regulatory model envisioned by the Legislature should be specifically considered within three different and typical contexts in which the underlying issues seem to reoccur: (1) applications and tariff filings; (2) adjudicatory dockets; (3) rulemaking dockets. Each of these contexts are briefly set forth below:

A. Initial Applications and Tariff Filings.

The advisory Staff should review and recommend to the Commission whether an application or tariff filing complies with the Commission's filing requirements and whether the Commission should suspend and investigate the filing. In so doing, the advisory Staff should not take a position as to the ultimate merits of the application or tariff filing. Such positions are advocacy positions and should not be taken or expressed by advisory Staff prior to the development of the complete record. In the event the Commission chooses to further investigate an application or tariff filing, the Commission should open an adjudicatory docket and should maintain the right to appoint the PAS as a party to assist in the investigation or in the development of a complete record. Additionally, the PAS should have the right to separately intervene in any such adjudicatory docket.

With regard to the initial phases of these adjudicatory dockets, the current roles of advisory Staff and adjudicatory Staff are duplicative and inefficient. Often the advisory Staff's role extends into its expression on the ultimate merits of the applications and tariff filings when only a comment on compliance with the filing requirements or a suspension recommendation is necessary.¹

The advisory Staff's expression on the ultimate merits of the application or tariff filing works to compromise the quasi-judicial role of the Commission. In this regard, the Commission's advisory Staff should not take a position which would indicate any bias or predisposition as to the ultimate merits of an adjudicatory docket prior to the complete development of the record. For advisory Staff to do otherwise

¹ Advisory Staff's expression on the ultimate merits of the applications and tariff filings may be mandated under the current regulations which do not separate the advisory and adjudicatory functions of staff, but instead continue to require advisory Staff to analyze "the reasonableness and propriety" of such filings. 3 AAC 48.275(j).

would be akin to a Superior Court Judge's clerk taking a position on the ultimate merits of a civil case before the trial even begins.

The advisory Staff's expression on the ultimate merits of the application or tariff filing also necessarily involves the commitment of far greater Staff resources than are necessary or helpful to the development of a proper record. Prior to the hearing, the advisory Staff does not have the many advantages of the adjudicatory Staff when forming its ultimate positions. Adjudicatory Staff may serve discovery, depose witnesses, hire experts, and have *ex parte* communications with other parties. In short, as a party to the adjudicatory docket, the adjudicatory Staff has far greater opportunity than advisory Staff to understand and advance the public interest. As it practically works out, the advisory Staff's initial concerns may or may not ultimately frame the issues most important for consideration within the adjudicatory docket, and may or may not even frame the issues of concern to the adjudicatory Staff. Accordingly, the current and large commitment of additional resources by the advisory Staff necessary to express its positions on the "reasonableness and propriety" of such filings are often wasted resources which would better utilized if transferred to the advocacy Staff.

The proposed regulations recognize the current duplicative and inefficient roles between advisory Staff and adjudicatory Staff during the initial phases of an adjudicatory docket. The proposed modifications to 3 AAC 48.275(j) limit the advisory Staff's role to a review of the application or tariff filing for compliance with the filing requirements of the regulations. The proposed regulations are not entirely clear as to whether advisory Staff or adjudicatory Staff would make the recommendation for suspension and further investigation to the Commission. While the point of transfer from the initial review functions of the

advisory Staff to the latter adjudicatory functions of the adjudicatory Staff should be clarified in a manner which limits advocacy functions of the advisory Staff, it would seem reasonable to continue to allow advisory Staff to make an initial suspension and investigation recommendation.

B. Adjudicatory Dockets.

The role of adjudicatory Staff within the context of an adjudicatory docket must be strengthened to ensure the public interest is properly and fully represented. When the adjudicatory Staff represents the public interest, it is a party. As such, adjudicatory Staff's ideas and adjudicatory positions may be tested in the marketplace of ideas through discovery, cross examination, argument, *ex parte* conversations with other parties, and briefing. Adjudicatory Staff also has the time necessary to more fully explore its positions prior to committing to them.

The role of the advisory Staff within the context of an adjudicatory docket must necessarily be limited to ensure a transparent process which is fair to all the participants of the process. While the advisory Staff clearly has a role to play, the Commission should ensure that its quasi-judicial role is not compromised by the advisory Staff taking adjudicatory positions prior to the establishment of a complete record in the proceeding.

C. Rulemaking Dockets.

Similarly, the role of adjudicatory Staff within the context of a rulemaking docket should also be strengthened to ensure the public interest is properly and fully represented. Moreover, the role of the advisory Staff should be more limited to allow the Commission and the public a greater opportunity to frame the substance of the policy to be expressed.

While the *ex parte* rules do not apply in rulemaking matters, it is still important to preserve the integrity of the Commission's policy making process by ensuring the advisory Staff is not placed in a dual role when framing broad policy issues. Currently, the advisory Staff often drafts fully-formed regulations which are then noticed to the public for comment. This puts the public in the position of commenting on policies which are already fully formed by the advisory Staff, and puts the advisory Staff in the position of advising the Commission as to the public's comments on its own fully-formed regulations. Neither should be permitted.

Instead, the rulemaking process should be made transparent earlier so as to allow the advisory Staff the opportunity to identify areas in which new policies may be necessary, the public the right to comment and frame those issues prior to their expression as fully-formed regulations, and the Commission the opportunity (after considering the public's concerns) to direct the advisory Staff as to what policies should be expressed within the new regulations before they are fully formed.

IV. Administrative Support for Public Advocacy Staff's Role.

The regulatory model envisioned by the Legislature will not work absent the Commission's dedication of the resources necessary to make it work. With this in mind, the Commission should allocate the resources necessary to put in place the regulatory model envisioned by the Legislature when it created the PAS, even if it is necessary to reallocate resources from the advisory Staff to the adjudicatory Staff.

This suggestion, however, is not a suggestion to transfer resources only, but a suggestion to transfer both resources and advocacy functions from advisory Staff to adjudicatory Staff. Currently, the advisory

Staff has 16 analysts while the adjudicatory Staff has only 4. Given the Commission's own expertise on regulatory matters, these staffing proportions seem disproportionately weighted toward the advisory Staff.

Moreover, many of the advisory Staff's resources seem devoted to continuing what are essentially advocacy functions. For example, advisory Staff's extensive review and analysis of every filing for the purposes of commenting on its "reasonableness and propriety" is both advocacy and unnecessary. Instead, advisory Staff only need review and comment on the compliance of the filing with the filing requirements and the need for suspension and further investigation.² Similarly advisory Staff's extensive efforts to create fully-formed new regulations in new policy areas is also both advocacy and unnecessary. Instead, advisory Staff only need identify policy issues necessary for the Commission to consider and the public to comment upon. After this more transparent and public process, then the advisory Staff could draft the specific regulations under the direction of the Commission after it has had the benefit of initial public comment. In short, many of the current functions of the advisory Staff are truly advocacy functions which would be better and more efficiently assigned to the advocacy Staff.

V. RCA Order No. U-97-49(8) Notice.

Pursuant to Commission Order No. U-97-49(8), AECA notes this matter may directly impact the access charge system which AECA administers. Since this matter involves AECA's participation in Commission proceedings "relating to access charge tariffs, the billing and collection of access charges, and

² This would also shorten the review time necessary for such filings and allow those filings on which further investigation is necessary to reach the adjudicatory process more quickly.

the distribution of access charge revenues." AECA's participation in this proceeding has been preauthorized under Section 603(b) of the Alaska Intrastate Interexchange Access Charge Manual ("Manual"). Nevertheless, AECA does not intend to include the costs of its participation in this proceeding in its budget as a Category I expense under Section 603(d) of the Manual.

VI. Conclusion.

AECA believes the proposed regulations form a good first step in putting in place the regulatory model for Staff envisioned by the Legislature when it created both this Commission and the P&S. AECA respectfully believes that changes consistent with the proposed regulations could greatly aid the Commission in fulfilling its regulatory duties to the public of Alaska, and thanks the Commission for the opportunity to begin this discussion.

DATED this 28th day of May, 2002.

BRENA, BELL & CLARKSON, P.C.
Attorneys for Alaska Exchange Carriers Association, Inc.

By _____
Robin O. Brena, Bar No. 8410089
David W. Wensel, Bar No. 9306041
310 K Street, Suite 601
Anchorage, AK 99501
(907) 258-2000

Kennedy & Co. LLC

S. Records
File

Dan F. Kennedy CPA, MBA and Janet C. Kennedy CPA
Lakeview Professional Building
851 E. Westpoint Dr., Suite 108
Wasilla, Alaska 99654

work phone: 907.376-1272
fax: 907.373-1272
www.kennedycpas.com
email: kennedy@kennedycpas.com

via FAX, only 269-0229

June 13, 2002

**To: Honorable Senator Robin Taylor, Chair and Members of the Senate
Judiciary Committee**

RE: RCA Testimony

Thank you for opening an inquiry as to the Regulatory Commission of Alaska. I wish to provide input as to the future of the RCA. The RCA is broken.

I have been a certified public accountant in Alaska since 1980, with extensive utility experience. In 1995 I obtained a graduate degree from Alaska Pacific University, Master of Business Administration in Telecommunication Management.

When the RCA transitioned from the Alaska Public Utility Commission, I had hoped that the agency would become efficient in its public responsibility. It failed. The RCA is just another state bureaucracy that creates hardship on some utilities. The RCA needs leadership to make effective and efficient decisions.

Recommendations that Can be Accomplished at the June 24th Special Session

1. Reauthorize the RCA for only a one year period to allow for careful study.
2. Identify the problems of the RCA during the next six months and pass effective legislation next year based on such recommendations of the study.
3. Lessen the caseload by eliminating all cooperatives from rate regulation, now. Member/owners of cooperatives elect their own board of directors that can protect the public through its statutory fiduciary responsibilities. Any cooperative disputes can be efficiently adjudicated by arbitration or in the court system.
4. Appoint competent leaders to the RCA that can make cost effective decisions for the public.

I am willing to help solve the problems. Please call me at 376-1272 if you have any questions.

Sincerely,

Dan F. Kennedy CPA

Dan F. Kennedy CPA, MBA
Kennedy & Co. LLC - certified public accountants
Wasilla, Alaska