

SB 3001/

HB 3001

**Before the
Senate Judiciary Committee
25 June 2002**

***Testimony of Wesley E. Carson
Alaska Communications Systems***

Mr. Chairman, members of the Committee, on behalf of Alaska Communications Systems I wish thank you for the opportunity to present testimony before the Senate Judiciary Committee. My name is Wesley E. Carson. I was involved in founding Alaska Communications Systems and serve as its President & Chief Operating Officer.

With regard to the Legislature's consideration of the proposed re-authorization of the Regulatory Commission of Alaska ("RCA"), we state most emphatically our belief that the regulatory status quo is unacceptable. We have serious concerns about how the RCA's regulatory processes and substantive decisions are impacting the long-term public interest of Alaskans, as well as the economic strength of the State's regulated utilities. Our concerns and those expressed by many other utilities throughout Alaska must be addressed by the Legislature in a thorough and comprehensive manner *before the RCA is re-authorized.*

At this juncture, it should be abundantly clear that it would not be prudent for the Legislature to simply re-authorize the RCA and perpetuate the status quo. No matter how well intentioned the commissioners and staff may be, there are procedural flaws, public policy and legal issues that must first be addressed.

Attached to my testimony are outlines of legal and procedural issues we suggest be included in the Legislature's review of the RCA. Many of our procedural concerns are shared by other regulated utilities in the State. However, there are several telecommunications legal and policy matters that primarily affect ACS at this time. I would like to highlight several of these matters for the Committee.

This testimony will focus on the four ACS local telephone companies that build and maintain the Public Switched Telephone Network, serving 75 percent of the State's population. These ACS companies are: ACS of Anchorage (formerly ATU); ACS of Fairbanks (formerly FMUS); ACS of Alaska (serving Juneau); and ACS of the Northland (serving the highest cost and most remote of our service areas).

It is important to distinguish these ACS local telephone companies from the Regional Bell Operating Companies (or RBOCs) that provide service in every one of the other 49 states. Alaska is the only state that is not, and has never been, served by an RBOC. Verizon, the largest RBOC, owns approximately one-third of the nearly 200 million telephone lines in the country and SBC Communications owns almost another one-third. Together, the RBOCs account for 87 percent of the country's telephone lines. All four of the ACS companies taken together represent about 330,000 telephone lines or less than 2/1000ths of the nation's total. In drafting the Telecommunications Act of 1996, Congress was cognizant of the differences between the RBOCs and small independents such as ACS.

TELECOMMUNICATIONS LAW AND POLICY

The RCA purports to simply implement State and Federal law and regulations, and to take its policy direction from the Legislature. We believe the RCA creates its own public

policy and legal interpretations where necessary to support its positions. And we contend the RCA seeks to promote competition in local telephone service at any cost – to ACS and, in the long-term, the rural Alaskan consumer. We suggest the following examples in support our view.

Anchorage Interconnection Agreement

The Interconnection Agreement between General Communications, Inc. (“GCI”) and Anchorage Telephone Utility (“ATU”), one of the first in the nation, was approved by the Alaska Public Utility Commission (“APUC”) in January, 1997 in Order U-96-89(9). It established the terms for local telephone competition in Anchorage, including the rate at which GCI would lease from ATU unbundled network element (“UNE”) loops. The UNE loop is the telephone circuit or line connecting a customer with the Public Switched Telephone Network. By leasing the UNE loop, GCI is able to use the telephone company’s facilities to connect a customer and charge the customer for retail telephone service.

In the 1997 order, the APUC established a *temporary* UNE loop rate of \$13.85 per month. This rate was intended to be a short-term substitute for, and to be replaced by, a final price based on a cost study in compliance with federal law. In the Commission’s own words, “all prices in the arbitrated interconnection agreement are temporary in nature and will require a full study based upon a cost methodology to be determined by this Commission at a later date.”

ACS of Anchorage, Inc., as the successor to ATU, sought, but failed to obtain, an agreement with GCI for new cost-based rates. ACS then asked the RCA to set new rates in compliance with federal law in January 2000, 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. Undoubtedly, this non-compensatory rate, which gives GCI a cost of goods advantage over ACS, has contributed to making Anchorage the most competitive local telephone market in the nation. It thus explains, in part, the following remark made by RCA Chair G. Nanette Thompson in a speech on July 30, 2001, at the Anchorage Chamber of Commerce:

"My colleagues on other state commissions are astonished to hear that a competitor has captured 35-40 percent of the Anchorage market."

The RCA, on March 6, 2000, opened a docket to set new rates, and expressly recognized that the existing rates were both temporary and "not based upon an accepted forward-looking cost methodology." Nevertheless, the RCA took no action on the open docket. Finally, a year and a half after requesting new forward-looking rates, with no resolution in sight, ACS asked for at least a new "temporary" rate.

The RCA held a hearing during the latter part of 2001 in which ACS submitted extensive evidence supporting a UNE loop rate of \$24.00. ACS requested an "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 may have no recourse to collect the underpayments from GCI.

At the hearing, GCI's counsel made an oral representation – unsupported by any cost studies submitted in connection with the hearing – that their models could not justify a

rate greater than \$14.92. The RCA agreed with GCI, despite the absence of any supporting evidence, and issued an order granting an interim refundable rate of \$14.92.

Two and a half years after requesting new rates in compliance with federal law, and five and a half years after initiating interconnection competition, ACS still has never had an Anchorage UNE loop rate established in compliance with federal law. In fact, ACS has been unable to obtain even a schedule for resolving this matter. And, as our submitted cost studies indicate, ACS is still not receiving adequate compensation for UNE loops.

Termination of ACS Rural Exemptions

Telephone companies classified as "rural" (i.e., serving high cost areas) by the Telecommunications Act of 1996 are exempt from the obligation to interconnect and lease their loops and other facilities to competitors. State Commissions may terminate a rural exemption, but only, according to the Act, if the state commission finds that it is technically feasible, is not unduly economically burdensome, and would be consistent with universal service to do so. The Act recognized the fragile economics of most rural telephone companies and the folly of trying to bring market economics to high cost telecommunications services that cannot exist without significant subsidies.

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 therefore ruled that the exemption should be preserved.

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 ACS. The APUC did so, then

terminated the rural exemptions of the ACS companies and ordered interconnection with GCI on June 30, 1999. 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, in a decision that was binding on all other circuits, held that the burden of proof must be on the competitor, not the rural telephone company, and the economic burden on the rural telephone company associated with competitive entry must be considered.

Obviously recognizing that these rural exemptions had been terminated 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."* This was a clear case of the RCA ignoring a federal decision that did not comport with its own policy to force competition in rural areas. ACS has appealed the matter to the Alaska Supreme Court, where it is now pending review.

The RCA also terminated the exemption for ACS' most rural company, ACS of the Northland, despite GCI's testimony in 1997 and again in 1999 that it was seeking interconnection only in North Pole and not anywhere else in the ACS of the Northland service territory. Given GCI's position, and the absence of a dispute concerning most of the ACS of the Northland territory, we do not believe any specific evidence was

introduced of the impacts of competition on the economic burden or universal service in Northland's small communities such as Seldovia, Ninilchik, Delta Junction and Nenana.

The RCA, in declaring the RCA's intent that the rural exemption be terminated for these small communities, stated: "We have a responsibility to carry out the intent of Congress in adopting the Telecommunications Act of 1996, which is *to require competition in the provision of local telecommunications services*" (Docket No. U-97-144, Order No. 12).

We contend that the RCA has a responsibility to carry out the *full intent of the Act*, not just the provisions that support the commission's own agenda. The Act permits a state commission to terminate a rural exemption *only* if there is an affirmative finding that allowing interconnection competition is will not be unduly economically burdensome on the rural telephone company and will not jeopardize universal service. And, consistent with the 8th Circuit Court of Appeals decision, the burden of making this case must be on the competitor, not the rural telephone company.

Interconnection Agreements in Fairbanks and Juneau

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. In sharp contrast to its dilatory handling of the ACS request for legal UNE loop rates in Anchorage, the RCA very promptly set rates for Fairbanks and Juneau in response to a request by GCI. The actual ACS cost for an average loop in Fairbanks is about \$33.50, based on cost information submitted by ACS to justify receipt of federal universal service funds. The RCA, however, set a UNE loop price for Fairbanks of \$19.19 – giving GCI a cost of goods that is just 57% of the ACS cost.

At the time it terminated the rural exemptions, the RCA stated that “negotiations regarding appropriate UNE pricing can achieve an acceptable level of economic impact” and promised that it would play a continuing supervisory role to ensure that the “economic burdens borne by the incumbent carrier in a market where local competition is newly introduced are not too great.” The Company testified in the Fairbanks rural exemption proceeding that economic harm would result from a UNE loop rate as low as \$27.30. The RCA flatly rejected the Company’s economic harm argument, declaring: “*That UNE price is unrealistically low.*” The RCA then promptly arbitrated a rate of \$19.19.

Again, we believe the RCA pursued its own policy agenda and was determined to grant GCI a competitive advantage so as to replicate the Anchorage experience in these rural markets. To establish the UNE loop rate, the RCA rejected ACS’ detailed cost study, relied on an improper economic model, and elected to set prices based on Lower 48 costs (with an “Alaska differential” in some cases) rather than *actual ACS costs*.

The RCA relied upon the “Synthesis Model” used by the FCC to allocate Universal Service Funds. As long ago as 1999, the FCC cautioned against using the model for UNE pricing, stating that “[t]he federal cost model was developed for the purpose of determining federal universal service support, and it may not be appropriate to use nationwide values for other purposes, such as determining prices for unbundled network elements” (Tenth Report and Order, 14 FCC Rcd 20156, ¶32 (1999)). The FCC reiterated this position in an order issued just this month, stating: “The Commission has cautioned against using the results of the Synthesis Model to set rates.” (Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps, Order, FCC 02-161, para 36 (June 5, 2002)).

Furthermore, it is worth noting that the Rural Task Force of the Federal-State Joint Board on Universal Service, co-chaired by Chair Thompson, reviewed the reliability of the FCC's Synthesis Model and concluded: "[T]he costs generated by the Synthesis Model are likely to vary widely from reasonable estimates of forward-looking costs. As a result it is the opinion of Task Force that the current model is not an appropriate tool for determining the forward-looking cost of Rural Carriers" (Rural Task Force Recommendation to the Federal-State; Joint Board on Universal Service, September 22, 2000, at 18).

Exacerbating the economics of forcing competition in these high cost markets, the RCA also issued an order granting GCI the right to receive the federal universal service fund 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. The end result is to discourage investment to build and maintain the high cost networks that connect customers in these areas.

Rate Case Proceedings

Many utilities have expressed concern about the level of effort and resources required to adjudicate rate cases before the RCA. ACS shares this concern. The current ACS rate cases were mandated by the commission as a condition of transferring the certificates of public convenience and necessity to ACS in 1999. By commission order, these rate cases commenced on July 1, 2001, using information from 2000 financial results. We now anticipate rates sometime in 2003, based on data that will then be three years old. This matter has already cost ACS roughly \$1.8 million and we expect the full proceeding to cost approximately \$3.0 million.

ACS has produced more than 13,000 documents to date, and provided more than 2,500 responses to more than 850 separate discovery requests – the bulk of which came from our chief competitor, GCI. All of this effort is paid for by the consumers, either directly via the “RCC” charge on utility bills or indirectly as recoverable expenses through rates. Earlier this month, the RCA finally issued a depreciation decision in the rate case proceedings that appears to conflict with the U.S. Supreme Court’s decision this May in Verizon v. FCC. The U.S. Supreme Court criticized attempts to minimize depreciation and slow depreciation rates, yet that is precisely what the RCA has ordered. The depreciation rates established by the RCA for ACS of Anchorage are not only much lower than the rates employed by its competitors, but these rates appear to be significantly lower than any other telephone utility in Alaska. In fact, they appear to be lower than any known depreciation rate for any telephone utility, big or small, anywhere in the country.

This is exactly the opposite result from what one would expect in the most competitive marketplace in the nation where there is heightened pressure to modernize equipment or lose customers. The effect of this decision will be to leave ACS burdened with capital tied up in stranded, obsolete facilities while the competitors invest in newer technologies. Many utilities have expressed fears that testimony against re-authorization of the RCA could result in retaliatory rulings by the commission in the future. We are left to wonder if ACS has been the RCA’s first victim.

The “quid pro quo” for the regulation imposed on the ACS companies should be an opportunity to earn a return on our investment. That would be fair. But the reality is that the RCA can compel us to build and serve – but we do not have a way to assure a return on investment. This is a commission that claimed “sovereign immunity” when ACS

sought to have a matter under the Telecommunications Act reviewed by a federal district court. Where is justice when the Commission refuses to be held accountable for their decisions? And why wouldn't state commissioners welcome a review to make absolutely certain the decisions they were making were consistent with the law and promoting the public interest?

The Legislature must be concerned about the impacts these regulatory policies have on ACS and, more importantly, on Alaskan consumers in the long run. ACS and its predecessors have invested substantial funds to build and upgrade the network that connects three-fourths of the State's population with each other and the rest of the world. We must be able to generate adequate financial returns if we are to continue to construct and operate the modern telecommunications facilities that keep Alaskans connected. I can assure you that the capital markets are scrutinizing the impact of this commission's regulatory decisions on the Alaskan markets. We must have access to capital from those markets to continue to invest in the business.

Looking at ACS of Anchorage, we have seen a steady decline in revenues from 1999 to 2001 that is directly proportional to the increase in UNE loops. Over that same period, we have gotten more efficient each year. Our cash expenses per line have decreased. That is one of the benefits of competition. It makes you become more efficient. In fact, it is worth noting that ACS is a more efficient operation than many of our peer group companies. For 2001, annual cash expense per telephone line for ACS of Anchorage was \$242. The comparative spending per line for Alltel was \$276; CenturyTel was at \$402 and the TDS expense was \$435.

We have continued to invest in the network. We have made these investments with the hope that the RCA would, through our current rate case and the Anchorage UNE

proceeding, permit us to earn a reasonable return on that investment. Thus far, we have certainly been disappointed.

I reference again the recent RCA order reducing our depreciation rates. We were seeking a rate of 9.30 percent, which is comparable to our primary competitor's depreciation rate. Interestingly enough, though, it was GCI arguing against our depreciation rate – not the RCA's Public Advocacy Staff. Staff relied entirely on GCI to formulate a position and the RCA reduced our rate from the existing 7.80 percent to 4.78 percent, which was remarkably close to the GCI recommendation of 4.49 percent.

Am I implying that ACS is concerned about the frequency with which the RCA sides with GCI in such matters? Absolutely. We reviewed commission decisions on disputed issues before the RCA from July 1999 to the present. In those matters where GCI advocated a position, the RCA ruled in GCI's favor 81.3 percent of the time. The commissioners might well tell you they are only implementing the law. I believe an objective review of matters such as the five and one-half year old "temporary" Anchorage UNE loop rate, the disregard of the 8th Circuit Court of Appeals ruling on the burden of proof in a rural exemption proceeding, and the termination of the rural exemption for ACS of the Northland communities without a record establishing the findings required by the Act suggest otherwise.

Recommendations for the Legislature

We believe the legislators must carefully review the current regulatory regime before re-authorizing the RCA. The Legislature must assure that State regulation of utilities promotes the public interest, and that every utility receives fair and open, unbiased, and rational treatment that encourages continued investment in Alaska's infrastructure.

With regard to ACS' specific concerns, we would ask that the Legislature consider how continued investment in the network will be assured in the long run; how capital will be generated to build the local telephone network and pay the expense of operating it; and how the future of telecommunications in Alaska, the state more dependent upon modern telecommunications than any other state in the Union, will be guaranteed. There is great urgency for ACS. The RCA has made significant decisions adverse to ACS that are very difficult to remedy as time goes on. How shall ACS recover revenues lost as a result of years of unlawful interconnection rates or due to forced interconnection agreements in rural areas? There is no time for delay and maintenance of the status quo is not acceptable.

ACS makes the following recommendations to the Legislature relative to the proposed re-authorization of the RCA:

1. *Immediately establish a Legislative Oversight Committee to monitor the RCA's actions and to formulate recommendations for consideration in the 2003 legislative session.* The charter of the Legislative Oversight Committee should be to assure that regulatory policy is aligned with long-term public interest, that regulatory processes are completed in a timely fashion, that due process is afforded to all, and that substantive law is being applied appropriately.
2. *Use the findings and recommendations of the Legislative Oversight Committee, along with testimony provided in these and related legislative committee hearings, to guide the 2003 Legislature's deliberations of the proposed re-authorization of the RCA.* The Legislature should also utilize the State Telecommunications Study as it considers the appropriate statutory,

regulatory and policy directions necessary to guide the regulators in telecommunications matters. We offer the issues set forth on the attachments to this testimony for inclusion in Legislature's deliberations.

3. *Require that the chair of the RCA be rotated so as to spread the responsibilities and prevent a single commissioner from exercising undue influence.* As pertaining to ACS specifically, we are concerned about the appearance of impropriety in Chair Thompson's interactions with GCI; what we perceive as bias against ACS in regulatory processes and decisions; and the possibility of retribution against ACS by the RCA in current and future regulatory orders as a result of ACS testifying before this Legislature. Consequently, and in light of the significant power currently vested in the RCA's chair, we believe it would be appropriate for another commissioner to be appointed to the position of chair and to require that Commissioner Thompson disqualify herself from matters relating to ACS.

Mr. Chairman and members of the Committee, we again thank you for this opportunity. This concludes the testimony of ACS.

Re-Authorization of the Regulatory Commission of Alaska
Summary of Procedural/Due Process Issues
Potential Remedial Action

RCA Management Structure; Advisory Staff vs. Public Advocacy Section

Issue:

- Too many duties assigned to the Chair; Chair's term of office too long
- Conflicting roles between Advisory Staff and PAS
- Over allocation of positions to Advisory Staff (47 vs. 5 assigned to PAS)
- Under utilization of PAS (498 formal adjudications; 59 assigned to PAS)
- Rules for Advisory Staff vague and ad hoc; ex parte does not apply
- No opportunity for utilities to cross-examine Advisory Staff

Potential Remedial Action:

- Legislature should implement term limits for the Chair; one-year appointment with limitations on successive terms
- Re-allocate technical and professional Advisory positions to PAS
- Structurally separate PAS from RCA; house RCA and PAS in different Executive Branch departments
- Assign all public interest advocacy functions to PAS
- Remaining RCA staff to perform administrative, filing compliance and informal consumer complaint resolution
- If structural separation of PAS not implemented, Legislature should consider alternative management structures including reinstatement of the Executive Director/Staff Director position

Lack of Codified Ex Parte Rules

Issue:

- Administrative Procedures Act does not apply to RCA adjudications
- No codified ex parte rules beyond what is found in case law
- Perceived concerns about ex parte have been cited by RCA to discourage ACS from communicating directly with commissioners
- ACS is limited in its ability to "make its case"
- Commissioners are limited in their ability to learn about complex telecom issues and ask legitimate questions about the positions of parties

Potential Remedial Action:

- Legislature could adopt specific ex parte rules governing interactions with RCA commissioners
- Legislature could require that the RCA promulgate ex parte regulations by a date certain
- FCC approach that defines rules; applies specific rules to specific cases; allows direct contact with commissioners followed by a mandatory disclosure filing should be considered

Open Meetings Act

Issue:

- Adjudicatory matters and certain other matters are specifically exempted from application of the OMA
- All other matters requiring deliberation and voting must be addressed in a properly noticed public meeting
- Apparent violations of the OMA (comments filed at the FCC; contract and procurement matters; RCA response to pending legislation, etc.)

Potential Remedial Action:

- Legislative guidance to the RCA regarding OMA compliance obligations
- Legislative action prohibiting the practice of conducting two-at-a-time commissioner meetings as an alternative to the public deliberation and voting requirements of the OMA
- Legislative action directed to the Department of Law setting out specific guidelines for reminding the RCA of its OMA obligations

Due Process and Evidentiary Hearings

Issue:

- RCA's new "diversion" procedure implemented without prior public notice or any industry input
- New procedure probably adopted as mechanism to speed up adjudications, but no specific rationale was ever articulated by the RCA
- New procedure effects tariffs that have been "suspended" for further investigation and relies heavily on Advisory Staff recommendations
- Utilities are given 30 days to file written responses to Advisory Staff memoranda; RCA may then summarily decide contested issues
- New procedure eliminates: Opportunity of other interested parties to intervene; discovery, filing of written testimony, opportunity to cross-examine adverse witnesses and the evidentiary hearing itself

Potential Remedial Action:

- The Superior Court reversed and remanded the case that initiated the "diversion" procedure, finding that the RCA failed to follow existing law
- Legislature should direct the RCA to suspend the procedure until new regulations have been duly adopted
- Legislature should direct the RCA to promulgate regulations by a date certain that are calculated to improve efficiency without violating the due process rights of parties
- Legislature should adopt reasonable, but absolute time standards for RCA decisions; RCA's unilateral "good cause" extensions should be eliminated
- Legislature should take action to adopt an Administrative Law Judge classification that allows ALJs to make substantive regulatory decisions subject to appeal

Re-Authorization of the Regulatory Commission of Alaska
Summary of Substantive Policies And
Potential Remedial Action

Interconnection Agreements

Issue:

- Rates for facilities leases ("UNEs" or "Unbundled Network Elements") artificially low based on improper legal standard
- Failure to promptly resolve matters raised by the incumbent
- Refusal to submit implementation of federal law for federal judicial review
- Bias in favor of competitive carriers

Potential Remedial Action:

- Rates should be based on the costs of the carrier leasing facilities, not on another or a hypothetical carrier's costs
- The best evidence of the leasing carrier's forward looking costs should be that carrier's most current costs for labor, materials and other cost components
- Require decisions implementing federal law to be subject to federal judicial review
- Competing carriers must pay the full cost for their use of facilities -- avoid a policy of discounting facilities below their true cost

Rural Exemption

Issue:

- Rural exemptions under the federal Telecommunications Act of 1996 have been terminated by the RCA based on an incorrect legal standard and in the absence of evidence in the record
- Rural exemptions under the federal Telecommunications Act of 1996 have been terminated without detailed analyses and findings, risking universal service for all telephone consumers outside of Anchorage

Potential Remedial Action:

- Require the RCA to follow federal judicial rulings when implementing provisions of the federal Telecommunications Act of 1996
- Require the RCA to place the burden of proof on competing carriers, as required by federal law
- Establish as a universal service as a priority state policy and require detailed analyses and finding to support terminating a rural exemption

Deregulation and Rate Cases

Issue:

- Anchorage is the most competitive major market for telecommunications in the nation and competition is well under way in Fairbanks and Juneau
- Continued regulation is contrary to the principals of competition
- Rates and other requirements should be eliminated in all markets where consumers have a choice of two or more carriers
- Where regulation continues, final rates should be determined within 12 months of commencing a proceeding and carriers should not be exposed to burdensome discovery

Potential Remedial Action:

- Detariff and deregulate markets where consumers have a choice of carriers
- Permit carriers to negotiate rates and terms with customers
- Establish statutory limits on the time allowed for a rate case
- Establish statutory limits on discovery

Other Matters

Issue:

- Federal law requires incumbent telephone companies to share their facilities with competitors but fails to impose any recipricol obligations on the competitors
- Commission policy imposes retroactive network service standards
- Commission policy imposes barriers to corporate affiliations and marketing
- Commission policy opposes regulatory parity for all providers of the same service, regardless of the mode of service delivery

Potential Remedial Action:

- Establish obligations under state law for competitive carriers to share their facilities to the same extent, and under the same terms and conditions, as incumbent carriers
- Limit the Commission's right to impose new network service standards to those facilities constructed after a rule is adopted
- Eliminate obsolete barriers to corporate efficiency and joint marketing
- Establish a policy of regulatory parity for all telecommunications services regardless of the mode of service delivery

adopted 6/26¹⁰ A.M.

WORK DRAFT

WORK DRAFT

WORK DRAFT

amended sec 32
(Donley)

22-GH2115L
Craver
6/26/02

amend 2 - chair
(Donley)

amend 3 - "terminate" def -
(Donley)

SENATE CS FOR CS FOR HOUSE BILL NO. 3001(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - THIRD SPECIAL SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the powers and duties of the Regulatory Commission of Alaska,
2 establishing a task force to inquire into the operation of the commission, extending the
3 termination date of the commission to June 30, 2003, establishing the
4 Telecommunications Commission of Alaska, making conforming amendments, and
5 permitting grants to water and sewer companies for water quality projects; and
6 providing for an effective date."

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

8 * Section 1. AS 29.35.060(a) is amended to read:

9 (a) The assembly acting for the area outside all cities in the borough and the
10 council acting for the area in a city may grant franchises, including exclusive franchise
11 privileges, to a person, corporation, organization, or utility not certificated by the
12 former Alaska Public Utilities Commission, [OR BY] the Regulatory Commission of
13 Alaska, or the Telecommunications Commission of Alaska and may permit the use

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1 of streets and other public places by the franchise holder under regulations prescribed
2 by ordinance.

3 * Sec. 2. AS 29.35.060(b) is amended to read:

4 (b) Unless the grant is made on a competitive basis, the grant of an exclusive
5 right to use a public street or right-of-way for more than five years to a utility or a
6 transportation system not certificated by the former Alaska Public Utilities
7 Commission, [OR BY] the Regulatory Commission of Alaska, or the
8 Telecommunications Commission of Alaska shall be valid only if approved by a
9 majority of the voters at an election.

10 * Sec. 3. AS 29.35.131(c) is amended to read:

11 (c) A local exchange telephone company or wireless telephone company shall
12 include the appropriate enhanced 911 surcharge, stated separately and included in the
13 total amount owed, in the bills delivered to its customers. The Telecommunications
14 [REGULATORY] Commission of Alaska may not consider the enhanced 911
15 surcharge as revenue of the telephone company and has no jurisdiction over an
16 enhanced 911 system. A customer is liable for payment of the enhanced 911
17 surcharge in the amounts billed by the telephone company until the amounts have been
18 paid to the telephone company.

19 * Sec. 4. AS 29.35.137(5) is amended to read:

20 (5) "local exchange service" means the transmission of two-way
21 interactive switched voice communications furnished by a local exchange telephone
22 company within a local exchange area, including access to enhanced 911 systems; in
23 this paragraph, "local exchange area" means a geographic area encompassing one or
24 more political subdivisions as described in maps, tariffs, or rate schedules filed with
25 the Telecommunications [REGULATORY] Commission of Alaska, where local
26 exchange rates apply;

27 * Sec. 5. AS 37.05.146(b)(4) is amended by adding a new subparagraph to read:

28 (AAA) Telecommunications Commission of Alaska under
29 AS 42.05 and AS 42.08;

30 * Sec. 6. AS 39.25.120(c)(19) is amended to read:

31 (19) hearing officers and administrative law judges of the Regulatory

1 Commission of Alaska and the Telecommunications Commission of Alaska.

2 * Sec. 7. AS 39.50.200(b) is amended by adding a new paragraph to read:

3 (57) Telecommunications Commission of Alaska (AS 42.08.010).

4 * Sec. 8. AS 42.04.010(b) is amended to read:

5 (b) The commission shall annually elect [WHEN A VACANCY OCCURS
6 IN THE OFFICE OF CHAIR, THE COMMISSION MAY NOMINATE] one of its
7 members to serve as chair for the following fiscal year. When a vacancy occurs in
8 the office of chair, the commission shall elect one of its members to serve the
9 remaining term as chair [GOVERNOR SHALL DESIGNATE THE CHAIR OF
10 THE COMMISSION, EITHER BY SELECTING THE MEMBER NOMINATED BY
11 THE COMMISSION OR ANOTHER MEMBER]. The term as chair is one year
12 [FOUR YEARS]. The chair may [NOT] be elected [APPOINTED] to not more than
13 three successive terms as chair. After a year of not serving as chair, the
14 commissioner is eligible for election as chair again.

15 * Sec. 9. AS 42.04.080 is amended by adding new subsections to read:

16 (c) A member of a hearing panel appointed under (a) of this section may not
17 have or have had an ex parte communication on the matter before the panel with a
18 party to the proceeding.

19 (d) The chair may not appoint the members of a hearing panel if the chair has
20 had an ex parte communication on the matter before the panel, and the chair shall
21 delegate the appointment power to the next most senior commissioner who has not had
22 an ex parte communication in that matter.

23 (e) For purposes of (c) and (d) of this section, an ex parte communication is a
24 direct or indirect communication between a commissioner and a party without the
25 opportunity for all other parties to be present. However, a communication occurring
26 more than five years before the filing of the matter with the commission does not
27 disqualify a person under (c) or (d) of this section. Circumstances that might
28 reasonably suggest to a third party that an ex parte contact had occurred, even if none
29 was made, shall be considered an ex parte contact for purposes of (c) and (d) of this
30 section.

31 * Sec. 10. AS 42.04 is amended by adding a new section to article 1 to read:

1 **Sec. 42.04.090. Impartial decision-making.** (a) A hearing panel and each
2 member of the hearing panel shall accord to a person the right to be heard according to
3 law. A member of a hearing panel may not initiate, permit, or consider an ex parte
4 communication or other communication made to the member of a hearing panel
5 outside the presence of the parties concerning a pending or impending proceeding
6 except as allowed by this section. Members of a hearing panel shall make reasonable
7 efforts to see that law clerks and other commission staff carrying out similar functions
8 under the hearing panel's supervision do not violate the provisions of this section.

9 (b) A hearing panel and each member of the hearing panel may initiate or
10 consider an ex parte communication when expressly authorized by law to do so.

11 (c) When circumstances require, a hearing panel and each member of the
12 hearing panel may engage in ex parte communications for scheduling or other
13 administrative purposes if (1) the communications do not deal with substantive matters
14 or the merits of the issues litigated; (2) each member of the hearing panel reasonably
15 believes no party will gain a procedural or tactical advantage because the
16 communication is ex parte; and (3) the hearing panel takes reasonable steps to notify
17 all parties promptly of the substance of the ex parte communication and, when
18 practicable, allows them an opportunity to respond. This subsection does not apply to
19 ex parte communications by commission staff concerning scheduling or administrative
20 matters.

21 (d) If the parties agree to this procedure beforehand, either in writing or on the
22 record, a hearing panel and each member of the hearing panel may engage in ex parte
23 communications on specified administrative topics with one or more parties.

24 (e) A hearing panel and each member of the hearing panel may consult other
25 members of the panel and commission staff whose function is to aid the hearing panel
26 in carrying out its adjudicative responsibilities.

27 (f) A hearing panel and each member of the hearing panel may, with the
28 consent of the parties, confer separately with the parties and their lawyers in an effort
29 to mediate or settle matters pending before the hearing panel.

30 * **Sec. 11.** AS 42.05.141(a) is amended to read:

31 (a) The commission [REGULATORY COMMISSION OF ALASKA] may

1 do all things necessary or proper to carry out the purposes and exercise the powers
2 expressly granted or reasonably implied in this chapter, including

3 (1) regulate every public utility engaged or proposing to engage in a
4 utility business inside the state, except to the extent exempted by AS 42.05.711;

5 (2) investigate, upon complaint or upon its own motion, the rates,
6 classifications, rules, regulations, practices, services, and facilities of a public utility
7 and hold hearings on them;

8 (3) make or require just, fair, and reasonable rates, classifications,
9 regulations, practices, services, and facilities for a public utility;

10 (4) prescribe the system of accounts and regulate the service and safety
11 of operations of a public utility;

12 (5) require a public utility to file reports and other information and
13 data;

14 (6) appear personally or by counsel and represent the interests and
15 welfare of the state in all matters and proceedings involving a public utility pending
16 before an officer, department, board, commission, or court of the state or of another
17 state or the United States and to intervene in, protest, resist, or advocate the granting,
18 denial, or modification of any petition, application, complaint, or other proceeding;

19 (7) examine witnesses and offer evidence in any proceeding affecting
20 the state and initiate or participate in judicial proceedings to the extent necessary to
21 protect and promote the interests of the state.

22 * **Sec. 12.** AS 42.05 is amended by adding a new section to read:

23 **Sec. 42.05.144. Telecommunications exempted from jurisdiction.** The
24 Regulatory Commission of Alaska may not regulate, adjudicate, or otherwise exercise
25 any of its powers over telecommunications services in the state. Telecommunications
26 services utilities shall be under the sole jurisdiction of the Telecommunications
27 Commission of Alaska. All references in AS 42.04 and this chapter to
28 telecommunications services shall be interpreted as being subject to the jurisdiction of
29 the Telecommunications Commission of Alaska.

30 * **Sec. 13.** AS 42.05 is amended by adding a new section to read:

31 **Sec. 42.05.175. Timelines for issuance of final orders.** (a) The commission

1 shall issue a final order not later than six months after a complete application is filed,
2 for an application

- 3 (1) for a certificate of public convenience and necessity;
4 (2) to amend a certificate of public convenience and necessity;
5 (3) to transfer a certificate of public convenience and necessity; and
6 (4) to acquire a controlling interest in a certificated public utility.

7 (b) Notwithstanding a suspension ordered under AS 42.05.421, the
8 commission shall issue a final order not later than nine months after a complete tariff
9 filing is made for a tariff filing that does not change the utility's revenue requirement
10 or rate design.

11 (c) Notwithstanding a suspension ordered under AS 42.05.421, the
12 commission shall issue a final order not later than 15 months after a complete tariff
13 filing is made for a tariff filing that changes the utility's revenue requirement or rate
14 design.

15 (d) The commission shall issue a final order not later than 12 months after a
16 complete formal complaint is filed against a utility or, when the commission initiates a
17 formal investigation of a utility without the filing of a complete formal complaint, not
18 later than 12 months after the order initiating the formal investigation is issued.

19 (e) The commission shall issue a final order in a rule making proceeding not
20 later than 24 months after a complete petition for adoption, amendment, or repeal of a
21 regulation under AS 44.62.180 - 44.62.290 is filed or, when the commission initiates a
22 rule making docket, not later than 24 months after the order initiating the proceeding is
23 issued.

24 (f) The commission may extend a timeline required under (a) - (e) of this
25 section if all parties of record consent to the extension.

26 (g) If the commission does not issue and serve a final order regarding an
27 application or suspended tariff under section (a), (b), or (c) of this section within the
28 applicable timeline specified, and if the commission does not extend the timeline in
29 accordance with (f) of this section, the application or suspended tariff filing shall be
30 considered approved and shall go into effect immediately.

31 (h) For purposes of this section, "final order" means a dispositive

1 administrative order that resolves all matters at issue and that may be the basis for a
2 petition for reconsideration or request for judicial review.

3 (i) For purposes of this section, an application, tariff filing, formal complaint,
4 or petition is complete if it complies with the filing, format, and content requirements
5 established by statute, regulation, and forms adopted by the commission under
6 regulation.

7 * Sec. 14. AS 42.05.191 is amended to read:

8 Sec. 42.05.191. Contents and service of orders. Every formal order of the
9 commission shall be based upon the facts of record. However, the commission may
10 issue an order approving any settlement supported by all the parties of record in
11 a proceeding, including a compromise settlement, if the settlement is consistent
12 with this chapter and AS 42.06. Every order entered pursuant to a hearing must state
13 the commission's findings, the basis of its findings and conclusion., together with its
14 decision. These orders shall be entered of record and a copy of them shall be served
15 on all parties of record in the proceeding.

16 * Sec. 15. AS 42.05.325(c)(2) is amended to read:

17 (2) does not include an intrastate or interstate long-distance carrier that
18 contracts for operator services and charges rates for those services that are no greater
19 than the rates charged by long-distance carriers regulated by the Telecommunications
20 [REGULATORY] Commission of Alaska or by the Federal Communications
21 Commission.

22 * Sec. 16. AS 42.05.381(f) is amended to read:

23 (f) A local exchange telephone utility may adjust its rates in conformance with
24 changes in jurisdictional cost allocation factors required by either the Federal
25 Communications Commission or the Telecommunications [REGULATORY]
26 Commission of Alaska upon a showing to the Telecommunications
27 [REGULATORY] Commission of Alaska of

28 (1) the order requiring the change in allocation factors;

29 (2) the aggregate shift in revenue requirement, segregated by service
30 classes or categories, caused by the change in allocation factors; and

31 (3) the rate adjustment required to conform to the required shift in

1 local revenue requirement.

2 * Sec. 17. AS 42.05.712(c) is amended to read:

3 (c) Each subscriber or member of the utility or cooperative shall receive notice
 4 of an election under this section with the subscriber's or member's regular bill for
 5 service at least 60 days before the date set for the election. The notice must [SHALL]
 6 contain impartial language informing the subscribers or members that an election on
 7 the option of deregulation or regulation by the Regulatory Commission of Alaska or
 8 the Telecommunications Commission of Alaska, as applicable, will be held within
 9 60 days and that a ballot to participate in that election will be mailed or delivered to
 10 each subscriber or member of the utility or cooperative with the regular bill for
 11 service. The notice must [SHALL] also state that a subscriber or member of the
 12 cooperative is entitled to vote in the election without regard to whether the subscriber's
 13 or member's account with the utility or cooperative is current and that the ballot must
 14 be postmarked or returned to the commission within 30 days after it was mailed or
 15 otherwise delivered to the subscriber or member. The notice must [SHALL] also
 16 announce the schedule for one or more public meetings which shall provide an
 17 opportunity for the subscribers or members to discuss this election. The public
 18 meeting or meetings shall be held not more than 30 days before the ballots are mailed
 19 or distributed to those eligible to vote. A cooperative may satisfy this requirement by
 20 including a discussion of this election on the agenda of an annual meeting if the annual
 21 meeting is scheduled to be held not more than 30 days before the election.

22 * Sec. 18. AS 42.05.712(d) is amended to read:

23 (d) A ballot with return postage paid shall be mailed or delivered to each
 24 subscriber or member of the utility or cooperative with the subscriber's or member's
 25 bill for service and shall contain only the following language:

26 "Shall. (name of utility or cooperative) be exempt
 27 from regulation by the (Regulatory or Telecommunications)
 28 Commission of Alaska?

29 [] YES [] NO"

30 * Sec. 19. AS 42.05.990(2) is amended to read:

31 (2) "commission" means the Regulatory Commission of Alaska in

1 regard to all matters concerning public utilities except for telecommunications
2 utilities, and "commission" means the Telecommunications Commission of
3 Alaska in regard to all matters concerning telecommunications utilities;

4 * Sec. 20. AS 42 is amended by adding a new chapter to read:

5 **Chapter 08. Telecommunications Commission.**

6 **Sec. 42.08.010. Telecommunications Commission of Alaska created. (a)**

7 There is created within the Department of Community and Economic Development as
8 an independent agency of the state the Telecommunications Commission of Alaska.

9 (b) The Telecommunications Commission of Alaska shall regulate, adjudicate
10 and otherwise exercise its powers over all sections of AS 42.05 relating to
11 telecommunications services.

12 (c) The Telecommunications Commission of Alaska may do all things
13 necessary or proper to carry out the purposes and exercise the powers expressly
14 granted or reasonably implied in this chapter, including

15 (1) regulate every telecommunications utility engaged or proposing to
16 engage in a telecommunications business inside the state, except to the extent
17 exempted by AS 42.05.711;

18 (2) investigate, upon complaint or upon its own motion, the rates,
19 classifications, rules, regulations, practices, services, and facilities of a
20 telecommunications utility and hold hearings on them;

21 (3) make or require just, fair, and reasonable rates, classifications,
22 regulations, practices, services, and facilities for a telecommunications utility;

23 (4) prescribe the system of accounts and regulate the service and safety
24 of operations of a telecommunications utility;

25 (5) require a telecommunications utility to file reports and other
26 information and data;

27 (6) appear personally or by counsel and represent the interests and
28 welfare of the state in all matters and proceedings involving a telecommunications
29 utility pending before an officer, department, board, commission, or court of the state
30 or of another state or the United States and to intervene in, protest, resist, or advocate
31 the granting, denial, or modification of any petition, application, complaint, or other

1 proceeding;

2 (7) examine witnesses and offer evidence in any proceeding affecting
3 the state and initiate or participate in judicial proceedings to the extent necessary to
4 protect and promote the interests of the state.

5 **Sec. 42.08.020. Commissioners.** (a) The commission consists of three
6 commissioners appointed by the governor and confirmed by the legislature in joint
7 session. To qualify for appointment as a commissioner, a person must be a member in
8 good standing of the Alaska Bar Association or have a degree from an accredited
9 college or university with a major in engineering, finance, economics, accounting,
10 business administration, or public administration. Actual experience for a period of
11 five years in the field of engineering, finance, economics, accounting, business
12 administration, or public administration is equivalent to a degree.

13 (b) The term of office of each member is five years. A commissioner, upon
14 the expiration of a term, shall continue to hold office until a successor is appointed and
15 qualified.

16 (c) A vacancy arising in the office of a commissioner shall be filled by
17 appointment by the governor and confirmed by the legislature in joint session, and,
18 except as provided in AS 39.05.080(4), an appointee selected to fill a vacancy shall
19 hold office for the balance of the full term for which the predecessor on the
20 commission was appointed.

21 (d) A vacancy in the commission does not impair the authority of a quorum of
22 commissioners to exercise all the powers and perform all the duties of the
23 commission.

24 (e) The governor may remove a commissioner from office for cause, including
25 incompetence, neglect of duty, inability to serve, or misconduct in office or because
26 the member, while serving on the commission, is convicted of a misdemeanor for
27 violating a statute or regulation related to telecommunications utilities or is convicted
28 of a felony. A commissioner, to be removed for cause, shall be given a copy of the
29 charges and afforded an opportunity to be publicly heard in person or by counsel in the
30 commissioner's own defense upon not less than 10 days' notice. If a commissioner is
31 removed for cause, the governor shall file with the lieutenant governor a complete

1 statement of all charges made against the commissioner and the governor's finding
2 based on the charges, together with a complete record of the proceedings.

3 (f) Members of the commission are in the exempt service and are entitled to a
4 monthly salary equal to Step C, Range 26, of the salary schedule in AS 39.27.011(a)
5 for Juneau, Alaska. The chair of the commission is entitled to a monthly salary equal
6 to Step C, Range 27, of the salary schedule in AS 39.27.011(a) for Juneau, Alaska.

7 (g) Each commissioner, before entering upon the duties of office, shall take
8 and subscribe to the oath prescribed for principal officers of the state.

9 **Sec. 42.08.030. Principal office; seal.** (a) The commission shall establish a
10 principal office and branch offices necessary to discharge its business efficiently. For
11 the convenience of the public or of parties to a proceeding, the commission may hold
12 meetings, hearings, or other proceedings at other locations.

13 (b) The commission shall have an official seal.

14 **Sec. 42.08.040. Legal counsel.** (a) The Department of Law shall provide full-
15 time legal counsel to the commission.

16 (b) The commission may, subject to the approval of the attorney general,
17 contract for the services of specialized legal counsel or legal consultants.

18 **Sec. 42.08.050. Employment of commission personnel.** (a) The chair of the
19 commission is responsible for directing the administrative functions of the
20 commission and carrying out the policies as set by the commission. The commission
21 chair may employ engineers, hearing examiners, administrative law judges, arbitrators,
22 mediators, experts, clerks, accountants, and other agents and assistants considered
23 necessary. Employees of the commission who are not in the exempt service under
24 AS 39.25.110 or the partially exempt service under AS 39.25.120 are in the classified
25 service under AS 39.25.100.

26 (b) The chair of the commission may enter into a contract for not more than
27 \$5,000 to engage the services of a consultant or expert the chair considers necessary.
28 The commission may contract for and engage the services of consultants and experts
29 the commission considers necessary.

30 **Sec. 42.08.060. Restrictions on members and employees.** (a) A member of
31 the commission or an employee of the commission may not have an official

1 connection with, hold stock or securities in, or have a pecuniary interest in a
2 telecommunications utility within the state. Membership in a cooperative association
3 is not a "pecuniary interest" within the meaning of this section; however, a member or
4 employee of the commission may not be an officer, board member, or employee of a
5 cooperative association. A member or employee may not act upon a matter in which a
6 relationship of the member or employee with any person creates a conflict of interest.

7 (b) A member or employee of the commission may not, after leaving the
8 position as a member or employee of the commission, act as agent for or on behalf of
9 a telecommunications utility in any matter before the commission that was before the
10 commission during the employee's employment or the member's term of office. A
11 violation of this subsection is a class A misdemeanor.

12 (c) Members and employees of the commission, except clerical and secretarial
13 staff, are subject to AS 39.50. Members and employees of the commission are subject
14 to AS 39.52.

15 (d) A member of the commission is disqualified from voting upon any matter
16 before the commission in which the member has a conflict of interest.

17 **Sec. 42.08.070. Powers and duties of commission chair.** (a) The chair of
18 the commission shall

19 (1) employ the commission staff;

20 (2) establish and implement a time management system for the
21 commission;

22 (3) assign the work of the commission to members and staff of the
23 commission so that matters before the commission are resolved as expeditiously and
24 competently as possible; when assigning a matter, the chair shall also set a date by
25 which time the matter should be completed.

26 (b) The chair of the commission may appoint a hearing examiner or an
27 administrative law judge to hear a matter that has come before the commission; a
28 member of the commission may serve as hearing examiner or, if qualified, as an
29 administrative law judge.

30 (c) The chair of the commission shall direct the public advocacy section to
31 participate as a party in a matter when the commission believes that it is in the public

1 interest to do so.

2 **Sec. 42.08.080. Decision-making procedures.** (a) Except as provided in
3 AS 42.05.171, when a matter comes for decision before the commission under
4 AS 42.05, the three commissioners shall serve as a hearing panel to hear, or if a
5 hearing is not required, to otherwise consider, and decide the case. The panel shall
6 exercise the powers of the commission with respect to the matter.

7 (b) The commission shall adopt regulations by December 31, 2003, that
8 establish standards of timeliness for the types of cases that come before the
9 commission. The commission shall establish standards based in part on degrees of
10 complexity of the cases.

11 **Sec. 42.08.090. Impartial decision-making.** (a) A hearing panel and each
12 member of the hearing panel shall accord to every person the right to be heard
13 according to law. A member of a hearing panel shall not initiate, permit, or consider
14 an ex parte communication or other communication made to the member of a hearing
15 panel outside the presence of the parties concerning a pending or impending
16 proceeding except as allowed by this section. Members of a hearing panel shall make
17 reasonable efforts to see that law clerks and other commission staff carrying out
18 similar functions under the hearing panel's supervision do not violate the provisions of
19 this section.

20 (b) A hearing panel and each member of the hearing panel may initiate or
21 consider an ex parte communication when expressly authorized by law to do so.

22 (c) When circumstances require, a hearing panel and each member of the
23 hearing panel may engage in ex parte communications for scheduling or other
24 administrative purposes if (1) the communications do not deal with substantive matters
25 or the merits of the issues litigated; (2) the hearing panel and each member of the
26 hearing panel reasonably believe no party will gain a procedural or tactical advantage
27 because the communication is ex parte; and (3) the hearing panel and each member of
28 the hearing panel take reasonable steps to notify all other parties promptly of the
29 substance of the ex parte communication and, when practicable, allow them an
30 opportunity to respond. This subsection does not apply to ex parte communications by
31 commission staff concerning scheduling or administrative matters.

1 (d) If the parties agree, either in writing or on the record, to this procedure
2 beforehand, a hearing panel and each member of the hearing panel may engage in ex
3 parte communications on specified administrative topics with one or more parties.

4 (e) A hearing panel and each member of the hearing panel may consult other
5 members of the panel and commission staff whose function is to aid the hearing panel
6 in carrying out its adjudicative responsibilities.

7 (f) A hearing panel and each member of the hearing panel may, with the
8 consent of the parties, confer separately with the parties and their lawyers in an effort
9 to mediate or settle matters pending before the hearing panel.

10 **Sec. 42.08.100. Communications carriers section.** There is established
11 within the commission a communications carriers section that shall develop,
12 recommend, and administer policies and programs with respect to the regulation of
13 rates, services, accounting, and facilities of communications common carriers within
14 the state involving the use of wire, cable, radio, and space satellites.

15 **Sec. 42.08.150. Public advocacy section.** There is established within the
16 commission a public advocacy section. The section shall participate as a party in
17 matters that come before the commission when directed to do so in accordance with
18 AS 42.08.070(c). The public advocacy section shall operate separately from the rest of
19 the commission.

20 * **Sec. 21.** AS 44.66.010(a)(4) is amended to read:

21 (4) Regulatory Commission of Alaska (AS 42.04.010) -- June 30, 2003
22 [2002];

23 * **Sec. 22.** AS 44.66.010(a) is amended by adding a new paragraph to read:

24 (21) Telecommunications Commission of Alaska (AS 42.08.010) --
25 June 30, 2006.

26 * **Sec. 23.** AS 45.50.473(a) is amended to read:

27 (a) A person may not provide an alternate operator service without disclosing
28 to the consumer before a charge is incurred the cost of the service provided by the
29 person and the identity of the person providing those services. This section does not
30 affect the power of the Telecommunications [REGULATORY] Commission of
31 Alaska to regulate providers of alternate operator services under AS 42.05 in a manner

1 consistent with this section.

2 * Sec. 24. AS 45.50.473(b) is amended to read:

3 (b) The owner of a place where telephone business from consumers is
4 aggregated, including a hotel, motel, hospital, and pay telephone other than a
5 telephone utility regulated by the Telecommunications [REGULATORY]
6 Commission of Alaska, shall disclose a surcharge added to the cost of local or long
7 distance telephone service before the service is provided. Disclosure may be made by
8 posting the amount of the surcharge on or near the telephone instruments subject to the
9 surcharge or by other reasonable written or oral means.

10 * Sec. 25. AS 45.50.475(b) is amended to read:

11 (b) A local exchange telecommunications company and a company that
12 provides a telephone directory on behalf of a local exchange telecommunications
13 company shall provide for the identification in the telephone directory of those
14 residential customers who do not wish to receive telephone solicitations. The local
15 exchange telecommunications company may impose a reasonable charge for
16 identification in the directory. The charge shall be based on the cost of providing the
17 identification and is subject to the approval of the Telecommunications
18 [REGULATORY] Commission of Alaska.

19 * Sec. 26. AS 45.50.475(c) is amended to read:

20 (c) A local exchange telecommunications company shall, upon request,
21 provide to a person who engages in telephone solicitation a list of all telephone
22 numbers identified in the telephone directory as residential customers who do not wish
23 to receive telephone solicitations. If possible and if requested by the person who
24 engages in telephone solicitations, this list shall be provided in computer readable
25 format. The local exchange telephone company may impose a reasonable charge for
26 the list. The charge shall be based on the cost of providing the list and is subject to the
27 approval of the Telecommunications [REGULATORY] Commission of Alaska.

28 * Sec. 27. AS 45.63.080(12) is amended to read:

29 (12) by a person who is soliciting for a business, or for an affiliate of a
30 business, that is regulated by the Telecommunications [REGULATORY]
31 Commission of Alaska;

1 * Sec. 28. AS 46.03.030(b) is amended to read:

2 (b) The department may grant to a municipality or to a water or sewer
3 company, as funds are available, a grant for any of the following:

- 4 (1) a water quality enhancement project;
5 (2) a public water supply, treatment, or distribution system;
6 (3) a wastewater collection, treatment, or discharge system;
7 (4) a solid waste processing, disposal, or resource recovery system.

8 * Sec. 29. AS 46.03.030(e) is amended to read:

9 (e) A grant under this section to a municipality or to a water or sewer
10 company for a project funded by an appropriation made by the legislature

11 (1) before July 1, 1994, may not exceed 50 percent of the eligible costs
12 of the project;

13 (2) after July 1, 1994, may not exceed

14 (A) 85 percent of the eligible costs for a municipality with a
15 population of 1,000 persons or less or a water or sewer company with 1,000
16 or fewer customers;

17 (B) 70 percent of the eligible costs for a municipality with a
18 population of 1,001 to 5,000 persons or a water or sewer company with
19 1,001 to 5,000 customers; and

20 (C) 50 percent of the eligible costs for a municipality with a
21 population greater than 5,000 persons or a water or sewer company with
22 more than 5,000 customers; however, if a municipality with a population
23 greater than 5,000 persons or a water or sewer company with more than
24 5,000 customers seeks a grant for a project that relates to a solid waste
25 processing or disposal system that incorporates resource recovery, the
26 department may provide a grant for up to 60 percent of the eligible costs of the
27 project.

28 * Sec. 30. AS 42.04.100 is repealed.

29 * Sec. 31. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 APPLICATION OF TIMELINES TO NEW AND EXISTING DOCKETS. The

1 timelines provided in AS 42.05.175, added by sec. 13 of this Act, apply to all new dockets of
2 the Regulatory Commission of Alaska filed on or after July 1, 2002. For dockets commenced
3 before July 1, 2002, the date of July 1, 2002, shall be used as the date of filing for the purpose
4 of applying the timelines in AS 42.05.175.

5 * Sec. 32. The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 TASK FORCE INQUIRY INTO REGULATORY COMMISSION OF ALASKA. (a)
8 A task force is established to inquire into all aspects of the operation of the Regulatory
9 Commission of Alaska. The members of the task force shall be appointed as follows: three
10 people by the president of the senate, three people by the speaker of the house of
11 representatives, and one person by the governor.

12 (b) The task force shall immediately perform a comprehensive review of the
13 commission and its operations. The task force shall present a written report to the legislature
14 not later than January 30, 2003. The task force is terminated upon the presentation of the
15 written report to the legislature.

16 (c) The task force shall have access to all information, including confidential
17 information, in the custody of the commission. The task force shall maintain the
18 confidentiality of any confidential information accessed. Confidential information may not be
19 disclosed in the written report prepared under (b) of this section.

20 * Sec. 33. Sections 1 - 7, 12, 15 - 20, 22 - 27, and 30 of this Act take effect January 1, 2003.

21 * Sec. 34. Except as provided in sec. 33 of this Act, this Act takes effect immediately under
22 AS 01.10.070(c).

moved out
6/26

adopted 6/26
amend 1 adopted
Amend 2 p 18 ins 13-14 6/26/02
Am 3 delete sect 28, 29, 30
Am 4 remove all ref. to Telecom. Comm
Am 5 p 18 add (3) - elec. comm.
Am 6 p 6 ln 27-28 good cause & reports quarterly
Am 7 task force maj. vote to get confid. into subject to Exec Ethics Act

SENATE CS FOR CS FOR HOUSE BILL NO. 3001(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - THIRD SPECIAL SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the powers and duties of the Regulatory Commission of Alaska,
2 establishing a task force to inquire into the operation of the commission, extending the
3 termination date of the commission to June 30, 2003, establishing the
4 Telecommunications Commission of Alaska, making conforming amendments, and
5 permitting grants to certain regulated public utilities for water quality projects; and
6 providing for an effective date."

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

8 * Section 1. AS 29.35.060(a) is amended to read:

9 (a) The assembly acting for the area outside all cities in the borough and the
10 council acting for the area in a city may grant franchises, including exclusive franchise
11 privileges, to a person, corporation, organization, or utility not certificated by the
12 former Alaska Public Utilities Commission, [OR BY] the Regulatory Commission of
13 Alaska, or the Telecommunications Commission of Alaska and may permit the use

1 of streets and other public places by the franchise holder under regulations prescribed
2 by ordinance.

3 * **Sec. 2.** AS 29.35.060(b) is amended to read:

4 (b) Unless the grant is made on a competitive basis, the grant of an exclusive
5 right to use a public street or right-of-way for more than five years to a utility or a
6 transportation system not certificated by the former Alaska Public Utilities
7 Commission, [OR BY] the Regulatory Commission of Alaska, or the
8 Telecommunications Commission of Alaska shall be valid only if approved by a
9 majority of the voters at an election.

10 * **Sec. 3.** AS 29.35.131(c) is amended to read:

11 (c) A local exchange telephone company or wireless telephone company shall
12 include the appropriate enhanced 911 surcharge, stated separately and included in the
13 total amount owed, in the bills delivered to its customers. The Telecommunications
14 [REGULATORY] Commission of Alaska may not consider the enhanced 911
15 surcharge as revenue of the telephone company and has no jurisdiction over an
16 enhanced 911 system. A customer is liable for payment of the enhanced 911
17 surcharge in the amounts billed by the telephone company until the amounts have been
18 paid to the telephone company.

19 * **Sec. 4.** AS 29.35.137(5) is amended to read:

20 (5) "local exchange service" means the transmission of two-way
21 interactive switched voice communications furnished by a local exchange telephone
22 company within a local exchange area, including access to enhanced 911 systems; in
23 this paragraph, "local exchange area" means a geographic area encompassing one or
24 more political subdivisions as described in maps, tariffs, or rate schedules filed with
25 the Telecommunications [REGULATORY] Commission of Alaska, where local
26 exchange rates apply;

27 * **Sec. 5.** AS 37.05.146(b)(4) is amended by adding a new subparagraph to read:

28 (AAA) Telecommunications Commission of Alaska under
29 AS 42.05 and AS 42.08;

30 * **Sec. 6.** AS 39.25.120(c)(19) is amended to read:

31 (19) hearing officers and administrative law judges of the Regulatory

1 Commission of Alaska and the Telecommunications Commission of Alaska.

2 * Sec. 7. AS 39.50.200(b) is amended by adding a new paragraph to read:

3 (57) Telecommunications Commission of Alaska (AS 42.08.010).

4 * Sec. 8. AS 42.04.010(b) is amended to read:

5 (b) The commission shall annually elect [WHEN A VACANCY OCCURS
6 IN THE OFFICE OF CHAIR, THE COMMISSION MAY NOMINATE] one of its
7 members to serve as chair for the following fiscal year. When a vacancy occurs in
8 the office of chair, the commission shall elect one of its members to serve the
9 remaining term as chair [GOVERNOR SHALL DESIGNATE THE CHAIR OF
10 THE COMMISSION, EITHER BY SELECTING THE MEMBER NOMINATED BY
11 THE COMMISSION OR ANOTHER MEMBER]. The term as chair is one year
12 [FOUR YEARS]. The chair may [NOT] be elected [APPOINTED] to not more than
13 three successive terms as chair. After a year of not serving as chair, the
14 commissioner is eligible for election as chair again.

15 * Sec. 9. AS 42.04.080 is amended by adding new subsections to read:

16 (c) A member of a hearing panel appointed under (a) of this section may not
17 have or have had an ex parte communication on a substantive matter that is pending or
18 likely to come before the panel with a party to the proceeding.

19 (d) The chair may not appoint the members of a hearing panel if the chair has
20 had an ex parte communication on the matter before the panel, and the chair shall
21 delegate the appointment power to the next most senior commissioner who has not had
22 an ex parte communication in that matter.

23 (e) For purposes of (c) and (d) of this section, an ex parte communication is a
24 direct or indirect communication on a substantive matter that is pending or likely to
25 come before the commission between a commissioner and a party without the
26 opportunity for all other parties to be present. However, a communication occurring
27 more than two years before the filing of the matter with the commission does not
28 disqualify a person under (c) or (d) of this section. Circumstances that might
29 reasonably suggest to a third party that an ex parte contact had occurred, even if none
30 was made, shall be considered an ex parte contact for purposes of (c) and (d) of this
31 section.

1 * **Sec. 10.** AS 42.04 is amended by adding a new section to article 1 to read:

2 **Sec. 42.04.090. Impartial decision-making.** (a) A hearing panel and each
3 member of the hearing panel shall accord to a person the right to be heard according to
4 law. A member of a hearing panel may not initiate, permit, or consider an ex parte
5 communication or other communication made to the member of a hearing panel
* 6 outside the presence of the parties concerning a matter that is pending or likely to
7 come before the panel except as allowed by this section. Members of a hearing panel
8 shall make reasonable efforts to see that law clerks and other commission staff
9 carrying out similar functions under the hearing panel's supervision do not violate the
10 provisions of this section.

11 (b) A hearing panel and each member of the hearing panel may initiate or
12 consider an ex parte communication when expressly authorized by law to do so.

13 (c) When circumstances require, a hearing panel and each member of the
14 hearing panel may engage in ex parte communications for scheduling or other
15 administrative purposes if (1) the communications do not deal with substantive matters
16 or the merits of the issues litigated; (2) each member of the hearing panel reasonably
17 believes no party will gain a procedural or tactical advantage because the
18 communication is ex parte; and (3) the hearing panel takes reasonable steps to notify
19 all parties promptly of the substance of the ex parte communication and, when
20 practicable, allows them an opportunity to respond. This subsection does not apply to
21 ex parte communications by commission staff concerning scheduling or administrative
22 matters.

23 (d) If the parties agree to this procedure beforehand, either in writing or on the
24 record, a hearing panel and each member of the hearing panel may engage in ex parte
25 communications on specified administrative topics with one or more parties.

26 (e) A hearing panel and each member of the hearing panel may consult other
27 members of the panel and commission staff whose function is to aid the hearing panel
28 in carrying out its adjudicative responsibilities.

29 (f) A hearing panel and each member of the hearing panel may, with the
30 consent of the parties, confer separately with the parties and their lawyers in an effort
31 to mediate or settle matters pending before the hearing panel.

1 * **Sec. 11.** AS 42.05.141(a) is amended to read:

2 (a) The commission [REGULATORY COMMISSION OF ALASKA] may
3 do all things necessary or proper to carry out the purposes and exercise the powers
4 expressly granted or reasonably implied in this chapter, including

5 (1) regulate every public utility engaged or proposing to engage in a
6 utility business inside the state, except to the extent exempted by AS 42.05.711;

7 (2) investigate, upon complaint or upon its own motion, the rates,
8 classifications, rules, regulations, practices, services, and facilities of a public utility
9 and hold hearings on them;

10 (3) make or require just, fair, and reasonable rates, classifications,
11 regulations, practices, services, and facilities for a public utility;

12 (4) prescribe the system of accounts and regulate the service and safety
13 of operations of a public utility;

14 (5) require a public utility to file reports and other information and
15 data;

16 (6) appear personally or by counsel and represent the interests and
17 welfare of the state in all matters and proceedings involving a public utility pending
18 before an officer, department, board, commission, or court of the state or of another
19 state or the United States and to intervene in, protest, resist, or advocate the granting,
20 denial, or modification of any petition, application, complaint, or other proceeding;

21 (7) examine witnesses and offer evidence in any proceeding affecting
22 the state and initiate or participate in judicial proceedings to the extent necessary to
23 protect and promote the interests of the state.

24 * **Sec. 12.** AS 42.05 is amended by adding a new section to read:

25 **Sec. 42.05.144. Telecommunications exempted from jurisdiction.** The
26 Regulatory Commission of Alaska may not regulate, adjudicate, or otherwise exercise
27 any of its powers over telecommunications services in the state. Telecommunications
28 services utilities shall be under the sole jurisdiction of the Telecommunications
29 Commission of Alaska. All references in AS 42.04 and this chapter to
30 telecommunications services shall be interpreted as being subject to the jurisdiction of
31 the Telecommunications Commission of Alaska.

1 * Sec. 13. AS 42.05 is amended by adding a new section to read:

2 Sec. 42.05.175. Timelines for issuance of final orders. (a) The commission
3 shall issue a final order not later than six months after a complete application is filed
4 for an application

- 5 (1) for a certificate of public convenience and necessity;
- 6 (2) to amend a certificate of public convenience and necessity;
- 7 (3) to transfer a certificate of public convenience and necessity; and
- 8 (4) to acquire a controlling interest in a certificated public utility.

9 (b) Notwithstanding a suspension ordered under AS 42.05.421, the
10 commission shall issue a final order not later than nine months after a complete tariff
11 filing is made for a tariff filing that does not change the utility's revenue requirement
12 or rate design.

13 (c) Notwithstanding a suspension ordered under AS 42.05.421, the
14 commission shall issue a final order not later than 15 months after a complete tariff
15 filing is made for a tariff filing that changes the utility's revenue requirement or rate
16 design.

17 (d) The commission shall issue a final order not later than 12 months after a
18 complete formal complaint is filed against a utility or, when the commission initiates a
19 formal investigation of a utility without the filing of a complete formal complaint, not
20 later than 12 months after the order initiating the formal investigation is issued.

21 (e) The commission shall issue a final order in a rule making proceeding not
22 later than 24 months after a complete petition for adoption, amendment, or repeal of a
23 regulation under AS 44.62.180 - 44.62.290 is filed or, when the commission initiates a
24 rule making docket, not later than 24 months after the order initiating the proceeding is
25 issued.

26 (f) The commission may extend a timeline required under (a) - (e) of this
27 section if all parties of record consent to the extension.

same prov as H. 2149 good cause may only be extended once for 90 days

28 (g) If the commission does not issue and serve a final order regarding an
29 application or suspended tariff under section (a), (b), or (c) of this section within the
30 applicable timeline specified, and if the commission does not extend the timeline in
31 accordance with (f) of this section, the application or suspended tariff filing shall be

1 considered approved and shall go into effect immediately.

2 (h) For purposes of this section, "final order" means a dispositive
3 administrative order that resolves all matters at issue and that may be the basis for a
4 petition for reconsideration or request for judicial review.

5 (i) For purposes of this section, an application, tariff filing, formal complaint,
6 or petition is complete if it complies with the filing, format, and content requirements
7 established by statute, regulation, and forms adopted by the commission under
8 regulation.

9 * Sec. 14. AS 42.05.191 is amended to read:

10 **Sec. 42.05.191. Contents and service of orders.** Every formal order of the
11 commission shall be based upon the facts of record. However, the commission may,
12 without a hearing, issue an order approving any settlement supported by all the
13 parties of record in a proceeding, including a compromise settlement. Every order
14 entered pursuant to a hearing must state the commission's findings, the basis of its
15 findings and conclusions, together with its decision. These orders shall be entered of
16 record and a copy of them shall be served on all parties of record in the proceeding.

17 * Sec. 15. AS 42.05.325(c)(2) is amended to read:

18 (2) does not include an intrastate or interstate long-distance carrier that
19 contracts for operator services and charges rates for those services that are no greater
20 than the rates charged by long-distance carriers regulated by the Telecommunications
21 [REGULATORY] Commission of Alaska or by the Federal Communications
22 Commission.

23 * Sec. 16. AS 42.05.381(f) is amended to read:

24 (f) A local exchange telephone utility may adjust its rates in conformance with
25 changes in jurisdictional cost allocation factors required by either the Federal
26 Communications Commission or the Telecommunications [REGULATORY]
27 Commission of Alaska upon a showing to the Telecommunications
28 [REGULATORY] Commission of Alaska of

29 (1) the order requiring the change in allocation factors;

30 (2) the aggregate shift in revenue requirement, segregated by service
31 classes or categories, caused by the change in allocation factors; and

1 (3) the rate adjustment required to conform to the required shift in
2 local revenue requirement.

3 * Sec. 17. AS 42.05.712(c) is amended to read:

4 (c) Each subscriber or member of the utility or cooperative shall receive notice
5 of an election under this section with the subscriber's or member's regular bill for
6 service at least 60 days before the date set for the election. The notice must [SHALL]
7 contain impartial language informing the subscribers or members that an election on
8 the option of deregulation or regulation by the Regulatory Commission of Alaska or
9 the Telecommunications Commission of Alaska, as applicable, will be held within
10 60 days and that a ballot to participate in that election will be mailed or delivered to
11 each subscriber or member of the utility or cooperative with the regular bill for
12 service. The notice must [SHALL] also state that a subscriber or member of the
13 cooperative is entitled to vote in the election without regard to whether the subscriber's
14 or member's account with the utility or cooperative is current and that the ballot must
15 be postmarked or returned to the commission within 30 days after it was mailed or
16 otherwise delivered to the subscriber or member. The notice must [SHALL] also
17 announce the schedule for one or more public meetings which shall provide an
18 opportunity for the subscribers or members to discuss this election. The public
19 meeting or meetings shall be held not more than 30 days before the ballots are mailed
20 or distributed to those eligible to vote. A cooperative may satisfy this requirement by
21 including a discussion of this election on the agenda of an annual meeting if the annual
22 meeting is scheduled to be held not more than 30 days before the election.

23 * Sec. 18. AS 42.05.712(d) is amended to read:

24 (d) A ballot with return postage paid shall be mailed or delivered to each
25 subscriber or member of the utility or cooperative with the subscriber's or member's
26 bill for service and shall contain only the following language:

27 "Shall. (name of utility or cooperative) be exempt
28 from regulation by the (Regulatory or Telecommunications)
29 Commission of Alaska?

30 [] YES [] NO"

31 * Sec. 19. AS 42.05.990(2) is amended to read:

1 (2) "commission" means the Regulatory Commission of Alaska in
2 regard to all matters concerning public utilities except for telecomm.unications
3 utilities, and "commission" means the Telecommunications Commission of
4 Alaska in regard to all matters concerning telecommunications utilities;

5 * Sec. 20. AS 42 is amended by adding a new chapter to read:

6 **Chapter 08. Telecommunications Commission.**

7 **Sec. 42.08.010. Telecommunications Commission of Alaska created. (a)**

8 There is created within the Department of Community and Economic Development as
9 an independent agency of the state the Telecommunications Commission of Alaska.

10 (b) The Telecommunications Commission of Alaska shall regulate, adjudicate
11 and otherwise exercise its powers over all sections of AS 42.05 relating to
12 telecommunications services.

13 (c) The Telecommunications Commission of Alaska may do all things
14 necessary or proper to carry out the purposes and exercise the powers expressly
15 granted or reasonably implied in this chapter, including

16 (1) regulate every telecommunications utility engaged or proposing to
17 engage in a telecommunications business inside the state, except to the extent
18 exempted by AS 42.05.711;

19 (2) investigate, upon complaint or upon its own motion, the rates,
20 classifications, rules, regulations, practices, services, and facilities of a
21 telecommunications utility and hold hearings on them;

22 (3) make or require just, fair, and reasonable rates, classifications,
23 regulations, practices, services, and facilities for a telecommunications utility;

24 (4) prescribe the system of accounts and regulate the service and safety
25 of operations of a telecommunications utility;

26 (5) require a telecommunications utility to file reports and other
27 information and data;

28 (6) appear personally or by counsel and represent the interests and
29 welfare of the state in all matters and proceedings involving a telecommunications
30 utility pending before an officer, department, board, commission, or court of the state
31 or of another state or the United States and to intervene in, protest, resist, or advocate

1 the granting, denial, or modification of any petition, application, complaint, or other
2 proceeding;

3 (7) examine witnesses and offer evidence in any proceeding affecting
4 the state and initiate or participate in judicial proceedings to the extent necessary to
5 protect and promote the interests of the state.

6 **Sec. 42.08.020. Commissioners.** (a) The commission consists of three
7 commissioners appointed by the governor and confirmed by the legislature in joint
8 session. To qualify for appointment as a commissioner, a person must be a member in
9 good standing of the Alaska Bar Association or have a degree from an accredited
10 college or university with a major in engineering, finance, economics, accounting,
11 business administration, or public administration. Actual experience for a period of
12 five years in the field of engineering, finance, economics, accounting, business
13 administration, or public administration is equivalent to a degree.

14 (b) When a vacancy occurs in the office of chair, the commission may
→ 15 nominate one of its members to serve as chair. When a vacancy occurs in the office of
16 chair, the governor shall designate the chair of the commission, either by selecting the
17 member nominated by the commission or another member. The term of the chair is
18 four years. The chair may not be appointed to successive terms as chair.

19 (c) Members of the commission are appointed for staggered terms of five
20 years. A commissioner, upon the expiration of a term, shall continue to hold office
21 until a successor is appointed and qualified.

22 (d) A vacancy arising in the office of a commissioner shall be filled by
23 appointment by the governor and confirmed by the legislature in joint session, and,
24 except as provided in AS 39.05.080(4), an appointee selected to fill a vacancy shall
25 hold office for the balance of the full term for which the predecessor on the
26 commission was appointed.

27 (e) A vacancy in the commission does not impair the authority of a quorum of
28 commissioners to exercise all the powers and perform all the duties of the
29 commission.

30 (f) The governor may remove a commissioner from office for cause, including
31 incompetence, neglect of duty, inability to serve, or misconduct in office or because

1 the member, while serving on the commission, is convicted of a misdemeanor for
2 violating a statute or regulation related to telecommunications utilities or is convicted
3 of a felony. A commissioner, to be removed for cause, shall be given a copy of the
4 charges and afforded an opportunity to be publicly heard in person or by counsel in the
5 commissioner's own defense upon not less than 10 days' notice. If a commissioner is
6 removed for cause, the governor shall file with the lieutenant governor a complete
7 statement of all charges made against the commissioner and the governor's finding
8 based on the charges, together with a complete record of the proceedings.

9 (g) Members of the commission are in the exempt service and are entitled to a
10 monthly salary equal to Step C, Range 26, of the salary schedule in AS 39.27.011(a)
11 for Juneau, Alaska. The chair of the commission is entitled to a monthly salary equal
12 to Step C, Range 27, of the salary schedule in AS 39.27.011(a) for Juneau, Alaska.

13 (h) Each commissioner, before entering upon the duties of office, shall take
14 and subscribe to the oath prescribed for principal officers of the state.

15 **Sec. 42.08.030. Principal office; seal.** (a) The commission shall establish a
16 principal office and branch offices necessary to discharge its business efficiently. For
17 the convenience of the public or of parties to a proceeding, the commission may hold
18 meetings, hearings, or other proceedings at other locations.

19 (b) The commission shall have an official seal.

20 **Sec. 42.08.040. Legal counsel.** (a) The Department of Law shall provide full-
21 time legal counsel to the commission.

22 (b) The commission may, subject to the approval of the attorney general,
23 contract for the services of specialized legal counsel or legal consultants.

24 **Sec. 42.03.050. Employment of commission personnel.** (a) The chair of the
25 commission is responsible for directing the administrative functions of the
26 commission and carrying out the policies as set by the commission. The commission
27 chair may employ engineers, hearing examiners, administrative law judges, arbitrators,
28 mediators, experts, clerks, accountants, and other agents and assistants considered
29 necessary. Employees of the commission who are not in the exempt service under
30 AS 39.25.110 or the partially exempt service under AS 39.25.120 are in the classified
31 service under AS 39.25.100.

1 (b) The chair of the commission may enter into a contract for not more than
2 \$5,000 to engage the services of a consultant or expert the chair considers necessary.
3 The commission may contract for and engage the services of consultants and experts
4 the commission considers necessary.

5 **Sec. 42.08.060. Restrictions on members and employees.** (a) A member of
6 the commission or an employee of the commission may not have an official
7 connection with, hold stock or securities in, or have a pecuniary interest in a
8 telecommunications utility within the state. Membership in a cooperative association
9 is not a "pecuniary interest" within the meaning of this section; however, a member or
10 employee of the commission may not be an officer, board member, or employee of a
11 cooperative association. A member or employee may not act upon a matter in which a
12 relationship of the member or employee with any person creates a conflict of interest.

13 (b) A member or employee of the commission may not, after leaving the
14 position as a member or employee of the commission, act as agent for or on behalf of
15 a telecommunications utility in any matter before the commission that was before the
16 commission during the employee's employment or the member's term of office. A
17 violation of this subsection is a class A misdemeanor.

18 (c) Members and employees of the commission, except clerical and secretarial
19 staff, are subject to AS 39.50. Members and employees of the commission are subject
20 to AS 39.52.

21 (d) A member of the commission is disqualified from voting upon any matter
22 before the commission in which the member has a conflict of interest.

23 **Sec. 42.08.070. Powers and duties of commission chair.** (a) The chair of
24 the commission shall

25 (1) employ the commission staff;

26 (2) establish and implement a time management system for the
27 commission;

28 (3) assign the work of the commission to members and staff of the
29 commission so that matters before the commission are resolved as expeditiously and
30 competently as possible; when assigning a matter, the chair shall also set a date by
31 which time the matter should be completed.

1 (b) The chair of the commission may appoint a hearing examiner or an
2 administrative law judge to hear a matter that has come before the commission; a
3 member of the commission may serve as hearing examiner or, if qualified, as an
4 administrative law judge.

5 (c) The chair of the commission shall direct the public advocacy section to
6 participate as a party in a matter when the commission believes that it is in the public
7 interest to do so.

8 **Sec. 42.08.080. Decision-making procedures.** (a) Except as provided in
9 AS 42.05.171, when a matter comes for decision before the commission under
10 AS 42.05, the three commissioners shall serve as a hearing panel to hear, or if a
11 hearing is not required, to otherwise consider, and decide the case. The panel shall
12 exercise the powers of the commission with respect to the matter.

13 (b) The commission shall adopt regulations by December 31, 2003, that
14 establish standards of timeliness for the types of cases that come before the
15 commission. The commission shall establish standards based in part on degrees of
16 complexity of the cases.

17 (c) A member of a hearing panel appointed under (a) of this section may not
18 have or have had an ex parte communication on a substantive matter that is pending or
19 likely to come before the panel with a party to the proceeding.

20 (d) The chair may not appoint the members of a hearing panel if the chair has
21 had an ex parte communication on the matter before the panel, and the chair shall
22 delegate the appointment power to the next most senior commissioner who has not had
23 an ex parte communication in that matter.

24 (e) For purposes of (c) and (d) of this section, an ex parte communication is a
25 direct or indirect communication on a substantive matter that is pending or likely to
26 come before the commission between a commissioner and a party without the
27 opportunity for all other parties to be present. However, a communication occurring
28 more than two years before the filing of the matter with the commission does not
29 disqualify a person under (c) or (d) of this section. Circumstances that might
30 reasonably suggest to a third party that an ex parte contact had occurred, even if none
31 was made, shall be considered an ex parte contact for purposes of (c) and (d) of this

1 section.

2 **Sec. 42.08.090. Impartial decision-making.** (a) A hearing panel and each
3 member of the hearing panel shall accord to every person the right to be heard
4 according to law. A member of a hearing panel shall not initiate, permit, or consider
5 an ex parte communication or other communication made to the member of a hearing
6 panel outside the presence of the parties concerning a pending or impending
7 proceeding except as allowed by this section. Members of a hearing panel shall make
8 reasonable efforts to see that law clerks and other commission staff carrying out
9 similar functions under the hearing panel's supervision do not violate the provisions of
10 this section.

11 (b) A hearing panel and each member of the hearing panel may initiate or
12 consider an ex parte communication when expressly authorized by law to do so.

13 (c) When circumstances require, a hearing panel and each member of the
14 hearing panel may engage in ex parte communications for scheduling or other
15 administrative purposes if (1) the communications do not deal with substantive matters
16 or the merits of the issues litigated; (2) the hearing panel and each member of the
17 hearing panel reasonably believe no party will gain a procedural or tactical advantage
18 because the communication is ex parte; and (3) the hearing panel and each member of
19 the hearing panel take reasonable steps to notify all other parties promptly of the
20 substance of the ex parte communication and, when practicable, allow them an
21 opportunity to respond. This subsection does not apply to ex parte communications by
22 commission staff concerning scheduling or administrative matters.

23 (d) If the parties agree, either in writing or on the record, to this procedure
24 beforehand, a hearing panel and each member of the hearing panel may engage in ex
25 parte communications on specified administrative topics with one or more parties.

26 (e) A hearing panel and each member of the hearing panel may consult other
27 members of the panel and commission staff whose function is to aid the hearing panel
28 in carrying out its adjudicative responsibilities.

29 (f) A hearing panel and each member of the hearing panel may, with the
30 consent of the parties, confer separately with the parties and their lawyers in an effort
31 to mediate or settle matters pending before the hearing panel.

1 **Sec. 42.08.100. Communications carriers section.** There is established
2 within the commission a communications carriers section that shall develop,
3 recommend, and administer policies and programs with respect to the regulation of
4 rates, services, accounting, and facilities of communications common carriers within
5 the state involving the use of wire, cable, radio, and space satellites.

6 **Sec. 42.08.150. Public advocacy section.** There is established within the
7 commission a public advocacy section. The section shall participate as a party in
8 matters that come before the commission when directed to do so in accordance with
9 AS 42.08.070(c). The public advocacy section shall operate separately from the rest of
10 the commission.

11 * **Sec. 21.** AS 44.66.010(a)(4) is amended to read:

12 (4) Regulatory Commission of Alaska (AS 42.04.010) -- June 30, 2003
13 [2002];

14 * **Sec. 22.** AS 44.66.010(a) is amended by adding a new paragraph to read:

15 (21) Telecommunications Commission of Alaska (AS 42.08.010) --
16 June 30, 2006.

17 * **Sec. 23.** AS 45.50.473(a) is amended to read:

18 (a) A person may not provide an alternate operator service without disclosing
19 to the consumer before a charge is incurred the cost of the service provided by the
20 person and the identity of the person providing those services. This section does not
21 affect the power of the Telecommunications [REGULATORY] Commission of
22 Alaska to regulate providers of alternate operator services under AS 42.05 in a manner
23 consistent with this section.

24 * **Sec. 24.** AS 45.50.473(b) is amended to read:

25 (b) The owner of a place where telephone business from consumers is
26 aggregated, including a hotel, motel, hospital, and pay telephone other than a
27 telephone utility regulated by the Telecommunications [REGULATORY]
28 Commission of Alaska, shall disclose a surcharge added to the cost of local or long
29 distance telephone service before the service is provided. Disclosure may be made by
30 posting the amount of the surcharge on or near the telephone instruments subject to the
31 surcharge or by other reasonable written or oral means.

1 * **Sec. 25.** AS 45.50.475(b) is amended to read:

2 (b) A local exchange telecommunications company and a company that
3 provides a telephone directory on behalf of a local exchange telecommunications
4 company shall provide for the identification in the telephone directory of those
5 residential customers who do not wish to receive telephone solicitations. The local
6 exchange telecommunications company may impose a reasonable charge for
7 identification in the directory. The charge shall be based on the cost of providing the
8 identification and is subject to the approval of the Telecommunications
9 [REGULATORY] Commission of Alaska.

10 * **Sec. 26.** AS 45.50.475(c) is amended to read:

11 (c) A local exchange telecommunications company shall, upon request,
12 provide to a person who engages in telephone solicitation a list of all telephone
13 numbers identified in the telephone directory as residential customers who do not wish
14 to receive telephone solicitations. If possible and if requested by the person who
15 engages in telephone solicitations, this list shall be provided in computer readable
16 format. The local exchange telephone company may impose a reasonable charge for
17 the list. The charge shall be based on the cost of providing the list and is subject to the
18 approval of the Telecommunications [REGULATORY] Commission of Alaska.

19 * **Sec. 27.** AS 45.63.080(12) is amended to read:

20 (12) by a person who is soliciting for a business, or for an affiliate of a
21 business, that is regulated by the Telecommunications [REGULATORY]
22 Commission of Alaska;

23 * **Sec. 28.** AS 46.03.030(b) is amended to read:

24 (b) The department may grant to a municipality or, to the extent allowed
25 under (i) of this section, to a public utility, as funds are available, a grant for any of
26 the following:

- 27 (1) a water quality enhancement project;
28 (2) a public water supply, treatment, or distribution system;
29 (3) a wastewater collection, treatment, or discharge system;
30 (4) a solid waste processing, disposal, or resource recovery system.

31 * **Sec. 29.** AS 46.03.030(e) is amended to read:

1 (e) A grant under this section to a municipality or public utility eligible
2 under (i) of this section for a project funded by an appropriation made by the
3 legislature

4 (1) before July 1, 1994, may not exceed 50 percent of the eligible costs
5 of the project;

6 (2) after July 1, 1994, may not exceed

7 (A) 85 percent of the eligible costs for a municipality with a
8 population of 1,000 persons or less or a utility with 1,000 or fewer
9 customers;

10 (B) 70 percent of the eligible costs for a municipality with a
11 population of 1,001 to 5,000 persons or a utility with 1,000 to 5,000
12 customers; and

13 (C) 50 percent of the eligible costs for a municipality with a
14 population greater than 5,000 persons; however, if a municipality with a
15 population greater than 5,000 persons seeks a grant for a project that relates to
16 a solid waste processing or disposal system that incorporates resource
17 recovery, the department may provide a grant for up to 60 percent of the
18 eligible costs of the project.

19 * **Sec. 30.** AS 46.03.030 is amended by adding a new subsection to read:

20 (i) A public water and sewer utility is eligible for a grant for projects described
21 in (b)(1) - (3) of this section if its rates are regulated by the Regulatory Commission of
22 Alaska under AS 42.05.

23 * **Sec. 31.** AS 42.04.100 is repealed.

24 * **Sec. 32.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 APPLICATION OF TIMELINES TO NEW AND EXISTING DOCKETS. The
27 timelines provided in AS 42.05.175, added by sec. 13 of this Act, apply to all new dockets of
28 the Regulatory Commission of Alaska filed on or after July 1, 2002. For dockets commenced
29 before July 1, 2002, the date of July 1, 2002, shall be used as the date of filing for the purpose
30 of applying the timelines in AS 42.05.175.

31 * **Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 TASK FORCE INQUIRY INTO REGULATORY COMMISSION OF ALASKA. (a)
3 A task force is established to inquire into all aspects of the operation of the Regulatory
4 Commission of Alaska. The members of the task force shall be appointed as follows: three
5 people by the president of the senate, three people by the speaker of the house of
6 representatives, and one person by the governor.

7 (b) The task force shall immediately perform a comprehensive review of the
8 commission and its operations. The task force shall present a written report to the legislature
9 not later than January 30, 2003. The task force is terminated upon the presentation of the
10 written report to the legislature. The task force shall make specific recommendations in its
11 report advising the legislature regarding

12 (1) the type of arbitration best suited to rate and tariff issues;

13 (2) the ^{approp. level} extent of ~~de~~regulation of the electric and telephone cooperatives
14 organized under AS 10.25 and the extent of ~~de~~regulation of municipally owned utilities.

15 (c) The task force shall have access to all information, including confidential
16 information, in the custody of the commission. The task force shall maintain the
17 confidentiality of any confidential information accessed. Confidential information may not be
18 disclosed in the written report prepared under (b) of this section.

19 * Sec. 34. The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 POWERS AND DUTIES OF REGULATORY COMMISSION OF ALASKA AND
22 TELECOMMUNICATIONS COMMISSION OF ALASKA IN THE YEAR AFTER
23 ^{EX}TERMINATION. Notwithstanding AS 44.66.010(b), the powers and duties of the Regulatory
24 Commission of Alaska and the Telecommunications Commission of Alaska in the year
25 following ~~termination~~ are not reduced or otherwise limited, and each commission shall
26 continue in existence after ~~termination~~ for one year. Each commission shall continue to
27 exercise all its powers and perform its duties and responsibilities under AS 42 during the year
28 following its ~~termination~~.

29 * Sec. 35. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 INITIAL APPOINTMENTS TO TELECOMMUNICATIONS COMMISSION OF

1 ALASKA. Notwithstanding AS 42.08.020(c), added by sec. 20 of this Act, and
2 AS 39.05.055, one initial member of the Telecommunications Commission of Alaska shall be
3 appointed for a term of one year, one initial member of the Telecommunications Commission
4 of Alaska shall be appointed for a term of three years, and one initial member of the
5 Telecommunications Commission of Alaska shall be appointed for a term of five years.

6 * Sec. 36. Sections 1 - 7, 12, 15 - 20, 22 - 27, and 31 of this Act take effect January 1, 2003.

7 * Sec. 37. Except as provided in sec. 36 of this Act, this Act takes effect immediately under
8 AS 01.10.070(c).

SENATE JUDICIARY COMMITTEE - ROLL CALL VOTE

DATE: 6/26

BILL: *Therriault - chair*
MOTION:

MEMBER	YEA	NAY	ABSENT
DONLEY		✓	
COWDERY		✓	
THERRIAULT	✓		
ELLIS	✓		
TAYLOR		✓	
TOTAL	2	3	

BILL: MOTION:

MEMBER	YEA	NAY	ABSENT
COWDERY			
THERRIAULT			
ELLIS			
DONLEY			
TAYLOR			
TOTAL			

BILL: MOTION:

MEMBER	YEA	NAY	ABSENT
THERRIAULT			
ELLIS			
DONLEY			
COWDERY			
TAYLOR			
TOTAL			

BILL: MOTION:

MEMBER	YEA	NAY	ABSENT
ELLIS			
DONLEY			
COWDERY			
THERRIAULT			
TAYLOR			
TOTAL			

OK to share w/ ext. w/ 1/15 but not for 1/16 and GCI proposal

HB 111

~~CS FOR HOUSE BILL NO 333 (11)~~

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY:

Offered:
Referred:

Sponsor(s):

A BILL

FOR AN ACT ENTITLED

"An Act setting timelines for issuance of final orders by the Regulatory Commission of Alaska, amending the authority of the commission to enter compromise settlement orders, establishing a process for further reform of commission practices and procedures, and extending the commission's termination date to June 30, ²⁰²⁴~~2006~~; and providing for an effective date."

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

*Section 1. AS 42.05 is amended by adding a new section to read:

Sec. 42.05.175. Timelines for issuance of final orders. (a) The commission shall issue a final order not later than six months after a complete

application is filed for an application

- (1) for a certificate of public convenience and necessity;
- (2) to amend a certificate of public convenience and necessity;
- (3) to transfer a certificate of public convenience and necessity;

and

(4) to acquire a controlling interest in a certificated public utility.

(b) Notwithstanding a suspension ordered under AS 42.05.421, the commission shall issue a final order not later than nine months after a complete tariff filing is made for a tariff filing that does not change the utility's revenue requirement or rate design.

(c) Notwithstanding a suspension ordered under AS 42.05.421, the commission shall issue a final order not later than 15 months after a complete tariff filing is made for a tariff filing that changes the utility's revenue requirement or rate design.

(d) The commission shall issue a final order not later than 12 months after a complete formal complaint is filed against a utility or, when the commission initiates a formal investigation of a utility without the filing of a complete formal complaint, not later than 12 months after the order initiating the formal investigation is issued.

(e) The commission shall issue a final order in a rule making proceeding not later than 24 months after a complete petition for adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290 is filed or, when the commission initiates a rule making docket, not later than 24 months after the order initiating the proceeding is issued.

(f) The commission may extend a timeline required under (a) - (e) of this section if all parties of record consent to the extension or if, before the timeline expires, the commission

(1) reasonably finds that good cause exists to extend the timeline; and

(2) issues a written order extending the timeline and setting out its findings regarding good cause.

(g) The commission shall file provide copies of all written orders issued under (f)(2) of this section to each member of the legislature within 30 days after issuance of such order.

(h) If the commission does not issue and serve a final order regarding an application or suspended tariff under section (a), (b), or (c) of this section within the applicable timeline specified, and if the commission does not extend the timeline in accordance with (f) of this section, the application or suspended tariff filing shall be considered approved and shall go into effect

immediately.

(i) For purposes of this section, "final order" means a dispositive 2 administrative order that resolves all matters at issue and that may be the basis for a petition for reconsideration or request for judicial review.

(j) For purposes of this section, an application, tariff filing, formal complaint, or petition is complete if it complies with the filing, format, and content requirements established by statute, regulation, and forms adopted by the commission under regulation.

* Sec. 2. AS 42.05.191 is amended to read:

Sec. 42.05.191. Contents and service of orders. Every formal order of the commission shall be based upon the facts of record. However, the commission shall issue an order approving any settlement supported by all the parties of record in a proceeding, including a promise settlement, unless the commission finds that the settlement is consistent with AS 42.05, AS 42.06, or the public interest. Every order entered pursuant to a hearing must state the commission's findings, the basis of its findings and conclusions, together with its decision. These orders shall be entered of record and a copy of them shall be served on all parties of record in the proceeding.

* Sec. 3. AS 44.66.010(a)(4) is amended to read:

(4) Regulatory Commission of Alaska (AS 42.04.010) June 30,

2004 [2002];

* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

PRIOR DOCKETS. The provisions of AS 42.05.175, added by sec. 1 of this Act do not apply to dockets of the Regulatory Commission of Alaska that are initiated before July 1, 2002.

***Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

ADVISORY COMMITTEE: No later than October 31, 2002, the chair of the commission shall appoint a committee to investigate and propose reforms to the commission's regulatory process. The committee shall include one member of the commission, one member representing incumbent local exchange carriers, one member representing competitive local exchange carriers, one member representing electric utilities, one member representing natural gas utilities, one member representing water and or sewer utilities, and one member representing the public advocacy section. Where possible, the chair shall honor nominations from the represented group. The committee shall hold open meetings and receive comment from the public and all regulated utilities. No later than October 31, 2003, the committee shall prepare a report to the commission and the legislature addressing this following issues: how to reduce the backlog of cases

and other matters pending before the commission; how to revise the processes of the commission to assure that fewer issues must be tried in trial-like proceedings; whether the deadlines established in this legislation require further amendment; what areas for which the commission is currently responsible provide the highest public benefit and which produce lower public benefit; identification of areas of regulatory oversight that may be eliminated.

*Sec 6. The uncodified law of the State of Alaska is amended by adding a new section to read:

INFORMAL MEETINGS: The commission shall, approximately once per month, hold informal meetings at which the public and representatives of all regulated utilities may informally discuss issues involving the process and procedures of the commission. Such meetings shall be transcribed and must be attended by at least one commissioner.

* Sec. 7. This Act takes effect immediately under AS 01 .10.070(c).