

HB

1 1 1

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 111
(H) Publish Date: 2/19/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Regulatory Commission of Alaska: BRU Regulatory Commission of Alaska (399)
Sunset Extension Component Regulatory Commission of Alaska
Sponsor Rules
Requester Governor Component No. 2417

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	3,982.9	3,982.9	3,982.9	3,982.9	3,982.9	
Travel	60.0	60.0	60.0	60.0	60.0	
Contractual	1,920.0	1,920.0	1,920.0	1,920.0	1,920.0	
Supplies	62.5	62.5	62.5	62.5	62.5	
Equipment	13.8	13.8	13.8	13.8	13.8	
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	6,039.2	6,039.2	6,039.2	6,039.2	6,039.2	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1141 - RCA Receipts	6,039.2	6,039.2	6,039.2	6,039.2	6,039.2	
TOTAL	6,039.2	6,039.2	6,039.2	6,039.2	6,039.2	0.0

Estimate of any current year (FY2003) cost: 6,003.1
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	62	62	62	62	62
Part-time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

This legislation extends the Regulatory Commission of Alaska to June 30, 2007. In accordance with AS 08.03.020, funding is extended one year following the termination date allowing the commission to conclude its affairs. The information above identifies direct expenditure and revenue information included in the FY 2004 Operating Budget Request. The RCA's budget is funded through the Regulatory Cost Charge (RCC) mechanism and direct charge mechanisms. No general funds are allocated for support of the agency. The RCC is recalculated each year and allows the agency to recover its operating costs through an assessment on the revenues of the utilities and pipeline carriers it regulates.

Prepared by: G. Nanelle Thompson, Chair Phone 907-276-6222
Division Regulatory Commission of Alaska Date/Time 1/29/03 9:33 AM
Approved by: Edgar Blatchford, Commissioner Date 1/29/2003
Agency Department of Community & Economic Development

Proposed Amendments to AS 42.05

* Sec. _____. AS 42.05.810 is amended by adding a new subsection to read:

(d) No long distance carrier shall be regulated by the commission as a dominant carrier in the long distance market if its statewide market share, as measured in intrastate minutes of use, is less than 60 percent, except that the incumbent long distance carrier shall remain the carrier of last resort until the commission orders otherwise.

**ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.
RCA REAUTHORIZATION**

April 2, 2003

ARECA's positions regarding reauthorization of the RCA are as follows:

1. Executive Director and Public Advocacy Section.

ARECA supports the creation of an Executive Director or Chief of Staff for the RCA; and ARECA does not oppose transferring the duties of the Public Advocacy Section (PAS) to the Department of Law. ARECA believes these actions can be accomplished administratively without statutory amendment.

2. Alternative rate making procedures for municipal and cooperative electric utilities.

AS 42.05 should be amended to allow alternative rate making procedures for regulated municipal and cooperative electric utilities. This can be accomplished through the addition of one new section to AS 42.05. A draft of that proposed new section (AS 42.05.425) is attached.

Summary of alternative procedures:

- Upon approval of the municipal or cooperative governing body, automatic implementation of retail electric rate decreases and minor retail rate increases (less than or equal to the change in the consumer price index).
- For other proposed electric rate changes when there are other adverse parties in the case, allows the case to be decided by neutral administrative law judges (ALJs) who are experts in electric rate case regulation. The cost of the ALJs are paid directly by the parties, not from the RCA's budget.
- In all other respects (quality of service, billing disputes, disconnection, etc.), these utilities would remain subject to full RCA regulation.

Benefits of alternative procedures:

- Will allow prompt and efficient self-regulation of rate reductions and minor rate increases by responsive governing authorities of municipal and cooperative electric utilities.
- ALJ process will allow more efficient and expert rate case decision-making when multiple adverse parties exist.
- Both procedures will significantly reduce the RCA's caseload by delegating minor and adversarial cases other forums.
- Will allow the RCA to focus its time and resources on other, important cases and duties.

3. Three-year extension of RCA.

If ARECA's recommendations are accepted, ARECA supports a three-year extension of the RCA.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

_____ BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE _____
_____ : ____ / ____ /03

A BILL
FOR AN ACT ENTITLED

"An Act establishing alternative rate making procedures for cooperative and municipal electric utilities regulated by the Regulatory Commission of Alaska; extending the termination date of the commission to June 30, 2006; and providing for an effective date."

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

* Sec. 1. AS 42.05 is amended by adding a new section to Article 4 to read:

Sec. 42.05.425. Alternative rate making procedures for municipal electric utilities and electric cooperatives. (a) An electric utility subject to economic regulation under this chapter that (1) is owned and operated by a municipality or city within the state, or (2) is an electric cooperative organized under AS 10.25, may elect to change its electric base rates under the provisions of this section.

(b) The commission shall, within ten days after the filing of a utility's rate change request, approve on a permanent basis a tariff revision that reduces an electric base rate for retail service without increasing any other electric base rate if the proposed tariff revision is authorized by resolution of the utility's governing body (municipal assembly, city council, or a cooperative's board of directors).

(c) The commission shall, within ten days after the filing of a utility's rate change request, approve on a permanent basis a tariff revision that increases any electric base rate for retail service if

 B _____

_____ B _____

1 (1) the proposed tariff revision is authorized by resolution of the utility's governing body
2 (municipal assembly, city council, or a cooperative's board of directors); and

3 (2) the percentage increase to each electric base rate is less than or equal to the annual
4 percentage change in the Consumer Price Index for Urban Consumers in Anchorage (CPI-U, Anchorage)
5 for the most recent calendar year, as reported by the U.S. Department of Labor, Bureau of Labor Statistics
6 (or other comparable consumer price index adopted by the commission by regulation, if the CPI-U,
7 Anchorage, is not available).

8 (d) For a tariff revision that increases any electric base rate for retail service by a percentage
9 greater than the annual percentage change in the CPI-U, Anchorage, for the most recent calendar year, and
10 for a tariff revision that changes any electric base rate for wholesale service, the filing utility may, at its
11 option, have the tariff revision adjudicated under the alternative procedures set forth in (f) if there is an
12 intervenor with material adverse interests in the case.

13 (e) Prior to initiation of the alternative procedures set forth in (f),

14 (1) the filing utility shall submit its rate change request to the commission in accordance
15 with this chapter and the commission's regulations, including all required supporting information;

16 (2) the filing utility shall file with the commission written notification of its election to
17 have its rate change request adjudicated under the procedures in (f) of this section;

18 (3) any person desiring to intervene as a party regarding the rate change request shall,
19 within ten days after the filing utility files the notification required in (2) of this subsection, petition to
20 intervene; and

21 (4) not later than twenty days after a petition to intervene is filed, the commission shall
22 accept answers to the petition, and issue an order granting or denying the petition to intervene and
23 determining whether the filing utility's rate change request is eligible for adjudication under the procedures
24 set forth in (f).

1 (f) Upon a commission finding that the filing utility's rate change request is eligible for
2 adjudication under this subsection, the rate change request shall be processed and adjudicated by a neutral
3 and qualified administrative law judge or, if agreed upon by all parties, by a panel of an odd number of
4 administrative law judges, under the following rules:

5 (1) To qualify to serve as an administrative law judge under this subsection, an
6 administrative law judge shall be a member in good standing of a state bar association within the United
7 States, have at least five years of experience litigating or adjudicating rate cases of regulated electric
8 utilities, and comply with the restrictions applicable to members of the commission under AS 42.04.060.

9 (2) Within ten days after issuance of the commission order referenced in (e)(4), all parties
10 shall meet to attempt to unanimously agree on a qualified administrative law judge. If unanimous
11 agreement cannot be reached within that period of time, the parties shall select an administrative law judge
12 from a list of ten qualified administrative law judges supplied to the parties by the American Arbitration
13 Association through a striking of names process. The administrative law judge shall be selected within five
14 working days after receipt of the American Arbitration Association list. The parties shall alternate in
15 striking names from the list until one administrative law judge remains, who shall be the administrative law
16 judge under this subsection. The filing utility shall be the first to strike a name from the list. The order of
17 striking for the other parties shall be determined by unanimous agreement among those parties or, if
18 unanimous agreement cannot be reached, through drawing by lot. If a panel of administrative law judges is
19 used, the selection process in this paragraph shall be used for the selection of each panel member.

20 (3) All reasonable and necessary costs and expenses of the administrative law judge or
21 panel and all administrative expenses of the adjudication process shall be borne equally by all parties who
22 are either a certificated utility or an agency of the state.

23 (4) Not later than three days after selection of an administrative law judge or panel, the
24 parties shall submit a joint filing notifying the commission of the selection. Not later than three days after
25 the joint filing, the commission shall serve a copy of all prior orders and pleadings in the case on the

1 administrative law judge or panel and on all parties of record. The commission shall be placed on the
2 service list for all subsequent pleadings and orders filed and issued in the proceeding.

3 (5) Not later than 30 days after service by the commission of all prior orders and
4 pleadings, the administrative law judge or panel shall issue an order establishing a complete procedural
5 schedule for adjudication of the base rate change request. The administrative law judge or panel is subject
6 to the applicable timelines set forth in AS 42.05.175 and AS 42.05.421, however, when establishing a
7 procedural schedule and adjudicating the rate request, the administrative law judge or panel shall take
8 reasonable steps to ensure issuance of a final order in substantially less time than the maximum allowed
9 under those timelines.

10 (6) In adjudicating the base rate change request, the administrative law judge or panel
11 shall have all of the procedural and substantive powers and duties that apply to the commission and
12 commission members under law, including this chapter, the commission's regulations, and commission
13 precedent, provided, however, that the scope of the administrative law judge's or panel's jurisdiction,
14 powers, and duties is expressly limited to that which is necessary to adjudicate the electric base rate request
15 presented pursuant to this subsection.

16 (7) A party may petition the administrative law judge or panel for reconsideration of an
17 order issued by the administrative law judge or panel.

18 (8) Notwithstanding AS 42.04.080 and AS 42.05.171, the decisions and orders of the
19 administrative law judge or panel under this section are not subject to review by the commission. All final
20 orders of the administrative law judge or panel under this section are subject to judicial review as final
21 administrative orders in accordance with AS 44.62.560—44.62.570. If an appeal is not taken from a final
22 order of the administrative law judge or panel, the administrative law judge or panel may apply to the
23 superior court for enforcement of its orders. The court shall enforce the order by injunction or other
24 process.

1 (9) If an appeal is not taken from a final order of the administrative law judge or panel,
2 the commission shall approve the tariff sheets implementing the rate changes approved and ordered by the
3 administrative law judge or panel.

4 (g) The commission shall adopt regulations as necessary to implement the requirements,
5 procedures, and legislative intent of this section.

6 * Sec. 2. AS 44.66.010(a)(4) is amended to read:

7 (4) Regulatory Commission of Alaska (AS 42.04.010) – June 30, 2006 [2003].

8 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section read:

9 APPLICATION OF ALTERNATIVE RATE MAKING PROCEDURES. The rate making
10 provisions set forth in AS 42.05.425, added by sec. 1 of this Act, apply to all applicable electric base rate
11 change requests filed with the Regulatory Commission of Alaska on or after July 1, 2003.

12 * Sec. 4. Except as provided in sec. 3, this Act takes effect immediately under AS 01.10.070(c).

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

Resolution 03-32

A Resolution Regarding the Sunset Review of the Regulatory Commission of Alaska and Recommended Changes

This Resolution cancels and supercedes Resolution 03-17. ARECA resolves as follows:

- I. If the other provisions of this resolution are enacted, ARECA supports extension of the Regulatory Commission of Alaska (RCA) for a period of three (3) years.
- II. ARECA supports the creation of an Executive Director or Chief of Staff for the RCA; and ARECA supports transferring the duties of the Public Advocacy Section (PAS) to the Department of Law.
- III. ARECA supports the establishment of an Administrative Law Judge (ALJ) option, as described below, for the processing of rate change requests by a cooperative, municipal-owned, or city-owned public utility that is subject to economic regulation by the RCA.

A. Retail service rate changes less than or equal to the annual change in CPI. For a utility's proposed base rate change for retail services that, in total, is less than or equal to the annual change in the applicable consumer price index (CPI) (or other reasonable and known inflation benchmark), the utility's governing body (for a cooperative, its board of directors, and for a municipal- or city-owned utility, its municipal assembly or city council) shall be authorized to approve the proposed, or lower, rate change and forward notice of that approval to the RCA, and the RCA shall approve the tariff sheets implementing that change in rates.

B. Retail service rate changes that are greater than the annual change in CPI. For a utility's proposed base rate change for retail services that is, in total, greater than the annual change in the applicable CPI (or other reasonable and known inflation benchmark), the filing utility may select one of the following two options for the processing and approval of its proposed rate change:

1. Traditional RCA option. Under this option, the rate change request shall be heard and processed under the traditional procedures set forth in AS 42.05 *et seq.*
2. ALJ Option. Under this option, the rate change request shall be heard and processed by an ALJ under the following procedures:
 - a. All ALJ and hearing administrative costs shall be borne equally by all parties;
 - b. All procedures shall be conducted by an ALJ selected by the original parties through a "striking of names" process;
 - c. All orders shall be issued by the ALJ;
 - d. Judicial review shall be by the Superior Court (under the procedures and standards applicable to judicial review of RCA orders); and
 - e. Upon issuance of a final, non-appealable order, the RCA shall approve the tariff sheets implementing the ordered change in rates.

C. Any wholesale service rate changes. For a utility's proposed base rate change for any wholesale services, the filing utility may select one of the two options listed above in B.1. and B.2. for the processing and approval of its proposed rate change.

IV. Implementation and effective date. ARECA intends to propose all proposed statutory amendments deemed necessary to implement the changes set forth above. All of the changes set forth in I. through II. shall be effective July 1, 2003. The changes set forth in III. shall be effective for rate change requests filed on or after the effective date of the enabling legislation.

PASSED AND APPROVED this _____ day of March, 2003.

Dwight Nissen, President

Attest: _____

GCI'S COMMENTS ON AMENDMENTS TO HB111

At the urging of Alaska Communications Systems (ACS) and without significant discussion, the House Labor and Commerce Committee adopted lengthy amendments to HB 111, a simple sunset extension bill for the Regulatory Commission of Alaska (RCA) as advocated by the Governor. The stated purposes of the amendments are to accelerate the development of competition and promote investment and the improvement of existing facilities used to provide telecommunications services. In reality, the effect of the amendments is to eliminate competition and allow ACS and other telephone companies to implement rate increases to consumers, while eliminating regulatory requirements to upgrade existing facilities.

1. The amendments would allow all local telephone companies to implement rate increases to Alaska's consumers.

Depreciation expense is one large component of the costs that regulated utilities are allowed to collect from ratepayers. Regulated depreciation rates are based on the actual, useful service life of the equipment used to provide service. However, ACS is dissatisfied with the service lives set by the RCA after a recent proceeding in which it was seeking to raise rates. Section 4 of CSHB 111 would reverse the RCA's decision and authorize all telephone utilities to base depreciation on the service lives permitted by the IRS for income tax purposes. The IRS lives were never intended to establish the useful service life of equipment; instead, the IRS lives are intended to allow rapid depreciation for income tax purposes. Use of the IRS lives will allow ACS, and all other telephone companies, to implement rate increases to all ratepayers.

Section 2 of CSHB 111 would allow local telephone companies to implement rate increases—without any oversight from the RCA—as soon as a competitor is even authorized to provide service. The limitation included in Section 2—that the local telephone company should have less than 60 percent of the statewide market share—is totally meaningless, as none of the 20 local companies in Alaska, each serving separate areas, has 60 percent of the statewide market share. While it might seem counterintuitive that a company facing competition might raise rates, this is exactly what ACS did in Anchorage after GCI introduced competition. Furthermore, other provisions of CSHB 111 will allow local phone companies to eliminate any prospect of successful competition.

2. The amendments would allow local and long distance carriers to discriminate between customers and areas within the state.

Section 5 of CSHB 111 declares the entire state "competitive" for long distance service and completely exempts all long distance carriers from rate regulation by the RCA. Section 5 of CSHB 111 even exempts carriers from statutory provisions that require just and reasonable rates (AS 42.05.381), prohibit rate discrimination (AS 42.05.391), and protect consumers against inadequate and unsafe facilities (AS 42.05.291). Because of Section 5, the RCA would be unable to require "geographic rate averaging," which keeps down long distance rates in rural Alaska. Furthermore, the "access charges" that long distance carriers pay to rural local phone companies would increase substantially under CSHB 111, creating pressure on long distance companies to increase rates to consumers in rural Alaska. Local phone companies would receive the same exemptions as soon as another carrier is able to offer service to 50 percent of the subscribers, but before development of actual competition. The full list of exemptions includes the statutes that prohibit discrimination in service (AS 42.05.301), authorize "Lifeline" rates (AS 42.05.306), require just and reasonable rates and tariffs (AS 42.05.361-381), and prohibit discrimination in rates and unreasonable preferences among customers and, indeed, the entire power of the RCA to review and set rates (AS 42.05.411, .421, .431, .451, .471). The exemptions would be available to long distance companies immediately and to any local phone company as soon as any competitor was able to provide service, but before actual development of competition.

3. The amendments would allow ACS to eliminate competition; the amendments are contrary to federal law and would create tremendous market uncertainty.

Section 8 of CSHB 111 allows ACS, without any negotiation much less any review and approval by a regulatory body, to unilaterally increase the rates it charges to GCI pursuant to the existing Interconnection Agreement that was arbitrated under federal law and approved by the RCA. As expressly allowed by federal law and as necessary for local phone competition, GCI leases certain portions of ACS' equipment to provide local service and GCI pays ACS a rate, including a reasonable profit, arbitrated and negotiated and approved by the RCA. Section 8 allows ACS to change these rates, unilaterally, to recover whatever costs

it expects it might incur in the future, with whatever profit it unilaterally deems appropriate, and based on the inappropriate IRS depreciation lives allowed by the section. There is no doubt ACS would immediately raise GCI's rates to at least the unreasonable levels it has requested from (and been rejected by) the RCA, eliminating local competition.

The pricing standard set in Sections 4 and 8 of CSHB 111 are totally contrary to the pricing requirements set by federal law and upheld by the United States Supreme Court. Furthermore, the authorization for ACS to unilaterally change the rates is directly contrary to the arbitration and negotiation procedures required by federal law. For these reasons, passage of these provisions would lead directly to costly litigation and directly undercut the "stable regulatory environment" deemed "vital to the state's future" in Finding (a)(6) of CSHB 111.

4. In direct contradiction of the stated purpose, the amendments eliminate requirements to upgrade existing networks.

Section 1 of CSHB 111 states the amendments are intended to improve the existing facilities used to provide local phone service. However, Section 3 of CSHB absolutely prohibits the RCA from requiring phone companies to improve existing facilities. This amendment is targeted at a regulation adopted by the RCA in 1997 requiring all phone companies to support a data transmission rate of 28.8 kilobits per second by 2003. Thus, local phone companies were given 6 years to bring their facilities up to a very modest standard for data transmission. Section 3 would reverse the requirement in the regulation.

Furthermore, Section 5 even exempts local phone companies from the statutory requirement (AS 42.05.291) to maintain "safe services and facilities" and that allows the RCA to require correction of unsafe facilities. This exemption is applicable immediately for long distance companies and as soon a local company faces any competition.

5. In direct contradiction to the stated purpose, the amendments discourage investment in telecommunication facilities in Alaska.

Section 1 of CSHB 111 states that existing policies favoring local competition actually discourage investment in Alaska's telecommunication facilities. This argument is false and has been explicitly rejected by the United States Supreme Court.

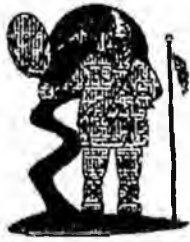
When other local phone companies brought a lawsuit against the pro-competitive provisions of the federal Telecommunications Act, those companies argued that the pricing standards adopted by the FCC discouraged investment. However, that argument was rejected by the United States Supreme Court.

In fact, in Alaska as elsewhere, large investments in new, advanced telecommunications facilities by competitive carriers like GCI, is encouraged by the Act. GCI will be investing approximately \$100 million in Alaska this year, more than any other carrier. GCI would be unable to maintain this level of investment in the face of the anti-competitive provisions of CSHB 111.

6. The amendments would require GCI to protect ACS from the effects of competition.

As discussed above, GCI leases portions of ACS' facilities to provide local phone service, and GCI pays RCA-approved rates for those facilities. This important aspect of the federal Telecommunications Act enables incumbents like ACS to continue to receive revenue even for customers served by a new competitor. Nonetheless, ACS has complained bitterly about the requirement that it allows GCI to use its facilities, and because of poor service and high rates of ACS, GCI is developing its own local exchange facilities. Now, through Section 4 of CSHB 111, ACS seeks to require GCI to pay ACS for the full cost of any ACS facilities for customers that leave ACS and take service on GCI facilities. Even for equipment installed by ACS long before competition began, if GCI leased the equipment for a time and the customer then took service over GCI's own equipment, GCI would be required to pay ACS for the entire value of the equipment. Such a provision is illegal and the absolute opposite of competition. No new entrant could enter any market if it is required to guarantee the investments of the incumbent provider against the possibility that customers would choose the new entrant's service. Under ACS' amendments, GCI will face the unacceptable alternatives of continuing to use ACS' equipment forever, at rates unilaterally set by ACS, or of building its own facilities and still having to pay ACS for its facilities.

(Edited 4:30 p.m. on 4/30)



Maniilaq Association

P.O. Box 256 - 733 2nd Avenue - Kotzebue, AK 99752
Phone: (907) 442-3311 or 800-431-3321
Fax: (907) 442-7678



Reggie Joule
State Capitol, Room #405
Juneau, AK 99801
Telephone: 907-465-4833 Toll
Fax: 907-465-4586

Dear Representative Joule,

Telecommunications is one of the most important infrastructure components we have in rural Alaska. It helps provide high quality health care to our people, distance education to our youth, and global commerce opportunities to all of us.

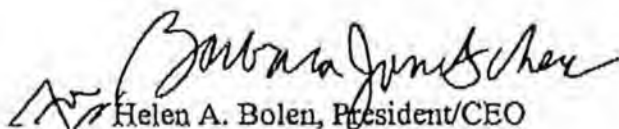
In the past few years, telecommunication advancement has exploded in rural Alaska. Prices have gone down, new technologies have been implemented and people are better off. The Regulatory Commission of Alaska (RCA) helped make that happen.

The RCA has always protected consumers and deftly implemented complex regulatory principles that directly benefit our communities.

As the primary health and social services provider in Northwest Alaska and a state-wide leader in telemedicine delivery, Maniilaq Association, Inc. (Maniilaq), strongly encourages the extension of the RCA for four years without any special amendments. Maniilaq believes that important consumer protections and benefits will be lost if the RCA is held hostage to special interest amendments, and this will hinder Maniilaq's efforts to build strong, vibrant communities in Northwest Alaska.

Maniilaq wants health, education and commerce opportunities to grow in our region and across the state. A healthy RCA helps foster that.

Sincerely,


Helen A. Bolen, President/CEO
Maniilaq Association, Inc.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 23, 2003

SUBJECT: Sectional summary of CSHB 111() "I" version
(Work Order No. 23-GH1049U)

TO: Representative Tom Anderson
Attn: Josh Applebee

FROM: Barbara R. Craver 
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. This section contains uncodified law expressing the legislature's findings and intent for this Act.

Section 2. This section amends AS 42.05.145 "Telecommunications regulation policy." When a new carrier enters a local market, the commission is directed not to designate an incumbent local exchange carrier as the dominant carrier in a local exchange market, unless that carrier has a 60 percent market share.

Section 3. This section provides that any new laws or rules that change standards for service or facilities operate prospectively only.

Section 4. These new subsections are added to AS 42.05.381. Subsection (k) allows electric or telephone utilities to use the same depreciation schedules as allowed under the federal tax code. Subsection (l) requires the commission to look to a telephone utility's current costs in determining the costs that a utility can charge another telephone utility for use of the first utility's facilities, systems or services and allows costs to be adjusted for inflation and increased risk from competition. This subsection also requires that a utility providing facilities, systems or services to another utility shall be reimbursed within 90 days of a cancellation of the use by the second utility for the unamortized capital costs incurred by the first utility to provide the services to the canceling utility.

Representative Tom Anderson

April 23, 2003

Page 2

Section 5. New section AS 42.05.433 allows a telephone utility to file a certificate with the commission that the telephone utility is operating in a competitive service area. Such a utility is exempt from tariff filing requirements for rate changes and other rate related matters. Subsections of this section provide for shared "carrier of last resort" obligations, and provide that the local exchange market in Anchorage and the state wide interexchange long distance market are considered to be a competitive service area. Definitions are provided for several terms used in this section. New section AS 42.05.435 sets out the policy to be used in setting prices for unbundled network elements.

Section 6. This section provides that a long distance carrier will not be regulated by the commission as the dominant carrier in the long distance market, if the carrier's statewide market share is less than 60 percent. The long distance carrier that is designated as the dominant carrier on the effective date of this subsection will remain the carrier of last resort until the commission orders otherwise.

Section 7. The term of the Regulatory Commission is extended until June 30, 2007. Without this amendment, the commission will end June 30, 2003.

Section 8. This section of uncodified law allows local exchange carriers who are providing unbundled network elements to other utilities to adjust their rates in accordance with this Act.

Section 9. The commission is required to develop regulations to implement the shared carrier of last resort provisions of this Act.

Section 10. This section provides an immediate effective date for this Act.

BRC:med
03-431.med

23-GH1049U
Craver
4/23/03

CS FOR HOUSE BILL NO. 111()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

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

A BILL
FOR AN ACT ENTITLED

1 "An Act providing for the prospective effect of standards changed by the Regulatory
2 Commission of Alaska; relating to competition in regulated telecommunications and
3 exemptions from tariffs in competitive telecommunications markets; relating to the
4 designation of a dominant carrier in local exchange and long distance markets; relating
5 to depreciation expense rates; relating to cost recovery for telecommunications utilities;
6 setting a policy regarding unbundled network elements in the telecommunications
7 market; extending the termination date of the Regulatory Commission of Alaska; and
8 providing for an effective date."

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

10 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
11 to read:

12 FINDINGS AND PURPOSE. (a) The legislature finds that

1 (1) the Telecommunications Act of 1996 was enacted to foster the rapid
2 deployment of advanced telecommunications, information technologies, and services to all
3 Americans by promoting competition and reducing regulation in telecommunications markets
4 nationwide;

5 (2) the Telecommunications Act of 1996 specifically recognizes the unique
6 abilities and circumstances of the types of local exchange carriers in Alaska--those that are in
7 remote areas that have never been served by a regional bell operating company or an affiliate
8 of a regional bell operating company;

9 (3) state law is tailored to the era of monopoly regulation that existed before
10 passage of the Telecommunications Act of 1996 and fails to reflect national policy of
11 achieving modern and efficient telecommunications systems by way of market incentives
12 rather than regulatory controls;

13 (4) state law fails to recognize that policies designed to encourage new
14 entrants to compete against the nation's largest carriers, the regional bell operating companies,
15 are disproportionately burdensome and financially threatening to Alaska's smaller local
16 exchange carriers;

17 (5) Alaska's outdated policies impede local exchange carriers' deployment of
18 advanced telecommunications services and competitive initiatives to consumers, discourage
19 investment for the future, and deny consumers some of the benefits of modern, efficient, and
20 market-driven telecommunications services;

21 (6) telecommunications in the state are of strategic importance to the
22 economic and social growth and development of the state, and it is vital to the state's future
23 that telecommunications providers operate in a stable and profitable regulatory environment
24 that promotes the improvement of local exchange facilities as well as the development of new
25 facilities; therefore, care and caution must be exercised in introducing competition into rural
26 areas of Alaska to ensure the preservation of universal service;

27 (7) state regulation during the monopoly era has been a surrogate for market
28 forces; upon the achievement of substantial competition, market forces should be allowed to
29 drive investment and service quality;

30 (8) in markets served by Alaska carriers where substantial competition has
31 been achieved, eliminating certain regulatory requirements will

- 1 (A) promote investment in existing local exchange facilities and the
2 development of new facilities;
3 (B) promote market-driven service quality levels; and
4 (C) relieve consumers of the burden of paying for the costs of
5 regulation;

6 (9) reducing regulatory burdens on Alaska local exchange carriers will enable
7 the carriers to devote additional resources to the deployment of advanced services and to
8 competitive initiatives to benefit consumers in Alaska; and

9 (10) in conformance with the Telecommunications Act of 1996, it is
10 appropriate to eliminate, where possible, the incidence of implicit subsidies in telephone rates;
11 state regulators should be prohibited from using revenue earned or expense incurred from
12 unregulated activities in determining appropriate levels for regulated prices.

13 (b) The purposes of this Act are to

14 (1) accelerate the development of competition in the telecommunications
15 industry for the benefit of consumers in the state by reducing regulatory burdens on these
16 carriers:

17 (2) ensure that competition will not threaten the integrity of Alaska's
18 telecommunications networks;

19 (3) promote the improvement of existing facilities used to provide local
20 exchange services and the development of new facilities;

21 (4) maintain competition in local exchange markets once unbundling
22 requirements have achieved substantial competition; and

23 (5) clarify the jurisdiction of the Regulatory Commission of Alaska as it
24 relates to unregulated activities and prescribe changes to certain regulated accounting
25 practices.

26 * **Sec. 2.** AS 42.05.145 is amended by adding a new subsection to read:

27 (b) Upon the commission's approval of a carrier's application to provide
28 competitive local exchange telecommunications service in an incumbent local
29 exchange carrier's service area, the incumbent local exchange carrier may not be
30 regulated by the commission as a dominant carrier in the local exchange market if its
31 statewide market share, as measured in number of carrier common lines, is less than

1 60 percent. However, the incumbent local exchange carrier shall remain the carrier of
2 last resort in the relevant area until the commission orders otherwise or unless
3 AS 42.05.433(e) applies.

4 * Sec. 3. AS 42.05.291 is amended by adding a new subsection to read:

5 (e) Regulations, rules, and orders of the commission that change the standards
6 of service and facilities shall operate prospectively only. A rule, regulation, or order
7 may not require or have the effect of requiring a public utility to retrofit a
8 telecommunications network without the utility's consent.

9 * Sec. 4. AS 42.05.381 is amended by adding new subsections to read:

10 (k) An electric or telephone utility's proposed depreciation rates shall be
11 allowed under this subsection if the underlying service lives are not shorter than the
12 service lives permitted by the United States Internal Revenue Service to determine the
13 appropriate level of depreciation expense for federal income tax computations. The
14 commission may not require a utility to file a depreciation study unless the utility
15 proposes to use depreciation rates based on service lives that are shorter than the
16 service lives permitted by the Internal Revenue Service.

17 (l) A telephone utility providing facilities, systems, or services to other
18 telephone utilities under state or federal law shall be allowed to recover costs it
19 expects to incur to provide the facilities, systems, or services, and shall be allowed a
20 reasonable profit. The best evidence of the costs a telephone utility expects to incur
21 shall be its most current costs, adjusted for inflation. Capital and depreciation costs
22 may rise to reflect increased business risk in competitive service areas and shall be
23 consistent with (k) of this section. If a telephone utility cancels the use of another
24 carrier's facilities, systems, or services at any time before the time when the applicable
25 costs for providing those facilities, systems, or services are fully amortized, the utility
26 canceling the usage shall, within 90 days, reimburse the other carrier for the balance of
27 the capital expenditures incurred by the other carrier as a result of cancellation of the
28 use of the facilities, systems, or services.

29 * Sec. 5. AS 42.05 is amended by adding new sections to read:

30 Sec. 42.05.433. Exemption from tariffs for telecommunications services in
31 a competitive market; carrier of last resort obligations. (a) A local exchange

1 carrier or an interexchange long distance carrier in a competitive service area may file
2 a certification with the commission certifying that the relevant market satisfies the
3 competitive service area standard of this section. A certification exempts the
4 telecommunications utility from tariff filing requirements.

5 (b) A certification filed under (a) of this section is effective upon filing. To
6 deny a certification and the exemption from tariffs, the commission shall make a
7 written finding and order. An exemption granted under this section applies upon its
8 effective date to any pending tariff filings, rate-setting proceedings, and any other rate-
9 related matters under consideration by the commission.

10 (c) A local exchange carrier or an interexchange long distance carrier granted
11 a tariff exemption under this section

12 (1) shall make product and service descriptions and rate lists available
13 to the public at the carrier's normal places of business;

14 (2) shall post the current version of the product and service
15 descriptions and rate lists on the carrier's Internet web sites; and

16 (3) may negotiate competitive rates, terms, and conditions for service.

17 (d) A local exchange carrier or an interexchange long distance carrier granted
18 a tariff exemption under (a) of this section is exempt from the following provisions of
19 this chapter: AS 42.05.291, 42.05.301, 42.05.306, 42.05.361, 42.05.371, 42.05.381,
20 42.05.391, 42.05.411, 42.05.421, 42.05.431, 42.05.451, and 42.05.471.

21 (e) Upon the commission's certifying that the relevant market is a competitive
22 service area, local exchange providers are subject to shared carrier of last resort
23 obligations when more than one carrier in the relevant market or rural telephone
24 company service area has been designated as an eligible telecommunications carrier.
25 When more than two eligible telecommunications carriers exist in a market or rural
26 telephone company service area, carrier of last resort obligations shall be based on
27 relative market share calculations as more specifically described in regulations
28 adopted by the commission.

29 (f) The local exchange market in Anchorage and the statewide interexchange
30 long distance market shall be considered competitive service areas. Facilities-based
31 providers in those two markets shall share carrier of last resort obligations based on

1 relative market share calculations as more specifically described in regulations
2 adopted by the commission.

3 (g) In this section,

4 (1) "competitive service area" means

5 (A) the service area served by a local exchange carrier under a
6 certificate of public convenience and necessity in which at least 50 percent of
7 all retail customers have a choice of facilities-based providers; or

8 (B) the entire state for the long distance market;

9 (2) "eligible telecommunications carrier" means a telephone utility
10 eligible to receive universal service support under 47 U.S.C. 254.

11 (3) "facilities-based service provider" means a telephone utility that
12 offers a portion of its products and services by means of facilities it owns and operates
13 or by means of facilities and unbundled network elements it leases from another
14 provider, or any combination of facilities owned and leased;

15 (4) "network element" means a facility or equipment used in the
16 provision of a telecommunications service, including features, functions, and
17 capabilities that are provided by means of the facility or equipment, including
18 subscriber numbers, data bases, signaling systems, and information sufficient for
19 billing and collection or used in the transmission, routing, or other provision of a
20 telecommunications service;

21 (5) "unbundled network elements" means network elements that are
22 available on a nondiscriminatory basis for sale or lease at a technically feasible point
23 to other telecommunications service providers.

24 **Sec. 42.05.435. State telecommunications policy: pricing of unbundled**
25 **network elements.** (a) It is the policy of the state to encourage the negotiation of
26 market prices in the telecommunications market for the use of unbundled network
27 elements in Alaska.

28 (b) To the extent that rates must be arbitrated under the provision of the
29 Telecommunications Act of 1996, it is the policy of the state to have arbitrated rates
30 for unbundled network elements set as closely as possible to market prices.

31 (c) A carrier that provides facilities, systems, or services to other carriers shall

1 be fully compensated for all capital expenditures related to providing the facilities,
2 systems, or services to another carrier.

3 (d) In this section,

4 (1) "market price" means the price arrived at between willing buyers
5 and willing sellers;

6 (2) "network element" and "unbundled network elements" have the
7 meanings given in AS 42.05.433.

8 * Sec. 6. AS 42.05.810 is amended by adding a new subsection to read:

9 (d) The commission may not regulate a long distance carrier as a dominant
10 carrier in the long distance market if the carrier's statewide market share, as measured
11 in intrastate minutes of use, is less than 60 percent. However, the carrier that is, on the
12 effective date of this subsection, the dominant long distance carrier shall remain the
13 carrier of last resort certificated to provide intrastate interexchange telephone services
14 until the commission orders otherwise.

15 * Sec. 7. AS 44.66.010(a)(4) is amended to read:

16 (4) Regulatory Commission of Alaska (AS 42.04.010) -- June 30, 2007
17 [2003];

18 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 APPLICABILITY. To implement the policy of AS 42.05.381(l), added by sec. 4 of
21 this Act, an incumbent local exchange carrier that is providing facilities, systems, or services
22 to other telephone utilities may immediately adjust and implement new rates for existing
23 interconnection agreements after providing a written statement to the Regulatory Commission
24 of Alaska certifying compliance with this Act.

25 * Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 CARRIER OF LAST RESORT. The Regulatory Commission of Alaska shall, by
28 regulations, effective not later than December 31, 2003, adjust and allocate the financial
29 obligation of being a carrier of last resort to all carriers serving a competitive service area.
30 The adjustment and allocation made under this section must be proportionate to each carrier's
31 share of the market.

1

* Sec. 10. This Act takes effect immediately under AS 01.10.070(c).

REGULATORY COMMISSION OF ALASKA (RCA) AT A GLANCE

***Mission Statement:** To protect consumer interests by ensuring affordable, reliable utility and pipeline services and ensuring that the utility and pipeline infrastructure is adequate to support community needs.

***Funding:** There are no general funds appropriated to the RCA. The agency is funded by a Regulatory Cost Charge, a capped surcharge assessed to all regulated utility and pipeline customers.

***Budget:** FY03 - \$6.04 million.

***Staffing:** 62 positions, including five Commissioners, appointed by the Governor for six-year terms; hearing examiners; paralegals; common carrier specialists; financial, engineering, and tariff analysts; consumer protection and information officers; and various administrative personnel.

***Workload:** The RCA workload includes formal cases (dockets), informal cases (consumer complaints), and tariff filings (changes to the rates, terms, and conditions of utility and pipeline services).

-Current Docket Caseload: 214 (versus approximately 550 in 1999)

-Dockets Opened each year: 160 (5-year average)

-FY02 Consumer Complaints Handled: 664 (663 closed by 10/15/02)

-FY02 Tariff Filings: 536 (455 processed routinely; 50 suspended into dockets; 9 withdrawn; 22 pending at year end)

-Substantive Orders (Decisions) Issued: 608 each year (3-year average)

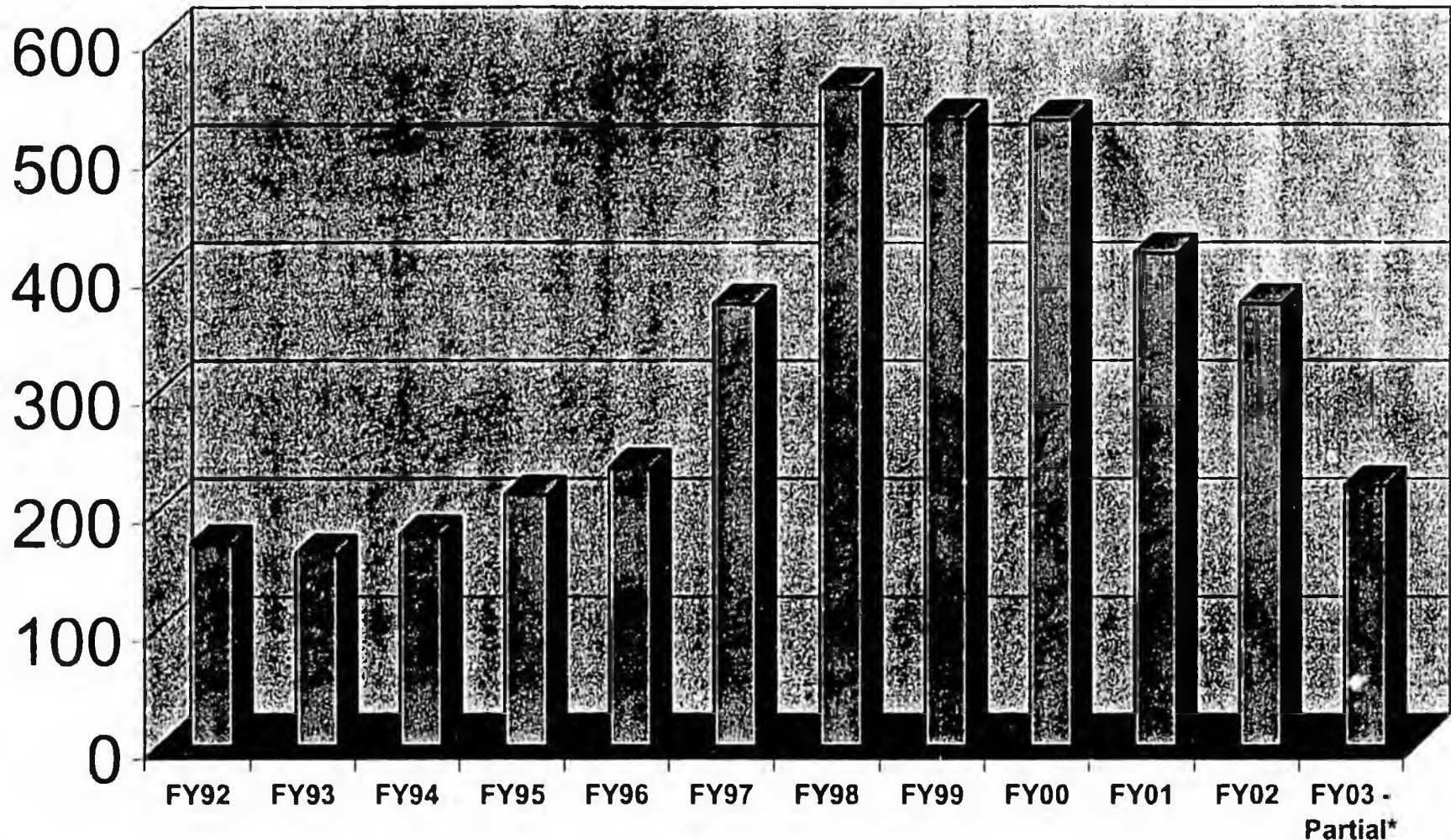
-Appeals: 16 (out of nearly 2,000 substantive decisions)

***To reach us:** By phone – (907) 276-6222. By fax – (907) 276-0160. By email – rca_main@rca.state.ak.us. In person: 701 West Eighth Avenue, Suite 300, Anchorage, Alaska 99501. Visit our website:

www.state.ak.us/rca.

THE RCA CASE BACKLOG IS GONE

Docket Cases FY92- FY02; FY03 through 12/31/02



■ Pending Cases End of Year

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
Internet e-mail address:
legaudit@legis.state.ak.us

November 29, 2002

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF COMMUNITY AND
ECONOMIC DEVELOPMENT
REGULATORY COMMISSION OF ALASKA
SUNSET REVIEW

November 26, 2002

Audit Control Number

08-20021-03

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently, under AS 44.66.010(a)(4), the Regulatory Commission of Alaska is scheduled to terminate on June 30, 2003.

In our opinion, the termination date for this commission should be extended. The regulation of public utilities and pipelines contributes to the protection of the public's welfare. We recommend the legislature extend the termination date to June 30, 2005.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section.



Pat Davidson, CPA
Legislative Auditor

TABLE OF CONTENTS

	<u>Page</u>
Objectives, Scope, and Methodology.....	1
Organization and Function	3
Report Conclusions.....	5
Findings and Recommendations.....	7
Analysis of Public Need	11
Appendix A: Summary of Expenditures.....	17
Agency Response:	
Department of Community and Economic Development.....	19
Legislative Audit's Additional Comments	23

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Regulatory Commission of Alaska (RCA). The purpose of this audit was to determine if there is a demonstrated public need for the continued existence of this commission and if it has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during the legislative oversight hearings to determine whether the Regulatory Commission of Alaska should be reestablished. The law currently specifies that the board will terminate on June 30, 2003.

Objectives

RCA was created to protect and promote the public interest by certifying and economically regulating qualified public utilities and pipeline carriers. It oversees the availability, affordability, and quality of utility services throughout Alaska. The objective of this audit was to determine whether the public need for this commission continues to exist.

Our analysis of public need, findings and recommendations, and our conclusions have been summarized in the applicable sections of this report.

Scope and Methodology

Alaska Statute 44.66.050 requires the factors outlined in the Analysis of Public Need section of this report be evaluated as part of this audit in order to determine need for the commission's continued existence.

In a special session in June 2002, legislative committees conducted extensive oversight hearings that focused on RCA's workload and the utilities' complaints of slow processing of their requests. The legislature responded to these complaints by enacting statutory deadlines for RCA decisions in several categories of cases. The governor signed that legislation in August.

As the new timelines are just now beginning to take effect, it is premature to conduct a workload study of RCA processes or survey utility companies on whether they believe RCA has improved. These issues will be included in the next sunset audit of RCA.

Approximately a year has elapsed since our prior sunset audit. Our present audit thus reviewed RCA activities for the limited period from July 2001 through November 2002. Our report conclusions and analysis of public need are limited to those activities excluding an opinion on RCA's effectiveness or efficiency in dealing with its workload.

ORGANIZATION AND FUNCTION

The Regulatory Commission of Alaska (RCA) was created July 1, 1999 upon reorganization of the Alaska Public Utilities Commission by Ch. 25, SLA 1999. Under AS 42.04, 42.05 and 42.06, RCA is charged with the responsibility to ensure the furnishing of safe and adequate service to all public utility patrons, without discrimination and at reasonable rates, consistent with the interests of both the public and the utility. RCA certifies qualified providers of public utility and pipeline services. After issuance of this certificate, the commission also regulates the rates, classifications, rules, regulations, practices, services, and facilities of a public utility or pipeline, unless it is specifically exempted or has been deregulated by a vote of its customers. The commission has the authority to adopt regulations and to hold formal, quasi-judicial hearings to accomplish these purposes.

RCA regulates pipeline, telephone, electric, natural gas, water, sewer, refuse, cable TV, and steam services. All pipelines, and all other public utilities with ten or more customers, are regulated by the certification process. Most are also economically regulated.

The commission consists of five commissioners appointed by the governor and confirmed by the legislature. The commissioners must either be a member in good standing of the Alaska Bar Association or have a degree in engineering, finance, economics, accounting, business administration, or public administration from an accredited college or university. The commissioners serve six-year terms.

The staff of RCA is divided into the seven major functions of administration, finance, tariff, engineering, communication carriers, consumer protection, and public advocacy. RCA has 62 funded positions¹ in its \$6 million FY 03 operating budget. A brief description of the services provided by each function is as follows.

- **Administration:** The commission chair is responsible for fiscal and personnel administration, budget preparation, and records and document management. The chair is aided by a special assistant, an administrative manager, documents processing and accounting personnel, and other clerical support staff.

Regulatory Commission of Alaska Members
Nan Thompson, Chair Term Expires July 2004
Bernie Smith Term Expires July 2003
Patricia DeMarco Term Expires March 2008
Will Abbott Term Expires March 2007
Jim Strandberg Term Expires July 2006

¹ This total does not include the assistant attorneys general that the Department of Law furnishes to RCA through a reimbursable services agreement.

REPORT CONCLUSIONS

In a special session in June 2002, legislative committees conducted extensive oversight hearings that focused on the Regulatory Commission of Alaska's (RCA) workload and the utilities' complaints of slow processing of their requests. The legislature responded to these complaints by enacting statutory deadlines for RCA decisions in several categories of cases. The governor signed that legislation in August.

As the new timelines are just now beginning to take effect, it is premature to conduct a workload study of RCA processes or survey utility companies on whether they believe RCA has improved. These issues will be included in the next sunset review of RCA.

Therefore, the report conclusions and analysis of public need are limited to RCA's operations excluding the Commission's effectiveness or efficiency in dealing with its workload.

Except for the limitation discussed above, RCA is operating in an efficient and effective manner and the public interest is being served by requiring public utilities and pipelines to be certificated and economically regulated by RCA. The regulatory process stabilizes the availability of utility services. Economic regulation by the Commission ensures that, despite the absence of competition, utilities provide service at reasonable rates.

In two years, the impact of the new deadlines on both the utilities and the public can be meaningfully evaluated. We thus recommend that Alaska Statute 44.66.010(a)(4) be amended to extend the termination date of the Regulatory Commission of Alaska to June 30, 2005.

FINDINGS AND RECOMMENDATIONS

In our previous sunset audit,² we made three recommendations. We noted the Regulatory Commission of Alaska's (RCA) lack of published procedures and criteria as to when its public advocacy section would be assigned to a case and how its intervention would be accomplished.³ RCA has now considered public comments and drafted proposed regulations that adequately address our concerns. We recommend that RCA diligently pursue its current plan to forward the proposed regulations to the Department of Law regulations attorney by December 2002.

We also reported last year that 65 piped water systems and 65 piped sewer systems did not have the required certificate to operate a utility. RCA indicates its intention to ultimately address this matter through regulations that distinguish among the requirements imposed upon water-related utilities of various sizes and settings. See Recommendation No. 3.

We further recommended that RCA improve its procedures for assuring that the newspaper notices of its formal proceedings are printed in an accurate and timely manner. Our fieldwork shows that this problem remains uncorrected. See Recommendation No. 2.

Finally, an outstanding recommendation from our 1998 sunset review⁴ concerned the implementation of a management information system with a number of components. This recommendation was subsequently incorporated as a requirement within RCA's enabling legislation.⁵ The management information system has now been substantially implemented, though on a piecemeal basis spread among a variety of systems rather than on a single, fully-integrated mainframe. This overall system also included an employee time tracking component mandated by statute.⁶

² Department of Community and Economic Development, Regulatory Commission of Alaska Sunset Review, Audit Control No. 08-20013-02 (November 30, 2001).

³ Neither this audit nor our prior audit evaluated the organizational placement of RCA's public advocacy function under the existing statute or as clarified by the regulation project that is currently pending. We will look at this issue during the next sunset review.

⁴ Department of Commerce and Economic Development, Alaska Public Utilities Commission, Audit Control No. 08-1459-99 (December 23, 1998).

⁵ Section 26 of Ch. 25, SLA 1999 directs RCA to "develop its management information system and make the system accessible to the general public through the Internet for the purpose of tracking, scheduling, and managing all dockets within the commission."

⁶ AS 42.04.070(a)(2) directs RCA's chair to "establish and implement a time management system for the commission."

During legislative oversight hearings held at the end of FY 02, RCA's chair indicated that this deficiency had been corrected with a "new internal proceeding to monitor notices" (see Exhibit 1). By the time of our next sunset review, this new procedure will have had ample opportunity to be fully implemented and the Division of Legislative Audit will be able to test its effectiveness in curing this persistent problem.

Recommendation No. 3

RCA should either require smaller water and sewer utilities to be certificated or establish a meaningful exemption system by regulation.

Alaska Statute 42.05.141(a)(1) empowers RCA to "regulate every public utility engaged . . . in a utility business inside the state, except to the extent exempted by AS 42.05.711." RCA's responsibility "to regulate" includes the certification of water and sewer utilities.

Certain larger water and sewer utilities are subject to full ongoing economic regulation, such as the setting of prices. However, even the smaller utilities that are not economically regulated must obtain an RCA operating certificate, unless the agency exempts them under AS 42.05.711(d). This latter subsection permits RCA to "exempt a utility, a class of utilities, or a utility service from all or a portion of this chapter if the commission finds that the exemption is in the public interest."

Our prior review reported 65 piped water systems and 65 piped sewer systems that did not have the required certificate to operate a utility. These systems were spread among 73 different operators, 52 (71%) of which were incorporated under Alaska law as second-class cities. RCA was thus overlooking almost half of the State's 114 second-class cities and not fulfilling its statutory role under AS 42.05.141.

Since our prior review, RCA has chosen to neither solicit applications from, nor pursue enforcement against, such uncertificated utilities. RCA instead indicates its intention to ultimately address this matter through regulations that distinguish among the requirements imposed upon water-related utilities of various sizes and settings.

While public comment was solicited last summer, RCA has so far not drafted any proposed regulations. RCA indicates its intention to send proposed regulations to the Department of

EXHIBIT 1

**EXCERPT FROM TRANSCRIPT OF
SENATE JUDICIARY COMMITTEE**

(June 25, 2002)

SENATOR THERRIAULT: *And then [audit recommendation] number three should insure that the publication of notices and formal proceedings be monitored.*

CHAIRWOMAN THOMPSON: *We did that. We implemented a new internal proceeding to monitor notices after we got the auditor's recommendation.*

ANALYSIS OF PUBLIC NEED

The following analysis of commission activities relates to the public need factors defined in the "sunset" law, Alaska Statute 44.66.050. This analysis was not intended to be comprehensive, but addresses those areas we were able to cover within the scope of our review.

The extent to which the board, commission, or program has operated in the public interest.

With the exception of smaller water and sewer utilities,¹⁰ the commission has made a conscientious effort to allow only qualified applicants to provide utility services and to regulate them in such a manner as to ensure service at a reasonable cost. Upon finding that no public interest would be served by regulation, the commission administratively exempts certain utilities through its discretionary power granted by AS 42.05.711(d).

The extent to which the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

In a special session in June 2002, legislative committees conducted extensive oversight hearings that focused on the Regulatory Commission of Alaska's (RCA) workload and utilities' complaints of slow processing of their requests. The legislature responded to these complaints by enacting statutory deadlines for RCA decisions in several categories of cases. The governor signed that legislation in August.

As the new timelines are just now beginning to take effect, it is premature to conduct a workload study of RCA processes and to survey utility companies on whether they believe RCA has improved.

While it is premature to evaluate RCA's workload, we did review the agency's system¹¹ to monitor its decision-making progress and impending deadlines. This system appears adequate to plan for the issuance of timely decisions (or available extensions) and should prevent the triggering of default adoptions provided for tardiness.

The extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

¹⁰ These are discussed later in this section of the report.

¹¹ There are two components of RCA's system. First, each matter filed with RCA is assigned to a responsible "docket manager" who monitors subordinates' progress in preparing the matter for decision. Second, the RCA "process coordinator" maintains a database that she uses to monitor workflow and continually advise the commissioners and staff as to the needed allocation of resources.

Anchorage consumers can choose between ACS and GCI for local service. GCI leases lines from ACS and depends on the latter to physically install the phone service to GCI's new customers, customers that would otherwise be ACS subscribers. GCI customers claim that ACS gives their new installations a lower priority (longer wait) than those of ACS' own new customers.

RCA has appropriately recognized the significance of this dispute, noting the agency to be "troubled by this recent, dramatic increase in consumer complaints" over telecommunications services.¹⁴ RCA has conducted a public investigative hearing on the matter and reviewed the two utilities explanations. We understand that commissioners are now reviewing a draft of an order intended to address the pattern of customer complaints.

The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

RCA uses a variety of methods to notify the public of formal proceedings. All notices appear on the Internet. Some are also placed in newspapers in the affected areas, posted at a local post office, or included with customer billings.

Newspaper notices are still published in cases where that traditional method will be an effective means to reach the affected public. In Recommendation No. 2, we discuss the continuing need for RCA to verify that the intended newspaper notices actually get published.

RCA's web site is another tool for communicating with the public, with the counter currently showing approximately 4,200 visits per month. Notices of upcoming meetings and formal actions are posted along with detailed annual reports, discussions of major utility issues, and invitations for the public to comment. The process for filing a consumer complaint is explained. Also, members of the public can place themselves on the "courtesy list" and receive direct e-mail notices concerning topics they select.

RCA's office has a computer terminal that the public uses to research agency records such as docket pages, orders and transcripts. We encourage RCA to make this information available on the Internet.

Public participation is encouraged in several other ways. Since the prior audit, RCA has hired a publication specialist for its consumer protection section. Also, Alaska's attorneys have been invited to four part-day classes on RCA processes. Finally, RCA's public advocacy section continues to directly represent aggregated consumer interests in matters pending before the commission.

¹⁴ RCA's Order Opening Investigation of Telecommunications Service Disparity Claims, U-02-97(1) (Oct. 2, 2002), p. 2.

Since our prior review, RCA has chosen to neither solicit applications from, nor pursue enforcement against, such uncertificated utilities. RCA instead indicates its intention to ultimately address this matter through regulations that distinguish among the requirements imposed upon water-related utilities of various sizes and settings.

There is certainly merit to RCA's approach. Last April, the commission issued an order that invited public comment and contained a thoughtful, detailed discussion that candidly recognized both the gravity of the problem and the complexities that cloud its resolution (see Exhibit 3). The logistics (capacity development) and financial realities (sustainability) of operating a village utility are obviously quite different from those faced by a large urban one in the Railbelt. A system sponsored by a homeowners association justifies a different level of consumer protection than a business serving the general public. Regulation of systems that are heavily subsidized requires careful coordination with both environmental requirements and the policy aims of grantors. Recommendation No. 3 further discusses RCA's progress in addressing this issue.

EXHIBIT 3

EXCERPT FROM RCA ORDER R-02-4(1)

(Notice of Inquiry dated April 30, 2002)

We see the need for small Alaskan water and sewer utilities to apply for certification expressed in the large number of non-complying utilities that ADEC has reported, and the potential for harm to all residents that could occur if this is allowed to continue. It is important for existing utilities to be brought, over a period of time, to a standard where public health is assured. In Alaska, this will require adequate funding and clear coordination with the ADEC's safe drinking water regulations. We realize our statutory certification standard, along with the EPA/ADEC Safe Drinking Water Act capacity development requirements, stand as major regulatory hurdles for small water and sewer utilities. It is clear that in many cases, immediate compliance with our fit, willing, and able standard may not be practical.

Our goal in this inquiry is to find ways to certificate rural water and sewer utilities under a phased program that is coordinated with the ADEC capacity development requirements, and that embraces the realities of utility operation in Alaska.

Emphasis added. Footnotes omitted. ADEC = Alaska Dept. of Environmental Conservation. EPA = U.S. Environmental Protection Agency.

The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

We found no evidence of RCA hiring practices or appointments that were contrary to state personnel practices. Since our sunset review a year ago, no complaints have been filed with any of the following: (1) DCED human resource manager; (2) Alaska Human Rights Commission; (3) U.S. Equal Employment Opportunity Commission; (4) Alaska Public Employees Association; (5) Alaska State Employees Association; (6) Office of Equal Employment Opportunity in the governor's office.

APPENDIX A

Regulatory Commission of Alaska Summary of Expenditures FY 02 – FY 03 (unaudited)

Expenditures ¹⁶	FY 02 Authorized (Original)	FY 02 Authorized (Revised) ¹⁷	FY 02 Actual	FY 03 Authorized
Personal Services	\$ 3,736,500	\$ 3,586,182	\$ 3,584,182	\$ 3,982,900
Travel	55,000	55,000	38,007	60,000
Contractual	2,005,500	2,021,686	1,821,478	1,920,000
Supplies	62,500	83,031	82,997	62,500
Equipment	<u>13,800</u>	<u>127,401</u>	<u>127,401</u>	<u>13,800</u>
Total	<u>\$ 5,873,300</u>	<u>\$ 5,873,300</u>	<u>\$ 5,654,065</u>	<u>\$ 6,039,200</u>

Source: The information included in this summary was obtained from the State's accounting records.

¹⁶ Under AS 42.05.254, RCA assesses utilities and pipelines a regulatory cost charge designed to recoup its costs.

¹⁷ At year-end approximately \$150,000 was reclassified from personal services to contractual services, supplies, and equipment. The reclass to supplies and equipment was for management information system enhancements; the reclass to contractual services was for management information system enhancements and purchases of additional adjudication services.

STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND
ECONOMIC DEVELOPMENT
REGULATORY COMMISSION OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

701 WEST EIGHTH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501-3469
PHONE: (907) 276-6222
FAX: (907) 276-0160
TTY: (907) 276-4533
WEBSITE: www.state.ak.us/rca/

January 8, 2003

RECEIVED

JAN 10 2003

LEGISLATIVE AUDIT

Pat Davidson, Legislative Auditor
State of Alaska
Legislative Budget and Audit Committee
Division of Legislative Audit
P. O. Box 113300
Juneau, Alaska 99811-3300

Re: Response to Preliminary Audit Report/Sunset Review of the
Regulatory Commission of Alaska – November 26, 2002

Dear Ms. Davidson:

The RCA appreciates the audit's conclusion that our agency operates in a reasonably effective and efficient manner and should be extended for an additional two years, until June 30, 2005. We will work to implement the recommendations set out in the preliminary audit report. We take this opportunity to expand and clarify several issues you identified.

RCA Extension: Your recommendation was for a two-year rather than a four-year extension of the RCA. Although the reasons are not explicit, the report also notes that a review of how the agency is implementing the deadlines imposed by the legislature last session is premature. I agree that because of the effective date of that legislation, it is premature to evaluate our effectiveness in meeting the deadlines. We must report quarterly on our compliance with the deadline standards to the legislative budget and audit committee. AS 42.05.175(g). Therefore, the legislature will have access to compliance data even without another audit.

An extension for only two years instead of the allowed four is problematic because of the amount of the agency's time it takes to respond to the audit process, and more significantly at least last year, the legislature. If the legislature's goal is improving our productivity, time spent responding to performance reviews detracts from our ability to handle the issues presented by industry and the public. When the legislature required quarterly reports to



of publication were sent to Juneau with the invoices. We have requested that any originals still available be returned to us, but they cannot be easily retrieved.

To address the problem long-term, our Information Systems department is writing a program to integrate the verification process into our MIS so that in the future, we will be able to generate reports that verify publication of notices. We anticipate completion of this project during the first quarter of 2003.

3. RCA should either require smaller water and sewer utilities to be certificated or establish a meaningful exemption system by regulation. After the recommendation in the last audit, the RCA began the process of adopting a meaningful exemption system by regulation. We held a public hearing and asked for comments. We have coordinated our efforts with the other state agencies involved in the design and construction of these systems. In order to adopt regulations, we must use a public meeting process and its associated timelines. We have prioritized this project, balancing the impact on consumers and the necessity of coordinating amongst other affected agencies. Because local governments own most of the uncertificated utilities they will be exempt from economic regulation. The rates paid by consumers will not be affected by certification. We have worked with DCED/RUBA to modify an accounting software program for use by these new water systems so that they will maintain good financial information when they begin operations. We have worked with the other public and private entities that are funding construction of these systems to encourage the new utilities to get started financially on the right path. We expect the process of finalizing an exemption system by regulation to be completed by the end of 2003.

The recently opened docket to address the increased consumer telecommunications complaints in Anchorage was referenced in your report. This proceeding is consistent with the experience of other commissions across the nation as markets transition from monopoly to competitive. Our role in protecting consumers from the consequences of a competitive market increases, and our role in reviewing rates decreases. We issued an order in November 2002 designed to ensure that consumers continue to receive requested services. The incumbent carrier has appealed our decision.

The agency has regulations that change our rate review responsibilities that are effective in the markets open to competition: Anchorage, Juneau and Fairbanks.¹ On October 23, 2002 we voted at a public meeting to open a docket to review

¹ Carriers operating in competitive markets can decrease their rates by providing the RCA with notice. We review rate decreases for discrimination only, and do not require cost justification. In competitive markets, only rate increases must be supported by proof of costs.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
Internet e-mail address:
legaudit@legis.state.ak.us

January 9, 2003

Members of the Legislative Budget
and Audit Committee

We have reviewed the response to our preliminary audit on the Department of Community and Economic Development, Regulatory Commission of Alaska (RCA). Nothing contained in this response gives us cause to reconsider our findings.

However, we would like to comment on one statement made by RCA in its response. The Commission believes that our recommended two-year extension is too short and states that the newly required quarterly reports will allow the legislature to fully monitor the status of RCA's deadlines.

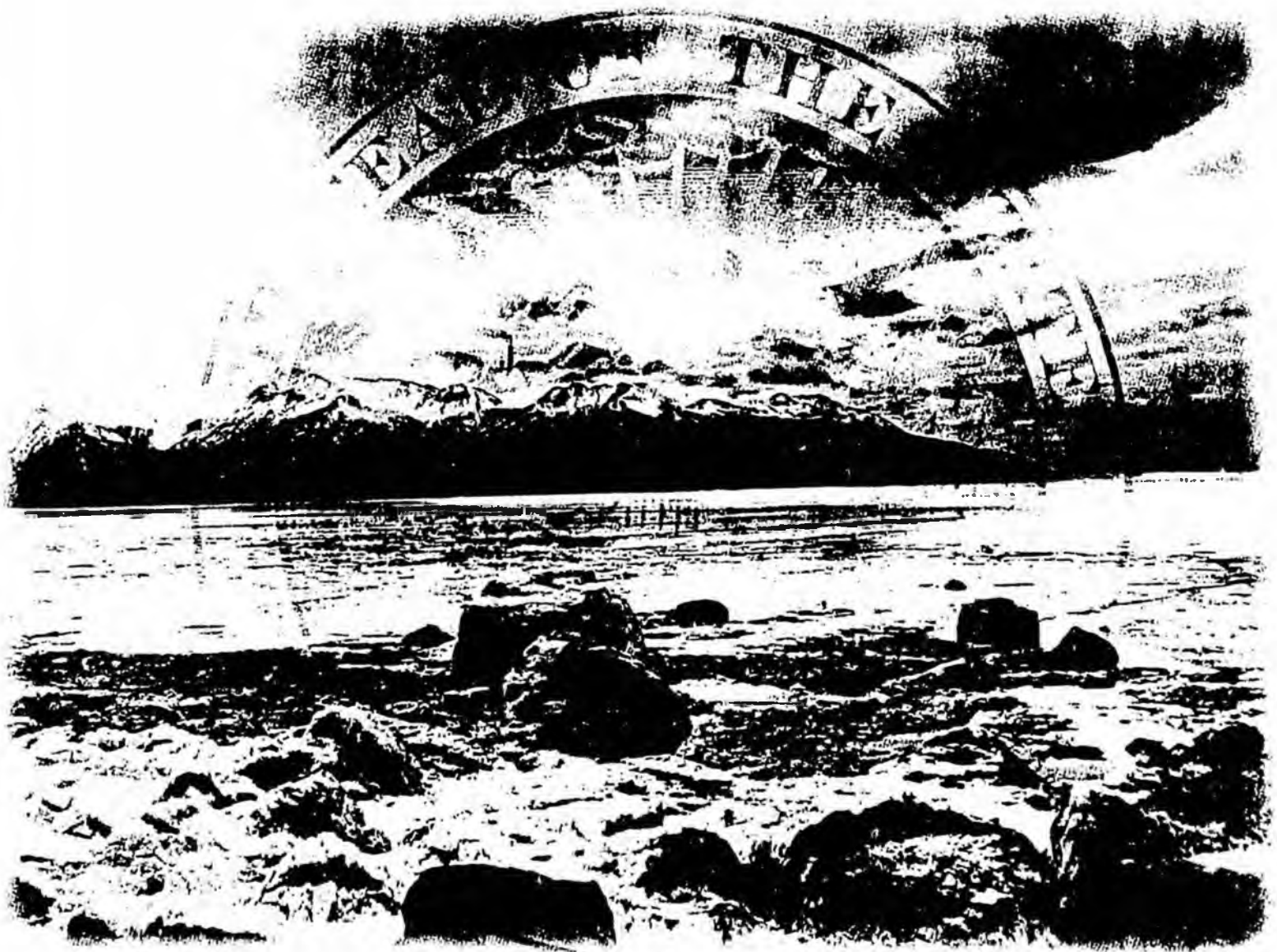
We appreciate RCA's desire to avoid the disruption of too frequent sunset reviews. However, RCA's internally-generated quarterly reports are not an adequate substitution for a meaningful evaluation of the impacts of the recent and significant legislative changes on RCA's operations.

In summary, we reaffirm the findings and conclusions presented in the report.

A handwritten signature in black ink that reads "Pat Davidson".

Pat Davidson, CPA
Legislative Auditor

Regulatory Commission of Alaska



2002 Annual Report



Regulatory Commission of Alaska

***701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501-3469***

PHONE: (907) 276-6222

FAX: (907) 276-0160

TTY: (907) 276-4533

<http://www.state.ak.us/rca>

*Fiscal year 2002 statistical data will be available at the RCA's
web site shortly after the release of this printed volume.*



STATE OF ALASKA

**DEPARTMENT OF COMMUNITY
AND ECONOMIC DEVELOPMENT**

REGULATORY COMMISSION OF ALASKA

**FRANK H. MURKOWSKI,
GOVERNOR**

701 WEST EIGHTH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501-3469
PHONE: (907) 276-6222
FAX: (907) 276-0160
TTY: (907) 276-4533
WEB SITE: <http://www.state.ak.us/rca>

January 2, 2003

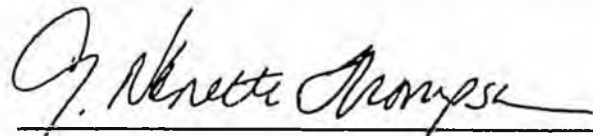
Honorable Pete Kott, Speaker of the House
and
Honorable Gene Therriault, President of the Senate

Dear Speaker Kott and President Therriault:

On behalf of the Regulatory Commission of Alaska we are pleased to submit to the Alaska State Legislature the Thirty-third Annual Report of the Regulatory Commission of Alaska, covering the fiscal year ending June 30, 2002. This is filed pursuant to AS 42.05.211 and AS 42.06.220.

Respectfully yours,

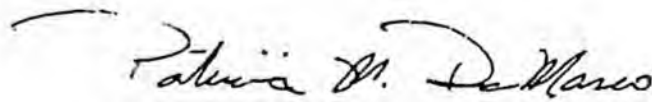
REGULATORY COMMISSION OF ALASKA



Chair



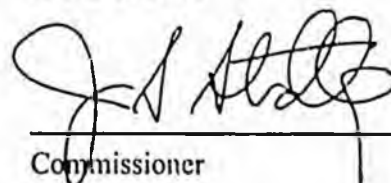
Commissioner



Commissioner



Commissioner



Commissioner



TABLE OF CONTENTS

<i>Mission Statement</i>	4
<i>Message From the Chair</i>	7
<i>RCA Commissioners</i>	
G. Nanette Thompson, Chair	8
Bernie Smith	8
Patricia M. DeMarco	9
Will Abbott	9
James S. Strandberg	10
Former Commissioners	10
<i>RCA Organization</i>	
Organizational Flowchart	11
RCA Roster	12
Agency Responsibilities	13-15
<i>Fiscal Year Operations</i>	
2002 Overview	16
Operating Budget	17
Economic Development	18
2003 Commission Plan	18
<i>Regulated Utilities</i>	
Financial Operations and Reported Customers	19
<i>Significant Events</i>	
Electric Events	20
Natural Gas Event	20
Refuse Event	21
Telecommunications Events	21-23
Water & Wastewater Events	23
<i>Pipeline Carriers</i>	
Financial Operations	24
<i>Significant Events</i>	
Cook Inlet Pipe Line Events	24
North Slope Pipeline Events	25
Trans Alaska Pipeline System Events	25



Fiscal year 2002 was the third year of operation for the Regulatory Commission of Alaska (RCA). It was another year of significant progress for the agency.

The Regulatory Commission of Alaska significantly reduced the backlog inherited from the Alaska Public Utilities Commission. Since the RCA's inception in 1999, we have closed over 700 dockets, while opening an average of 175 new dockets each year. The number of pending dockets has been substantially reduced, and our active caseload is stabilizing at less than 350 dockets. Overall, the Commission decreased the number of pending cases by 11-percent from fiscal year 2001.

To improve the Commission's operations, we implemented a computerized management information system designed to improve our efficiency. The Commission electronically records all filings submitted to the Commission and links these filings to a daily Mailsheet that is available electronically to the public. This system has increased the agency's productivity and allows the public to access data quickly. We continue to increase the amount and type of information available on our website. In fiscal year 2003, the Commission will begin to incorporate the statutory deadlines and reporting requirements established by the Legislature at the end of the last session.

We held several significant hearings, including proceedings on rate change requests from Golden Heart Utilities, Inc., College Utilities Corporation, Alaska Communications Systems, Inc., ENSTAR Natural Gas Company, a Division of SEMCO, and Chugach Electric Association, Inc. As with all rate cases, we review economically regulated utility's rates to allow providers to recover reasonable costs while protecting consumers' interests.

The telecommunications industry has seen dynamic changes occur at a national level, and in our own Alaskan market. The Commission continues to be actively involved in the federal regulatory process advocating for the interests

of Alaskan telecommunications carriers that deliver services to high cost areas with federal support. By our efforts to balance the Telecommunications Act's dual goals of competition and universal service, we assure that Alaskans have affordable and reliable telecommunications options. During the fiscal year, the agency submitted a successful application to the U.S. Department of Agriculture for a grant program to spread broadband Internet access to Alaskan communities not yet connected to the Internet.

In fiscal year 2002, the Commission adopted several significant sets of regulations. These regulation projects included restructuring long distance telecommunications to protect telephone consumers from slamming (the unauthorized switching of a consumer's long distance or local phone service provider); adopting rules to clarify how utilities compensate each other for pole attachments; and defining the role of the Public Advocacy Section. The Commission started several new regulatory projects during the year, including drafting a new regulatory framework for small rural water and wastewater utilities and considering revisions to the telecommunications access charge process.

The 2001 Legislative Audit analysis stated the Commission operates effectively and efficiently and therefore, recommended that we continue to regulate public utilities and pipeline carriers for the next four fiscal years. After a special session, the Legislature extended the agency and operations for one year and adopted deadlines for the Commission to resolve filings. Legislators also changed the process for nomination of the Commission chair to allow Commissioners to elect a chairperson every year.

The Commission is proud of its accomplishments in fiscal year 2002 and will continue to strive to improve the way the agency conducts business.

Sincerely,

G. Nanette Thompson
Chair



COMMISSIONER PATRICIA M. DEMARCO



Commissioner Patricia M. DeMarco, Ph.D. was appointed to the Regulatory Commission of Alaska on July 1, 1999, with a term ending June 30, 2002. Dr. DeMarco was reappointed by Governor Tony Knowles to serve for six more years. She serves on the National Association of Regulatory Utility Commissioners Committee on Consumer Affairs. Dr. DeMarco previously occupied the position of President of the Anchorage Economic Development Corporation for four years. She brings to the Commission a strong interest in utility infrastructure as a mechanism to expand the economic potential of Alaska. She has a multi-disciplined approach to solving problems and views the role of regulation as a catalyst for change.

Dr. DeMarco came to Alaska in 1995 from Connecticut where her experience included a twenty-year career in various aspects of electric utility regulation, planning, and operation. She also started a nonprofit corporation to diversify the defense dependent economy, especially the area served by the five utilities in the Connecticut Municipal Electric Energy Cooperative.

Dr. DeMarco received formal education at the University of Pittsburgh. She holds a Bachelor of Science and a Doctorate degree in biology and spent seven-years in biochemical genetics research. Dr. DeMarco is married with two adult children. She serves as Treasurer of the Anchorage Symphony Orchestra and as Secretary of the Anchorage Downtown Rotary Club.

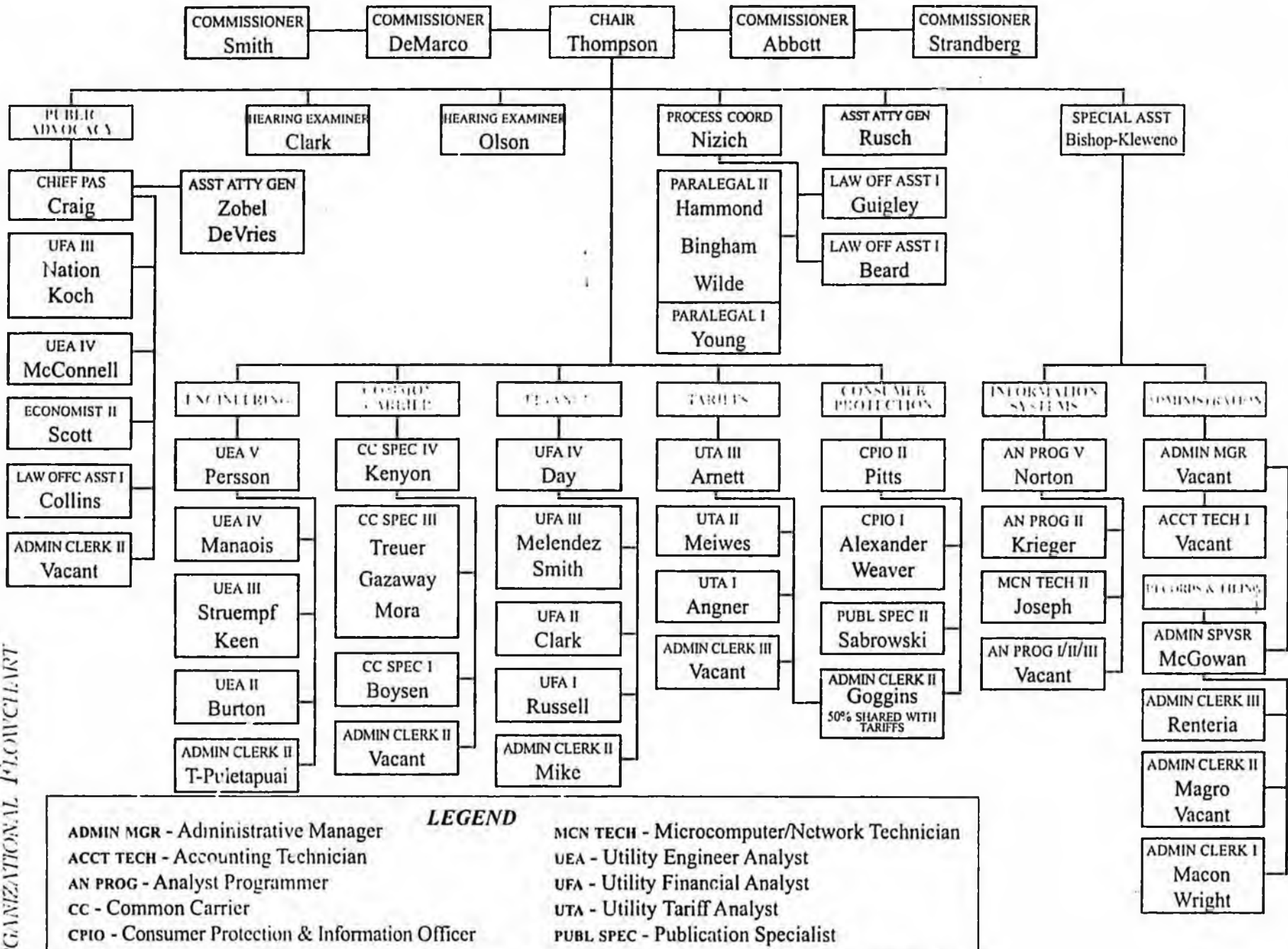
COMMISSIONER WILL ABBOTT



Commissioner Will Abbott was appointed to the Regulatory Commission of Alaska on July 1, 1999. He was reappointed in 2001 for a term expiring March 1, 2007.

Mr. Abbott previously worked for the Alaska Housing Finance Corporation, Municipality of Anchorage, a local environmental firm, and is retired from the United States Air Force.

Mr. Abbott is married and has two sons.



LEGEND

ADMIN MGR - Administrative Manager	MCN TECH - Microcomputer/Network Technician
ACCT TECH - Accounting Technician	UEA - Utility Engineer Analyst
AN PROG - Analyst Programmer	UFA - Utility Financial Analyst
CC - Common Carrier	UTA - Utility Tariff Analyst
CPIO - Consumer Protection & Information Officer	PUBL SPEC - Publication Specialist

☐ Positions funded under contract. All positions are located in Anchorage. Last revised November 15, 2002.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES



COMMISSION SUPPORT STAFF

Commission Support staff provides legal and administrative assistance to the Chair and Commissioners. The Chair directs these functions with the aid of a special assistant, assistant attorney general, hearing examiners, paralegal support staff, and clerical support staff.



Leteasha Macon, Receptionist



(Front row, from left) Antony Scott, Rosalie Nizich, Paul Olson, (back row, from left) Mary Margaret Bingham, Jennifer Guigley, Anita Hammond, and Ann Wilde.



COMMON CARRIER STAFF

Common Carrier staff develops and recommends policies concerning local and long distance telephone services, cable, radio, and satellites. Staff administers telecommunication rates, services, and facilities for certificated utilities and presents analyses to the Commission for adjudication. Staff also participates on federal-state joint boards with the Federal Communications Commission and staff from other states.



(Front row, from left) Richard Gazaway, Lorraine Kenyon, Philip Treuer, (back row, from left) Robin Boysen, and Michael Mora.



CONSUMER PROTECTION STAFF

Consumer Protection staff interacts with consumers, utility personnel, members of the media, and staff. Staff investigates and resolves informal consumer complaints, promotes public relations, responds to information requests, and may assist Commission staff with formal complaints. Staff also educates consumers on utility services and rates, and disseminates information to the public and media regarding Commission proceedings.



(Front row, from left) Rose Weaver, Agnes Pitts, Tamara Alexander, (back row, from left) Catherine Sabrowski, and Judy Goggins.



PUBLIC ADVOCACY STAFF

Public Advocacy staff provides the Commission with a third party perspective in proceedings to advocate public interest. The Commission assigns cases to the Public Advocacy Section to investigate and participate in proceedings for utilities and pipeline carriers. Staff audits records, engages in settlement discussions, and presents findings with testimony to the Commission.



(Front row, from left) Deborah Collins, Lew Craig, Tim McConnell, (back row, from left) Steve DeVries, Katherine Koch, and Parker Nation.



RECORDS & FILING STAFF

Records & Filing staff manages all of the Commission's public records, orders, and information requests from staff, the public, attorneys utilities. Staff processes new filings and documents maintains current and archive filings, and posts public documents to the Commission's web site.



(Front row) Joyce McGowan, (back row, from left) Letitia Renteria, Holly Magro, and Carolyn Wright.



TARIFF STAFF

Tariff staff investigates and analyzes tariff filings and presents recommendations to the Commission at bimonthly tariff action meetings. Staff coordinates tariff meetings, complies with all public notice requirements for tariff filings, and maintains current master tariffs for all utilities and pipeline carriers.



(Front row, from left) Jennifer Meiwes, Wendy Arnett, Judy Goggins, (back row, from left) Brian Beard, and Matthew Angner.



OPERATING BUDGET

In 1992, following the mandate of the Legislature, the Commission enacted regulations to recover operating costs through an assessment on the revenues of regulated utilities and pipeline carriers. The Regulatory Cost Charge shows up as a recurring surcharge on the monthly billing statements to consumers and shippers.

The Legislature appropriated and the Governor approved a fiscal year 2003 budget of \$6.04 million, funded entirely from the Regulatory Cost Charge. There are no unrestricted general funds in the fiscal year 2002 appropriation.

	1999	2000	2001	2002	% Change (2001-2002)
Personal Services	\$2,839,900	\$3,287,000	\$3,422,400	\$3,734,500	
Travel	35,000	35,000	52,200	55,000	
Contractual	1,525,200	1,300,900	1,808,700	2,005,500	
Commodities	62,500	62,500	62,500	62,500	
Equipment	13,800	13,800	13,800	13,800	
General Fund	\$2,476,400	\$2,709,200	\$3,363,600	\$3,869,300	14.6%
Personal Services	\$2,616,802	\$2,989,089	\$3,402,786	\$3,584,182	
Travel	42,773	56,692	72,359	38,008	
Contractual	1,373,854	1,145,843	1,583,573	1,821,477	
Commodities	64,623	77,919	48,615	82,997	
Equipment	22,421	19,689	10,589	127,401	
Relocation Costs	0	0	140,249	0	
General Fund	\$2,120,653	\$2,299,630	\$3,255,911	\$3,643,668	12.3%
General Fund	\$3,926,597	\$4,289,232	\$5,258,171	\$5,654,065	7.6%
Program Receipts ²			\$5,258,171	\$5,654,065	7.6%

¹ The Commission received revenues under various provisions of its statutes including copying and postage charges (AS 42.05.201) and cost allocations in proceedings (AS 42.05.651 and AS 42.06.610).
² Revenues from the Regulatory Cost Charge user fee are recognized on the modified accrual method of accounting for fiscal years 2000 through 2002. Fourth quarter revenues are generated as of June but collected in July of the following fiscal year.
³ Reporting did not include the transfer of \$332,478.63 on August 20, 1999 and \$12,171.00 on November 9, 1999.



2001
 2000
 1999
 1998

Prepared by Felix Mendel

	1999	1998	2000	2001
Cable Television ²	\$6,751,000	\$6,232,000	\$6,574,000	\$6,380,000
Electric	1,233,579,201	1,307,506,511	1,361,572,213 ¹	1,389,426,622
Natural Gas	179,757,326	180,458,522	186,650,434	180,965,146
Refuse	6,638,960	5,998,254	3,072,122	3,184,025
Steam Heat	Not reported	1,776,628	7,991,033	8,484,229
Telecommunications ³	417,024,290	660,653,316	625,546,641 ¹	599,831,476
Wastewater	97,823,582	103,568,947	84,272,842	94,340,320
Water	153,698,530	162,073,055	125,579,941	141,494,274
			\$1,071,991,266	\$1,111,106,092
Cable Television ²	\$5,372,000	\$5,811,000	\$6,189,000	\$6,563,000
Electric	504,513,606	513,714,260	525,626,713 ¹	557,262,581
Natural Gas	100,865,752	110,451,278	99,580,257	117,028,010
Refuse	26,633,726	31,250,540 ¹	33,077,014 ¹	33,342,330
Steam Heat	Not reported	1,414,788	1,540,413	1,895,793
Telecommunications ³	235,846,988	360,273,606 ¹	357,197,021 ¹	369,760,452
Wastewater	31,473,874	32,343,760	32,518,942	32,488,857
Water	35,647,884	35,503,989	36,029,727	36,959,311
			\$1,091,100,076	\$1,151,000,337
Cable Television ²	\$784,000	\$972,000	\$981,000	\$757,000
Electric	41,455,886	42,773,482	36,904,719 ¹	31,188,177
Natural Gas	15,710,652	18,010,521	8,789,246	6,580,788
Refuse	2,817,821	3,885,765	2,632,125	3,497,368
Steam Heat	Not reported	(2,796,173)	(1,492,060)	(1,057,779)
Telecommunications ³	24,105,402	32,992,147 ¹	37,839,669 ¹	39,501,928
Wastewater	4,067,810	5,016,028	4,988,554	4,058,481
Water	6,224,657	208,994	6,811,516	5,857,628
	\$1,209,128	\$101,961,601	\$97,151,769	\$90,383,591
Cable Television ²	9,420	7,822	8,130	8,130
Electric	218,621	225,821	229,306 ¹	233,199
Natural Gas	98,220	99,285	103,728	108,487
Refuse	52,116	50,359	51,160	52,315
Steam Heat	Not reported	124	135	148
Telecommunications ³	427,000 ¹	534,555 ¹	592,815	570,216
Wastewater	57,364	62,949	59,219	60,057
Water	58,212	60,586	60,292	60,150
	\$1,026,955	\$1,011,501	\$1,105,787	\$1,092,702

¹ Figures have been restated to correct compilation errors in summarizing reported data in previous annual reports.

² Cable television is not regulated by the Commission as to rates and services with the exception of GCI Cable, in Juneau, which is rate regulated for basic tier channels.

³ Includes local exchange carriers only.



"Keep Alaska's bears wild, handle your garbage responsibly." Photo is courtesy of Waste Management of Alaska, Inc.

REFUSE EVENT

Consolidation of Refuse Certificates; Waste Management of Alaska, Inc.

Waste Management of Alaska, Inc. (WMA), a wholly owned subsidiary of USA Waste Management, Inc., filed to consolidate all refuse utilities owned under a single certificate and tariff. The Commission approved WMA's application to merge its refuse public utility operations in Alaska under a single certificate. The Commission also approved an application to change the utility's name to Waste Management of Alaska, Inc. d/b/a Anchorage Refuse, Andersen Services, Arrow Refuse, Peninsula Sanitation, Star Sanitation Service, Tongass Sanitation, Wasilla Refuse, and Williwaw Services. The Commission will review the rate impact of this consolidation in 2003. Docket: U-00-30, pending

TELECOMMUNICATIONS EVENTS

Local Competition in Fairbanks and Juneau

The Commission prevailed on appeals filed by incumbent carriers who seek to overturn the Commission's orders to open up local competition in the Fairbanks and Juneau areas (U-97-82/143/144 and U-99-141/142/143) litigation is still pending. If the incumbent carrier is successful in overturning key Commission decisions in these areas, local competition

in rural Alaska markets could be delayed or halted. The Commission spent significant resources to review and resolve various disputes and requests concerning carrier-to-carrier practices and interconnection agreements. Dockets: U-96-89, U-01-37, U-01-41, U-02-18, pending

Designation of Public Interest Pay Telephones

The Commission requested applications from eligible providers, following the adoption of regulations for the provision of public interest pay telephones in 2000. After final selections are made, at least one public pay telephone will be available in each community where a need for service exists. The public pay telephones will be subsidized through the Alaska Universal Service Fund. Dockets: R-97-03, U-01-124, pending



Alaska Power & Telephone Company (AP&T) customer representatives make a call. Photo is courtesy of AP&T.

Consideration of the Reform of Intrastate Interexchange Telecommunications Market Structure and Regulations

The Commission continued to review regulations governing the intrastate interexchange market, access charge reform, and a variety of other matters. The review of interexchange market rules includes whether to change the responsibilities of the carrier of last resort within the state and what regulations should apply to the rates and services provided by long distance carriers to consumers and to other carriers.



Appropriate Use of Federal Universal Service Funds by Telecommunications Carriers

As a prerequisite for continued receipt of Federal Universal Service Funds, the Federal Communications Commission (FCC) requires the Commission to annually certify whether Eligible Telecommunications Carriers (ETC) in Alaska will use the funds only for the provision, maintenance, and upgrading of facilities, and services for which the support was intended. The Commission reviewed the information concerning the use of federal funds by each ETC in Alaska and on September 26, 2001, certified to the FCC that the funds received in 2002 would be appropriately used. Docket: U-01-90, pending



New water pipes to be installed in Anchorage. Photo courtesy of Municipality of Anchorage. Photo by Anchorage Daily News.

Water and Wastewater Utility

Application by Municipality of Anchorage d/b/a Anchorage Water and Wastewater Utility

The Commission approved Municipality of Anchorage d/b/a Anchorage Water and Wastewater Utility's (AWWU) application to amend its certificate and expand service into the entire Girdwood area. The Commission found AWWU would meet the fire flow needs of a proposed Girdwood Post Office. Anchorage Water and

Wastewater Utility will also offer a viable alternative to an existing small water utility if the utility experiences financial, managerial, or technical difficulties. Docket: U-01-35, closed (6/10/02)

Consideration of the Regulations for Certificated Small Public Water and Wastewater Systems

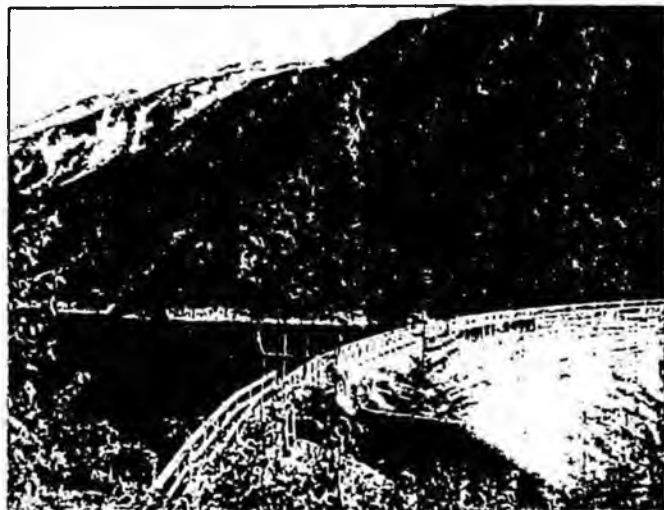
The Commission initiated an inquiry into the development of new regulations for small public water and wastewater systems as part of the State of Alaska's responsibility to the U.S. Environmental Protection Agency to implement the Safe Drinking Water Act. The State must demonstrate an effective strategy with control points to achieve statewide technical, financial, and managerial fitness or available funds could be reduced for Alaska's safe drinking water program. The Alaska Department of Environmental Conservation (ADEC) is pursuing a "Capacity Development Program" to improve the operation of small water and wastewater systems. The Commission has been working closely with ADEC and other stakeholders to develop a unified strategy to effectively implement the Capacity Development Program, so that the U.S. Environmental Protection Agency's requirements are met while minimizing regulatory redundancies. Docket: R-02-04, pending

Denied Request to Recover Acquisition Adjustment and Approved Cost Based Interim and Refundable Rate Relief; Golden Heart Utilities, Inc.

Golden Heart Utilities, Inc. (GHU) water and wastewater divisions was denied a rate relief to recover an amount in excess of the price purchased for the systems acquired from Fairbanks Municipal Utilities System (U-00-115/116). However, GHU was granted an interim and refundable rate relief based on reported increases in actual investment and operating costs for the utility in test-year filings. Dockets: U-02-13, U-02-14, pending



TRANS ALASKA PIPELINE SYSTEM EVENTS



Salmon Creek Dam in Juneau generates over 10 percent of the city's hydroelectric power. Photo is courtesy of Alaska Electric Light & Power Company.

NORTH SLOPE PIPELINE EVENTS

Transportation Rate Settlement Agreement, Alpine Transportation Company

The Commission accepted the rate settlement for the 2001 transportation rates based on a Settlement Agreement between the State of Alaska and Alpine Transportation Company. The agreement prescribes a methodology under which the pipeline carrier must file rates at or below the maximum calculated rate. Docket: P-00-15, pending

Pipeline Certification, BP Transportation (Alaska) Inc.

The Commission granted, on an interim basis, a connection permit to BP Transportation (Alaska) Inc., to connect the Northstar Oil Pipeline to the Trans Alaska Pipeline System at Pump Station No. 1. The Commission will grant a final permit if specific terms and conditions of the connection are found reasonable. Docket: P-01-06, pending

Interim Connection, Milne Point Pipeline Company

The Commission granted, on an interim basis, a connection permit to Milne Point Pipeline Company to connect to the Oliktok Pipeline Company. The Commission will grant a final permit if specific terms and conditions of the connection are found reasonable. Docket: P-01-07, pending



Reopened Docket, Quality Bank Proceedings, Trans Alaska Pipeline System Company

The Federal Energy Regulatory Commission (FERC) consolidated its Trans Alaska Pipeline System (TAPS) quality bank proceedings and ordered hearings before a FERC administrative law judge. In order to place the Commission's quality bank proceedings in the same procedural status as those of the FERC, the Commission reopened Docket P-98-09; consolidated the Commission's quality bank dockets; directed that concurrent hearings be held with the FERC; and appoint an administrative law judge. Hearings in this docket will be held concurrently with FERC hearings regarding the quality bank proceedings in the fall of 2002. Docket: P-89-02, pending



Transfer of ownership, Phillips Transportation Alaska, Inc.


The Commission approved the transfer of a 3.0845 percent interest in the Trans Alaska Pipeline System pipeline and terminal assets from BP Pipelines (Alaska) Inc. (BP), to Phillips Transportation Alaska, Inc. In previous years, BP owned approximately 50 percent of the pipeline, but currently owns approximately 47 percent. Phillips Transportation Alaska, Inc. ownership has increased from approximately 24 to 27 percent. Docket: P-01-08, pending




Alaska Pipeline System is a critical link in the nation's energy infrastructure. Photo is courtesy of the Alaska Pipeline System.




ELECTRIC EVENTS

 *Transfer Price of Gas Methodology Argued; Municipality of Anchorage d/b/a Municipal Light & Power Department*


Municipality of Anchorage d/b/a Municipal Light & Power Department (ML&P) proposed to compute the transfer price of gas (associated with ML&P's purchase of one-third interest) from Beluga River Gas Field using the rate base/rate of return methodology. Subsequently, the PAS proposed using the Debt Service Coverage methodology, which the Commission approved. Docket: U-96-36, pending

 *Wholesale Rates Determined; Chugach Electric Association, Inc.*


Chugach Electric Association, Inc. (Chugach) proposed rates for its wholesale customers Matanuska Electric Association, Inc., Homer Electric Association, Inc./Alaska Electric Generation & Transmission Cooperative, Inc. (AEG&T) under the terms of the Settlement Agreement. The PAS argued that certain costs incurred by Chugach should not be included in the rate and recommended other cost reductions. The Commission agreed and ordered the cost reductions. Matanuska Electric Association, Inc. and AEG&T disputed the cost allocations proposed by Chugach. The PAS argued against changing the allocations, pointing out the Settlement Agreement specified that allocations were to remain unchanged until a general rate case is filed. The Commission agreed and required compliance with the approved Settlement Agreement. Docket: U-96-37, pending

 *Methodology for Line Loss Factor Established; Chugach Electric Association, Inc.*

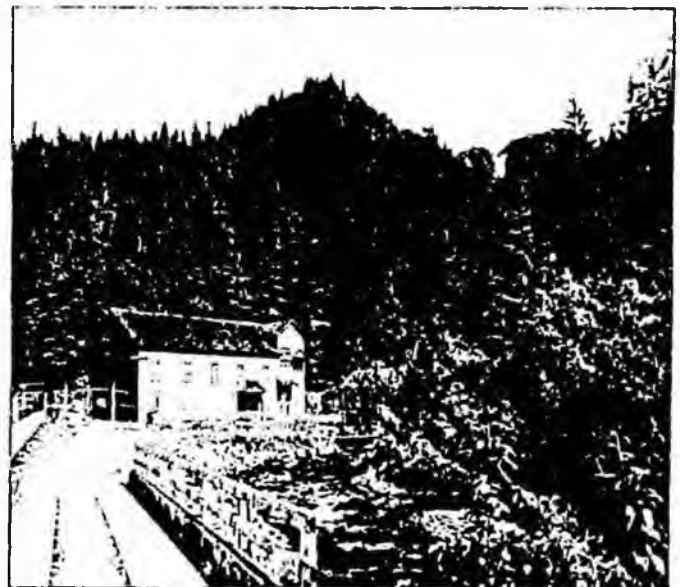
Chugach Electric Association, Inc. (Chugach) and its wholesale customers disagreed on how to measure and allocate line-loss. In fiscal year 2001, the PAS and other parties (Chugach, Alaska Electric Generation & Transmission Cooperative, Inc., Matanuska Electric Association, Inc., and Homer Electric Association, Inc.), presented a panel of experts to agree upon an approach through the use of a consultant. The Commission accepted the consultant's study and all issues have been stipulated with the Commission's approval pending. The PAS participated in numerous technical meetings and negotiations. Docket: U-99-106, pending

 *Inclusion of Fixed Costs in COPA Power Adjustment Argued; Homer Electric Association, Inc.*

The Commission opened an investigation into the use of Homer Electric Association, Inc.'s (HEA) Cost of Power Adjustment (COPA) to recover the fixed costs of an affiliate, Alaska Electric Generation & Transmission Cooperative, Inc. The PAS argued against the use of HEA's COPA to recover fixed costs. The Commission approved the exclusion and the affiliate's fixed costs will be determined in a pending docket. Docket: U-00-18, pending

 *Electric Rates Stipulated; Golden Valley Electric Association, Inc.*

Golden Valley Electric Association, Inc. (GVEA) filed revenue-requirements, cost of service study, and a rate design study to justify a rate reduction. The PAS reviewed GVEA's financial records and applied general rate making principles to reach a settlement agreement with GVEA. The result was a 2.6 percent reduction in rates. The Commission approved the stipulation and the rate decrease was implemented. Docket: U-00-93, pending



Taken out of service in 1993, this is one of two power houses built to generate power that led water from the Salmon Creek Dam. Photos courtesy of Alaska Electric Light & Power Company.



TELECOMMUNICATIONS EVENTS

Local Exchange Rates for 75-Percent of Ratepayers Statewide Argued; Alaska Communications Systems, Inc.

Alaska Communications Systems, Inc. (ACS) local exchange companies filed for rate increases in the service areas of Anchorage, Fairbanks, Juneau, and Sitka. The PAS filed testimony of two outside consultants and a PAS witness. During the proceeding, the PAS, ACS, and GCI Communication Corporation agreed to stipulate operating expenses and to include profits in the rates. A five-day hearing was held on depreciation expense, the largest single expense included in rates. Dockets: U-01-34, U-01-82, U-01-83, U-01-84, U-01-85, U-01-87, pending

Rural Exemption for Wireless Service Examined; Alaska Power & Telephone Wireless, Inc.

Alaska Power & Telephone Wireless, Inc. filed an application to provide local wireless service in Ketchikan. The Commission requested information to evaluate the applicability of the rural exemption. The PAS filed a legal brief regarding rural exemption issues and the utility's requirement to meet eligible telecommunications carrier laws under the Telecommunications Act of 1996. Docket: U-01-109, pending

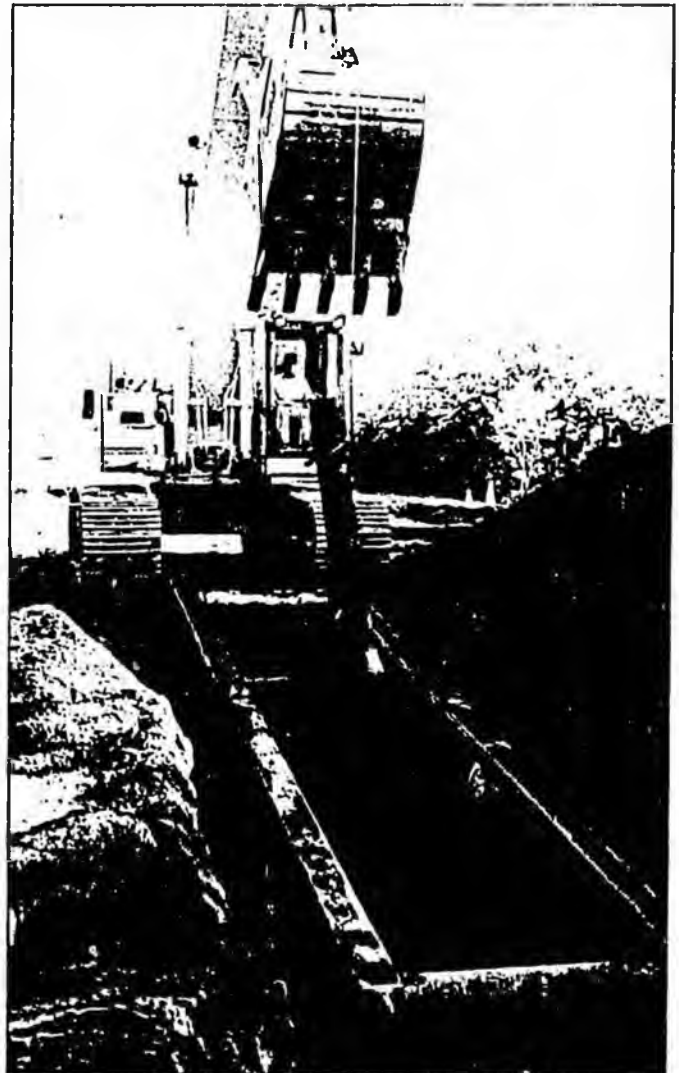


Alaska Power & Telephone Company (AP&T) technician, Colinda Hanson is with the Power Division of Wales Island. Photo is courtesy of AP&T.

WATER & WASTEWATER EVENT

Rate Increases Argued; Golden Heart Utilities, Inc.

Golden Heart Utilities, Inc. (GHU) filed revenue-requirements and rate design studies for a proposed rate increase. The PAS countered with several proposed reductions. The Commission agreed with most of the PAS' reductions in cost and issued an order. Immediately following the Commission's order, GHU filed a second request for an increase in rates, which is still pending. Dockets: U-00-115, U-00-116, U-00-146, closed (5/21/02); U-02-13, U-02-14, pending



Alaska Water and Wastewater Utility (AWWU) replaces old wooden water pipes. Photo is courtesy of Municipality of Anchorage & AWWU.



Table 10 to 11 and shows the...
 ...
 ...
 ...

Complaints	1999	2000	2001	2002
Complaints Opened	793	590	682	728
Complaints Closed	818	605	670	719
Complaints Pending (start of fiscal year)	47	22	7	19
Complaints Pending (end of fiscal year)	22	7	19	28

CHUGACH ELECTRIC ASSOCIATION

Customer Dispute: Utility's Billing Practice
 Chugach Electric Association, Inc.

A customer of Chugach Electric Association, Inc. (Chugach) filed an informal complaint with the Commission disputing the utility's billing practice. The utility had transferred a delinquent balance from the customer's business account to the customer's residential account. Staff investigated the complaint, and notified the customer that Chugach could not disconnect residential service for an outstanding business account balance, nor could Chugach disconnect service for nonpayment of a bill related to another class of service at a different service location. Chugach acknowledged that as the customer kept the residential account current, Chugach could not disconnect residential service for the outstanding business account. However, Chugach would disconnect the residential account if it became delinquent. Additionally, if the residential service was ever permanently disconnected at the customer's request or temporarily disconnected to transfer from one location to another, Chugach would require the delinquent business balance to be paid in full as a condition before starting new service. In review of the customer's account, Chugach found unclaimed capital credits for the business account and together with the customer, reached agreement for the unpaid balance that would be paid over the next few years with the proceeds from the capital credit. The complaint was resolved to the customer's satisfaction when Chugach agreed to remove the balance that was transferred to the residential account. Consumer Protection File: C-02-180, closed (4/29/02)

TELECOMMUNICATIONS COMPANY

Customer Dispute: Blocking Internet Access
 Summit Telephone & Telegraph Company

Summit Telephone & Telegraph Company d/b/a Summit Telephone Company (Summit) established a two-way Extended Area Service (EAS) between local exchanges in Chatanika, Haystack, Cleary Summit, and Fairbanks through the Basic Exchange Telecommunications Radio Service (BETRS). The service allows customers to call on the BETRS system, to and from certain communities without incurring long distance charges. Summit became concerned when customers found it difficult to place telephone calls due to the congestion caused by increased Internet usage and the limited capacity of BETRS. Therefore, Summit notified customers and the Commission, that it would immediately block EAS access to Internet providers, causing customers to pay a long distance charge when they connect to the Internet.

The Commission received complaints opposing Summit's actions blocking EAS and argued that charges for Internet use violated the Commission's approved stipulation providing for two-way EAS. Summit was granted an interim EAS blocking of Internet calls and required to report improvements to the BETRS in the Chatanika, Haystack, and Cleary Summit areas. Docket: U-02-17, pending



Tariff Filings	1999	2000	2001	2002
Processed Routinely	560	411	475	455
Suspended	40	63	63	50
Withdrawn	17	23	23	9
Rejected	8	9	1	0
Pending	8	38	14	22
<i>Totals</i>	<i>633</i>	<i>544</i>	<i>586</i>	<i>536</i>

The figure above is the comparison of filed tariff applications.

Tariff Revisions	1999	2000	2001	2002
General Rate Change ¹	47	49	30	41
General Rate Restructure	0	2	5	0
Simplified Rate Filing	2	0	6	4
New Service/Equipment Offering	168	143	100	91
Nonrecurring Rate	8	5	7	19
Universal Access Surcharge	30	4	1	1
Regulatory Cost Charge	75	107	110	106
Contracts	46	16	24	25
Fuel, gas, and purchased power surcharges; Power Cost Equalization filings; and nonfirm power purchase rates ²	133	85	124	117
Rule Change	76	55	59	40
Miscellaneous	48	78	110	68
Promotions ³	0	0	0	24
	<i>633</i>	<i>544</i>	<i>586</i>	<i>536</i>
	<i>11.0%</i>	<i>11.0%</i>	<i>11.0%</i>	<i>11.0%</i>

- ¹ In previous annual reports, some filings now shown in this category were classified as Miscellaneous. The General Rate Change category does not include simplified rate filings.
- ² There were no Power Cost Equalization (PCE) base rate changes for 2000, one PCE funding level change in 2001, and two PCE funding level changes in 2002.
- ³ In previous annual reports, Promotions were counted under Miscellaneous.



CERTIFICATION PROCEEDINGS

Prepared by Joyce A. Sawyer

Every utility (with limited exceptions) and pipeline carrier must obtain a certificate of public convenience and necessity to provide service to the public for compensation. The Commission must approve all amendments to, or transfers of, certificates, as well as acquisitions of controlling interest in certificate holders. In fiscal year 2002, the Commission processed 63 applications for certificates.

The pie chart to the right shows the number of certification proceedings filed in 2002.

Certification Proceedings	1999	2000	2001	2002
Cable Television	0	2	3	3
Electric	3	4	7	6
Natural Gas	2	2	1	0
Pipeline	6	11	7	5
Refuse	9	6	3	3
Steam Heat	0	0	0	0
Telecommunications	61	55	42	37
Wastewater	1	2	4	2
Water	5	2	6	7
Totals	87	87	73	63

The criteria for issuing certificates is prescribed by law. The service must be required for the public convenience and necessity, and the applicant must be fit, willing, and able to provide the service.

Most small electric utilities in the Power Cost Equalization program applied for certificates prior to fiscal year 1989. Several of these applications are still pending approval because of incomplete financial information or system safety considerations.

The pie chart to the right shows the number of certification proceedings filed in 2002.

Certification Proceedings	1999	2000	2001	2002
Acquisitions	7	3	2	4
Amendments	9	13	12	4
New Certificates	50	39	33	34
Certificate Transfers	9	23	13	13
Exemption from Certification	0	0	2	1
Discontinuation of Service	1	0	7	5
Temporary Operating Authority	3	1	0	0
Other	8	5	4	2
Totals	87	81	73	63

SUMMARY OF FININGS

A substantial part of the Commission's mission is to handle and process tariff filings, formal proceedings, informal complaints, and certification proceedings. Each document filed with the Commission is electronically scanned, categorized, appropriately routed, and filed. All documents received are posted daily to the Mailsheet (Daily Filings) and available to the public for viewing on the Commission's website.



Aerial photo of Haines, Alaska. Photo courtesy of Alaska Power & Telephone Company.



ALASKA SUPREME COURT CASES

Chugach Electric Association, Inc. v. the Regulatory Commission of Alaska

In fiscal year 1997, Chugach Electric Association, Inc. (Chugach) attempted to arrange power sales contracts with customers in the exclusive service territory of Municipality of Anchorage d/b/a Municipal Light & Power Department (ML&P). After which ML&P filed a complaint with the Alaska Public Utilities Commission (APUC). After briefing, the APUC issued an order prohibiting Chugach from selling power to customers in ML&P's service territory without obtaining a certificate for that service. The Alaska Supreme Court affirmed the APUC order. Case: S-09692, closed

Matanuska Electric Association, Inc. v. Chugach Electric Association, Inc.

In 1997, Matanuska Electric Association, Inc. (MEA) complained that the Cost of Power Adjustment (COPA) for wholesale power it purchased from Chugach Electric Association, Inc. (Chugach) was unjust and unreasonable because Chugach used an excessive line-loss factor in the computation. The Alaska Public Utilities Commission (APUC) issued U-97-36(13), which required Chugach to recalculate the COPA balancing account for 1995 through 1997 and refund excessive charges to its wholesale customers. The superior court reversed the APUC decision and MEA appealed to the Alaska Supreme Court. The Regulatory Commission of Alaska filed an *amicus curiae* brief asking the court to remand the case to the RCA. Case: S-09839, pending

ACS of Anchorage, Inc., ACS of the Northland, Inc., and ACS of Fairbanks, Inc. v. Regulatory Commission of Alaska and GTE Communication Corporation

The Alaska Communications Systems, Inc.'s local exchange companies appealed from the superior court decision affirming the Commission's order terminating the rural exemption under the Telecommunications Act of 1996. Case: S-10466, pending

SUPERIOR COURT CASES

Chugach Electric Association, Inc. v. Municipality of Anchorage d/b/a Municipal Light & Power Department (ML&P)

After Municipality of Anchorage d/b/a Municipal Light & Power Department (ML&P) filed an application to provide electric service to a non-military customer located on Fort Richardson Army Post, the Regulatory Commission of Alaska (RCA) ruled that ML&P should list its Army Post customers in its tariff rather than in the service area description in its certificate. Municipality of Anchorage d/b/a Municipal Light & Power Department petitioned for reconsideration and Chugach Electric Association, Inc. (Chugach) sought to intervene. After extensive briefing, the RCA ruled that it has concurrent jurisdiction on the military bases so long as there is no conflict with federal law. The RCA held there is no conflict with federal law where no issue of competitive procurement is involved. The RCA determined that it would continue to follow the past practice of listing ML&P's Army Post customers in the service area description of its certificate. The superior court affirmed in the fiscal year of 2002 the RCA's order, holding that the issue Chugach attempted to appeal is not ripe for adjudication. Case: 3AN-01-8288 CI, closed



Two utility workers inspecting a power pole. Photo courtesy of WEA.

9th CIRCUIT COURT OF APPEALS

G *ACS of Fairbanks, Inc., et al. v. Regulatory Commission of Alaska and GCI Communication Corporation*

These consolidated appeals arose from Alaska Communications Systems, Inc.'s (ACS) original action in federal court seeking injunctive and declaratory relief from the Regulatory Commission of Alaska's decisions approving the results of arbitration in GCI Communication Corporation's request for interconnection under the Telecommunications Act of 1996. The issue in Case No. 01-35344 is whether, by conducting interconnection proceedings under the Telecommunications Act, the Commission has waived the state's 11th amendment immunity from suit in federal court. In the cross-appeal, Case No. 01-35375, ACS appealed the federal district court's grant of a stay of the entire action pending the 9th Circuit's decision on the 11th amendment issue. Cases: 01-35344, 01-35375, pending

STATUTES

The Alaska Legislature reorganized and renamed the Commission to the Regulatory Commission of Alaska (RCA) in 1999 as the state agency responsible for regulation of utilities and pipeline carriers. The RCA exists as an independent agency within the Department of Community and Economic Development under AS 42.04.010. Other provisions in the same chapter of AS 42.04 establish the RCA's structure, provide for the appointment and terms of commissioners and the employment of staff, specify powers and duties of the chair, and describe decision-making procedures for the RCA. The RCA has authority to investigate, hold hearings, prescribe systems of accounts, require the filing of reports, adopt regulations, and take other lawful actions necessary to accomplish the stated purposes of the Alaska Public Utilities Regulatory Act, AS 42.05, and the Pipeline Act, AS 42.06. The RCA's principal regulatory functions are certification and economic regulation (3 AAC 48.820(43)), which includes regulation of rates, quality of service, management practices, and consumer complaints.

The RCA has jurisdiction over public utilities providing electric, telecommunications (interexchange, local exchange, and cable television), steam heat, water and wastewater, natural gas, and refuse.¹ The term "public utility" is defined in AS 42.05.990(4) to mean, in general, an entity that provides any of these utility services to ten or more customers for compensation, or that sells wholesale service to a utility serving ten or more customers.

However, AS 42.05.711 provides statutory exemptions from economic regulation and, in some cases from the certification requirement, for certain kinds of utilities.

- (1) Under AS 42.05.711(b), public utilities owned and operated by a political subdivision of the state are exempt from economic regulation, unless the political subdivision elects to be regulated by the RCA. However, if any utility of a political subdivision is in competition with any other utility, then all that political subdivision's utilities are regulated.²
- (2) Under AS 42.05.711(e), electric and telephone utilities with gross revenues less than \$50,000 are exempt from both certification requirements and economic regulation, unless 25-percent of their customers petition for regulation.
- (3) Under AS 42.05.711(i), refuse utilities with annual gross revenues of \$300,000 or less are exempt from economic regulation, unless customers that pay 25-percent of the utility's gross revenues petition the RCA for regulation under AS 42.05.712(h).
- (4) Under AS 42.05.711(k), cable television utilities are exempt from economic regulation, unless subscribers petition the RCA for regulation under the procedures in AS 42.05.712.
- (5) Under AS 42.05.711(f), (g), and (h), customers of various kinds of utilities may vote for exemption from regulation by the RCA under the procedures in AS 42.05.712.

¹ Under AS 42.05.990(4)(E), "public utility" also includes a petroleum or petroleum product distributor "when the consumer has no alternative in the choice of supplier of an alternative product or service at an equal or lesser price;..." No entities meeting this definition of "public utility" are currently certificated or regulated by the Commission.

² The utilities of the Municipality of Anchorage are the only utilities operated by a political subdivision that are currently subject to economic regulation by the Commission.

PHOTO CREDITS

The photos presented in this publication are courtesy of the following utilities and businesses:

Alaska Division of Community and Business Development (page 28)

Alaska Division of Tourism (pages 33, 34, and inside back cover)

Alaska Electric Light & Power Company (pages 5, 6, 16, 18, 25, 26, 27, 40, and back cover)

Arctic Slope Telephone Association Cooperative, Inc. (pages 22 and back cover)

Danny Daniels Photography (pages 4, 7, 8, 9, and 10)

Dept. of Fish & Game, Div. of Tourism (pages 33, 34, and inside back cover)

ENSTAR Natural Gas Company, a Division of SEMCO (pages 20 and back cover)

Holly Parsons Photography (pages 9, 13, 14, and 15)

Mark S. McCready, Alaska Power & Telephone Company (pages front cover, 21, 25, 29, 35, 37, 38, and back cover)

Matanuska Telephone Association, Inc. (page 18)

Municipality of Anchorage d/b/a Anchorage Water and Wastewater Utility (pages 16, 23, 29, 32, and back cover)

Rex Melton, Alaska Division of Tourism (pages 33, 34, and inside back cover)

Waste Management of Alaska, Inc. (pages 21 and back cover)

ACKNOWLEDGEMENTS

The Commission sincerely appreciates the hard work of the Consumer Protection Staff editors:

Agnes Pitts, Chief Consumer Protection & Information Officer

Tammy Alexander, Consumer Protection & Information Officer

Rose Weaver, Consumer Protection & Information Officer

Catherine Sabrowski, Publication Specialist

Judy Goggins, Administrative Clerk

PRINTING BY

Camai Printing Company
301 Calista Court, Suite B
Anchorage, Alaska 99518



The annual report was published in accordance with AS 42.05.221 and 42.05.220 by the Regulatory Commission of Alaska, Department of Community and Economic Development at a cost of \$5.83 per booklet.

TESTIMONY OF KRISTI CATLIN
HOUSE FINANCE COMMITTEE
HOUSE BILL 111
MAY 12, 2003

Good afternoon, Mr. Chairman and members of the committee. For the record, my name is Kristi Catlin, Director of Government Affairs for AT&T Alascom, with its main business address at 210 E. Bluff Drive, Anchorage, Alaska 99501.

Thank you for the opportunity to testify at this hearing. As you know, AT&T Alascom, and before that, Alascom, has a long history of providing telecommunications services to the state of Alaska. In fact, it has the longest history of any interexchange carrier in the state today.

We believe that both telecom service providers and policy-makers have a two-fold obligation to the constituents of this state. Those are to ensure that basic telecom services remain affordable to everyone in the state; and to provide a regulatory environment that fosters continued investment in the state telecom infrastructure, thereby ensuring that advanced services will reach to all parts of the state.

In the early days, Alascom was the only long distance carrier in Alaska, and as such, the regulated monopoly. In 1991, when intrastate long distance competition was initiated, additional regulations were developed to ensure that Alascom did not misuse its monopoly power to subvert competition. Those new regulations, at the same time, granted new long-distance competitors broad and significant freedoms. Competition grew and then flourished. In 1995 when AT&T bought Alascom, even though the market was already highly competitive, AT&T essentially bought a company regulated as though it were still a monopoly.

Many of the regulations that restrict AT&T Alascom today are vestiges of the old monopolistic environment. However, in this highly competitive marketplace, they do not serve as an incentive for investment – they only serve to add cost and thereby provide a disincentive for investment. As far as protection of the consumer on prices, we have almost 20 years of empirical evidence in the long distance market in the U.S. to show that competition serves the consumer well. In 1984, when AT&T was first broken up, the average discounted corporate minute was around \$.45. Today, the average discounted corporate minute is under \$.045. That's a whole order of magnitude swing. And yet, during that same time period, the long distance industry went from approximately \$9 - 10B to about \$90-110B. It was deregulation of the industry and the management of competition that spurred investment. And in 1995, when AT&T fell below 60% market share in the lower 48, the FCC ceased regulating AT&T as the "Dominant Carrier" and deemed the market for long distance as competitive.

And yet, here in Alaska, where AT&T Alascom now has 42% of the long distance business (and shrinking), and our largest competitor, GCI, has 46-48% of the long distance business (and growing), AT&T Alascom is still considered the Dominant Carrier, **despite a four-year attempt to get relief from this regulation at the RCA.** This regulation adds substantially to our cost structure for tracking, journalization, and reporting. It also adds regulatory process that our competitors don't have that keeps us from being competitive in the marketplace. The whole situation really begs a definition for "Dominance." Additionally, with the increased costs and inability to compete effectively because of outdated regulations, our ability to attract capital and invest in the network is severely hamstrung.

TESTIMONY OF KRISTI CATLIN
HOUSE FINANCE COMMITTEE
HOUSE BILL 111
MAY 12, 2003
Page 2

AT&T Alascom's proposed amendment language establishes a definition of "Dominance." The amendment is intended to level the playing field so that all carriers can play by the same rules. The specific relief that results from being relieved from Dominance is: (1) Elimination of the requirement to file a Form M annual report, which requires the separate journalization of costs and revenues; (2) Elimination of a daily 25% outage report and a quarterly Network Performance Report; and (3) Elimination of the more stringent Dominant Carrier tariff filing requirements.

The annual report requires costly billing-system development on every new offer (in all of AT&T's numerous billing systems), occasional re-programming on existing offers, and an intense three-month effort to produce the 78-page annual report, which consumes several groups inside AT&T. No other interexchange carrier is required to file this report. The network reports require that entire computer systems be maintained for reporting that do not exist anywhere else in the AT&T network, in addition to the labor required to produce the reports. No other interexchange carrier is required to file these reports. The tariff filing rules require that the Dominant carrier file all rate increases, or anything that might appear to be a rate increase, under a 45-day notice period with cost justification. All other carriers file on a 30-day notice period for similar filings, and are not required to file cost justification.

AT&T Alascom's amendment is specifically intended to benefit Alaska consumers by ensuring a healthy competitive environment through equalizing regulatory requirements for all players, by reducing regulatory cost, and by increasing competitive flexibility. By eliminating these additional costs and filing requirements, this amendment will directly increase AT&T Alascom's ability to more effectively compete. And we believe that consumers will ultimately benefit from the increased competition.

I believe that over the next 12-18 months, this state must wrestle with some difficult issues of telecom regulation. At stake is the very survival of an infrastructure that's struggling to keep up with the rest of the country. In a true free market, there is less regulation, not more. And competition, not regulation, becomes the force to shape the market.

I would ask you to carefully and thoughtfully consider the market dynamics at work here, and the definitions of broader market issues such as "Dominance" and "competition". I would also ask you to carefully consider your role in mandating an environment that has less regulation, not more, in order to create and maintain incentives to invest in the modern telecommunications infrastructure that all Alaskans desire.

As you consider House Bill 111 reauthorizing the RCA, please know that AT&T Alascom could support legislation which would extend the RCA for another 2-4 years, however, as we stated last year – only if the RCA is truly committed to bringing about regulatory reform.

Thank you, once again for this opportunity to present our testimony. I will be happy to answer any questions you may have.

House Finance Committee Testimony: CSHB111(L&C)
May 12, 2003 10:46 am

Mr. Chairman: Thank you for this opportunity to meet with you. I am Dave Harbour, Chairman of the Regulatory Commission of Alaska. My duty today, is to advise you on the many, complex fiscal and regulatory issues created when the House Labor and Commerce Committee added several telecommunications companies' amendments to the Commission's reauthorization bill.

My fellow Commissioners and I believe that both the industry and my agency face significant challenges with telecommunication policies and we are dedicated to addressing them in a fair and balanced way as you would wish. However, the amendments tacked on to this reauthorization bill will only address special interests of certain players at consumer expense, without addressing the fundamental problems. I will explain.

The Telecommunications Act of 1996 was designed to promote local competition in an industry dominated by the large Regional Bell Operating Companies. Alaska, however, doesn't fit this mold. Our local companies serve relatively small exchanges and are not the primary provider of intrastate long distance services. Anchorage's incumbent local exchange carrier faces competition from a company with access to cable facilities and a strong presence in the long distance market. Put simply, Federal policies were not designed with Alaska in mind.

Under the Act as interpreted by the Federal Communications Commission, we are required to set rates on a forward looking cost basis, regardless of whether the results reflect the existing costs faced by the incumbent carrier. We are required to follow Federal rules to determine profit when developing rates. In competitive areas such as Anchorage and Fairbanks, Federal law requires that carriers set interconnection rates based on Federal negotiation and arbitration standards.

Similarly, we are required to follow Federal policies to determine when a carrier may be deemed eligible to receive Federal universal service funding in competition with an incumbent. The FCC also controls how much support a competitor is eligible to receive.

Though we have opened up the long distance market to statewide facilities competition, the FCC still restricts where a carrier may build an earth station. Until the Federal policy is modified, Alascom's facilities monopoly in about 140 remote rural locations in the state will probably continue.

We are charged to enforce a host of Federal obligations and limitations on incumbent carriers and one of the reasons all states have regulatory agencies, is to deal with the details and complexities of changing federal rules, markets and technology. For example, our authority to regulate new technologies such as cable telephony or the new Broadband Power Line technology and our ability to require fair rates for interconnect to such emerging networks, is part of a new world of emerging issues.

These situations are challenges both for the industry and for the Commission. We welcome efforts to improve the current system. However, most of our challenges lie at the Federal level and that is where we believe much of the effort should be directed. We are discussing with the Governor's office, an effort (i.e. surely, in coordination with Senator Steven's office) to propose an Alaskan recommendation to the FCC allowing our state greater flexibility to manage competition, given our unique characteristics. All could benefit from such a solution, and we believe it will take Federal action, rather than changes in Alaska's statutes, to resolve most of the issues of current concern.

Many of the proposals before you attempt to solve the Federal problem by adopting state policies that conflict with Federal law. Statutory changes at odds with Federal law, will only lead to unnecessary litigation or federal preemption of state authority. This will increase the cost of regulation without a net benefit, since in the end, Federal law will prevail. Service to customers may be delayed or denied, and market instability may occur, as the industry and the Commission attempt to resolve these complex issues.

We believe it counterproductive to adopt any statutory changes that are inconsistent with Federal law, or that compromise the ability of the Commission to ensure due process when determining just and reasonable rates. The bulleted items below represent principle areas of concern. I have followed them with more detailed, section-by-section comments.

- The proposal would prematurely deregulate monopoly local and long distance carriers. Deregulation could occur when as many as 100% of the local customers in a given market had **no access** to a full-service competitor! Lack of price control may be especially critical in rural areas that may not face effective competition due to their remoteness, high cost and low population density.
- Except in very limited cases, the Commission could not require a carrier to upgrade its facilities¹ in light of consumer complaints. Customers unhappy with service quality could not obtain Commission help to require a utility to upgrade its facilities to meet a reasonable public need. Inadequate telecommunications infrastructure could defer economic development in rural areas.²
- Except in very limited cases, the Commission could not revise a carrier's depreciation rates to meet 'just and reasonable' ratemaking outcomes, or control the resultant increase in local rates, even if that carrier had already recovered the majority of its capital investment.

¹ The term, "facilities" generally means the electronic equipment, cables, and other infrastructure needed to provide service to customers.

² The Regulatory Commission of Alaska currently process approximately 730 citizen complaints per year, from the North Slope to Southeast Alaska. The majority of these, almost 600, are directed at telecommunications utilities. The Commission resolves complaints with utilities informally, when possible; at other times it adjudicates complaints through formal procedures.

- The Commission must accept a carrier's increased interconnection rates even when negotiation or arbitration fail and competitors contest those rates, if the carrier self-certified its compliances with the proposed act.

Our goal, as statutes direct, is to protect the public interest: determining through due-process, just and reasonable rates for consumers and the opportunity for utilities to gather fair returns on their investments. We support Governor Murkowski's clean version of the RCA reauthorization bill as the best way to protect the public interest. The proposed legislation cannot remedy defects with Federal policies and has the potential to increase customer rates while reducing quality of service in our state. Changes are best directed at the federal level through a coordinated effort by the administration, industry and the Commission. Thank you again for this opportunity to comment.

Section-by-Section Comments

Sec 2: Proposed AS 42.05.145(b):

- The proposal would prevent the Commission from treating monopoly local carriers as dominant carriers, limiting the Commission's ability to monitor and ensure fair consumer rates. Under proposed section AS 42.05.145(b), the Commission cannot regulate an incumbent local carrier as dominant if a) the carrier has less than 60% statewide market share and b) another carrier has an approved application to serve somewhere in the incumbent's service area. All local carriers in Alaska have less than 60% statewide market share, making 60% a meaningless and misleading distinction. As a result, incumbent local carriers would be deemed non-dominant when any other carrier receives certification, even though the competitor may never actually serve or may provide only limited service in the area. Rural local carriers already receive strong protection under the Act from competition. The Act's Rural Exemption releases a rural local carrier from federal forward-looking rate setting practices, unbundled network element policies and the duty to negotiate interconnection rates with a competitor.³ Further statutory protection is unneeded and risks harm to consumers. The long-standing policy of regulating monopolies remains valid and protects the public from undue rate increases and reductions in service quality.

Sec 3: Proposed AS 42.05.291(e):

- The first sentence of this proposal is unclear, but would apply to all utilities and would appear to prevent the Commission from requiring an updated quality of service standard to existing utility facilities or services, even if the current standards and requirements had become outdated or obsolete.

³ The Rural Exemption cannot be lifted unless the Commission finds that the result would not be unduly economically burdensome, is technically feasible and is consistent with provisions of the Act related to Universal Service. 47 U.S.C. 251(f).

- Under the second sentence of (e), the Commission would be unable to require any telecommunications utility to upgrade its plant in response to customer complaints or desires for improved service quality or availability. This prohibition would apply both to competitive and non-competitive markets. Given the long life of utility plant (at times decades), the proposed section (e) is especially damaging to consumers. Poor quality or antiquated telecommunications infrastructure could delay availability of Internet access and deter economic development in rural areas. Adequate protections exist to allow companies to explain why upgrades may be too expensive or impractical.

Sec 4: Proposed AS 42.05.381(k):

- This part of the proposal abides by neither the IRS depreciation standards nor traditional regulatory standards. One of the IRS' publications alone, on depreciation, consumes about 107 pages of text.⁴ In contrast, the pending proposal advocates one simple depreciation rule—*any rate is justified provided the life employed is no shorter than the service life permitted by the IRS*. The proposal ignores all other limitations, including that the utility stop recovering depreciation expense once the cost of an asset has been fully recovered. The proposal would also allow accelerated depreciation, making it possible for the carrier to increase its depreciation rates for the purpose of setting utility rates.⁵

Unlike the IRS, the Commission does not have a 107-page publication describing depreciation rates. We have flexibility and generally would allow a proposed depreciation rate if the utility could justify it. (However, utilities must supply accurate information and have not always done so.) This proposed legislation would effectively prevent review and approval of depreciation rates so long as the utility had claimed it had used the IRS lives.

- Given the constraints on Commission action, this proposal would curtail the Commission's authority to enforce the existing statutory requirement that depreciation rates not be excessive. AS 42.05.471
- Depreciation expense is a key component for determining rates for a utility. The Commission would have to accept a utility rate increase based on a potentially accelerated depreciation expense that could not be contested except in limited circumstance as specified by the amendment.

⁴ See IRS Publication 946.

⁵ Accelerated depreciation allows the utility to set a high depreciation rate in early years, followed (in theory) by a lower depreciation rate in later years. However, under this proposal, the utility would not be required to set a lower rate in later years, even if the utility had substantially recovered its investment.

Sec 4 (Cont.): Proposed AS 42.05.381(I):

- The first sentence allows the carrier to recover the costs "it expects to incur". While the meaning is vague, parties may argue that the Commission must accept the carrier's proposal even if costs were disputed. This provision may be inconsistent with the Act requirement that open issues be resolved through negotiation and arbitration.⁶
- The first sentence also requires that the carrier shall be "allowed a reasonable profit." In contrast, FCC policies state that normal profit is already embedded in the concept of forward-looking costs and so no additional profit component would generally be allowed when determining local interconnection rates.⁷ As a result, the intent of this provision appears to conflict with Federal policy.
- The second sentence states that "current costs" provide the best evidence for setting rates.⁸ However, this would be inconsistent with requirements of FCC regulations⁹ that local interconnection rates be based on forward-looking costs.
- The third sentence provides that depreciation and capital costs may reflect "increased business risk" and must be consistent with provision (k). As previously indicated, provision (k) would place no effective constraint on depreciation rates or capital recovery. As a result, the carrier could set its level of capital recovery virtually at will. This would be inconsistent with the Act and FCC requirements that rates be based on forward-looking costs. This provision would also be inconsistent with the requirement that rates be based upon negotiation and, if necessary, arbitration. To the extent a carrier has the ability to raise its interconnection rates¹⁰ in light of this provision, it could negatively affect competition and increase utility rates in the market. The term "business risk" is not defined and is legally arguable.
- The last section of this provision would make a carrier obligated to pay another carrier's investment costs if the first carrier at any time cancelled use of the other carrier's services. In a free market, competitors are not given full and unconditional recovery of investment, plus opportunity for double recovery. Yet that is what this proposal would achieve. The incumbent carrier would be fully compensated for its investment by a competitor, and then allowed further

⁶ 47 U.S.C. 251(c), 47 U.S.C. 252(b)(1).

⁷ FCC Order FCC 96-325, paragraph 700.

⁸ The term "current costs" probably means the costs as recorded in the utility's books and records. The current costs may reflect the utility's existing technology and past management decisions. In contrast, forward-looking costs attempt to estimate the costs if service were provided by an efficient provider and without limitations caused by historical factors.

⁹ 47 C.F.R. 51.505.

¹⁰ An interconnection agreement provides the terms and conditions for purchase of one carrier's services by a competitor.

opportunity for recovery as it uses those facilities for other purposes. New carriers may not want to risk entering Alaska markets knowing that by buying services from the incumbent, they may be required to pay all of the incumbent's investment within 90 days, as under this change.

Sec 5: Proposed AS 42.05.433(a) through (g). This proposal would allow full rate and quality of service deregulation of qualifying local and interexchange carriers. (Proposed AS 42.05.433(d)).

- It would prematurely deregulate local exchange carriers and allow deregulation even though 50% of the carrier's retail customers had no competitive choice. For example, if as a result of competition in Valdez, a carrier met the 50% benchmark, then service it provides to McCarthy would also be deregulated, even though the Commission might have a pending quality of service or rate complaint for that area.

As another example, if services in a big city are deregulated and the Incumbent is given flexibility to raise local retail rates and UNE¹¹ rates at will (as would occur under Sections 5 & 8), then customers in subdivisions where the Incumbent had the only facilities would be positioned to pay the Incumbent's price, either directly or indirectly as the Competitor passed on to its customers the costs of the higher Incumbent UNE rates. Further, the Commission would be unable to address consumer quality of service complaints like those recently raised against a large Incumbent for providing wireless services in place of wire line services in Anchorage and other locations.

- This proposal could prematurely deregulate the entire state for long distance services even though Alascom, Inc. retains a facilities monopoly in many areas of the state and the FCC prevents competitors from building duplicate earth stations in most of Alaska. We also note that the term "long distance" is not defined, and therefore the scope of deregulation could be quite broad.
- If deregulation occurs before effective competition exists throughout a Competitive Service Area, then customers are likely to experience rate increases and reduction of service quality. The Commission will be able to take no meaningful action when rates increase in areas with an effective monopoly. The Commission would also be unable to act on any resultant complaints until after a formal proceeding successfully led to repeal of the self-certification as the result of a written finding and order. Given the minimal standards for deregulation at section (g), it would be unlikely that the Commission could properly regulate an area, even if it concluded the carrier held an effective monopoly.

¹¹ Unbundled Network Element

- The amendment would allow monopoly and other carriers to deregulate their services at will by self-certifying that the area satisfies the competitive service area standard of the section. Upon self-certification, all pending Commission proceedings, including those involving consumer complaints would appear to cease. As a result, carriers would have an incentive to prematurely self-certify so as to avoid or delay continued scrutiny of pending quality of service or rate investigations.
- Provisions of (f) are problematic if the intent is to assign carrier of last resort obligations among interexchange carriers based on retail market share. A carrier may have a significant retail market share while owning few facilities. Such carriers may be unable to meet new, required carrier of last resort obligations absent construction of significant new, duplicative facilities. We may be forced to require carriers to build new facilities at locations where duplicate earth stations would make no sense. Carriers may be reluctant to enter the market if this means they must take on carrier of last resort obligations. It would further enhance incumbent monopolies.
- Sharing carrier of last resort responsibilities among several interexchange carriers has the potential to reduce quality of service. For example, the networks of the two largest carriers (Alascom and GCI) use incompatible technologies. As a result, calls between the two networks may require that a call be placed using multiple satellite hops, reducing call quality. Also sharing carrier of last resort responsibilities may leave the state dependent upon multiple carriers with a variety of potentially incompatible systems. This may compromise system reliability and make network-wide planning difficult. Further, determination of "carriers of last resort" will be controversial as we attempt to assure universal service while preventing "cherry picking" of the most profitable locations.

Sec. 5 (Cont.): Proposed AS 42.05.435

- The intent of section (b) is ill defined. This provision states that arbitrated rates should be set as close as possible to the prices arrived at between a willing buyer and a willing seller (i.e., "market prices") yet arbitration would likely only occur if the buyer and seller were unwilling to agree on rates. Nor is it clear which "willing buyers" and which "willing sellers" are referred to. It is not necessarily reasonable to base Alaska interconnection rates on the prices willing buyers and sellers may reach in the Lower 48.
- Section (c) requires that a carrier be "fully compensated" for all capital expenditures related to the furnishing of its facilities to another carrier. Put another way, the carrier must be compensated for its current costs of investment. However, FCC regulations require that UNE rates be based on forward looking costs. As a result this provision would appear inconsistent with federal requirements.

Sec 6: AS 42.05.810

- This section implies the Commission may regulate a long distance carrier as dominant when the carrier has a statewide market share of 60% or more. However, earlier provisions effectively deregulate the long distance market, rendering this section moot.

Sec. 8: APPLICABILITY

- This section allows the incumbent local exchange carrier to immediately adjust its interconnection rates after providing a written statement to the Commission certifying its compliance with the state law. Self-certification is inconsistent with requirements of the Act that allow a competitor (or the incumbent) to petition a state commission for compulsory arbitration of interconnection rate disputes. 47 USC 252(b). Further there is no mechanism to allow dispute of the incumbent's self certification (outside of litigation or Federal preemption). To the extent that the incumbent can implement unjustified, high interconnection rates at will, it has the potential to significantly reduce the level of competition and increase its ability to raise rates to Alaskan citizens.

Sec: 9: CARRIER OF LAST RESORT

- This provision requires the Commission to determine the financial cost of the obligation of being a carrier of last resort while other provisions remove the tools (i.e., accounting standards) necessary to determine what may be a valid obligation.
- Payment toward the carrier of last resort's obligation is a form of universal service support. The Act requires that "all providers of telecommunications services" pay such compensation.¹² As this provision would limit payment to carriers serving a competitive area, it violates the federal telecommunications Act.

¹² 47 U.S.C. 254(b)(4).