

**HB**

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**(File 1 of 5)**







23-GH1049\C  
Craver  
5/15/03

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

**BY THE HOUSE JUDICIARY COMMITTEE**

**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 and cost recovery for telecommunications utilities; setting  
6 a policy regarding unbundled network elements in the telecommunications market;  
7 extending the termination date of the Regulatory Commission of Alaska; and providing  
8 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) A telephone utility's proposed depreciation rates shall be allowed under  
11 this subsection if the underlying service lives are not shorter than the service lives  
12 permitted by the United States Internal Revenue Service to determine the appropriate  
13 level of depreciation expense for federal income tax computations. The commission  
14 may not require a telephone utility to file a depreciation study unless the telephone  
15 utility proposes to use depreciation rates based on service lives that are shorter than  
16 the 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).

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE MCGUIRE

TO: CSHB 111 (JUD), Draft Version "E"

1 Page 4, line 12:

2 Delete "2007"

3 Insert "2005"

4

5 Page 4, following line 13:

6 Insert new bill sections to read:

7 "\* Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to  
8 read:

9 REGULATIONS. The commission shall proceed to adopt regulations necessary to  
10 implement this Act.

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

13 REPORT TO THE LEGISLATURE. The commission shall provide a written review  
14 and progress report on the implementation of this Act to the legislature not later than six  
15 months, and, again, 18 months after this Act takes effect."

16

17 Renumber the following bill sections accordingly.

23-GH1049Z  
Craver  
5/15/03

**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 relating to the regulation of an incumbent local exchange carrier in a  
2 competitive market; providing for the prospective effect of standards changed by the  
3 Regulatory Commission of Alaska; providing that certain electric cooperative rate  
4 increases shall be approved without change by the Regulatory Commission of Alaska;  
5 providing an option for a hearing by a single administrative law judge or by a panel of  
6 administrative law judges in certain electric cooperative tariff cases involving  
7 intervenors; relating to exemptions from retail tariff filing requirements and certain  
8 other provisions in competitive telecommunications markets; setting a policy regarding  
9 unbundled network elements in the telecommunications market; relating to depreciation  
10 expense rates for certain telecommunications utilities; relating to the designation of a  
11 dominant carrier in telecommunications markets; extending the termination date of the  
12 Regulatory Commission of Alaska; and providing for an effective date."

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

2 \* **Section 1.** AS 42.05.145 is amended by adding a new subsection to read:

3 (b) Upon the commission's approval of a carrier's application to provide  
4 competitive local exchange telecommunications service in an incumbent local  
5 exchange carrier's service area, the incumbent local exchange carrier is subject to the  
6 same standards and regulations as the new carrier. However, the incumbent local  
7 exchange carrier remains the carrier of last resort in the relevant area until the  
8 commission orders otherwise.

9 \* **Sec. 2.** AS 42.05.291 is amended by adding a new subsection to read:

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

15 \* **Sec. 3.** AS 42.05 is amended by adding a new section to read:

16 **Sec. 42.05.383. Electric cooperative rate increases.** Notwithstanding the  
17 other provisions of this chapter, an increase in a rate by an electric cooperative  
18 organized under AS 10.25 or owned and operated by a municipality shall be approved  
19 on a permanent basis within 10 days without change if

20 (1) the rate increase is effective not earlier than two years after the  
21 previous rate increase;

22 (2) the proposed change to the rate compared to the existing rate is less  
23 than or equal to the rate of inflation; for purposes of this paragraph, "rate of inflation"  
24 means the rate of increase in the Consumer Price Index for all Urban Consumers for  
25 the Anchorage metropolitan area compiled by the Bureau of Labor Statistics, United  
26 States Department of Labor, since the previous rate increase; and

27 (3) the governing body of the utility has voted in a public meeting for  
28 the rate increase.

29 \* **Sec. 4.** AS 42.05 is amended by adding new sections to read:

30 **Sec. 42.05.415. Optional hearing procedures for electric cooperatives for**  
31 **certain rate changes.** (a) An electric cooperative organized under AS 10 25 or

1 owned and operated by a municipality that files a tariff containing a rate increase  
2 greater than the rate of inflation for the period since the cooperative's last rate change  
3 may request a hearing conducted under this section by an administrative law judge  
4 rather than the commission if there are intervenors. The rates in the tariff shall be  
5 compared to the electric cooperative's existing rates for similar services. The rate of  
6 inflation means the rate of increase in the Consumer Price Index for all urban  
7 consumers for the Anchorage metropolitan area compiled by the Bureau of Labor  
8 Statistics, United States Department of Labor.

9 (b) An electric cooperative requesting a rate increase under (a) of this section  
10 shall give written notice of its request at the time of filing the tariff. The electric  
11 cooperative shall provide its customers with notice of filing the tariff immediately.

12 (c) The commission shall, within 10 days of the filing of a tariff under this  
13 section, confirm in writing that the tariff is to be considered under this section, or shall  
14 inform the electric cooperative that the tariff does not qualify under this section.

15 (d) If the tariff is to be considered under this section, the commission shall

16 (1) accept for a period of 10 days after a tariff is filed under (a) of this  
17 section petitions for permission to intervene as a party; any petitions received after that  
18 date shall be rejected;

19 (2) accept answers to petitions to intervene for 10 days after a petition  
20 for permission to intervene is filed; answers filed after that date shall be rejected;

21 (3) issue an order granting or denying all petitions for permission to  
22 intervene not later than 10 days after the last date that answers to petitions were  
23 accepted and shall, on the same date, notify the electric cooperative whether a hearing  
24 will be required on the tariff filing.

25 (e) If a hearing is required by the commission and any petitions for permission  
26 to intervene are accepted by the commission, the following procedures shall be used:

27 (1) the parties responsible for the expense of the hearing conducted  
28 under this section shall notify the commission within five days after the date of the  
29 order in (d) of this section whether a single administrative law judge or a panel of  
30 administrative law judges will be used; if a panel is used, there must be an odd number  
31 of judges on the panel;

1 (2) the commission shall notify all parties of a meeting to be held  
2 within 10 days after the date of the order in (d) of this section; at the meeting, the  
3 parties shall select the judge or judges to be used in the hearing in accordance with  
4 AS 42.05.417.

5 (f) Notwithstanding AS 42.04.080 and AS 42.05.171, the decisions and orders  
6 of the administrative law judge or panel under this section are not subject to review by  
7 the commission. All final orders of the administrative law judge or panel under this  
8 section are subject to judicial review as final administrative orders in accordance with  
9 AS 44.62.560 and 44.62.570.

10 (g) If an appeal is not taken from a final order of the administrative law judge  
11 or panel, the commission shall approve the tariff implementing the rate changes  
12 approved and ordered by the administrative law judge or panel.

13 **Sec. 42.05.417. Hearings conducted by administrative law judges.** (a) In a  
14 proceeding in which a hearing is to be conducted by an administrative law judge or  
15 judges, the parties shall inform the commission of the name or names of the  
16 administrative law judge or judges the parties will use for a hearing if the parties have  
17 unanimously agreed on the names. The parties shall also provide information  
18 supporting each judge's qualifications under this section for verification by the  
19 commission.

20 (b) If the parties cannot unanimously agree upon the name or names of the  
21 administrative law judges to be used in the hearing, the parties shall request a list of  
22 qualified administrative law judges from the American Arbitration Association. The  
23 number of names requested shall be three times the number of judges that need to be  
24 selected.

25 (c) The parties shall select the administrative law judge or judges not later  
26 than five working days after the list requested under (b) of this section is received.  
27 The selection shall be made according to a process agreed upon unanimously by the  
28 parties, or, if an agreement cannot be reached, by the electric cooperative's striking the  
29 first name and each party's alternately striking a name from the list with the electric  
30 cooperative to exercise every other strike until the number of judges needed remains in  
31 the list. Not later than three days after selection of an administrative law judge or

1 judges for a panel, the parties shall jointly submit a written notification to the  
2 commission of the selection.

3 (d) The commission shall serve a copy of all prior orders and pleadings in the  
4 case on the administrative law judge or panel and on all parties of record. The  
5 commission shall be placed on the service list for all subsequent pleadings and orders  
6 filed and issued in the proceeding.

7 (e) Not later than 30 days after service by the commission of all prior orders  
8 and pleadings, the administrative law judge or panel shall issue an order establishing a  
9 complete procedural schedule for the hearing. A final order on the tariff filing must be  
10 issued by the administrative law judge or panel within the applicable timelines in  
11 AS 42.05.175 and not later than the last day of a suspension that could be issued under  
12 the applicable timelines in AS 42.05.421, or 270 days, whichever is earliest. In all  
13 cases, the administrative law judge or panel may not permit more than 90 days for  
14 discovery and shall adhere to the Alaska Rules of Civil Procedure for all procedural  
15 matters not explicitly governed by regulation.

16 (f) The administrative law judge or panel shall have all of the procedural and  
17 substantive powers and duties that apply to the commission and commission members  
18 under law. However, the scope of the administrative law judge's or panel's  
19 jurisdiction, powers, and duties are limited to approving, modifying, or denying the  
20 rate increases requested in the tariff filed.

21 (g) A party may petition the administrative law judge or panel for  
22 reconsideration of an order issued by the administrative law judge or panel within 10  
23 days after the final order. The motion for reconsideration shall be decided by the  
24 administrative law judge or panel without oral argument. If the motion for  
25 reconsideration has not been ruled upon by the administrative law judge or panel  
26 within 30 days after the date of filing the motion, or within 30 days after the date of  
27 filing a response requested by the administrative law judge or panel, whichever is  
28 later, the motion shall be considered denied.

29 (h) To qualify to serve as an administrative law judge under this section, an  
30 administrative law judge shall

31 (1) be a member in good standing of a state bar association within the

1 United States;

2 (2) have at least five years of relevant experience in litigation or  
3 administrative representation of regulated public utilities, which may include  
4 employment by a regulatory body as a hearing officer or similar position; and

5 (3) comply with the restrictions applicable to members of the  
6 commission under AS 42.04.060.

7 (i) The reasonable and necessary expense of the administrative law judge or  
8 panel and all administrative expenses of the hearing process shall be paid in equal  
9 parts by all parties who are a utility regulated under AS 42.05 or an agency of the  
10 state.

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

12 **Sec. 42.05.433. Exemption from retail tariffs for telecommunications**  
13 **services in a competitive market.** (a) A local exchange carrier in a competitive  
14 service area may file a certification with the commission certifying that the relevant  
15 market satisfies the competitive service area standard of this section. A certification  
16 exempts the telecommunications utility from retail tariff filing requirements.

17 (b) A certification filed under (a) of this section is effective upon filing. The  
18 commission may deny a certification only upon a written finding and order that, based  
19 on a preponderance of the evidence, the competitive service area standard has not been  
20 met.

21 (c) A local exchange carrier granted a retail tariff exemption under (a) of this  
22 section is, with regard to retail service in competitive service areas, exempt from the  
23 following provisions of this chapter: AS 42.05.361, 42.05.371, 42.05.381, 42.05.391,  
24 42.05.411, 42.05.421, and 42.05.431.

25 (d) In this section,

26 (1) "competitive service area" means the service area served by a local  
27 exchange carrier in which at least 50 percent of all retail customers have a choice of  
28 facilities-based service providers;

29 (2) "facilities-based service provider" means a telephone utility that  
30 offers a portion of its products and services by means of facilities it owns and operates  
31 or by means of facilities and unbundled network elements it leases from another

1 provider, or any combination of facilities owned and leased;

2 (3) "network element" means a facility or equipment used in the  
3 provision of a telecommunications service;

4 (4) "retail" means services or products sold directly to the actual user  
5 of the services or products;

6 (5) "unbundled" has the meaning given in 47 U.S.C 251(c)(3).

7 **Sec. 42.05.435. State telecommunications policy: pricing of unbundled**  
8 **network elements.** (a) A telephone utility providing unbundled network elements to  
9 other telephone utilities under state or federal law shall be allowed to recover the  
10 future costs it expects to incur to provide the unbundled network element and shall be  
11 allowed a reasonable profit or such other measure of costs as federal law may specify.  
12 To the maximum extent allowable under federal law, the best evidence of the future  
13 costs a telephone utility expects to incur shall be based on the following:

14 (1) the utility's most current costs for individual cost components, such  
15 as labor and materials in the relevant service area, adjusted for inflation;

16 (2) fill factors that represent a reasonable projection of actual total  
17 usage of the elements in question;

18 (3) the most efficient technology the telephone utility has actually  
19 deployed, which shall be presumed to be the most efficient technology available; and

20 (4) the cost of capital that reflects the risks associated with a  
21 competitive market.

22 (b) In this section, "network element" and "unbundled" have the meanings  
23 given in AS 42.05.433.

24 \* **Sec. 6.** AS 42.05.471 is amended by adding a new subsection to read:

25 (c) A telephone utility's proposed depreciation rates for all rates established by  
26 the commission in a competitive service area shall be allowed to the maximum extent  
27 allowed by law if the underlying service lives are not shorter than the general  
28 depreciation system service lives permitted by the United States Internal Revenue  
29 Service to determine the appropriate level of depreciation expense for federal income  
30 tax computations. The commission may not require a telephone utility to file a  
31 depreciation study unless the telephone utility proposes to use depreciation rates based

1 on service lives that are shorter than the general depreciation system service lives  
2 permitted by the Internal Revenue Service.

3 \* **Sec. 7.** AS 42.05.810 is amended by adding a new subsection to read:

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

10 \* **Sec. 8.** AS 44.66.010(a)(4) is amended to read:

11 (4) Regulatory Commission of Alaska (AS 42.04.010) -- June 30, 2007  
12 [2003];

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

15 **APPLICABILITY OF PROCEDURES REGARDING ELECTRIC COOPERATIVE**  
16 **RATE INCREASES.** The procedures for rate increases by certain electric cooperatives under  
17 AS 42.05.383, added by sec. 3 of this Act, apply to all applicable tariffs filed with the  
18 Regulatory Commission of Alaska on or after July 1, 2003.

19 \* **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to  
20 read:

21 **APPLICABILITY OF TELECOMMUNICATIONS SERVICES PROVISIONS.** To  
22 implement the policies of AS 42.05.433 and 42.05.435, added by sec. 5 of this Act, and  
23 AS 42.05.471(c), added by sec. 6 of this Act, the Regulatory Commission of Alaska shall  
24 adopt rate adjustments that conform to this Act within the 90 days after submission by a  
25 telephone utility. If the commission fails to act within 90 days after the submission of  
26 conforming rate adjustments, those adjustments shall be considered lawful. Any pending  
27 tariff filing, rate setting or other retail-rate-related proceedings shall be dismissed by the  
28 commission upon the filing of a certificate for a retail tariff exemption under AS 42.05.433,  
29 enacted by sec. 5 of this Act.

30 \* **Sec. 11.** This Act takes effect immediately under AS 01.10.070(c).

Summary of Legislative Proposals and Policy Changes  
CSHB111 - Revised 5/14/03

Section 1. New AS 42.05.145(b) - Equal Regulatory Treatment for Incumbent Local Companies and Competitive Local Companies

This section was originally proposed by the Alaska Telephone Association.

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Section 8. Act Takes Effect Immediately

# **ALASKA'S MAJOR MARKETS**

## **ARE HIGHLY COMPETITIVE**

### **ANCHORAGE**

- 1 Local service competition began in 1997.
- 2 ACS serves approximately 50% of the market.
- 3 GCI serves approximately 44% of the market.
- 4 AT&T serves approximately 6 % of the market.
- 5 GCI's market share is still growing.

### **Fairbanks**

- 1 Local service competition began in May 2001.
- 2 ACS serves approximately 75% of the market.
- 3 GCI serves approximately 25% of the market.
- 4 GCI's market share is rapidly growing.

### **Juneau**

- 1 Local service competition began March 2002.
- 2 ACS serves approximately 85% of the market.
- 3 GCI serves approximately 15% of the market.
- 4 GCI's market share is rapidly growing.

### **Illinois**

- 1 Competitors in Illinois serve 17% of that market.
- 2 In May 2003, the Illinois legislature enacted a statute that will increase facilities lease rates.
- 3 Commentators expect UNE rates to double.

[Click here and type return address and phone and fax numbers]

**Company Name Here**

# Fax

**To:** Karen Brinkman

**From:** Vanessa Tondidi

**Fax:** 202-637-2201

**Pages:** [Click here and type # of pages]

**Phone:** 202-637-2262

**Date:** 5/16/2003

**Re:** Additional Versions of Bill

**CC:** [Click here and type name]

**Urgent**     **For Review**     **Please Comment**     **Please Reply**     **Please Recycle**

● **Comments:** Additional versions of the bill. Versions 'S' (what passed out of L&C Comm.) will most likely be the starting point in Jud. today. Version 'E' will/may be discussed. It's my understanding that that is where we're trying to get to. Also, I'm faxing an explanation of the differences between the two.

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**Summary of Legislative Proposals and Policy Changes  
And Comparison with House Labor & Commerce Version  
CSHB111 - 23-GH1049/B Craver 5/15/03**

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Section 7 requires the RCA to adopt rate adjustments that conform to this Act within 90 days of a utility submitting such adjustments to the commission. The section also requires the dismissal of any pending tariff filings, rate-setting proceedings or retail-rate-related proceedings upon the filing of a retail tariff exemption certification. The requirement to submit rate adjustments to the RCA and the 90-day review cycle are new provisions not previously included in the L&C bill.

Section 8. (formerly Section 10 in the L&C bill) Act Takes Effect Immediately

In addition to the commentary above, the section (formerly Section 9 in the L&C bill) setting out the requirement for the RCA to promulgate carrier of last resort regulations by December 31, 2003 has been eliminated.

23-GH1049E  
Craver  
5/15/03

**CS FOR HOUSE BILL NO. 111(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-THIRD LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

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

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the regulation of an incumbent local exchange carrier in a**  
2 **competitive market; providing for the prospective effect of standards changed by the**  
3 **Regulatory Commission of Alaska; relating to exemptions from retail tariff filing**  
4 **requirements and certain other provisions in competitive telecommunications markets;**  
5 **setting a policy regarding unbundled network elements in the telecommunications**  
6 **market; relating to depreciation expense rates for certain telecommunications utilities;**  
7 **relating to the designation of a dominant carrier in telecommunications markets;**  
8 **extending the termination date of the Regulatory Commission of Alaska; and providing**  
9 **for an effective date."**

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

11 **\* Section 1. AS 42.05.145 is amended by adding a new subsection to read:**

12 **(b) Upon the commission's approval of a carrier's application for a certificate**

1 to provide competitive local exchange telecommunications service in an incumbent  
2 local exchange carrier's service area, the incumbent local exchange carrier is subject to  
3 the same retail tariff standards and regulations as the new carrier. However, the  
4 incumbent local exchange carrier remains the carrier of last resort in the relevant area  
5 until the commission orders otherwise.

6 \* **Sec. 2.** AS 42.05.291 is amended by adding a new subsection to read:

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

12 \* **Sec. 3.** AS 42.05 is amended by adding new sections to read:

13 **Sec. 42.05.433. Exemption from retail tariffs for telecommunications**  
14 **services in a competitive market.** (a) A local exchange carrier in a competitive  
15 service area may file a certification with the commission certifying that the relevant  
16 market satisfies the competitive service area standard of this section. A certification  
17 exempts the telecommunications utility from retail tariff filing requirements.

18 (b) A certification filed under (a) of this section is effective upon filing. The  
19 commission may deny a certification only upon a written finding and order that, based  
20 on a preponderance of the evidence, the competitive service area standard has not been  
21 met.

22 (c) A local exchange carrier granted a retail tariff exemption under (a) of this  
23 section is, with regard to retail service in competitive service areas, exempt from the  
24 following provisions of this chapter: AS 42.05.361, 42.05.371, 42.05.381, 42.05.391,  
25 42.05.411, 42.05.421, and 42.05.431.

26 (d) In this section,

27 (1) "competitive service area" means the service area served by a local  
28 exchange carrier in which at least 50 percent of all retail customers have a choice of  
29 facilities-based service providers;

30 (2) "facilities-based service provider" means a telephone utility that  
31 offers a portion of its products and services by means of facilities it owns and operates

1 or by means of facilities and unbundled network elements it leases from another  
2 provider, or any combination of facilities owned and leased;

3 (3) "network element" means a facility or equipment used in the  
4 provision of a telecommunications service;

5 (4) "retail" means services or products sold directly to the actual user  
6 of the services or products;

7 (5) "unbundled" has the meaning given in 47 U.S.C 251(c)(3).

8 **Sec. 42.05.435. State telecommunications policy: pricing of unbundled**  
9 **network elements.** (a) A telephone utility providing unbundled network elements to  
10 other telephone utilities under state or federal law shall be allowed to recover the  
11 future costs it expects to incur to provide the unbundled network element and shall be  
12 allowed a reasonable profit or such other measure of costs as federal law may specify.  
13 To the maximum extent allowable under federal law, the best evidence of the future  
14 costs a telephone utility expects to incur shall be based on the following:

15 (1) the utility's most current costs for individual cost components, such  
16 as labor and materials in the relevant service area, adjusted for inflation;

17 (2) fill factors that represent a reasonable projection of actual total  
18 usage of the elements in question;

19 (3) the most efficient technology the telephone utility has actually  
20 deployed, which shall be presumed to be the most efficient technology available; and

21 (4) the cost of capital that reflects the risks associated with a  
22 competitive market.

23 (b) In this section, "network element" and "unbundled" have the meanings  
24 given in AS 42.05.433.

25 \* **Sec. 4.** AS 42.05.471 is amended by adding a new subsection to read:

26 (c) A telephone utility's proposed depreciation rates for all rates established by  
27 the commission in a competitive service area shall be allowed to the maximum extent  
28 allowed by law if the underlying service lives are not shorter than the general  
29 depreciation system service lives permitted by the United States Internal Revenue  
30 Service to determine the appropriate level of depreciation expense for federal income  
31 tax computations. The commission may not require a telephone utility to file a

1 depreciation study unless the telephone utility proposes to use depreciation rates based  
2 on service lives that are shorter than the general depreciation system service lives  
3 permitted by the Internal Revenue Service.

4 \* **Sec. 5.** AS 42.05.810 is amended by adding a new subsection to read:

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

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

12 (4) Regulatory Commission of Alaska (AS 42.04.010) -- June 30, 2007  
13 [2003];

14 \* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to  
15 read:

16 **APPLICABILITY.** To implement the policies of AS 42.05.433 and 42.05.435, added  
17 by sec. 3 of this Act, and AS 42.05.471(c), added by sec. 4 of this Act, the Regulatory  
18 Commission of Alaska shall adopt rate adjustments that conform to this Act within the 90  
19 days after submission by a telephone utility. If the commission fails to act within 90 days  
20 after the submission of conforming rate adjustments, those adjustments shall be considered  
21 lawful. Any pending tariff filing, rate setting or other retail-rate-related proceedings shall be  
22 dismissed by the commission upon the filing of a certificate for a retail tariff exemption under  
23 AS 42.05.433, enacted by sec. 3 of this Act.

24 \* **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).

**Insert.**

**Section 1. Statement of purpose.** It is the purpose of this bill to require that the Regulatory Commission of Alaska thoroughly consider its rules governing telephone rates, charges between competing companies, and competition. It is the intent of this section that the public shall be protected, and that the rates that they are charged be kept fair. It is also the intent of this section to ensure that the businesses that provide local and long distance service be treated as fairly as possible, and that competition among companies be encouraged. The Legislature intends to take no position on the propriety of existing Commission rulings or regulations, but intends that all such rules governing the telecommunications industry shall be re-examined, and that regulations shall be implemented to change any existing regulation or rule the Commission determines should be changed in order to fairly implement the law and the above-stated purposes. The Commission shall take into consideration the Legislature's determination that it is desirable to promote competition, and to take steps, if fair to the public, to encourage more, rather than fewer, businesses to enter and remain in the Alaska telecommunications business.

**Section 2.** The Regulatory Commission of Alaska shall hold public hearings and review its regulations and rulings in the area of local and long distance telecommunications. It shall issue proposed regulations for review by the public, and legislators, before October 15, 2003, to address any ruling or regulation it determines is unfair, or that can be improved to better meet the purposes stated in section 1.

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# Telecommunications Terms

---

**Alternative Regulation ("Alt Reg")** – A form of economic regulation (implemented in the late 1980's as an alternative to rate of return regulation) designed to provide utility companies with incentives for increased efficiency and innovation. Under alternative regulation, utility commissions place price caps on some services and the companies are allowed to keep any profits gained by lowering their costs.

**Central Office (CO)** – Telephone company facility where telephone lines are connected to the telecommunications network. (See also "The Network")

**Competitive Local Exchange Carrier (CLEC)** – A local telephone company providing competitive local service within an incumbent's service territory.

**DSL / Digital Subscriber Line** – Traditional copper phone lines that have been modified in order to provide high speed Internet service.

**Data Local Exchange Carrier (DLEC)** - A company that only provides data transmission services.

**Facilities-Based Carrier** – A carrier that has its own facilities such as switches and transmission lines.

**Incumbent Local Exchange Carrier (ILEC)** – A telephone company which was given the exclusive, franchised right and responsibility to provide local telephone services in a given area.

**Interconnection Agreement** – Contracts between ILECs and CLECs that govern the rates, rights, and responsibilities of each party in order for a CLEC to have access to certain network facilities of the ILEC.

**Interexchange Carrier (IXC)** – A carrier offering long distance telephone service.

**Local Access and Transport Area (LATA)** – One of the 196 local geographic areas in the United States within which a local telephone company may offer telecommunications service. Illinois has 18 LATAs.

InterLATA – Telecommunications services that originate in one LATA and terminate in another LATA. Commonly referred to as long distance.

IntraLATA – Telecommunications services that originate and terminate in the same LATA. Commonly referred to as local and local toll or local long distance.

**Local Exchange Carrier (LEC)** – A carrier offering local telephone services.

**Local Loop** – The phone line from a customer's home or business to a Central Office.

**The Network** - Interconnected set of communications equipment that allows for the transmission of voice or data.

**Operations Support Systems (OSS)** – Computer systems that process the complex back-office functions (such as customer orders and repairs) involved in providing telephone services to customers.

**PICC/Pre-subscribed Interexchange Carrier Charge** – A charge paid by long distance telephone companies to local carriers for the completion of the long distance call over the local loop.

**Regional Bell Operating Company (RBOC)** – One of the seven local phone companies formed by the breakup of AT&T in 1984.

**Resale** – A competitive entry strategy that involves buying local and /or long distance phone lines or services at wholesale rates and then selling them to customers.

**SLC/Subscriber Line Charge** – The federally ordered charge to fund the cost of the telephone lines that reach from the local service provider to homes and businesses.

**Telecommunications Act of 1996 (TA96)** – Federal law passed in 1996 that attempts to open local phone markets to competition:

**Section 251** – Requires ILECs to open their local phone monopolies to competition from CLECs.

**Section 252** – Requires ILECs to negotiate interconnection agreements with CLECs. Provides for arbitration and state public utility commission approval of interconnection agreements.

**Section 271** – Allows RBOCs to provide long distance service once they meet a 14-point checklist designed to ensure that local phone monopolies are opened to competition.

**TELRIC** Total Element Long Run Incremental Cost. The FCC First Order and Report (a.k.a. *Local Competition First Report and Order*) established the price for unbundled network elements (UNEs) to equal TELRIC plus a reasonable allocation of forward-looking joint and common costs. TELRIC, as defined by the FCC, reflects the forward-looking cost of each UNE over a period long enough such that all of a firm's costs become variable or avoidable. The TELRIC cost of an element is measured by the FCC based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent local exchange carrier's wire centers. This "hypothetical network" standard was rejected by the 8<sup>th</sup> Circuit Court of Appeals in its July 18, 2000 opinion (*Iowa Utilities Board, et al., v. Federal Communications Commission and United States of*

America, No. 96-3321). This issue is currently under review by the U.S. Supreme Court. See Docket 96-0486/96-0569 Second Interim Order (February 17, 1998) on Ameritech Illinois' UNE rates, terms and conditions. See Unbundled Network Elements.

**Unbundled Network Element (UNE)** – The Telecommunications Act of 1996 allows CLECs to lease different “elements” of the Incumbent carrier’s pre-existing network. Examples include the Loop, Switch, Shared Transport and OSS.

**UNE-Platform (Unbundled Network Element Platform or the “Platform”)** – A combination of all of the network elements that allow a CLEC to provide local service.

## UNE-P RATES ISSUE

*Background:* The Federal Telecommunications Act of 1996 gives State Commissions the task of applying FCC pricing principles (TELRIC) in determining the rates CLECs pay for individual UNEs. These rates are based on costs provided by SBC and are developed over time through exhaustive investigations at the ICC. The Federal Supreme Court recently upheld the TELRIC pricing structure for UNEs. In September 2002, SBC filed, and then withdrew at the urging of the Commissioners and ICC Staff, a filing that would have dramatically increased all UNE, including UNE-P, rates (roughly 750 separate rates). On Christmas Eve 2002, SBC filed a narrowed case (from 750 to 145 different rates) that would substantially increase key UNE rates.

Docket 02-0864, The ICC's Investigation into SBC's proposed increase in UNE Rates –  
The UNE rates being investigated in this proceeding include increases in:

- Recurring and non-recurring (one-time) charges for all types of Local Loops. This is the line from a customer to the central office, which is by far the most important UNE for CLECs, and includes basic voice loops and DSL capable loops throughout Illinois (there are different rates used for Chicago, the suburbs and the rest of the state).
- Non-recurring charges only for UNE –Platform (UNE-P): These rates are mostly the one-time hook-up fees that a CLEC pays when it signs up a new UNE-P customer.
- Non-recurring charges only for “Enhanced Extended Loops” and “Special Access” conversions (think of these as high-speed “transport facilities” that CLECs use to transmit large amounts of aggregated voice traffic to the CLECs own facilities). Recall that these were major sticking points in Section 13-801 in the Rewrite).

SBC's rate calculations change Commission approved cost factors such as cost of capital, fill factors, and depreciation rates among hundreds of other inputs. These changes lead to significant increases (100 – 2,000%) in the current Commission approved UNE rates that in many cases increase the CLECs wholesale costs above the retail rates charged by SBC. SBC's UNE rates would likely result in increased retail rates because:

- CLECs would have to either have to stop providing services, try to assume these increased costs and face serious financial hardship (bankruptcy) or increase rates for their voice and DSL services for both business and residential customers.
- The telecommunications article of the PUA requires all telecommunications rates to be above cost and if SBC's costs have increased that much, then its retail rates would need to increase.

The schedule for this case is as follows:

Dec. 24, 2002	SBC filed its case (testimony, cost information and rate schedules).
April 29	Staff and Interveners will file their proposed rates.
May 20	SBC Files Rebuttal testimony to the Staff and Interveners Staff and the Interveners file Rebuttal to each other.
June 10	Staff and Interveners file Rebuttal testimony to SBC
June 24	SBC sur-rebuttal testimony
July 7-11	Hearings (schedule for legal briefs to be set after the hearings)
Nov. 23, 2003	Statutory deadline for a Commission final order

**Estimated Illinois UNE Loop and UNE-P Rates Pursuant to SB 885**

Loop Types	Area*	Current	UNE Loop Rates	% Change from	UNE-P Rates	UNE-P Rates	% Change from
		UNE Loop Rates	With SB 885 Passage	Current: With SB 885 Passage	(Loop & Port): Current Approved Rates	(Loop & Port) With SB 885 Passage	Current: With SB 885 Passage
Analog 2w basic	A	\$2.59	\$11.62	349%	\$4.77	\$13.80	189%
	B	\$7.07	\$23.23	229%	\$9.25	\$25.41	175%
	C	\$11.40	\$26.85	136%	\$13.58	\$29.03	114%
	Avg.	\$9.44	\$24.79	179%	\$11.62	\$26.97	139%
Analog PBX Ground Start	A	\$2.64	\$11.72	344%	\$4.82	\$13.90	188%
	B	\$7.84	\$25.58	226%	\$10.02	\$27.76	177%
	C	\$12.38	\$30.47	146%	\$14.56	\$32.65	124%
	Avg.	\$10.30	\$27.79	184%	\$12.48	\$29.97	146%
Analog COPTS Coin	A	\$2.67	\$11.73	339%	\$4.85	\$13.91	187%
	B	\$8.09	\$25.78	219%	\$10.27	\$27.96	172%
	C	\$12.72	\$30.77	142%	\$14.90	\$32.95	121%
	Avg.	\$10.59	\$28.04	179%	\$12.77	\$30.22	142%
Analog EKL	A	\$2.95	\$11.89	303%	\$5.13	\$14.07	174%
	B	\$12.18	\$29.66	144%	\$14.36	\$31.84	122%
	C	\$17.92	\$36.78	105%	\$20.10	\$38.96	94%
	Avg.	\$15.15	\$33.00	129%	\$17.33	\$35.18	108%
Analog 4w	A	\$4.08	\$23.49	476%	\$6.26	\$25.67	310%
	B	\$16.82	\$52.47	212%	\$19.00	\$54.65	188%
	C	\$26.63	\$62.95	136%	\$28.81	\$65.13	126%
	Avg.	\$22.06	\$57.24	181%	\$24.24	\$59.42	157%
160 Kbps (ISDN-BRI)	A	\$2.71	\$12.16	349%	\$12.05	\$21.50	78%
	B	\$8.88	\$35.28	297%	\$18.22	\$44.62	145%
	C	\$13.68	\$43.43	217%	\$23.02	\$52.77	129%
	Avg.	\$11.45	\$38.96	252%	\$20.79	\$48.30	132%
1.544 Mbps (DS1)	A	\$73.46	\$47.42	-35%	\$232.03	\$205.99	-11%
	B	\$61.45	\$81.96	33%	\$220.02	\$240.53	9%
	C	\$61.56	\$116.82	90%	\$220.13	\$275.39	25%

\*\*\* CONFIDENTIAL \*\*\*

### Estimated Illinois UNE Loop and UNE-P Rates Pursuant to SB 885

	Avg.	\$62.16	\$101.14	64%	\$220.73	\$259.71	18%
ADSL/HDSL 2w Compatible	A	\$2.59	\$11.49	344%			
	B	\$7.07	\$20.50	190%			
	C	\$11.40	\$28.95	154%			
	Avg.	\$9.44	\$25.12	176%			
ADSL/HDSL 4w Compatible	A	\$4.08	\$22.98	463%			
	B	\$16.82	\$40.99	144%			
	C	\$26.63	\$57.90	117%			
	Avg.	\$22.06	\$50.23	145%			
DS3 Digital Loop	A		\$553.53				
	B		\$672.39				
	C		\$883.53				
	Avg.		\$793.42				

\* Area refers to  
different Illinois  
"Access Areas":

Access Area A: Chicago Loop

Access Area B: Chicago Metro

Access Area C: The Rest of the State

Weights

5.4%

34.3%

60.3%

\*\*\* CONFIDENTIAL \*\*\*

23-GH1049E  
Craver  
5/15/03

**CS FOR HOUSE BILL NO. 111(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-THIRD LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

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

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the regulation of an incumbent local exchange carrier in a  
 2 competitive market; providing for the prospective effect of standards changed by the  
 3 Regulatory Commission of Alaska; relating to exemptions from retail tariff filing  
 4 requirements and certain other provisions in competitive telecommunications markets;  
 5 setting a policy regarding unbundled network elements in the telecommunications  
 6 market; relating to depreciation expense rates for certain telecommunications utilities;  
 7 relating to the designation of a dominant carrier in telecommunications markets;  
 8 extending the termination date of the Regulatory Commission of Alaska; and providing  
 9 for an effective date."

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

11 \* Section 1. AS 42.05.145 is amended by adding a new subsection to read:  
 12 (b) Upon the commission's approval of a carrier's application for a certificate

1 to provide competitive local exchange telecommunications service in an incumbent  
2 local exchange carrier's service area, the incumbent local exchange carrier is subject to  
3 the same retail tariff standards and regulations as the new carrier. However, the  
4 incumbent local exchange carrier remains the carrier of last resort in the relevant area  
5 until the commission orders otherwise.

6 \* **Sec. 2.** AS 42.05.291 is amended by adding a new subsection to read:

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

12 \* **Sec. 3.** AS 42.05 is amended by adding new sections to read:

13 **Sec. 42.05.433. Exemption from retail tariffs for telecommunications**  
14 **services in a competitive market.** (a) A local exchange carrier in a competitive  
15 service area may file a certification with the commission certifying that the relevant  
16 market satisfies the competitive service area standard of this section. A certification  
17 exempts the telecommunications utility from retail tariff filing requirements.

18 (b) A certification filed under (a) of this section is effective upon filing. The  
19 commission may deny a certification only upon a written finding and order that, based  
20 on a preponderance of the evidence, the competitive service area standard has not been  
21 met.

22 (c) A local exchange carrier granted a retail tariff exemption under (a) of this  
23 section is, with regard to retail service in competitive service areas, exempt from the  
24 following provisions of this chapter: AS 42.05.361, 42.05.371, 42.05.381, 42.05.391,  
25 42.05.411, 42.05.421, and 42.05.431.

26 (d) In this section,

27 (1) "competitive service area" means the service area served by a local  
28 exchange carrier in which at least 50 percent of all retail customers have a choice of  
29 facilities-based service providers;

30 (2) "facilities-based service provider" means a telephone utility that  
31 offers a portion of its products and services by means of facilities it owns and operates

1 or by means of facilities and unbundled network elements it leases from another  
2 provider, or any combination of facilities owned and leased;

3 (3) "network element" means a facility or equipment used in the  
4 provision of a telecommunications service;

5 (4) "retail" means services or products sold directly to the actual user  
6 of the services or products;

7 (5) "unbundled" has the meaning given in 47 U.S.C 251(c)(3).

8 **Sec. 42.05.435. State telecommunications policy: pricing of unbundled**  
9 **network elements.** (a) A telephone utility providing unbundled network elements to  
10 other telephone utilities under state or federal law shall be allowed to recover the  
11 future costs it expects to incur to provide the unbundled network element and shall be  
12 allowed a reasonable profit or such other measure of costs as federal law may specify.  
13 To the maximum extent allowable under federal law, the best evidence of the future  
14 costs a telephone utility expects to incur shall be based on the following:

15 (1) the utility's most current costs for individual cost components, such  
16 as labor and materials in the relevant service area, adjusted for inflation;

17 (2) fill factors that represent a reasonable projection of actual total  
18 usage of the elements in question;

19 (3) the most efficient technology the telephone utility has actually  
20 deployed, which shall be presumed to be the most efficient technology available; and

21 (4) the cost of capital that reflects the risks associated with a  
22 competitive market.

23 (b) In this section, "network element" and "unbundled" have the meanings  
24 given in AS 42.05.433.

25 \* Sec. 4. AS 42.05.471 is amended by adding a new subsection to read:

26 (c) A telephone utility's proposed depreciation rates for all rates established by  
27 the commission in a competitive service area shall be allowed to the maximum extent  
28 allowed by law if the underlying service lives are not shorter than the general  
29 depreciation system service lives permitted by the United States Internal Revenue  
30 Service to determine the appropriate level of depreciation expense for federal income  
31 tax computations. The commission may not require a telephone utility to file a

1 depreciation study unless the telephone utility proposes to use depreciation rates based  
2 on service lives that are shorter than the general depreciation system service lives  
3 permitted by the Internal Revenue Service.

4 \* **Sec. 5.** AS 42.05.810 is amended by adding a new subsection to read:

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

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

12 (4) Regulatory Commission of Alaska (AS 42.04.010) -- June 30, 2007  
13 [2003];

14 \* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to  
15 read:

16 **APPLICABILITY.** To implement the policies of AS 42.05.433 and 42.05.435, added  
17 by sec. 3 of this Act, and AS 42.05.471(c), added by sec. 4 of this Act, the Regulatory  
18 Commission of Alaska shall adopt rate adjustments that conform to this Act within the 90  
19 days after submission by a telephone utility. If the commission fails to act within 90 days  
20 after the submission of conforming rate adjustments, those adjustments shall be considered  
21 lawful. Any pending tariff filing, rate setting or other retail-rate-related proceedings shall be  
22 dismissed by the commission upon the filing of a certificate for a retail tariff exemption under  
23 AS 42.05.433, enacted by sec. 3 of this Act.

24 \* **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).

# LEGAL SERVICES

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

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## MEMORANDUM

May 5, 2003

**SUBJECT:** Sectional Summary of CSHB 111(L&C), Opinion on Executive Order 111, and consideration of the federal Telecommunications Act of 1996 (Work Order No. 23-GH1049\S)

**TO:** Representative Bill Williams  
Attn: Randy Ruaro

**FROM:** Barbara R. Craver  
Legislative Counsel

### **1. Sectional summary**

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," to provide that, when a new telecommunications 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 amends AS 42.05.291 to provide that any new laws or rules that change standards for services or facilities operate prospectively only, and to preclude the requiring of a retrofit to a telecommunication network without the utility's consent.

**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

Representative Bill Williams

May 5, 2003

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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.

**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. This 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 statewide 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 of Alaska 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 Regulatory Commission of Alaska 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.

## **2. Executive Order No. 111**

The executive order transfers the public advocacy duties in utility cases from the Regulatory Commission of Alaska to the Attorney General's Office. Currently the RCA statutes provide for a section of the RCA to serve as the "public advocacy section." AS 42.04.150. Under the executive order, the commission is required to request the attorney general to participate as a party to represent the public interest. From a legal standpoint I cannot see any difference this would make; the public interest will still be represented by state funded attorneys. There may be practical and policy differences, but I cannot see any change from the legal standpoint.

## **3. Federal Telecommunications Act of 1996**

I do not have an expertise in the Federal Telecommunications Act of 1996 however I am not aware that any of the provisions added by the House L & C committee substitute would violate the federal act. You have asked for a quick response to your request, so I

Representative Bill Williams

May 5, 2003

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am not able to devote the time that would be required to familiarize myself further with the federal act in order to respond.

The testimony at the House Labor and Commerce committee meeting on April 23, 2003, included that of several experts in telecommunications law. There appeared to be a difference in opinion as to whether the existing bill and the proposed amendments amounted to a violation of federal law, however most of the debate appeared to be on the policy issues. Only the representative from GCI stated that the bill would violate federal law. ACS's attorney said it would not. I am not in a position to advise you about whether these amendments would or would not be found to be violations of federal telecommunications law. This is a complex area that changes rapidly. There were remarks at the meeting regarding a 5,000 page FCC order that was expected to be released on the topic of state control of telecommunications markets. To my knowledge, that order has not been released.

If I may be of further assistance, please advise.

BRC:mdr

03-101.mdr

*Scott Wiseman*  
*Executive Director*

Position: NO POSITION  
Date: 5/6/03

ILLINOIS COMMERCE COMMISSION  
93<sup>rd</sup> GENERAL ASSEMBLY  
POSITION PAPER

Bill Number: SB 885

House Sponsor: S. Davis

Amendment: HA1

Senate Sponsor: Clayborne

Brief description of major bill components:

This bill would legislate wholesale prices by establishing in the law the ratemaking guidelines for SBC Illinois related to unbundled network elements (UNEs). The bill has several major components:

- Depreciation rates and fill factors are the major inputs used to calculate wholesale Unbundled Network Element rates. This bill sets these inputs at "actual levels" for unbundled loops (the line connecting a customer to a central office).
- The bill requires the ICC to use SBC's cost models and methodology as introduced by SBC in a pending case (ICC Docket No. 02-0864) and to complete the necessary rate adjustments within 30 days after the effective date of this act.
- The effect of these first two components is an increase in SBC's current wholesale rates.
- The new wholesale rates would automatically be incorporated into all interconnection agreements and all tariffs (contracts between SBC and its competitors).
- The bill abates ICC Docket No. 02-0864, the current case investigating these same SBC wholesale rates.
- To promote competition, a different section of the Public Utilities Act (Section 13-505.1) requires SBC to increase its retail rates if the increased wholesale rates go above current retail rates. This bill nullifies the impact of that section and provides that irrespective of the increase in wholesale rates, even if SBC's wholesale rates exceed SBC's retail rates, retail rates "shall not be required to increase."
- For 2 years, recurring wholesale rates will be frozen for "the first 35,000 voice grade equivalent lines used by" a competitor. The carrier in question would have to designate the lines to be frozen.
- Payphone wholesale rates are excluded from this wholesale rate freeze.

Changes in existing law:

This bill adds new Sections 13-408 and 13-409 to the Public Utilities Act.

Apparent reason(s) bill was introduced:

To guarantee increases in SBC's wholesale UNE loop rates and to automatically incorporate these rates into all of SBC's interconnection agreements.

Prior legislative history:

None

Possible impact on current agency policies and operations:

This represents a major departure from Federal and Illinois telecommunications regulatory policies and operations. The intent of the Federal Act, the State statutes, and FCC/ICC regulations has been to create an environment where consumers will realize the benefits lower costs and be given more choices if there is competition for their telephone service. The FCC gave state commissions the task of applying FCC pricing principles (called TELRIC) in determining the wholesale rates that competitors pay for individual Unbundled Network Elements ("UNEs" – the piece-parts of the telephone network). The ICC determines these rates using cost-based information provided by SBC through a judicial process, which permits participation by interested parties (the Attorney General, CUB, the U.S. Department of Defense, SBC, Competitors, etc.).

This bill would statutorily define the key factors used to calculate the wholesale rates that SBC is allowed to charge competitors for the use of its system and would set these wholesale rates until such time that this provision of the law is changed. In effect, the bill transfers the determination of just and reasonable wholesale rates to the General Assembly. This bill would result in significant increases for certain UNE rates over the current approved rates. Furthermore, the bill automatically incorporates these new rates into all of SBC's interconnection agreements with its competitors, and is a departure from freedom of contract laws and the Federal Telecom Act of 1996.

In addition, it is the policy of the Illinois Commerce Commission to reduce regulations where appropriate and replace them with market forces. This bill sets forth an elaborate set of regulatory burdens on the Illinois telecommunications industry and potentially has a negative impact on the competitive environment.

Probable increased/decreased fiscal impact:

Internal: Decrease in the short run as the bill abates a major case currently before the ICC. The bill could produce a long-term increase however, due to an increase in complaints by competitors and consumers if competition diminishes and a need to reevaluate retail rates results.

External: Other agencies currently participating in the case (02-0864) abated by this bill may experience a decrease.

State telecommunications tax revenues may decline as competitors scale back their Illinois operations and telecommunications customers migrate away from higher priced telephone services to reduced usage or to lower priced alternatives such as wireless service and non-taxed Internet telephony.

Effective Date:

Immediately

Probable origin of bill and sources of support or opposition:

This is an SBC Initiative

Support: SBC

Oppose: Business Groups, Citizens Action, CUB, AARP, Attorney General, other consumer groups, Competitive Carriers

Agency position and reasons for position:

The ICC takes no official position on this bill. It is difficult for the ICC to take a position on this bill in order for the Commission not to compromise what is in the pending docket 02-0864. The Commission, if it supported the numbers, or, said they were wrong, could be accused of having prejudged the case. However, with that said, if the General Assembly chooses to enact this bill, the ICC will take this statutory direction into account going forward.

The FCC gave states the task of applying FCC pricing principles (called TELRIC) in determining the rates competitors pay for individual UNEs. This "TELRIC" methodology identifies the most efficient costs associated with a forward looking, future network and is designed to send appropriate economic signals to both the incumbent and competitive carriers. The Supreme Court recently upheld the TELRIC pricing methodology and other obligations imposed by the FCC on incumbent local telephone companies. The ICC pays considerable attention to the prices charged for unbundled network elements through a judicial process in order to determine rates that are fair to all of the parties involved. This process allows all parties a forum to present their respective cases so that no entity can claim unfairness; a process that has held firm for decades and has been affirmed continually by the judiciary.

By legislating certain cost factors and cost methodology, this bill takes away from the parties the opportunity for debate on the calculation of rates. The result would be to deny the rights of judicial due process to all of the parties affected by these rates and to remove any flexibility in responding to new developments in the telecommunications industry. This would reduce the State's ability to quickly respond to new developments in the marketplace such as changes in costs, improved technology, and other competitive advancements, as it is more difficult and time consuming to make changes through the

ICC Analysis

legislative process. Furthermore, because this bill is likely to have some detrimental impact on competitive carriers and their customers, any rate increase could be used by political opponents of those who are seen as supportive of this legislation.

Apart from this overall issue, the bill raises a number of other specific concerns:

- Lines 66-112, Sets fill factors and depreciation rates at actual levels: The bill would legislate the position of one party (SBC) to a current Commission case (docket 02-0864). From a regulatory standpoint, this would reduce the ability of judicial, due process to balance the interests of all interested parties in wholesale proceedings. This could also be seen as a denial of the due process rights of all of the other parties to this docket (the Attorney General, CUB, the US Department of Defense, Competitive Carriers, etc.).
- Lines 114-136, Legislates burden of proof: The FCC established that the incumbent carrier (SBC in this case) has the burden of proof to establish that its proposed wholesale rates and cost support are appropriate. By codifying the cost models and methodology introduced by SBC in Docket 02-0864, this bill would establish by state law that SBC has met this burden of proof.
- Lines 119-130, Inconsistent application: The opening language of the bill states that it applies to all carriers operating under an alternative regulation plan, however the requirements of Section 13-408 only apply to a carrier operating under an alternative regulation plan as of the effective date of this act (SBC only). This would establish a very different treatment of SBC vs. any other incumbent who elects an alternative regulation plan in the future. This would result in an inequitable treatment of the incumbent carriers and would move away from the statute's current carrier-neutral policies.
- Lines 139-141, Interconnection Agreements: The bill mandates that the new rates set pursuant to these new sections would be automatically incorporated into all existing interconnection agreements. These interconnection agreements are the contracts that lay out the terms and conditions of the business relationship between SBC and its competitors. This represents a direct contradiction with the negotiating process established by the Federal Telecommunications Act of 1996 and State and Federal freedom of contract laws.
- Lines 142-162, Protections of the judicial process: As noted above, this legislation would shift certain wholesale ratemaking responsibilities from the ICC to the General Assembly. The General Assembly and the Commission have established a body of policies and procedures designed to ensure that all telecommunications rates are "just and reasonable" and are not anti-competitive. This judicial process also safeguards the interests of all telecommunications carriers and consumers. Because this bill waives the tariff and imputation protections of the Public Utilities Act and abates the ICC's current investigation (docket 02-0864) into the wholesale rates established by this bill, this would remove key regulatory provisions designed to protect the telecommunications consumers of Illinois.

- Lines 161-165, Imputation and the retail rate increase: The bill states that the imputation provisions of Section 13-505.1 shall not require any increase in retail rates as a result of the increase in unbundled network element rates. This provision does not guarantee that retail rates will not increase because of this legislation, merely that the imputation provisions of Section 13-505.1 will not "require" an automatic increase. Telecommunications carriers would still have the ability to increase retail rates and coupled with the increase in wholesale rates would likely do so.
- Lines 169-256, Recurring wholesale rate freeze for UNEs applicable to competitors' first 35,000 customers: The bill establishes a complicated process for competitive carriers to designate 35,000 access lines for which the monthly wholesale rates would be frozen for two years. First, as this is a rate freeze, these rates could not be adjusted up or down even if cost data would support an adjustment. Second, competitors that want to take advantage of the rate freeze would have to utilize a complicated designation process, which would force these carriers to give information to SBC about their best customers. In this way, SBC would be able to directly market "Winback" offers to these customers.

Testimony at committee (if needed):

Scott Wiseman, Executive Director – (785-7456)

Phil Casey, General Counsel 782-7482

Jonathan Feipel, Assistant Director - Telecommunications Division (524-4220)

**BILL ANALYSIS****SENATE BILL 885**

<b>LEGAL</b>	Tim Fox		
<b>RESEARCH</b>	Jack Unzicker (782.1310) ne		
<b>SPONSOR</b>	S. Davis / Clayborne		
<b>DATE</b>	5/2/03	<b>UPDATE</b>	5/7/03
<b>COMMITTEE</b>	Public Utilities		

**HOUSE AMENDMENT #1 BECOMES THE BILL****EXECUTIVE SUMMARY (pending HA#1)**

SB 885 directs the Illinois Commerce Commission to raise the monthly (wholesale) rates competitors pay SBC Illinois (the incumbent local exchange carrier) to lease its "unbundled network elements" in order to provide for local telephone service to customers. The Commission must use "fill factors" (the portion of a facility or element that will be filled with network usage) and "depreciation rates" (forward-looking) in determining these rates. In addition, the Commission must adjust rates, currently in effect, within 30 days.

Current monthly rates will be frozen for two years for the first 35,000 telephone "voice grade" lines leased from SBC (by a competitor). After two years, monthly rates increase to the higher level set by the Commission. Telecommunication companies that lease more than 35,000 lines pay the higher fee, set by the Commission, for any lines over 35,000. Rates for leasing "undesigned voice grade" lines (i.e. not one of the 35,000 lines selected by the carrier) are not eligible for a two year rate freeze and are set by the Commission.

Access lines leased to payphone companies, by SBC, are not eligible for the two year rate freeze. Also, the rate freeze does not apply to any company or its affiliate that leases lines to payphone companies.

- **Proponents of HA#1** argue that current law fails to reflect the cost of upgrading and maintaining the phone lines and equipment it must share with competitors. The current state-imposed formula for determining what wholesale rates SBC can charge competitors – the cost of the shared element plus 10% markup for sales, marketing and other costs – is out of date and needs to be changed. HA#1 contains SBC's proposed changes to current law.
- **Opponents** argues that competition is working in Illinois and SBC's proposed rate increases (for competitors to lease parts of SBC's network) will only increase telephone rates for both residential and business customers and effectively kill competition for local telephone service in the State.

**SENATE ACTION**

Committee: 11-0-0 Environment & Energy  
 Third Reading: 54-1-2 4/3/03

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**HOUSE ACTION**

Committee: 12-5-1 Public Utilities  
Third Reading: 66-39-10 5/7/03

**CURRENT LAW/POLITICAL BACKGROUND****Federal Law**

The Federal Communications Commission (FCC) requires SBC to lease any part of their phone networks, including separate pieces known as "unbundled network elements" (UNE), to competitors and give phone customers a choice of local telephone companies.

**NOTE:** SBC argues that this requirement goes beyond the requirements of the federal Telecommunications Act of 1996 which only requires companies like SBC, which is the incumbent local telephone service provider, to lease parts of its network that were deemed necessary to provide "ordinary service" to customers.

The federal Telecommunications Act gave state commissions the authority to apply FCC pricing principles (called TELRIC) in determining the wholesale rates competitors pay for individual unbundled network elements (UNE). The U.S. Supreme Court recently upheld the FCC's pricing principles.

**State Law**

In 2001, Illinois' telecommunications law was revised (PA 92-0022). Section 13-801 (220 ILCS 5/13-801) requires SBC (the local telephone service provider) to open its telephone network to competitors (Competitive Local Exchange Carriers). The law authorizes the Illinois Commerce Commission to require SBC to provide interconnection [Sec. 13-801(b)], collocation [Sec. 13-801(c)], network elements [Sec. 13-801(d)(1), (2) and (3)] and access to operation support systems to competitors on just, reasonable, and nondiscriminatory terms, rates and conditions.

The wholesale rates are based on costs developed over time through exhaustive investigations at the ICC using FCC pricing principles. The ICC determines these rates using cost-based information provided by SBC through a judicial process, which permits the participation by interested parties (the Attorney General, CUB, the U.S. Department of Defense, SBC, Competitors, etc.).

**Illinois Commerce Commission**

In late December 2002, SBC proposed to the Commission (Docket 02-0864) an increase in rates it charges for the "loop" when sold to competitors as "unbundled network elements" (UNE).

The UNE rates being investigated include:

- Recurring and non-recurring (one-time) charges for all types of "local loops" (i.e. the line from the customer to the central office and includes basic voice and data loops);
- Non-recurring charges only for UNE-Platform (UNE-P)(mostly the one-time hook-up fees paid by a competitor when it signs up a new customer); and

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- Non-recurring charges only for "Enhanced Extended Loops" and "Special Access" conversions (high-speed "transport facilities" used to transmit large amounts of aggregated voice traffic).

This case is still pending and the Commission is expected to issue final order on November 23, 2003.

**DETAILED DESCRIPTION OF ORIGINAL BILL**

SB 885, which is a shell bill, makes a technical change to the Telecommunications Article of the Public Utilities Act.

**AMENDMENT ANALYSIS**

HA#1, which becomes the bill, adds two new sections to the Telecommunications Article of the Public Utility Act regarding "unbundled network element rates." The amendment defines the key factors that the Commission must use to calculate wholesale rates that SBC is allowed to charge competitors for the use of its system.

Specific provisions include:

Section 13-408 (new). Unbundled network element rates.

- Findings

The General Assembly should provide direction to the Illinois Commerce Commission regarding the establishment of the monthly recurring rates that a company providing local telephone service (i.e. incumbent local exchange carrier) shall charge competitors for unbundled loops, whether provided on a standalone basis or in combination with other unbundled network elements, in order to insure:

- (i) that such rates are consistent with the requirements of the federal Telecommunications Act of 1996, the regulations adopted under this Act, and under Illinois law (Subsection (g) of Section 13-801), and
- (ii) that a company providing local telephone service should be able to recover the efficient, forward-looking costs of creating, operating, and maintaining the network outside plant infrastructure capacity and switching and transmission network capacity necessary to permit such local telephone providers to meet the obligations, under Illinois law (Section 13-801), in a timely manner and adequate fashion.

- Setting rates

The Illinois Commerce Commission shall set the recurring rates that local telephone providers (i.e. incumbent local exchange carrier) receive for providing access to unbundled loops, whether provided on a standalone basis or in combination with other unbundled network elements as follows:

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- (a) Fill factors – the Illinois Commerce Commission is directed to use fill factors – the proportion of a facility or element that will be “filled” with network usage – that represents a reasonable projection of the actual total usage of the elements in question, in accordance with applicable federal law. The existing actual total usage of the elements that affected local telephone company (i.e. incumbent local exchange carrier) are required to provide to competitors (as reflected in the current actual fill factors for the element in question) is the most reasonable projection of actual total usage. Therefore the Commission is directed to use current actual fill factors that reflect such existing total usage on a going forward basis in establishing cost-based rates for such unbundled network elements.

In addition, the Commission shall adjust all existing Commission-approved rates for unbundled loops, whether provided on a standalone basis or in combination with other unbundled network elements, that are currently in effect, to make such rates consistent with this provision.

- (b) Depreciation rates – the Illinois Commerce Commission is directed to use depreciation rates that are forward-looking and based on economic lives as reflected in the local telephone provider's (i.e. incumbent local exchange carrier) books of accounts as reported to the investment community under the Securities and Exchange Commission regulations. Use of accelerated depreciation mechanism is required in all cases. Use of a depreciation rate based on historical rate-of-return regulation derived lives of the elements and facilities in question is prohibited.

In addition, the Commission shall adjust all existing Commission-approved rates for unbundled loops, whether provided on a standalone basis or in combination with other unbundled network elements, that are currently in effect, to make such rates consistent with this provision.

- (c) Rate adjustments required under subsections (a) and (b) above must be completed within 30 days after the legislation becomes effective.
- (d) Notwithstanding anything to the contrary contained in Section 13-505.1 (requirements for changes in rates for competitive services), unbundled network element rates, established in accordance with the requirements of this section (13-4048), shall not require any increase in any retail rates for telephone services.

**Section 13-409 (new). Application of Unbundled Network Rates**

- (a) Rates during first two years – the monthly rates paid by competitors for the first 35,000 “voice grade equivalent access lines” and the unbundled network elements associated with those lines are frozen at current levels for two years from the effective date of this legislation.
- (b) Rates after two years – after two years the monthly rates paid by competitors shall be in accordance with rates established by the Commission under the provisions of Section 13-408.
- (c) Rates for over 35,000 Lines – competitors that lease over 35,000 “voice grade

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equivalent access lines," and the unbundled network elements associated with those lines, must choose which lines will have the rates frozen for a two-year period (as provided in subsections (a) and (b)). If a competitor loses the customer leasing an access line, during the two-year period when rates are frozen, the competitor may not substitute another customer at the frozen rate, but must lease the line at the full recurring rate established by the Commission under Section 13-408.

**NOTE:** "Voice grade equivalent lines" do not include high volume data transmission over DS1 (24 lines) or DS 2 (76 lines) lines.

In addition, all unbundled network elements leased to provide service over "undesignated voice grade" equivalent access lines (i.e. is not one of 35,000 lines selected by the carrier) shall be subject to the full monthly recurring rate established by the Commission according to Section 13-408.

- (d) Rates for under 35,000 Lines – competitors that lease under 35,000 "voice grade equivalent access lines," and the unbundled network elements associated those lines, must choose which lines will have rates frozen for a two-year period (as provided in subsections (a) and (b)). If a competitor loses the customer leasing an access line, during the two-year period when rates are frozen, the competitor may not substitute another customer at the frozen rate, but must lease the line at the full recurring rate established by the Commission under Section 13-408.

In addition, all unbundled network elements leased to provide service over "undesignated voice grade" equivalent access lines (i.e. is not one of the 35,000 lines selected by the carrier) shall be subject to the full monthly recurring rate established by the Commission according to Section 13-408.

- (e) For the purposes of determining when an individual telecommunications carrier has reached 35,000 voice grade equivalent lines, a specific carrier (carrier affiliate, any carrier serving as a sales or marketing agent and carrier with whom that carrier has a cooperative sales or marketing agreement) shall be treated as a single "individual" carrier.
- (f) Access lines leased to payphone service providers are not eligible for the rate freeze or discount provided for the first 35,000 voice grade equivalent access lines (under subsections (a) and (b)). In addition, the provisions of subsections (a) and (b) do not apply to unbundled network elements that are leased by individual telecommunications carriers to provide local telephone service to payphone providers.

Section 99. The bill has an immediate effective date.

**PROPONENTS/OPPONENTS**

**Proponents:** SBC Illinois, International Brotherhood of Electrical Workers (IBEW Locals #21 & 134), Chicago Federation of Labor, Communications Workers of America, Illinois AFL-CIO, Interface Computer Communications, Nash Brothers Construction, IHC Construction Company, LECG, Reliable Contracting, RAW Construction, Phone Masters

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- SBC argues that current law fails to reflect the cost of upgrading and maintaining the phone lines and equipment it must share with competitors. The current state-imposed formula for determining what wholesale rates SBC can charge competitors – the cost of the shared element plus 10% profit plus a 35% markup for sales, marketing and other costs – is out of date and needs to be changed. HA#1 contains SBC's proposed changes.

Opponents: Illinois Attorney General, American Assn. of Retired Persons (AARP), Citizens Utility Board (CUB), Citizens Action, Illinois Lt. Governor, AT & T, MCI/World Com., Sprint, IL. Public Telecommunications Assn., COVAD, Competitive Local Exchange Coalition of Illinois, Access One, CIMCO Communications, McLeod USA, Globalcom, Time Warner Telecom, Z-Tel, Talk America, Cable Television & Communications Association of Illinois, Comcast Corp., and McLeod USA.

- Opponents argue that competition is working in Illinois, and SBC's proposed rate increases (for competitors to lease parts of SBC's network) will only increase telephone rates for both residential and business customers and effectively kill competition for local telephone service in the State.

No Position: Illinois Commerce Commission, Verizon, and IL. Independent Telephone Assn.

1 AN ACT concerning telecommunications.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Public Utilities Act is amended by adding  
5 Sections 13-408 and 13-409 as follows:

6 (220 ILCS 5/13-408 new)

7 Sec. 13-408. Unbundled network element rates. This  
8 Section applies to and covers certain unbundled network  
9 element rates that shall be charged by incumbent local  
10 exchange carriers that are subject to regulation under an  
11 alternative regulation plan under Section 13-506.1 of this  
12 Act. The General Assembly finds and determines that it should  
13 provide direction to the Illinois Commerce Commission  
14 regarding the establishment of the monthly recurring rates  
15 that such incumbent local exchange carriers shall charge  
16 other telecommunications carriers for unbundled loops,  
17 whether provided on a standalone basis or in combination with  
18 other unbundled network elements, in order to ensure (i) that  
19 such rates are consistent with the requirements of the  
20 federal Telecommunications Act of 1996, the regulations  
21 promulgated thereunder, and subsection (a) of Section 13-801  
22 of this Act, and (ii) that such incumbent local exchange  
23 carriers are able to recover the efficient, forward-looking  
24 costs of creating, operating, and maintaining the network  
25 outside plant infrastructure capacity and switching and  
26 transmission network capacity necessary to permit such  
27 incumbent local exchange carriers to meet in a timely and  
28 adequate fashion the obligations imposed by Section 8-101 of  
29 this Act.

30 In order to ensure recurring unbundled network element  
31 rates for loops that accomplish these objectives, the

1 Illinois Commerce Commission shall set the recurring rates  
2 affected incumbent local exchange carriers receive for  
3 unbundled loops, whether provided on a standalone basis or in  
4 combination with other unbundled network elements, in  
5 accordance with the requirements delineated below.

6 (a) Fill factors. The General Assembly directs that the  
7 Illinois Commerce Commission shall employ fill factors (the  
8 proportion of a facility or element that will be "filled"  
9 with network usage) that represent a reasonable projection of  
10 actual total usage of the elements in question, in accordance  
11 with applicable federal law. The General Assembly finds that  
12 existing actual total usage of the elements that affected  
13 incumbent local exchange carriers are required to provide to  
14 competing local exchange carriers, as reflected in the  
15 current actual fill factors for the elements in question, is  
16 the most reasonable projection of actual total usage. The  
17 Commission, therefore, shall employ current actual fill  
18 factors that reflect such existing actual total usage on a  
19 going forward basis in establishing cost based rates for such  
20 unbundled network elements. In addition, the Commission shall  
21 adjust all existing Commission-approved rates for unbundled  
22 loops, whether provided on a standalone basis or in  
23 combination with other unbundled network elements, that are  
24 currently in effect to make such rates consistent with this  
25 provision.

26 (b) Depreciation rates. The General Assembly further  
27 directs that the Commission shall employ depreciation rates  
28 that are forward-looking and based on economic lives as  
29 reflected in the incumbent local exchange carrier's books of  
30 accounts as reported to the investment community under the  
31 regulations of the Securities and Exchange Commission. Use of  
32 an accelerated depreciation mechanism shall be required in  
33 all cases. Use of a depreciation rate based on historical  
34 rate-of-return regulation derived lives of the elements and

1 facilities in question shall be prohibited. In addition, the  
2 Commission shall adjust all existing Commission-approved  
3 rates for unbundled loops, whether provided on a standalone  
4 basis or in combination with other unbundled network  
5 elements, that are currently in effect to make such rates  
6 consistent with this provision.

7 (c) The rate adjustments required by subsections (a) and  
8 (b) of this Section must be completed within 30 days of the  
9 effective date of this Section. In the case of any incumbent  
10 local exchange carrier that is subject to an alternative  
11 regulation plan under Section 13-506.1 at the time this  
12 Section becomes effective, in making these rate adjustments,  
13 the Commission shall determine the specific required  
14 adjustments with respect to fill factors and depreciation  
15 lives by employing the models and methodology used to  
16 generate the proposed rates submitted by such an incumbent  
17 local exchange carrier in ICC Docket 02-0864. The Commission  
18 proceedings initiated to establish such adjusted rates shall  
19 be deemed interconnection agreement arbitration and approval  
20 proceedings under Sections 252(b) and (e) of the federal  
21 Telecommunications Act of 1996. Immediately upon conclusion  
22 of such proceedings, all existing interconnection agreements  
23 in this State of affected incumbent local exchange carriers  
24 shall be deemed amended to contain the adjusted rates  
25 established in such proceedings. In addition, immediately  
26 upon conclusion of such proceedings, all wholesale tariffs,  
27 currently effective in this State, of affected incumbent  
28 local exchange carriers shall be deemed amended to contain  
29 the adjusted rates established in such proceedings. In  
30 accordance with these provisions, immediately upon the  
31 establishment by the Commission of the adjusted rates covered  
32 hereby, each affected incumbent local exchange carrier shall  
33 charge such adjusted rates, to the extent applicable, for all  
34 of the network element products that are provided to other

1 carriers, whether those products are provided under an  
2 interconnection agreement or a tariff. The proceeding in ICC  
3 Docket 02-0864 is hereby abated as of the effective date of  
4 this amendatory Act of the 93rd General Assembly.

5 (d) Notwithstanding anything to the contrary contained  
6 in Section 13-505.1 of this Act, unbundled network element  
7 rates established in accordance with the provisions of this  
8 Section shall not require any increase in any retail rates  
9 for any telecommunications service.

10 (220 ILCS 5/13-409 new)

11 Sec. 13-409. Application of Sec. 13-408 unbundled  
12 network element rates.

13 (a) During the first 2 years following the effective  
14 date of Section 13-408, for the first 35,000 voice grade  
15 equivalent access lines used by an individual carrier to  
16 provide local exchange service to end users, the monthly  
17 recurring rate for the unbundled network elements associated  
18 with those lines and leased from an incumbent local exchange  
19 carrier to which Section 13-408 applies shall be frozen at  
20 the levels in effect immediately prior to the effective date  
21 of Section 13-408.

22 (b) Thereafter, the monthly recurring rates for all  
23 unbundled network elements provided by any incumbent local  
24 exchange carrier to which Section 13-408 applies shall be the  
25 rates established by the Commission in accordance with the  
26 provisions of Section 13-408.

27 (c) If, as of the effective date of Section 13-408 and  
28 this Section, an individual telecommunications carrier uses  
29 unbundled network elements leased from a specific incumbent  
30 local exchange carrier to provide local exchange service over  
31 more than 35,000 voice grade equivalent access lines, that  
32 carrier must designate the 35,000 voice grade equivalent  
33 access lines to which the provisions of subsections (a) and

1 (b) of this Section apply. If subsequent to such designation,  
2 the individual carrier loses the customer served by a  
3 designated access line, and therefore no longer leases the  
4 unbundled network elements associated with that line, the  
5 individual carrier may not designate a different access line  
6 to substitute for the lost line. All unbundled network  
7 elements leased to provide service over undesignated voice  
8 grade equivalent access lines shall be subject to the full  
9 monthly recurring rates established by the Commission in  
10 accordance with the provisions of Section 13-408.

11 (d) If, as of the effective date of this Section, an  
12 individual carrier uses unbundled network elements leased  
13 from a specific local exchange carrier to provide local  
14 exchange service over fewer than 35,000 voice grade  
15 equivalent access lines, that carrier must designate the  
16 access lines to which the provisions of subsections (a) and  
17 (b) of this Section apply. If subsequent to such designation,  
18 the individual carrier loses the customer served by a  
19 designated access line, and therefore no longer leases the  
20 unbundled network elements associated with that line, the  
21 individual carrier may not designate a different access line  
22 to substitute for the lost line. Subject to these  
23 limitations, subsequent to the effective date of this  
24 Section, such a carrier may designate additional voice grade  
25 equivalent access lines to which it wishes the provisions of  
26 subsections (a) and (b) of this Section to apply, until the  
27 total designated lines equal 35,000. If a subsequently  
28 designated line is lost, the carrier will not be permitted to  
29 designate a different line to substitute for that lost line.  
30 All unbundled network elements leased to provide service over  
31 undesignated voice grade equivalent access lines shall be  
32 subject to the full monthly recurring rates established by  
33 the Commission in accordance with the provisions of Section  
34 13-408.

1       (e) For purposes of this Section, in determining when an  
2       individual telecommunications carrier has reached 35,000  
3       voice grade equivalent access lines, a specific carrier, any  
4       affiliate of that carrier, any carrier serving as a sales or  
5       marketing agent for that carrier, and any carrier with whom  
6       that carrier has a cooperative sales or marketing arrangement  
7       all shall be treated as a single individual carrier.

8       (f) Notwithstanding any other provisions of this  
9       Section, access lines provided to payphone service providers  
10       are not eligible for the freeze or discount provided for in  
11       subsections (a) and (b) of this Section. Accordingly, the  
12       provisions of subsections (a) and (b) shall not apply to  
13       unbundled network elements that are leased by individual  
14       telecommunications carriers to provide local exchange service  
15       to payphone service providers.

16       Section 99. Effective date. This Act takes effect upon  
17       becoming law.

**BILL ANALYSIS****SENATE BILL 884**

<b>LEGAL</b>	Tim Fox (558-4874)		
<b>RESEARCH</b>	Jack Unzicker (782-1310) cm		
<b>SPONSOR</b>	Davis, S. (Clayborne)		
<b>DATE</b>	4/24/03	<b>UPDATE</b>	5/15/03
<b>COMMITTEE</b>	Public Utilities		

SEE HOUSE AMENDMENT #1. Becomes the bill.

**EXECUTIVE SUMMARY (as introduced)**

The Public Utilities Act now permits carriers to respond to the marketplace by offering services at rates and terms that differ from their tariffed rates. ICC oversight helps prevent these contracts from having anti-competitive effects. Specifically, ICC staff review the contracts to ensure that the agreements do not include features such as predatory pricing.

Note that SB 884 identical to the engrossed version of HB 2265.

**SENATE ACTION**

Committee:	11-0-0	Environment & Energy
Third Reading:	57-0-0	4/3/03

**HOUSE ACTION**

Committee: 14-0-0  
Third Reading:

**CURRENT LAW/POLITICAL BACKGROUND**

- Permits telecommunications carriers to negotiate with customers or prospective customers to provide competitive services, with regard for tariffs that it may have filed. 220 ILCS 5/13-509.
- Requires carriers to file contract with ICC within 30 days of executing it. Id.

**DETAILED DESCRIPTION OF ORIGINAL BILL**

Amends the Public Utilities Act:

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Under subsection (f) of Section 13-409, access lines leased to payphone service providers are not eligible for the freeze or discount provided for in subsection (a) and (b). In addition, the provisions of subsections (a) and (b) do not apply to unbundled network elements that are leased by individual telecommunications carriers to provide local exchange service to payphone service providers.

**PROPOSERS/OPPONENTS**

Proponents: SBC Illinois, Michael Ward (IL Public Telecommunications Assn.), TruComm., Data Net Systems.

No Position: Illinois Commerce Commission, Verizon.

1 AN ACT concerning telecommunications.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Public Utilities Act is amended by  
5 changing Section 13-509 as follows:

6 (220 ILCS 5/13-509) (from Ch. 111 2/3, par. 13-509)

7 (Section scheduled to be repealed on July 1, 2005)

8 Sec. 13-509. Agreements for provisions of competitive  
9 telecommunications services differing from tariffs. A  
10 telecommunications carrier may negotiate with customers or  
11 prospective customers to provide competitive  
12 telecommunications service, and in so doing, may offer or  
13 agree to provide such service on such terms and for such  
14 rates or charges as are reasonable, without regard to any  
15 tariffs it may have filed with the Commission with respect to  
16 such services. Within 30 business days after executing any  
17 such agreement, the telecommunications carrier shall submit  
18 to the Commission written notice of a list of any such  
19 agreements (which list may be filed electronically). The  
20 notice shall identify the general nature of all such  
21 agreements, the parties to each agreement, and a general  
22 description of differences between each agreement and the  
23 related tariff. A copy of each such agreement and any cost  
24 support required to be filed with the agreement by some other  
25 Section of this Act shall be provided to the Commission  
26 within 10 business days after a request for review of the  
27 agreement is made by the Commission or is made to the  
28 Commission by another telecommunications carrier. file--any  
29 contract--or-memorandum-of-understanding-for-the-provision-of  
30 telecommunications-service,-which-shall-include-the-rates--or  
31 other--charges,-practices,-rules-or-regulations-applicable-to

1 the-agreed-provision--of--such--service:---Any--cost--support  
2 required-to-be-filed-with-the-agreement-by-some-other-Section  
3 of--this--Act--shall--be--filed-within-30-business-days-after  
4 executing-any-such-agreement,-Where--the--agreement--contains  
5 the--same--rates,-charges,-practices,-rules,-and-regulations  
6 found-in-a-single-contract-or-memorandum-already-filed-by-the  
7 telecommunications-carrier-with-the--Commission,-instead--of  
8 filing--the--contract--or--memorandum,-the-telecommunications  
9 carrier-may-elect--to--file--a--letter--identifying--the--new  
10 agreement---and--specifically--referencing--the--contract--or  
11 memorandum-already-on-file-with-the-Commission-which-contains  
12 the-same-provisions,-A-single-letter-may--be--used--to--file  
13 more--than--one--new-agreement- Upon submitting notice to the  
14 Commission of any such agreement filing--its--contract--or  
15 memorandum,-or--letter, the telecommunications carrier shall  
16 thereafter provide service according to the terms thereof,  
17 unless the Commission finds, after notice and hearing, that  
18 the continued provision of service pursuant to such agreement  
19 contract-or--memorandum would substantially and adversely  
20 affect the financial integrity of the telecommunications  
21 carrier or would violate any other provision of this Act.

22 Any agreement or notice contract--or--memorandum entered  
23 into or and submitted filed pursuant to the provisions of  
24 this Section may, in the Commission's discretion, be accorded  
25 proprietary treatment.

26 (Source: P.A. 92-22, eff. 6-30-01.)

27 Section 99. Effective date. This Act takes effect upon  
28 becoming law.

# SBC's legislative triumph is simply breathtaking

BY JAMES SPETA AND JOHN ROBERTS

An Illinois resident would have had to be living under a rock to avoid the ongoing shouting match between SBC and its local telecommunications competitors—a fight that SBC has now won in the state Legislature. We are Illinois residents who both enjoy and have become used to high-volume politics; it is one of the treats of living in Chicago. But as law professors who study and teach telecommunications law, we find the notion that the Illinois Legislature waded into this area of telecommunications law and economics truly remarkable. Indeed, the speed with which this issue plowed through the Illinois Legislature, with the state Senate flipping overnight to pass the bill, and on to the governor's signature leaves us breathless.

This entire debate arises out of the federal Telecommunications Act of 1996, which directed that incumbents like SBC provide elements of their local networks to new entrants so that competition

might develop. This legislation purports to resolve incredibly technical issues of regulatory economics that determine how the elements of SBC's network should be priced when they are leased pursuant to this federal law. The Legislature, of course, is responsible for the Illinois Commerce Commission, whose failure to adopt the rates SBC prefers is what prompted this battle. But lost in the debate and in the manner in which the bill was positioned is that, in this area, the ICC is not principally implementing state law, but rather federal law.

That federal law empowered the Federal Communications Commission to adopt rules that govern this process. And the FCC's rules are reviewed by the federal courts. When the ICC acts to set the particular prices that SBC can charge, it acts to implement federal law, and it must apply the rules and economic methodologies that the federal commission has established. Moreover, when the ICC acts to set prices in any particular case, its actions are subject to judi-

**No one should entertain any hope that this new law, on its own, will resolve any issues.**

cial review in the federal courts. What is therefore so remarkable about the Illinois Legislature tackling this issue—and the reason we are surprised that the legislation passed—is how unnecessary it all seems. The law suggests that it is merely providing “direction” to the ICC, but the ICC is following federal rules that the incumbents have already had every opportunity to affect. SBC, and other incumbent companies, lobbied the Congress extensively concerning the 1996 Act (and they continue to lobby Congress for amendments). They presented their cases to the FCC and have challenged the FCC's rules in federal appellate courts. Indeed, the Supreme Court has twice heard cases involving the FCC's local competition rules, and, although it struck down certain of them, it both confirmed the FCC's primary role in implementing the federal law and specifically ap-

proved the FCC's pricing methodologies. In fact, Congress, the FCC and the federal courts have all rejected the argument that SBC is entitled to recover the accounting costs of constructing its networks. Congress recognized that it would be necessary to provide access at favorable rates if competition with the former monopoly Bell companies was to become a reality.

SBC may be right that the prices as set by the Illinois commission are too low. The ICC had not in fact rejected SBC's most recent requests, but, on the basis of a staff report that concluded that SBC's request would hurt competition and might raise prices to consumers, had merely set the matter down for extended inquiry. SBC decided not to try to prove its case at the commission, and the legislation it has secured simply directs that its side be accepted. What most surprises us about this

law is that the legislators did not even wait for the expert commission to develop a record on SBC's proposal. Again, whatever the merits of the debate, this would seem a matter for an expert administrative agency and its economists to resolve under direction of the federal law. And after this expert record were developed, the Legislature would have had much better basis for deciding whether the commission had gotten it wrong.

No one should entertain any hope that this new law, on its own, will resolve any issues or establish the certain playing field necessary for competition to develop. It will be challenged in the federal courts, at the FCC and in Congress. One can almost hear the lawyers and lobbyists sharpening their pencils for the next rounds. We have no idea why the Illinois Legislature thought this issue worth its time.

James Speta is associate professor at Northwestern University School of Law, and John Roberts is dean emeritus and professor at DePaul University College of Law.

Chicago Sun-Times 5/14/03

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TO REACH US: letters@suntimes.com

# Chicago Sun-Times

AN INDEPENDENT NEWSPAPER

John Cruickshank • Vice President of Editorial

Michael Cooke • Editor in Chief

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May 19, 2003

## How clout, regulatory bias and politics play phone tag

No technical matter save programming a VCR has generated more public confusion than the telecommunications dogfight over SBC Communications' desire to charge more money to rivals using its telephone lines. Consumers were confused. State senators, who voted down, then 16 hours later, approved, a bill to let SBC charge more were confused by the charts, numbers and claims spewed forth by both sides.

This much is certain: SBC, the Texas-based parent of Ameritech, was required by the 1996 Telecommunications Act to allow competitors to use its lines, so as to foster competition. The rates paid to SBC for this use, by companies such as AT&T and WorldCom, were set by the Illinois Commerce Commission.

The rate the ICC set in Illinois is the lowest or—and the two sides had different figures even for this—among the lowest in the country. The crux of the issue was whether this rate is sufficient for SBC to maintain its telephone network—i.e., whether it is a fair price—or whether this represented a loss for SBC.

The ICC has been mulling the matter and was expected to issue a decision by November, sure to be followed by a long appeal. This delay in part explains SBC's end-run in Springfield. An admittedly troubled company—the whole telecommunications industry is in the midst of tough times—SBC filed last year for a rate revision.

The rate originally set by the ICC was based on stringent technical criteria that resulted in a charge too low, SBC argued. Another factor no doubt was the bias against SBC among the ICC staff that lingers from the days when phones were ruled by the Bell monopoly. SBC's foes coun-

tered that the company was gushing money and trying to undermine competition by pricing access to its network too high.

Meanwhile, SBC has been waging a parallel battle before the ICC for approval to offer long-distance service, which would help it compete with AT&T and other companies that can bundle long distance in with their local service.

In one sense, we can't help but be concerned by the way the legislation on such a complex issue roared through Springfield, surfacing Tuesday and on the governor's desk by Friday. That speaks of enormous clout—the president of SBC is former Clinton Cabinet member and mayoral brother Bill Daley. But this is the kind of legislation you get when regulators move at a snail's pace and rely on prejudiced staff.

The action in Springfield does not meet the people who—in theory—know the most about this issue, the ICC commissioners and staff. They still have a role to play in finally permitting SBC to enter the long-distance business, and in setting a rate, under the timetable and formula spelled out in the new law, that both allows SBC's competitors to profit and lets SBC itself thrive and keep up the network on which all the feuding companies—and the citizens of Illinois—depend.

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 111

1 Page 1, line 1, following "Act":

2 Insert "providing that certain electric cooperative rate increases shall be approved  
3 without change by the Regulatory Commission of Alaska; providing an option for a  
4 hearing by a single administrative law judge or by a panel of administrative law judges  
5 in certain electric cooperative tariff cases involving intervenors;"

6

7 Page 1, following line 3:

8 Insert new bill sections to read:

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

10 **Sec. 42.05.383. Electric cooperative rate increases.** Notwithstanding the  
11 other provisions of this chapter, an increase in a rate by an electric cooperative  
12 organized under AS 10.25 or owned and operated by a municipality shall be approved  
13 on a permanent basis within 10 days without change if

14 (1) the rate increase is effective not earlier than two years after the  
15 previous rate increase;

16 (2) the proposed change to the rate compared to the existing rate is less  
17 than or equal to the rate of inflation; for purposes of this paragraph, "rate of inflation"  
18 means the rate of increase in the Consumer Price Index for all Urban Consumers for  
19 the Anchorage metropolitan area compiled by the Bureau of Labor Statistics, United  
20 States Department of Labor, since the previous rate increase; and

21 (3) the governing body of the utility has voted in a public meeting for  
22 the rate increase.

23 **\* Sec. 2.** AS 42.05 is amended by adding new sections to read:

1           **Sec. 42.05.415. Optional hearing procedures for electric cooperatives for**  
2 **certain rate changes.** (a) An electric cooperative organized under AS 10.25 or  
3 owned and operated by a municipality that files a tariff containing a rate increase  
4 greater than the rate of inflation for the period since the cooperative's last rate change  
5 may request a hearing conducted under this section by an administrative law judge  
6 rather than the commission if there are intervenors. The rates in the tariff shall be  
7 compared to the electric cooperative's existing rates for similar services. The rate of  
8 inflation means the rate of increase in the Consumer Price Index for all urban  
9 consumers for the Anchorage metropolitan area compiled by the Bureau of Labor  
10 Statistics, United States Department of Labor.

11           (b) An electric cooperative requesting a rate increase under (a) of this section  
12 shall give written notice of its request at the time of filing the tariff. The electric  
13 cooperative shall provide its customers with notice of filing the tariff immediately.

14           (c) The commission shall, within 10 days of the filing of a tariff under this  
15 section, confirm in writing that the tariff is to be considered under this section, or shall  
16 inform the electric cooperative that the tariff does not qualify under this section.

17           (d) If the tariff is to be considered under this section, the commission shall

18                 (1) accept for a period of 10 days after a tariff is filed under (a) of this  
19 section petitions for permission to intervene as a party; any petitions received after that  
20 date shall be rejected;

21                 (2) accept answers to petitions to intervene for 10 days after a petition  
22 for permission to intervene is filed; answers filed after that date shall be rejected;

23                 (3) issue an order granting or denying all petitions for permission to  
24 intervene not later than 10 days after the last date that answers to petitions were  
25 accepted and shall, on the same date, notify the electric cooperative whether a hearing  
26 will be required on the tariff filing.

27           (e) If a hearing is required by the commission and any petitions for permission  
28 to intervene are accepted by the commission, the following procedures shall be used:

29                 (1) the parties responsible for the expense of the hearing conducted  
30 under this section shall notify the commission within five days after the date of the  
31 order in (d) of this section whether a single administrative law judge or a panel of

1 administrative law judges will be used; if a panel is used, there must be an odd number  
2 of judges on the panel;

3 (2) the commission shall notify all parties of a meeting to be held  
4 within 10 days after the date of the order in (d) of this section; at the meeting, the  
5 parties shall select the judge or judges to be used in the hearing in accordance with  
6 AS 42.05.417.

7 (f) Notwithstanding AS 42.04.080 and AS 42.05.171, the decisions and orders  
8 of the administrative law judge or panel under this section are not subject to review by  
9 the commission. All final orders of the administrative law judge or panel under this  
10 section are subject to judicial review as final administrative orders in accordance with  
11 AS 44.62.560 and 44.62.570.

12 (g) If an appeal is not taken from a final order of the administrative law judge  
13 or panel, the commission shall approve the tariff implementing the rate changes  
14 approved and ordered by the administrative law judge or panel.

15 **Sec. 42.05.417. Hearings conducted by administrative law judges.** (a) In a  
16 proceeding in which a hearing is to be conducted by an administrative law judge or  
17 judges, the parties shall inform the commission of the name or names of the  
18 administrative law judge or judges the parties will use for a hearing if the parties have  
19 unanimously agreed on the names. The parties shall also provide information  
20 supporting each judge's qualifications under this section for verification by the  
21 commission.

22 (b) If the parties cannot unanimously agree upon the name or names of the  
23 administrative law judges to be used in the hearing, the parties shall request a list of  
24 qualified administrative law judges from the American Arbitration Association. The  
25 number of names requested shall be three times the number of judges that need to be  
26 selected.

27 (c) The parties shall select the administrative law judge or judges not later  
28 than five working days after the list requested under (b) of this section is received.  
29 The selection shall be made according to a process agreed upon unanimously by the  
30 parties, or, if an agreement cannot be reached, by the electric cooperative's striking the  
31 first name and each party's alternately striking a name from the list with the electric

1 cooperative to exercise every other strike until the number of judges needed remains in  
2 the list. Not later than three days after selection of an administrative law judge or  
3 judges for a panel, the parties shall jointly submit a written notification to the  
4 commission of the selection.

5 (d) The commission shall serve a copy of all prior orders and pleadings in the  
6 case on the administrative law judge or panel and on all parties of record. The  
7 commission shall be placed on the service list for all subsequent pleadings and orders  
8 filed and issued in the proceeding.

9 (e) Not later than 30 days after service by the commission of all prior orders  
10 and pleadings, the administrative law judge or panel shall issue an order establishing a  
11 complete procedural schedule for the hearing. A final order on the tariff filing must be  
12 issued by the administrative law judge or panel within the applicable timelines in  
13 AS 42.05.175 and not later than the last day of a suspension that could be issued under  
14 the applicable timelines in AS 42.05.421, or 270 days, whichever is earliest. In all  
15 cases, the administrative law judge or panel may not permit more than 90 days for  
16 discovery and shall adhere to the Alaska Rules of Civil Procedure for all procedural  
17 matters not explicitly governed by regulation.

18 (f) The administrative law judge or panel shall have all of the procedural and  
19 substantive powers and duties that apply to the commission and commission members  
20 under law. However, the scope of the administrative law judge's or panel's  
21 jurisdiction, powers, and duties are limited to approving, modifying, or denying the  
22 rate increases requested in the tariff filed.

23 (g) A party may petition the administrative law judge or panel for  
24 reconsideration of an order issued by the administrative law judge or panel within 10  
25 days after the final order. The motion for reconsideration shall be decided by the  
26 administrative law judge or panel without oral argument. If the motion for  
27 reconsideration has not been ruled upon by the administrative law judge or panel  
28 within 30 days after the date of filing the motion, or within 30 days after the date of  
29 filing a response requested by the administrative law judge or panel, whichever is  
30 later, the motion shall be considered denied.

31 (h) To qualify to serve as an administrative law judge under this section, an

1 administrative law judge shall

2 (1) be a member in good standing of a state bar association within the  
3 United States;

4 (2) have at least five years of relevant experience in litigation or  
5 administrative representation of regulated public utilities, which may include  
6 employment by a regulatory body as a hearing officer or similar position; and

7 (3) comply with the restrictions applicable to members of the  
8 commission under AS 42.04.060.

9 (i) The reasonable and necessary expense of the administrative law judge or  
10 panel and all administrative expenses of the hearing process shall be paid in equal  
11 parts by all parties who are a utility regulated under AS 42.05 or an agency of the  
12 state."

13

14 Page 1, line 4:

15 Delete "Section 1"

16 Insert "Sec. 3"

17

18 Page 1, following line 6:

19 Insert a new bill section to read:

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

22 APPLICABILITY OF PROCEDURES REGARDING ELECTRIC COOPERATIVE  
23 RATE INCREASES. The procedures for rate increases by certain electric cooperatives under  
24 AS 42.05.383, added by sec. 1 of this Act, shall apply to all applicable tariffs filed with the  
25 Regulatory Commission of Alaska on or after July 1, 2003."

26

27 Renumber the following bill section accordingly.

## LEGAL SERVICES

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

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

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.

1. The first amendment adds to the title of HB 111 to conform to the new sections.

2. The second amendment adds several new sections to AS 42.05:

**AS 42.05.383** - This section only applies to electric cooperatives organized under AS 10.25 or electric cooperatives that are owned and operated by municipalities. It requires the Regulatory Commission of Alaska to approve an electric cooperative's increased rates within 10 days after the tariff is filed, if three conditions are met:

- 1 - the utility has not increased rates within the last two years;
- 2 - the increase is less than or equal to the rate of inflation (Anchorage CPI) in the same time period; and
- 3 - the governing body (municipal assembly or board of the cooperative) of the utility has approved the increase at a public meeting.

**AS 42.05.415** - (a) This section only applies to electric cooperatives organized under AS 10.25 or electric cooperatives that are owned and operated by municipalities. If an electric cooperative files a rate increase greater than the rate of inflation (Anchorage CPI), it can ask that an administrative law judge (ALJ) conduct the hearing under this section. If a utility does not ask for this option, then the RCA will consider the rate increase itself under its normal procedures.

(b) The utility must notify the public and its customers of the rate increase filing.

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April 21, 2003  
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(c) The RCA has 10 days to determine whether this section applies to the tariff filing.

(d) The following timelines begin if this section applies:

- (1) intervenors can file a motion to participate on days 11 - 20,
- (2) parties can file answers to the intervenor's motions on days 21 - 30,
- (3) the RCA has to decide and notify the utility whether any intervenors are allowed, and whether a hearing will be required on the tariff filing by day 40.

(e) If the RCA determines that any intervenors may participate, the ALJ hearing option applies, if asked for at the time of the filing.

(1) The parties financially responsible for the hearing expenses will decide within five days (by day 45) whether one ALJ or a panel is needed. Any panel must consist of an odd number of judges.<sup>1</sup>

(2) The RCA will schedule a meeting by day 50 for the parties to meet to select the ALJ or panel. The procedures for selecting an ALJ or panel are in AS 42.05.417.

(f) The decision of the ALJ or panel is final and is not reviewed by the RCA. A party can appeal this decision to court.

(g) If the ALJ decision is not appealed, the RCA shall approve a tariff that conforms with the ALJ decision.<sup>2</sup>

AS 42.05.417 - This section provides procedures for using a single administrative law judge or panel of administrative law judges.

(a) If the parties can agree on an ALJ or panel of ALJ, they shall inform the commission of the judge(s) names and qualifications.

(b) If the parties can't name a judge or panel, they shall request ALJ names from the American Arbitration Association.

(c) The parties have to select the ALJ within three days after they get the names. The process for striking names from the list is provided, the utility gets the first strike and every other subsequent strike. The parties have to notify the RCA within three days of the ALJ selection.

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<sup>1</sup> Your draft at page 3, line 3 provided that all parties had to agree if a panel would be used. This would include intervenors that are not responsible for any of the costs of the hearing. It seems that the financially responsible parties will have a normal disincentive to make this any more costly than necessary, but should be allowed to have a panel if they are willing to pay for it.

<sup>2</sup> Your draft at page 4, lines 21 - 24 provided that the ALJ was the party responsible for seeking court enforcement of the decision. I did not use that in this draft because AS 42.05.551(b) and 42.06.480(b) provide that the RCA is the party responsible for seeking enforcement of its orders in court. It doesn't make sense that the ALJ, being paid for by the parties, would have the authority or the responsibility to enforce the tariff adopted by the commission conforming to the order.

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April 21, 2003  
Page 3

(d) The RCA will serve the ALJ and all parties of record with the prior orders and pleadings in the matter. The ALJ and the parties shall serve the RCA with all matters filed in the case.

(e) Within 30 days the ALJ has to issue a scheduling order for the matter. The scheduling order should:

- allow a final order not later than the applicable timelines found in AS 42.05.421 (suspension of tariff filing) or 42.05.175, or 270 days, whichever is earliest;

- not allow more than 90 days for discovery.

(f) The ALJ has all the powers of the RCA in regard to the matter.

(g) After the ALJ has issued an order, a party may request a reconsideration within 10 days, but if the ALJ does not rule on the motion for reconsideration, it shall be considered denied.

(h) Sets out the qualifications for an ALJ under this section.

(i) Provides that a regulated utility and the state agency share the cost of the ALJ and the hearing.

3. The third amendment set out is a technical change setting out a different bill section number.

4. The fourth amendment set out adds a temporary law section to uncodified law to provide that the new procedures applicable to tariff filings by electric cooperatives apply to tariffs filed on or after July 1, 2003.

If I may be of further assistance, please advise.

AMENDMENT

OFFERED IN THE HOUSE  
TO: HB 111

BY REPRESENTATIVE ANDERSON

1 Page 1, line 1, following "Act":

2 Insert "providing for the prospective effect of increased standards, increased  
3 competition in regulated telecommunications, and exemptions from tariffs in  
4 competitive markets; relating to the designation of a dominant carrier in local exchange  
5 and long distance markets; relating to depreciation expense rates; setting a policy  
6 regarding unbundled network elements in the telecommunications market;"

7

8 Page 1, following line 3:

9 Insert new bill sections to read:

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

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

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

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

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

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

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

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

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

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

20                   (A) promote investment in existing local exchange facilities and the  
21 development of new facilities;

22                   (B) promote market-driven service quality levels; and

23                   (C) relieve consumers of the burden of paying for the costs of  
24 regulation;

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

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

1 (b) The purposes of this Act are to

2 (1) accelerate the development of competition in the telecommunications  
3 industry for the benefit of consumers in the state by reducing regulatory burdens on these  
4 carriers;

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

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

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

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

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

15 (b) Upon the commission's approval of a carrier's application to provide  
16 competitive local exchange telecommunications service in a service area of another  
17 carrier holding a certificate to provide local exchange service, the incumbent local  
18 exchange carrier may not be regulated by the commission as a dominant carrier in the  
19 local exchange market if its statewide market share, as measured in number of carrier  
20 common lines, is less than 60 percent. However, the incumbent local exchange carrier  
21 shall remain the carrier of last resort certificated to provide local exchange telephone  
22 service in the service area until the commission orders otherwise.

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

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

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

29 (k) An electric or telephone utility's proposed depreciation rates shall be  
30 allowed under this subsection if the underlying service lives are not shorter than the  
31 service lives permitted by the United States Internal Revenue Service to determine the

1 appropriate level of depreciation expense for federal income tax computations. The  
 2 commission may not require a utility to file a depreciation study unless the utility  
 3 proposes to use depreciation rates based on service lives that are shorter than the  
 4 service lives permitted by the Internal Revenue Service.

5 (l) A telephone utility providing facilities, systems, or services to other  
 6 telephone utilities under state or federal law shall be allowed to recover costs it  
 7 expects to incur to provide the facilities, systems, or services, and shall be allowed a  
 8 reasonable profit. The best evidence of the costs a telephone utility expects to incur  
 9 shall be its most current costs, adjusted for inflation. Capital and depreciation costs  
 10 may rise to reflect increased business risk in competitive service areas and shall be  
 11 insistent with (k) of this section. If a telephone utility cancels the use of another  
 12 carrier's facilities, systems, or services at any time before the time when the applicable  
 13 costs for providing those facilities, systems, or services are fully amortized, the utility  
 14 canceling the usage shall, within 90 days, reimburse the other carrier for the balance of  
 15 the capital expenditures incurred by the other carrier as a result of cancellation of the  
 16 use of the facilities, systems, or services.

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

18 **Sec. 42.05.435. Exemption from tariffs for telecommunications services in**  
 19 **a competitive market.** (a) A local exchange carrier or an interexchange long  
 20 distance carrier in a competitive service area may file a certification with the  
 21 commission certifying that the relevant market satisfies the competitive service area  
 22 standard of this section. A certification exempts the telecommunications utility from  
 23 tariff filing requirements.

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

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

31 (1) shall make product and service descriptions and rate lists available

1 to the public at the carrier's normal places of business;

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

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

5 (d) A local exchange carrier or an interexchange long distance carrier granted  
6 a tariff exemption under (a) of this section is exempt from the following provisions of  
7 this chapter: AS 42.05.291, 42.05.301, 42.05.306, 42.05.361, 42.05.371, 42.05.381,  
8 42.05.391, 42.05.411, 42.05.421, 42.05.431, and 42.05.471.

9 (e) Upon certifying that the relevant market is a competitive service area, local  
10 exchange and long distance providers are subject to shared carrier of last resort  
11 obligations based on relative market share calculations as more specifically described  
12 in regulations adopted by the commission.

13 (f) In this section,

14 (1) "competitive service area" means

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

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

19 (2) "facilities-based service provider" means a telephone utility that  
20 offers a portion of its products and services by means of facilities it owns and operates  
21 or by means of facilities and unbundled network elements it leases from another  
22 provider, or any combination of facilities owned and leased;

23 (3) "network element" means a facility or equipment used in the  
24 provision of a telecommunications service, including features, functions, and  
25 capabilities that are provided by means of the facility or equipment, including  
26 subscriber numbers, data bases, signaling systems, and information sufficient for  
27 billing and collection or used in the transmission, routing, or other provision of a  
28 telecommunications service;

29 (4) "unbundled network elements" means network elements that are  
30 available on a nondiscriminatory basis for sale or lease at a technically feasible point  
31 to other telecommunications service providers.

1           **Sec. 42.05.435. State telecommunications policy: pricing of unbundled**  
 2 **network elements.** (a) It is the policy of the state to encourage the negotiation of  
 3 market prices in the telecommunications market for the use of unbundled network  
 4 elements in Alaska.

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

8           (c) A carrier that provides facilities, systems, or services to other carriers shall  
 9 be fully compensated for all capital expenditures related to providing the facilities,  
 10 systems, or services to another carrier.

11           (d) In this section,

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

14                   (2) "network elements" and "unbundled network elements" have the  
 15 meanings given in AS 42.05.433.

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

17           (d) The commission may not regulate a long distance carrier as a dominant  
 18 carrier in the long distance market if the carrier's statewide market share, as measured  
 19 in intrastate minutes of use, is less than 60 percent. However, the carrier that is, on the  
 20 effective date of this subsection, the dominant long distance carrier shall remain the  
 21 carrier of last resort certificated to provide intrastate interexchange telephone services  
 22 until the commission orders otherwise."  
 23

24 Page 1, line 4:

25           Delete "**Section 1**"

26           Insert "**Sec. 7**"

27  
 28 Renumber the following bill sections accordingly.  
 29

30 Page 1, following line 6:

31           Insert new bill sections to read:

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

3           REGULATION NOT APPLICABLE. The provisions of 3 AAC 48.275 requiring the  
4 filing of certain supporting information with the Regulator Commission of Alaska do not  
5 apply to a local exchange carrier or an interexchange long distance carrier granted an  
6 exemption under AS 42.05.433(a), added by sec. 5 of this Act.

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

9           APPLICABILITY. An incumbent local exchange carrier that is providing facilities,  
10 systems, or services to other telephone utilities may immediately adjust and implement new  
11 rates for existing interconnection agreements after providing a written statement to the  
12 Regulatory Commission of Alaska certifying compliance with this Act.

13     \* Sec. 10. The uncodified law of the State of Alaska is amended by adding a new section to  
14 read:

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

20

21     Renumber the following bill section accordingly.

## Summary of Legislative Proposals

### Policy Changes

#### Section 2. Amended AS 42.05.145 Nondominant Status for Incumbent Local Companies

Local exchange competition in Alaska is spreading at a rapid rate. The RCA has already granted every request to terminate the federally authorized "rural exemption" that has been submitted. With the "rural exemption" set aside, small local exchange companies are required to open their networks to the full gamut of interconnection requirements, including offering substantial wholesale discounts and "unbundled network elements" for lease by competitors. Imposition of such requirements has already been mandated by the RCA for communities as small as Delta Junction, Nenana, Ninilchik and Seldovia.

At the same time that large, well-financed competitors are entering some of the smallest rural markets, incumbents serving those markets continue to be regulated as monopolies – as "dominant carriers". Sound public policy and the interest of consumers requires that competitors be treated equally and that market forces be allowed to operate freely. Regulators that previously functioned as a surrogate for competition should step aside and allow consumers to freely exercise their choices. Declaring all local providers to be "nondominant" once competition has been authorized for a particular market is an important first step in that process.

#### Section 3. Amended AS 42.05.291 Prospective Application of RCA Rules

In response to an initiative of the federal Rural Utility Service, the former Alaska Public Utilities Commission adopted regulations that impose certain performance requirements on local exchange companies. These standards apply regardless of whether the facilities in question were capable of rendering such performance at the time of original installation. To the extent that these regulations can be construed as applying to legacy facilities, ACS faces a network retrofitting expense measured in the tens of millions of dollars.

ACS proposes legislation that would limit the application of network performance standards only to those facilities constructed or installed after the date such regulations are adopted.

Section 4. Amended AS 42.05.381 Depreciation Rates and Lease Rates to Competitors: Section 42.05.435 State Policy re Pricing of Unbundled Network Elements

(k) Depreciation for Retail Rates:

The RCA continues to have the authority to approve the retail rates paid by consumers for local services and the exchange access rates paid by interexchange carriers for use of local network facilities to carry long distance calls. A significant input to the rate setting process is the depreciation rates applied to plant investments. The RCA has recently embarked on a policy change that substantially reduces ACS' depreciation rates and significantly extends the length of time it takes to recover the cost of investment. This has occurred in spite of conventional wisdom moving in the opposite direction and in the face of extreme levels of local competition in Alaska.

ACS proposes legislation that would require the RCA to accept a utility's proposed depreciation rates as long as the underlying plant service lives are no shorter than the service lives used by the Internal Revenue Service for federal income tax computations.

(l) Lease Rates to Competitors: policy re unbundled network element pricing:

Under federal law, ACS is required to lease specific components of its local network to competitors for their use in providing competitive services. These components are referred to as "unbundled network elements" ("UNEs"). In those instances where the parties are unable to privately negotiate the rates, terms and conditions for UNE leasing, the Regulatory Commission of Alaska ("RCA") is empowered to arbitrate the dispute. With only general guidelines from the FCC, the RCA is given broad discretion in the arbitration process. Exercise of this discretion has resulted in UNE rates being set at levels well below ACS' actual cost to construct and maintain these facilities.

ACS proposes legislation to provide the RCA with additional guidance regarding the arbitration of UNE rates. The Legislature should endorse private negotiation as the primary method of establishing the UNE leasing relationship. Where arbitration is necessary, the RCA should be required to set UNE rates as close as possible to market prices. To the maximum extent allowed by federal law, the RCA should set UNE rates that allow the company providing the UNE to recover the cost the carrier actually expects to incur in providing the leased facilities along with a reasonable profit. In considering the appropriate level of UNE rates, the RCA should be instructed to include cost of capital and depreciation expenses that reflect the increased risk of operating in a competitive market. The RCA should accept as "best evidence" the actual costs the incumbent currently experiences adjusted for inflation. In no event should depreciation rates be set at levels lower than would otherwise be allowed by the Internal Revenue Service for tax computation purposes.

**Section 5. Amended AS 42.05.433 Exemption from Tariffs in Competitive Markets**

ACS operates four local exchange companies in Alaska. Three of those companies are fully subject to competition. The fourth company has been partially opened to competition. Competitors in Anchorage have captured approximately 50% market share. In Fairbanks, ACS has lost about 25% of the market in only eighteen months. In Juneau, the competitor has taken almost 15% of market in one year. Experts have observed that local markets in Alaska are clearly the most competitive in the nation. The long distance market in Alaska has been open to in-state competition for more than twelve years. Yet, the ACS local companies and its long distance affiliate are still required to comply with arcane tariff filing procedures that are both burdensome and require that ACS pre-announce its competitive initiatives long before these new products and services are allowed to be sold to consumers.

ACS proposes legislation that would eliminate retail tariffing requirements for all telecommunications providers operating in competitive markets. ACS proposes specific exemptions from the following statutory provisions in the statewide long distance market and in any other local market where a competitor is providing facilities-based service to more than 50% of the customers:

- **AS 42.05.291** – Rules, regulations and classifications for service and facilities;
- **AS 42.05.301** – Preferences or advantages in utility services;
- **AS 42.05.306** – Discounted or reduced rates for telecommunications services;
- **AS 42.05.361** – Requirements for filing and approval of tariffs and contracts;
- **AS 42.05.371** – Conditions of service governed by currently effective tariffs;
- **AS 42.05.381** – Just and reasonable utility rates based on revenue requirements approved by the RCA;
- **AS 42.05.391** – Preferences or advantages in utility rates;
- **AS 42.05.411** – New or revised tariffs, public noticing and inspection;
- **AS 42.05.421** – Tariff review process, RCA timelines for considering tariffs that have been suspended;
- **AS 42.05.431** – Power of the RCA to set rates; power to modify utility's proposed rates;
- **AS 42.05.471** – Authority of the RCA to establish accounting requirements and to set depreciation rates relative to retail and exchange access services.

Companies that have been detariffed are obligated to make product and service descriptions and rate lists available to the public at their normal places of business and to post the current versions of these descriptions and lists on their Internet web sites.

ACS also proposes to implement shared "carrier of last resort" obligations in the statewide long distance market, the Anchorage local market and any other local market where more than one service provider has been designated as an "eligible telecommunications carrier" for purposes of receiving shared federal; universal service funding.

## **Public Policy Points**

### **Telecommunications Legislation**

#### **Section 2. Amended AS 42.05.145 Nondominant Status for Incumbent Local Companies**

- As local markets become competitive, the retail operations of all competitors should face only limited and equal regulatory oversight.
- Regulatory status of an incumbent local company is changed from "dominant" to "nondominant" upon market entry (RCA authorization) of a competitive provider if incumbent serves fewer than 60% of the statewide access lines.
- Non-Anchorage Incumbent local companies continue to be carriers of last resort until AS 42.05.433(e) is triggered or the RCA orders otherwise.

#### **Section 3. Amended AS 42.05.291 Prospective Application of RCA Rules**

- Some rules adopted by the state regulator appear to apply to both new facilities and existing (previously installed) facilities
- Rules require that networks meet certain performance standards that are already outdated, but still obligate companies to incur substantial costs to retrofit existing facilities
- Scarce investment dollars should not be "deflected" from newer and more desirable technologies

- RCA rules should apply on a "going forward" basis to new construction and new facilities installed after the rules are adopted

#### **Section 4. Amended AS 42.05.381 Depreciation Rates and Lease Rates to Competitors**

##### **(k) Depreciation for Retail Rates**

- FCC has already indicated that accelerated depreciation in competitive telecom markets is appropriate
- IRS has consistently offered opportunities for accelerated depreciation in conjunction with federal income tax computation
- However, RCA decisions have gone the other way and have inexplicably extended depreciation recovery periods in highly competitive markets
- Incumbent companies are the only participants in a competitive market that face regulated depreciation rates; non-incumbents are not rate regulated and they are free to use any form of depreciation they chose; enactment of this section will help to level the competitive playing field
- Use of depreciation lives that are no shorter than those currently allowed by the IRS strikes the correct balance of interests and supports rational retail and wholesale pricing decisions

##### **(l) Lease Rates to Competitors**

- Companies that construct or lease facilities for use by competitors:
  - Must be allowed to recover expected costs

- Best evidence is incumbent's current cost adjusted for inflation
- Capital and depreciation costs should reflect increased business risk associated with competition
- Competitors should reimburse incumbent for unrecovered costs if they prematurely discontinue use of facilities

### **Section 5. Amended AS 42.05.433 Exemption from Tariffs in Competitive Markets**

- Tariffs (regulated statements of utility rates, terms and conditions) are typically required in monopoly situations
- Tariffs are closely scrutinized by regulators who function as an alternative to the forces of competition; prevents abuses that can occur in a monopoly market
- Once markets have become competitive, the role of regulators should change and the forces of competition should be allowed to operate freely
- State regulators tend to more closely scrutinize the tariffs of incumbent companies; all competitors should be treated equally in terms of the level of regulatory oversight imposed; exempting all companies in competitive markets from tariffing obligations assures that the playing field is level
- Filing tariffs requires that companies provide advance notice to competitors of their marketing plans and strategies

- Competitive local exchange and instate long distance markets should be detariffed just as the FCC detariffed interstate long distance service.
- Detariffing triggered by facilities-based competition where at least 50% of the consumers in a market have a choice of service provider.
- Shared "carrier of last resort" obligations will be required in any local market where more than one provider has been designated a "eligible telecommunications provider" for purposes of receiving shared federal universal service funding.
- The local market in Anchorage and the statewide long distance market have already met the detariffing trigger and are "deemed competitive". Shared "carrier of last resort" rules apply in Anchorage and in the statewide long distance market.

#### **Section 42.05.435 State Policy re Pricing of Unbundled Network Elements**

- Within guidelines, federal law has delegated discretion to the states regarding the pricing of network components that incumbent companies must lease to competitors
- Anticipated new FCC order (Triennial Review) will extend even more discretion to states
- As a matter of state policy, it is appropriate for the Legislature to establish guidelines for the exercise of that discretion by the RCA in setting rates for unbundled network elements

- Wherever possible, pricing for such elements should be the product of private negotiations of the telecom companies
- Where regulatory intervention is required, and within the bounds of federal rules, the RCA should attempt to set rates as close as possible to market rates, i.e., the prices that would be agreed to between willing sellers and willing buyers.

**House bill 111**  
**House Labor and Commerce Committee**

**Position of General Communications, Inc. (GCI) Regarding the Extension of the  
Regulatory Commission of Alaska (RCA)**

- **Like many other utilities regulated by the RCA, GCI does not always agree with the RCA decisions that are adverse to GCI's economic interest. However, we depart from those who attempt to use a necessary reauthorization bill to further a selfish public policy change.**
  - **Response: What decisions have been made by the RCA that are adverse to GCI's economic interests? Just prior to last summer's Special Legislative Session, evidence was taken by the Senate Judiciary Committee that suggested that GCI has prevailed in more than 80% of the disputes decided by the RCA. Does GCI challenge that statistic? Given that track record, it is understandable that GCI would support preserving the status quo.**
  
- **GCI supports the reauthorization of the RCA for four years and does not feel any amendments proposed to the House Labor and Commerce Committee so far should be adopted.**
  - **Response: Has GCI ever proposed legislative amendments during "sunset" reviews in prior years? Why would that have been appropriate in the past, but not now?**
  
- **We do not oppose ARECA's suggestions for administrative changes, but feel that to the extent they are supported by the new Administration, they can be implemented without statutory change. For example, the reinstatement of an executive director could be done by internal reorganization.**
  - **We understand that the Governor has broad administrative authority, but is GCI suggesting it would never be appropriate for the Legislature propose structural changes via statute? If, for example, the Administration opted to reinstate the Executive Director position, wouldn't the Legislature still have to fund the position via statutory appropriation? And if the Executive Director were to be part of the "partially exempt service", as it was under the APUC, wouldn't that require a statutory authorization in AS 39.25.120(c)(7)?**
  
- **We do not oppose Chugach Electric's request for an advisory board, so long as it is for the purpose of providing advice on procedure and efficiency, but not on policy. This could also be done by administrative order, and does not need a statutory change. The advisory board should also have public as well as utility members.**
  - **What is inherently wrong with an advisory board offering policy recommendations? Don't governmental entities routinely create advisory boards specifically for the purpose of considering matters of policy? If an RCA advisory board existed, the Legislature could task the board with analyzing specific issues and present policy proposals in the future. Do you see a problem with that?**

- We do not agree with AT&T's proposed amendment while they retain a federally mandated monopoly on long distance telephone service to approximately 150 Alaska villages. AT&T has been found to be a Dominant Carrier by the FCC because they have a federally mandated monopoly. AT&T's amendment will not change this federal mandate.
  - I'm sure GCI understands that a state Legislature does not have the authority to overrule a federal mandate. The reach of any new statutory provisions would only address matters of INTRAsate telecommunications. It is also my understanding that AT&T Alascom is no longer treated as a dominant carrier by the FCC except for those services that it provides to other carriers under its Tariff 11. AT&T has also agreed to withdraw its proposed language given that long distance services are being addressed in another amendment.
  
- Last year, the legislature passed time lines for most, if not all, RCA proceedings and dockets in response to complaints about timeliness by the utilities. There are also two new commissioners and a new chair. With these changes there is no reason to expect the RCA to be anything other than fully effective.
  - It has been suggested that the timeliness we passed last year do not seem to cover all matters coming before the Commission. I think you would agree that it would be unfair to set processing standards for some categories of cases, but not for others. Even the Legislative Auditor has indicated the need to revisit this issue to determine whether the standards we've set are meeting public interest objectives. While we look forward to further progress being made and the contributions of new commissioners, the Legislature set the initial round of timelines and it is appropriate for it to review the results and make further modifications if necessary.
  
- If the Governor's simple reauthorization bill becomes a policy changing Christmas tree, GCI reserves the option to propose amendments to the Legislature that we feel are in Alaska consumers' best interests.
  - I don't find that this Committee's consideration of suggestions to provide policy guidance to the RCA to constitute a "policy changing Christmas tree". If GCI has any ideas that would contribute to a fair, efficient and competitively neutral regulatory process, those suggestions would be welcome.
  
- Thus, the RCA should be reauthorized for four more years.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
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## 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 unammortized 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-GH1049I  
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](mailto: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](http://www.state.ak.us/rca).



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

*907.276.6222 • [www.state.ak.us/rca](http://www.state.ak.us/rca)*

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**Testimony to House Labor and Commerce Committee  
HB111 Extend Regulatory Commission of Alaska  
March 10, 2003  
G. Nanette Thompson, RCA**

Good afternoon Chair Anderson and Vice-Chair Lynn, committee members. Thank you for allowing me to testify before your committee today. I want to thank you for so quickly confirming the Governor's two new appointments to the RCA, Dave Harbour and Mark Johnson.

The RCA supports the Governor's bill that will reauthorize the agency for four years. The RCA's mission is to protect consumer interests by ensuring affordable, reliable utility and pipeline services and ensuring that utility and pipeline infrastructure is adequate to support community needs. We have come a long way since the agency was created in 1999, reducing the notorious backlog to a manageable open caseload of several hundred. We hope to be able to spend time focusing on some of the important policy issues facing the markets in transition to competition during the next year.

Every state has a regulatory agency to insure that utility service is available at reasonable prices to its citizens. Regulatory agencies historically were formed to make sure that monopoly providers of utility service did not take advantage of their customers. In markets transitioning to competition, our role is different. We need look no further than the California energy markets for an example of why responsible deregulation is important. The transition from a monopoly to a competitive market does not happen overnight. It is our responsibility to effect the transition that the law directs, and make sure that consumers continue to receive fairly priced services during and after the transition. We strive to strike the appropriate balance between regulatory oversight and open markets by adjusting the level of regulation as markets develop.

Because the telecommunications industry and their lobbyists in your halls have played out the "phone wars", I'll use that industry as an example and try to put some of what you may be hearing from them in perspective.

There is competition in the telecommunications industry because in 1996 Congress said there should be. Congress gave states the responsibility to transition monopoly markets to competition because they recognized that markets varied by state, and national rules would not get the job done. The larger local markets in Alaska are ahead of the rest of the country in the transition to competition. We got a head start because the Bell companies never provided service in Alaska. All other states had to go through the "271 process" to insure that the incumbent carrier's network was open to competitors before the local company could enter the long distance business. We skipped that step, and the three to five years it took most states to complete it, and went directly to arbitrating interconnection agreements. Just after the Telecom Act was passed, GCI filed a petition for interconnection and asked us to set prices for leasing parts of the incumbent's network. The APUC finished that process even before the FCC adopted regulations telling state commissions how to set prices. The APUC's order acknowledged that the

FCC was in the process of setting national pricing rules, and invited either party to ask them to revisit the results after those rules were clear. The RCA is now in the process of doing that for the Anchorage market. This controversy we face about the appropriate level of continued regulation and the best way to set prices, is being played out in almost every state nationwide, and in the courts. In May of last year, the United States Supreme Court upheld the FCC's methodology for setting interconnection prices. The Supreme Court noted that competitors were making significant investments and that the FCC correctly looked at what it would cost for another efficient carrier to replace the incumbent's network with the best available technology, not what the incumbent spent or would spend to rebuild the existing network. (*Verizon v. FCC*, 122 S.Ct.1646, 2002). The RCA has stayed involved in the details of these enormous changes in the telecommunications sector, as it has played out in our markets and across the country.

Our appeal record tells you that we are doing our job well. As an administrative agency, we do not make the law; we apply it. If we are not applying it correctly, parties may appeal to state or federal court and ask them to set us straight. The RCA has issued hundreds of final orders since we started in July 1999. So far, sixteen have been appealed. The agency's decisions have not yet been reversed, although there are several appeals pending. In one case the court remanded a case to us with instructions to hold a hearing before making a decision, but none have reversed a substantive decision. That track record should tell you that we are successfully analyzing the facts presented to us and issuing decisions that are consistent with legal precedents and supported by the facts in the record. We make decisions based on evidence presented through a process designed to insure that all parties' rights are protected.

The RCA does more than settle phone wars. We administer the PCE program. We are reviewing our PCE regulations in response to a resolution from ARECA to improve the reliability of the information we use to administer the program and to increase efficiency amongst the program's beneficiaries. We also review tariff prices for pipelines to insure that those who ship to destinations in Alaska pay just and reasonable rates. We also review costs incurred by providers of monopoly services; water, sewer, electric and gas, to insure that customers pay a fair price for the services they receive. We set rules in other markets that are transitioning to competition, such as refuse in some parts of the state, and long distance statewide. We just finished modifying our regulations to make it easier for long distance carriers that serve only a small part of the market to sell their services to Alaskan consumers.

I offer a few final notes. First, our budget. All of the money used by the RCA comes from utility ratepayer through the Regulatory Cost Charge. We get no general fund monies. Therefore the proposal in the Governor's budget to reduce our staff level by seven and transfer the Public Advocacy Section to the Attorney General's office will not save the state money. The Public Advocacy Section should be independent, and reassigning the function to Department of Law may preserve that independence. It may also, however, compromise the agency's ability to continue to meet the case processing deadlines imposed during the last legislative session. The Governor's Executive Order transferred the public advocacy function, but remained silent on what that section has

spent a significant amount of time doing-investigating filings where there are no other parties. If five of the seven eliminated positions are restored to our budget, we can transfer them to the agency staff and handle the additional workload. Without those positions restored, we are unlikely to be able to continue to process cases within the statutory timelines. Third, the reports. The legislative auditor spent time in our office and is familiar with our mission. I commend the legislative auditor's report to you. The study commissioned by Department of Administration and done by Bearing Point has some helpful background on the telecommunications industry in our state. The recently released Darby report is the work of three individuals, not the seven contemplated by the statute, and did not include any input from the RCA. It cannot be called a comprehensive study of the agency because they never talked to us, or looked at the publicly available information on our website or in our annual report. Many of the recommendations are for actions that we have already begun.

I encourage you to let this agency continue to do its job. Participation in the sunset reauthorization process is time-consuming for the agency and detracts from our ability to handle cases. The legislature has the option any year to redirect our mission. I urge you to reauthorize the agency for four years.

TESTIMONY OF KRISTI CATLIN  
HOUSE LABOR AND COMMERCE COMMITTEE  
HOUSE BILL 111  
MARCH 10, 2003

Good afternoon, Representative Anderson 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. It is from those very roots, and having witnessed the broad changes in technology and market shift over the years, that we would like to offer our perspective and respectfully make some requests for the legislature to consider.

We believe that both telecom service providers and policy-makers have a two-fold obligation to the constituents of this state. Those are: ensuring that basic telecom services remain affordable to everyone in the state; and providing 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. Regulations were put in place to ensure that Alascom did not misuse its monopoly power in pricing its services to consumers. In addition, 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. At the same time, new entrants to the long distance market were granted broad and significant freedoms. And even though the market was highly competitive in 1995 when AT&T bought Alascom, for the most part, it bought a company regulated as though it were a monopoly. As we all know, the regulations governing utilities with a legal monopoly work in two directions: they protect the consumer from unreasonable prices on one side of the equation, and they ensure a reasonable return for the regulated entity on the other side. Without a reasonable return, companies do not invest and services, therefore, do not advance.

Many of the regulations which restrict AT&T Alascom today are vestiges of that monopolistic environment I spoke of previously. 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".

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. Status quo is not an option, if you intend to have a healthy, competitive telecom market and infrastructure in Alaska. We have drafted appropriate language to assist the legislature in defining "dominance," and are submitting it for your consideration.

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

**Testimony of Wesley E. Carson**  
**Before the House Labor & Commerce Committee**  
**March 10, 2003**

Mr. Chairman and members of the committee, thank you for this opportunity to address you today. My reason for being here is to emphasize the importance of deferring any action to re-authorize the Regulatory Commission of Alaska until the state has articulated a clear set of telecommunications policies to guide the commission.

Although we have long advocated for the development of state policies to guide the RCA, this is of even more critical importance today. On February 20<sup>th</sup>, the Federal Communications Commission issued its long-awaited rules to revise network unbundling obligations for competition in the local telephone market. In making this decision, the FCC took the unprecedented step of delegating to state commissions broad regulatory discretion that previously was thought only to be exercised by federal authority.

This delegation will allow the RCA to now unilaterally determine whether incumbent local telephone companies, like ACS, must continue to provide elements of their networks to competitive carriers at below-cost prices. As the FCC has failed to provide specific instructions to the states, it is now imperative that the Legislature act to develop appropriate telecommunications policies to guide the RCA in its decision-making going forward.

There are many telecommunications policy issues that require your attention. The Report to the Senate Appointees to the Task Force on Operations of the RCA, submitted on January 30 by Darby Associates, makes some very relevant points, including that regulators need to fashion rules designed to encourage investment; that the RCA should review the adequacy, need and rationale for legacy regulations based on an assumption of incumbent market power; and that it is time to explore a wide range of less regulatory options and find ways to substitute market forces for regulation.

The RCA has clearly demonstrated a propensity for more regulation as the means of promoting competition, rather than allowing market forces to govern. The Darby Report quite correctly concludes that "application of old regulatory models based on market conditions that no longer prevail does a gross disservice to the people of Alaska."

As you may know, Anchorage holds the distinction for being the most competitive local telephone market in the country. Although open to competition for a much shorter period of time, Fairbanks and Juneau are rapidly moving in a similar direction. In all three of these markets, the RCA has unfairly mandated that the competitor be allowed to use the ACS networks at rates that are below cost. The RCA has also taken an activist role in terminating the "rural exemptions" that Congress authorized to ensure that the nation's smaller markets remained viable – even terminating the "rural exemption" in locations as small and costly to serve as Nenana and Seldovia.

The net result of these regulatory actions has been to compromise the Company's ability to attract and commit capital. This is clearly not just an ACS opinion, but rather a fact that is becoming broadly understood.

As you are aware, the State of Alaska contracted with BearingPoint (formerly KPMG Consulting) to produce the "Telecommunications Policy Study and Assessment for the State of Alaska," which was submitted to the Department of Administration in November 2002. The report concluded that local telephone competition which forces incumbent local telephone companies to lease their network to competitors as below-cost pricing "potentially imposes a financial burden on incumbents, and may artificially support competitors at the same time." The RCA, by means of the interconnection terms it imposed on ACS, has done exactly that.

A recent press release by Standard & Poor's addresses the downgrade of ACS as being "based on competitive pressure that has materially weakened ACS's business profile, impaired operating performance, and resulted in credit measures." The press release further explains: "The rating on ACS reflects the company's position as the leading local exchange carrier in Alaska, offset by heavy competition in the local retail access line business due to low regulatory mandated local resale loop rates to the company's local network, a narrow market with limited growth opportunities, and high acquisition and capital spending-related debt levels."

Clearly, we are not alone in our judgment that the RCA has impaired ACS's ability to raise capital. The State must act to assure that the RCA does not destroy the economic viability of Alaska's largest local telephone company, providing the last-mile connection to nearly three out of four of its citizens.

ACS urges the Legislature to move cautiously in your deliberations on the RCA extension and to properly sequence your decisions. In addition to a general review of the RCA's structure and procedures, Alaska's policy-makers must carefully review the Commission's ongoing role in the administration of the Telecommunications Act of 1996. While this was an important consideration at the beginning of the legislative session, it has been magnified considerably by the FCC's decision on February 20. As the RCA goes forward to accept the broad new delegation it has received from the FCC, it should have the benefit of clear policy guidance that is lacking in the FCC's ruling. Once the legislature has provided that guidance, the second matter of reauthorizing the Commission can be decided.

On behalf of Alaska Communications Systems, I thank you, Mr. Chairman and Committee members, for the privilege of addressing you today.



Honorable Tom Anderson, Chair  
House Labor and Commerce Committee  
Alaska Capital, Room 432  
Juneau, AK 99801-1182

March 9, 2003

RE: HB 111 (Governor Murkowski) - Support

Dear Chair Anderson:

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the House Labor and Commerce Committee to support HB 111 submitted by the House Rules Committee at the request of Governor Murkowski.

HB 111 would reauthorize the Regulatory Commission of Alaska for a period of four years. Much of the debate over the RCA in the past has focused on the utilities supervised by the Regulatory Commission of Alaska and the relationship of the RCA with the entities it supervises. AARP relies on the RCA because it offers our members and all Alaskans the best opportunity to achieve basic consumer protections:

- The ability to make informed choices about utility services
- The security of safe and reliable energy and telecommunications services
- The assurance that sales practices and advertisements are fair, so they do not confuse, mislead, or frighten the public
- The reassurance that consumers receive accurate information, communicated clearly and in plain language so we understand our rights and remedies

The RCA assures consumers the right to affordable rates and access to such basic necessary services as utilities and communications. We emphasize "reasonable" rates but we also emphasize access for our rural citizens.

The RCA allows consumers an opportunity to participate in the governmental decision-making process that shapes the marketplace and ensures meaningful consumer input.

When wronged, the RCA offers consumers redress and complaint resolution.

AARP believes the Regulatory Commission of Alaska is necessary for our organization and for our members. Without the RCA, we would be deprived of any public oversight of energy and telecommunications services and, when a complaint is warranted, we would not have the RCA available and willing to listen to a consumer's side of an argument.

The RCA protects our rights as consumers. We ask that the House Labor and Commerce Committee support Governor Murkowski's bill to reauthorize the RCA for four years. Our AARP families need it. All Alaskans need it.

AARP urges an "AYE" vote on HB 111.

Should you have any questions about our position, please feel free to contact Marie Darlin (907.586.3637), Coordinator of the AARP Capitol City Task Force; Patrick Luby (907.762.3314), AARP Legislative Representative; or me (907.245.5259).

Thank you for your consideration.

Sincerely,



Marguerite Stetson  
AARP Alaska  
Executive Council Member for Advocacy  
3009 Northwood Street  
Anchorage, AK 99517-1871  
907.245.5259 voice  
907.245.5279 fax  
[ffmas@aurora.uaf.edu](mailto:ffmas@aurora.uaf.edu)

cc: Governor Frank Murkowski  
Vice-Chair Bob Lynn  
Representative Nancy Dahlstrom  
Representative Carl Gatto  
Representative Norman Rokeberg  
Representative Harry Crawford  
Representative David Guttenberg  
Marie Darlin  
Patrick Luby

March 10, 2003

The Honorable Tom Anderson  
Chair, Labor and Commerce Committee  
House of Representatives  
State Capitol, Room 432  
Juneau, AK 99801-1182

Dear Representative Anderson:

Chugach is concerned about a recent order from the Regulatory Commission of Alaska. While we are hopeful that some of the most troublesome provisions of the order may be changed during the process of hearing our Petition for Reconsideration, the damage has already been done.

Chugach worked hard to demonstrate its financial strength and stability to national rating agencies and financial markets. Over the past decade we have successfully improved our bond ratings. We were pleased when we achieved "investment grade" ratings a few years ago. Our high bond ratings translate into lower interest rates when it is necessary to finance projects by issuing bonds on the financial markets. This in turn leads to lower costs paid by consumers through utility rates.

Chugach feels strongly that we have a case for reconsideration of the order from the RCA. We are working through the appeal process and are confident things will change for the better; however, a signal about the stability of the utility and investment climate in Alaska has already been sent to the nation's markets and individual investors.

Source documents are attached for your review.

Signed,

Evan J. Griffith, General Manager  
Chugach Electric Association, Inc.



ALASKA PERMANENT  
CAPITAL MANAGEMENT COMPANY

900 West Fifth Avenue, Suite 601  
Anchorage, Alaska 99501

Phone: (907) 272-7575

February 24, 2003

Regulatory Commission of Alaska  
1016 W. 6<sup>th</sup> Ave.  
Anchorage, AK 99501-1963

Dear Commissioners;

I have reviewed your Order 26 in the Chugach Electric rate docket (U-01-108) and write to express my concern over the impact of the order on Chugach's bondholders. APCM is a substantial holder of Chugach's bonds for clients and for this reason has a direct fiduciary responsibility to help assure that the rates you set for Chugach are adequate to maintain Chugach's financial health and good bond rating. If Chugach's bond rating were to drop, bondholders would lose value immediately. Additionally, future bond issues would be relatively more costly to Chugach and new issues may be rated below the level presently permitted by some client investment policy. This would compel us to discontinue purchasing and holding Chugach bonds.

Frankly, your Order 26 has me very concerned. I want to stress to you the need to maintain a viable market for Chugach's bonds. To accomplish, this, the utility needs stability in its revenues and must earn solid margins that give comfort to those who may buy those bonds. I urge you to establish rates such as those which have been adequate in the past to allow reliable coverage of debt service and allow modest but steady growth in equity.

I know that your concerns are wider than just those of bondholders but I honestly believe that in the long run, all of the various stakeholders in this matter – including the public – are best served by stability. For this reason I strongly urge that you consider carefully the impacts of this order and revise your ruling as needed to achieve a more moderate result.

I ask that this letter be made a part of the permanent record in this proceeding.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "David A. Rose". The signature is written in a cursive style with a long horizontal flourish at the end.

David A. Rose  
Chairman and CEO

cc: Respective client files (thirteen)  
Michael R. Cunningham, CFO, Chugach Electric

Publication date: 28-Feb-2003  
Reprinted from RatingsDirect

## Chugach Electric Association, Alaska; Utility, Wholesale Electric

Credit Analyst: Leo Carrillo, San Francisco (1) 415-371-5077; Kathryn Mock Masterson, San Francisco (1) 415-371-5009

### Credit Profile

#### ON CREDITWATCH:NEGATIVE

To  
From

\$150.000 mil. Chugach Elec Assoc 1st lien  
rev bnds ser 2001A dtd 04/17/2001 due  
03/15/2011

AAA/A(SPUR)

A

\$120.000 mil. Chugach Elec Assoc new  
bnds ser 2002A dtd 02/01/2002 due  
02/01/2012

AAA/A(SPUR)

A

\$60.000 mil. Chugach Elec Assoc new  
bnds ser 2002B dtd 02/01/2002 due  
02/01/2012

AAA/A(SPUR)

A

### Rationale

Standard & Poor's Ratings Services has placed its 'A' underlying ratings on Chugach Electric Association, Alaska's revenue bonds on CreditWatch with negative implications. The rating action reflects the expected financial impact on the utility of the latest rate order by the Regulatory Commission of Alaska (RCA). The underlying ratings reflect the credit quality of Chugach's approximately \$394 million in bonds outstanding before the credit enhancement provided by bond insurance. The insured ratings on the bonds remain unaffected by the CreditWatch listing.

The RCA, the agency that sets retail rates charged by Chugach, released a rate order on February 6 that effectively reduces Chugach's revenue requirement by approximately \$6 million in 2003 and requires the utility to refund approximately \$7.1 million to ratepayers for overcollection in 2001 and 2002. If the refunding is charged against the 2002 fiscal year, it is likely the utility would violate in that year the bond covenant requiring margin-for-interest (MFI) coverage of 1.1x. Chugach has petitioned the commission to reconsider its decision, which the RCA has partially granted. A final determination may come as early as the end of March 2003. If a sufficiently favorable order is not forthcoming, a rating downgrade is expected.

Chugach maintains sufficient liquidity to meet the refund obligation required by the latest rate order. Chugach has access to over \$50 million in lines of credit from CoBank and National Rural Utilities Co-op Finance Corp., versus the estimated \$7.1 million in refunds due under Order No. 26, the new rate order. Chugach indicated that it would increase its short-term borrowing in 2003 under these credit facilities to finance its payment obligation.

Use of the credit facilities, however, will increase debt and weaken financial ratios. The utility estimates that the \$6 million reduction in revenue required by Order No. 26 would result in an MFI of 1.08x under current budgeting assumptions. Estimates also indicate that the \$7.1 million in refunds—representing a reduction in revenue of approximately \$1.1 million in 2001 and \$6 million in 2002—would result in an MFI of only 0.92x for 2002. The \$7.1 million reimbursement, while only a small percentage of operating revenues, represents about 23% of operating margins.

In additions to substantially weakening debt service coverage, RCA's rate order signals heightened regulatory and refinancing risks for the utility and may cause Standard & Poor's to apply more stringent guidelines in assessing Chugach's credit quality. Standard & Poor's is finding it increasingly difficult to distinguish the credit characteristics of Chugach, a generation and transmission (G&T) cooperative, from those of investor-owned utilities. Unlike

many G&T cooperatives, Chugach is subject to oversight by a state regulatory agency. The latest RCA rate order indicates that the RCA is willing to overlook the MFI covenant in the mortgage indenture, and suggests that the agency is now less supportive of credit quality than it had been in the past.

In light of the increased regulatory risk, Standard & Poor's is also focusing more closely on Chugach's capital structure and its use of bullet maturities associated with 75% of its debt, which further distinguishes Chugach from other G&Ts. Chugach's heavy reliance on bullet debt is more closely akin—although not fully so—to an investor-owned utility's use of non-amortizing debt. It is Standard & Poor's practice to require higher coverage ratios for utilities whose financial performance need to be measured by coverage of interest-only payments. While Chugach will not need to address the bullet maturities until 2011 and 2012, these two maturities account for approximately 75%, or \$295 million, of Chugach's outstanding principal. Standard & Poor's had previously cited Chugach's coverage of interest as weak for a utility with mostly non-amortizing debt, and that degradation of coverage margins, even by small amounts, could result in lower ratings.

Chugach is an electric cooperative serving two-thirds of the population of Alaska, mainly around Anchorage, the Kenai Peninsula, and, through a member-distribution cooperative, north to Fairbanks. Chugach faces no competition from investor-owned utilities; its only meaningful competition is the municipal utility serving Anchorage, Anchorage Municipal Light & Power.

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*Setting The Standard.*

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## CHUGACH ELECTRIC ASSOCIATION, INC

*Anchorage, Alaska, United States*

### Ratings

<u>Category</u>	<u>Moody's Rating</u>
First Mortgage Bonds	A2
Bkd Senior Secured	Aaa

### Contacts

<u>Analyst</u>	<u>Phone</u>
Kevin G. Rose/New York	1.212.553.1653
James Hempstead/New York	
John Diaz/New York	

### Opinion

#### Rating Rationale

Chugach's Aaa rating on its bonds reflects the insurance policy provided by MBIA Insurance Corporation, providing for the payment of principal and interest when due. The A2 underlying rating for these bonds has come under some pressure recently due to an unsupportive decision by the Regulatory Commission of Alaska (RCA) in the co-op's recently concluded rate case. This rate case outcome is in contrast to largely supportive regulatory treatment provided to Chugach in the recent past. Chugach's standalone credit fundamentals still benefit from its dominance in the Alaskan market, its low-risk operating profile, and generally conservative financial strategies. We also note that although some 30% of Chugach's total revenues come from two customers, these customers have signed either a take and pay or partial requirements contract with the co-op.

We note that although Chugach is a small co-op, it is still the largest power provider in Alaska, serving over two-thirds of the Railbelt and owning a majority of the transmission assets in Southcentral Alaska. Most of the co-op's generating capacity comes from gas-fired plants that are near the wellhead, making fuel costs more affordable. Although certain fuel costs are cyclical, Chugach has typically managed other costs and relied on increases in sales to minimize the need for rate increases. Also, equity levels have been maintained at about 25%, while providing regular returns of capital to members. Lastly, any efforts to establish electric competition in Alaska are effectively at a standstill.

#### Recent Developments

Chugach's request for a 5.7% rate increase and a change in the rate setting methodology were denied in an order issued by the RCA on 2/6/03. Preliminarily, Chugach estimates revenue refunds required by the rate decision would cause an operating loss of about \$2MM for fiscal 12/31/02, causing a shortfall in meeting the required 1.1 interest coverage under the Rate Covenant in Chugach's bond indenture. Furthermore, Chugach would need to achieve cost savings or otherwise compensate for the rate reduction to restore compliance with the Rate Covenant in 2003. Importantly, noncompliance with the Rate Covenant interest coverage test is not

cause for acceleration of the obligations. Also, we note that on 2/18/03, the RCA agreed to stay some aspects of the order, including any change in rates, pending the outcome of Chugach's planned filing of a motion for reconsideration of the order on or before 2/28/03.

**Rating Outlook - Stable**

The outlook for the Aaa rating is stable as the bond insurance policy stands behind repayment of the obligations. We will continue to monitor the pressure on Chugach's underlying rating. The extent of relief will depend in part on the degree to which Chugach can be successful in obtaining a more supportive outcome through a planned filing of a motion for reconsideration of the 2/6/03 rate order.

**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 or 15 (d) of the Securities Act of 1934

Date of Report (Date of earliest reported) January 31, 2003

**CHUGACH ELECTRIC ASSOCIATION, INC.**  
(Exact name of registrant as specified in its charter)

**Alaska**  
(State or Other Jurisdiction of Incorporation)

**33-42125**  
(Commission File Number)

**92-0014224**  
(IRS Employer Identification No.)

**5601 Minnesota Drive, Anchorage, Alaska**  
(Address of Principal's Executive Offices)

**99518**  
(Zip Code)

Registrant's telephone number, including area code:

**(907) 563-7494**

**None**  
(Former Name or Former Address, if Changed Since Last Report)

## Item 5. Other Events

On February 6, 2003, Chugach Electric Association, Inc. (Chugach) received Order No. 26, "Order Determining Revenue Requirement and Rate Design Issues and Requiring Filings" in Docket U-01-108, "In the Matter of the Tariff Revision, Designated as TA226-8, Filed by CHUGACH ELECTRIC ASSOCIATION, INC., for a Rate Increase and Rate Redesign," from the Regulatory Commission of Alaska (RCA).

Chugach filed a general rate case on July 10, 2001, based on the 2000 test year, requesting a permanent base rate increase of 6.5%, and an interim base rate increase of 4.0%. On September 5, 2001, the RCA granted a 1.6% interim increase effective September 14, 2001. Chugach filed a petition for reconsideration and on October 25, 2001, the RCA revised its Interim Approval to permit Chugach to collect an interim base rate increase of 3.97%. The additional rate increase was implemented on November 1, 2001. The interim rate increase was based on a normalized (adjusted for recurring expenses) test year and a system ratemaking Times Interest Earned Ratio (TIER) of 1.35.

In its filing with the RCA, Chugach proposed that margins be calculated using a rate base/rate of return methodology rather than the TIER methodology previously used. The request to change from the TIER-based methodology to the return-on-rate-base methodology would not have any material adverse effect on future ratemaking or on Chugach's ability to service its outstanding indebtedness.

As anticipated in Chugach's July 2001 original filing, on April 15, 2002, Chugach submitted a filing with the RCA to update certain known and measurable costs and savings that had occurred outside the 2000 Test Year. In the updated filing, Chugach reduced its base rate increase request from 6.5% to 5.7%, or approximately \$0.9 million in the revenue requirement on a system basis. The revised filing also reflected an increase in depreciation expense of approximately \$1.5 million due to the completion of the Beluga Unit 7 re-powering project and a reduction in annualized interest expense of \$2.4 million due to Chugach's recent refinancings. In this revised filing, Chugach continued to request \$11.9 million in margins. As a result of reduced interest costs, Chugach's supplemental filing would have yielded an equivalent system TIER of 1.47.

The RCA hearing on Chugach's proposed rates took place in November and December of 2002, concluding on December 13, 2002. The RCA issued an order dated January 31, 2003, on February 6, 2003.

The Order resolved several issues in Chugach's favor:

- o The RCA rejected intervenor mismanagement allegations regarding re-powering of Beluga Units 6, 7 and Cooper Lake Power Plant (CLPP) overhaul and polychlorinated biphenyl (PCB) remediation.
- o The RCA accepted Chugach's rate lock cost amortization and did not question other refinancing activities.

- o The RCA approved the 1999 depreciation study, in part, and allowed implementation of remaining life depreciation methodology.
- o The RCA approved recovery of rate lock and CLPP remediation expenses.

The Order contains several adjustments not in Chugach's favor:

- o The RCA required Chugach to continue using TIER in calculating return levels.
- o The RCA adjusted Chugach's system overall TIER downwards from 1.35 to 1.30, a difference of approximately \$1.3 million in margins based on the 2000 test year and would have similar impacts in subsequent years. Chugach had requested that its permanent rates in this case be established with an effective TIER of 1.47, or a difference of approximately \$4 million in margins based on the 2000 test year between the now-authorized TIER of 1.30.
- o The RCA required Chugach to treat Allowance for Funds Used During Construction/Interest During Construction (AFUDC / IDC) as a reduction to long-term interest expense, which reduces the revenue requirement by approximately \$1.2 million. With the required AFUDC/IDC adjustment alone, Chugach's effective TIER would be below a 1.30.
- o The RCA required a 1.8 percentage point interest rate reduction (from 3.8% to 2%) on Chugach's \$60.0 million of variable debt, which equates to a revenue requirement reduction of approximately \$1.1 million.
- o Chugach's overall Depreciation Study was approved, although the RCA did require approximately \$0.7 million in downward adjustments, primarily related to Bernice Lake Units 2 - 4 and Chugach's North Submarine Cable field. This reduction in the revenue requirement will match Chugach's reduction in depreciation expense, resulting in a net effect of zero to margins in subsequent years.

Chugach's analysis of the financial impact of the Order is still preliminary. There are several outstanding questions regarding interpretation of the Order that have not yet been clarified. However, based upon this preliminary analysis, the Order would require the following:

- o A refund of revenues collected in 2001 of approximately \$1.1 million and in revenues collected in 2002 of approximately \$6.0 million, which would result in a net operating loss of \$2 million in 2002. Under the Order, Chugach's financial performance for 2002 would fall below the 1.10 level contained in the Rate Covenant in its currently effective indenture. In accordance with the Rate Covenant, Chugach is taking the actions described below to promptly address this margin shortfall.

- o A reduction in estimated 2003 revenues of approximately \$6.0 million. Chugach has calculated, that based on the budgeted revenues and expenditures, under Order 26, Chugach may have insufficient margins over interest in 2003 to comply with the requirements of the Rate Covenant in its bond indenture. Chugach is taking the actions described below to promptly address this margin shortfall.

On February 13, 2003, Chugach filed a Motion with the RCA asking the RCA to stay the effect of its Order until after the RCA considers Chugach's Petition for Reconsideration of Order 26.

On February 18, 2003, the RCA granted in part Chugach's motion for stay. Specifically, the RCA stayed until further order of the RCA Ordering Paragraph 1, of Order U-01-108(26) which states "Chugach's rates will be established on the basis of the 2000 test year revenue requirement recomputed in accordance with our decisions set out in the body of this Order." The RCA also stayed two other obligations until further order of the Commission pertaining to filing tariff sheets and a recalculated Cost of Power Adjustment Base Cost of Power. The RCA also allowed a one-week extension until February 28, 2003 to comply with ordering paragraphs 2 and 3 which require Chugach to recalculate its revenue requirement and cost-of-service studies reflecting the impact of Order U-01-108(26) on Chugach's rates. The RCA also extended the time to file Petitions for Reconsideration of Order U-01-108(26) one week to February 28, 2003. Chugach intends to file the Petition for Reconsideration with the RCA on or before February 28, 2003.

#### SIGNATURES

Pursuant to the requirements of the Securities and Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: February 19, 2003

CHUGACH ELECTRIC ASSOCIATION, INC.

By: \_\_\_\_\_  
Evan J. Griffith  
General Manager

**Chugach Electric Association, Inc.**  
Anchorage, Alaska

March 10, 2003

**RCA Must Consider Financial Health of Alaska Utilities  
Chugach Electric Association's finances are impacted by RCA order**

Below are citations from some of Chugach's rating agencies and major bondholders. Full documents are attached for your review. In addition we have provided a copy of Chugach's 8K filing to the Security and Exchange Commission (SEC) and Chugach's Petition For Reconsideration with the Regulatory Commission of Alaska (RCA).

**Moody's Investors Service**

"The A2 underlying rating for these [Chugach] bonds has come under some pressure recently due to an unsupportive decision by the Regulatory Commission of Alaska (RCA) in the co-op's recently concluded rate case."

"This rate case outcome is in contrast to largely supportive regulatory treatment provided to Chugach in the recent past."

**Standard & Poors Rating Services**

"Standard & Poors Rating Services has placed its 'A' underlying rating on Chugach Electric Association, Alaska's revenue bonds on CreditWatch with negative implications."

"The rating action reflects the expected financial impact on the utility of the latest rate order by the Regulatory Commission of Alaska (RCA)."

"In additions to substantially weakening debt service coverage, RCA's rate order signals heightened regulatory and refinancing risks for the utility and may cause Standard & Poors to apply more stringent guidelines in assessing Chugach's credit quality."

**Alaska Permanent Capital Management Company** – (Letter from Dave Rose to RCA)

"I have reviewed your [RCA] Order 26 in the Chugach Electric rate docket (U-01-108) and write to express my concern over the impact of the order on Chugach's bondholders."



ARECA  
703 West Tudor Road, Suite 200  
Anchorage, Alaska 99503-6650  
907-561-6103  
Fax: 907-561-5547  
www.areca.org

March 10, 2003

The Honorable Tom Anderson  
Chair, House Labor and Commerce Committee  
Alaska State Legislature  
Juneau, Alaska

Subject: HB 111, Extension of the Regulatory Commission of Alaska

Dear Representative Anderson,

ARECA represents the electric utility industry of Alaska. Our members generate roughly 90 % of the electricity provided to the general public throughout the State. My Board of Directors has taken a very active interest in the efficiency of the Regulatory Commission for Alaska (RCA) and has unanimously adopted the following resolution and white paper on the issue. ARECA cannot support HB 111 as presently written. We strongly believe that the present regulatory process is much too cumbersome, time consuming, and very expensive. My members have called for a one-year sunset extension; and statutory amendments that will streamline the regulatory process. However, we are aware that the Governor and Legislature have been grappling with the RCA issue for two sessions now and would like to get this issue behind them so that other more pressing issues can be resolved. In fact the Governor's staff has indicated to ARECA that the Governor plans to straighten out the RCA issue "administratively." While this level of interest encourages us, the RCA is an independent body and we therefore remain only mildly sanguine about an administrative fix. Nevertheless, my members would like to work with the Governor and therefore are prepared to support a four year sunset extension as requested under HB 111, but we would like to have the legislature pass amendments to the RCA statutes that would help the Governor insure that the RCA gets fixed.

Attached to the ARECA resolution and "white paper" is a summary of issues that we would like to see the legislature address. I am prepared to provide you with statutory language that would implement these ideas.

I request that you make this letter and its attachments available to House Labor and Commerce Committee members for consideration at today's committee hearing.

Sincerely,

Eric P. Youid  
Executive Director

**Resolution 03-17**

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

The Regulatory Commission of Alaska (RCA) was under sunset review by the 2002 Alaska Legislature it was given a one-year extension by the Legislature and Governor following a special session. The legislation also established an interim committee to review the RCA process and make recommendations on how the functions of the commission can be streamlined.

ARECA members have expressed serious concerns about the RCA's impaired timeliness, duplication of staff effort and poor quality decision-making in some economic and non-economic regulatory cases. The members' concerns have caused both unnecessary expenses and significant lost revenues costing electric ratepayers millions of dollars over the past three years.

Additional staff were given to the RCA over the past three years but several hundred filings remain unresolved many of which are several years old. Alaska's electric ratepayers deserve timely, cost-effective reviews based upon sound regulatory rule-making practices.

Furthermore, the 1999 Legislature, added a new but separate regulatory review staff function known as the "Public Advocacy Section" (PAS) within the RCA to intervene in filings when designated by the chair of the RCA resulting in duplicative staff reviews and audits which have concluded with conflicting analysis and recommendations costing ratepayers unnecessary expenses and lost revenues.

It is ARECA's intention to establish a "white paper" on changes that need to be considered by the legislature to streamline the RCA and to realign the value and effectiveness of the PAS. Pending the changes required to make the RCA a valued and effective regulatory body, ARECA recommends a conditional one-year sunset extension for the RCA.

**ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.****White Paper Regarding ARECA Board Resolution 03-17**

The Regulatory Commission of Alaska (RCA) was created in 1999 through passage of the Alaska Public Utilities Regulatory Act, ch. 25 SLA 1999. In 2002, the RCA was under sunset review by the 2002 Alaska Legislature. During that review, the utility industry and some legislators expressed significant concerns about the RCA's inability to process cases in a timely manner and a perceived lack of impartiality in the RCA's decision-making processes. Following a special session, the Legislature and the Governor extended the RCA's termination date by one year, imposed modest statutory timelines for deciding cases, and enacted a statute regarding impartial decision-making. The Legislature also created a task force to analyze the operation of the RCA.

In its sunset review audit of the RCA, dated November 26, 2002, the Alaska Division of Legislative Audit recommended that the RCA's termination date be extended by two years to June 30, 2005. For the reasons stated below, ARECA believes more vigilant legislative oversight is still required and proposes that the RCA's termination date be extended by one year to June 30, 2004.

Despite the efforts expended during the last session and the RCA's recent progress in attending to the case backlog it inherited from the Alaska Public Utilities Commission, ARECA's members have seen little improvement in the RCA's operations. ARECA's members have expressed serious concerns about the RCA's continued lack of timely case processing and order issuance, inefficient use of staff resources, inconsistent application of regulatory principles and precedent, and procedural irregularities in performing rulemaking functions.

Related to these problems, there has been significant delay in the RCA's implementation of a Management Information System (MIS) in the three and one-half years since it was required by Section 26 of the 1999 Act. Despite the Legislative Auditor's charitable finding that the MIS has been "substantially implemented," that implementation was only recently completed and only "on a piecemeal basis spread among a variety of systems rather than on a single, fully-integrated mainframe." This failure to implement an adequate MIS has resulted in inefficiency and non-compliance with state statute.

For example, the RCA has repeatedly failed to comply with AS 42.05.254(h), which the Legislature enacted in 1999. That statute required the RCA to adopt regulations establishing a cost-based methodology for fairly allocating collection of the RCA's annual budget from the various utility industries through regulatory cost charges (RCCs). The RCA has consistently declined to even begin that rulemaking process, despite ARECA's encouragement that it do so. The 1999 Act exempted the RCA from this requirement for the fiscal year 2001 RCC determination. Because of the RCA's failure to adopt the required regulations, its fiscal year 2002 and 2003 RCCs were not determined based on the methodology required by AS 42.05.254(h).

To help address the continuing deficiencies of the RCA, ARECA proposes that the Legislature adopt new statutory amendments that will guide the RCA toward more efficient and fair regulation of Alaska's utilities. ARECA proposes statutory amendments in three general areas: (1) RCA procedure and decision-making; (2) the Public Advocacy Section; and (3) RCA rate making. ARECA's primary proposed amendments are summarized below.

#### **RCA procedure and decision-making**

In 2002, the Legislature adopted modest statutory timelines for issuance of RCA orders after a utility makes a complete filing (AS 42.05.175). To enhance and protect the effectiveness of those timelines, ARECA proposes amendments that will: (1) require the RCA to clearly state what documents and additional information are needed for a filing to be considered "complete"; (2) limit what constitutes "good cause" for the RCA to unilaterally extend a statutory timeline; and (3) expand the scope of these and other statutory timelines to also apply to the RCA's processing of power cost equalization filings by unregulated electric utilities.

One of the concerns of ARECA members is that the RCA is inconsistent in its application of regulatory rules and principles and is not guided by its own precedent. To help address these issues, ARECA proposes a new statute requiring the RCA to either adhere to its own precedent or explain its departure from precedent.

The RCA relies heavily on its advisory staff when deciding cases. In some orders, the RCA attaches to its decision a copy of a written advisory staff recommendation. Other times, the RCA does not attach the recommendation or even notify the parties that such a recommendation exists. ARECA proposes amendments that will require the RCA to publish all substantive, written recommendations of its advisory staff and provide a means by which an affected party can file a response prior to the RCA issuing its decision.

#### **Public Advocacy Section**

Currently, the Public Advocacy Section (PAS) intervenes in RCA cases whenever directed to do so by the RCA Chair. In theory, the PAS is supposed to be an independent party and the RCA is prohibited from having *ex parte* communications with the PAS. In practice, however, the RCA gives significant deference to the PAS, including special discovery powers that no other parties have. The RCA assigns the PAS as a party to virtually every docket that will result in a hearing, even when the issues are relatively narrow or insignificant, when there are already several adverse parties in a case, or when the PAS' involvement would unduly delay a case. To make the PAS' involvement more efficient and independent, ARECA proposes statutory amendments that will: (1) clarify that the PAS' role is to advocate for the public interest, including both customers' rate interests and reasonable cost recovery for utilities; (2) require that the PAS consider the need for its advocacy, procedural efficiency, and avoidance of case delay before it seeks to intervene in a docket; (3) increase the independence of the PAS by making it reportable to the Commissioner of the Department of Community and Economic Development, instead of to the RCA Chair; and (4) prohibit the RCA from affording the PAS greater rights and powers than those of other independent parties.

### **RCA Rate Making**

ARECA members are concerned about the RCA not following its own precedent and inconsistently applying rules when determining what costs should be recovered in utility rates. These inconsistencies create unwarranted uncertainty regarding what the RCA will or will not allow.

In addition, despite the RCA's backlog of cases and difficulties with issuing timely orders, the RCA has established a pattern of attempting to increase the number of utilities that have to file rate cases, which are very costly and burdensome to litigate. For example, for decades electric utilities have used monthly cost of power adjustment (COPA) surcharges to quickly flow-through fuel, purchased power, and related cost changes (both increases and decreases) to customers without the utility having to spend hundreds of thousands of dollars on a general rate case every year. In 2002, the RCA, on its own initiative, proposed new regulations that would significantly limit the types of costs that a utility could recover through the COPA mechanism. The results would have been increased costs for utilities to file full rate cases more often and an increased number of RCA dockets opened when the RCA already suffers from a significant case backlog.

To address these issues, ARECA proposes statutory amendments to AS 42.05.381 that will require the RCA to (1) allow an electric utility to elect to recover all reasonable fuel, purchased power, and related costs through the COPA mechanism; (2) allow a utility to defer and amortize rate recovery of certain significant, non-recurring costs to better match customer costs with customer benefits; and (3) allow a utility to recover through rates all reasonable costs associated with conducting a rate case before the RCA. Finally, ARECA proposes an amendment that will clarify existing AS 42.05.381(b) to allow a municipally-owned and -operated utility to include a reasonable annual rate of return on investment when calculating its revenue requirement and to do so under a rate base/rate of return methodology.

### **Conclusion**

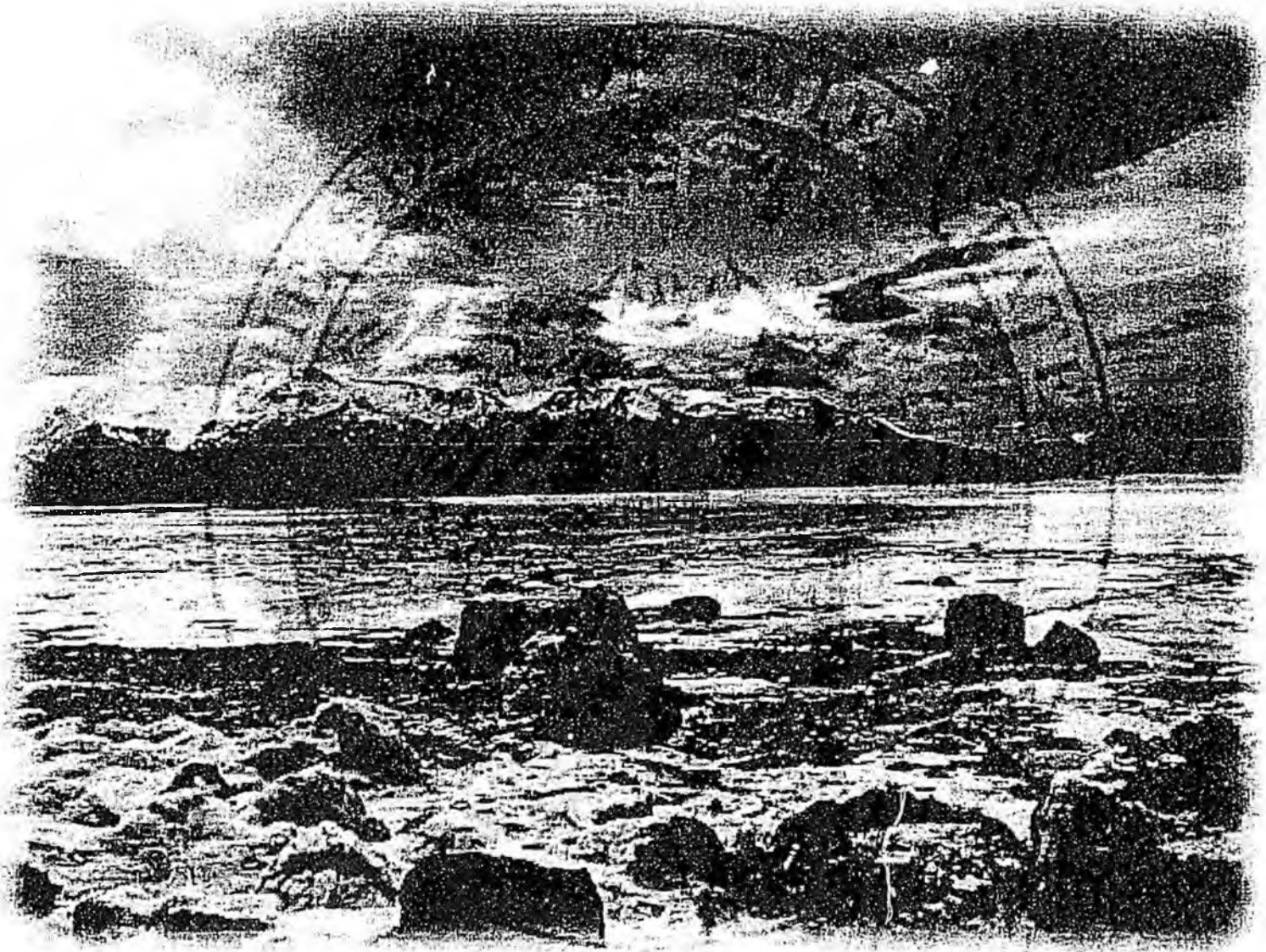
ARECA recommends that its proposed statutory amendments be enacted and that the RCA's termination date be extended by one year to June 30, 2004.

**ARECA REVISED STATUTORY AMENDMENTS REGARDING THE RCA**  
**February 25, 2003**

- I. Allow RCA to hire non-DOL attorneys as RCA employees [AS 42.04.040]
- II. Provide for an executive director to supervise and manage advisory staff, not the RCA chair [AS 42.04.050]
- III. Restructure the Public Advocacy Section (PAS) [AS 42.04.070(a), (c); AS 42.04.080(c); 42.04.150]
  - A. Move PAS under the direction of the Commissioner of Department of Community and Economic Development
  - B. Clarify PAS' public interest role
  - C. Afford the PAS the same rights and duties as other parties
- IV. Clarify existing timelines statute to apply the timelines to unregulated PCE filings and requests for changes to depreciation rates [AS 42.05.175(b)]
- V. Require RCA to follow its own precedent or explain its departure [AS 42.05.195]
- VI. Increase RCA Staff pay scale to allow RCA to attract and retain qualified professionals [AS ??]

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***Regulatory Commission*** ©  
***of Alaska***



***2002 Annual Report***

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***Regulatory Commission of Alaska***

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# STATE OF ALASKA

DEPARTMENT OF COMMUNITY  
AND ECONOMIC DEVELOPMENT

REGULATORY COMMISSION OF ALASKA

FRANK H. MURKOWSKI,  
GOVERNOR

701 WEST EIGHTH AVENUE, SUITE 300  
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January 2, 2003

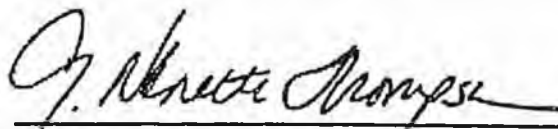
Honorable Pete Kott, Speaker of the House  
and  
Honorable Gene Therriault, President of the Senate

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,

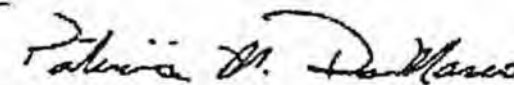
REGULATORY COMMISSION OF ALASKA



Chair



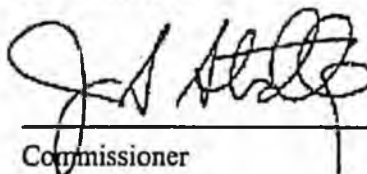
Commissioner



Commissioner



Commissioner



Commissioner

*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."*



Chair Thompson (center) is flanked (left to right) by Commissioners Abbott, Smith, DeMarco, and Strandberg.

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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

*CHAIR G. NANETTE THOMPSON*

*Chair G. Nanette Thompson* was appointed to the Regulatory Commission of Alaska on July 1, 1999, with a term expiring June 30, 2004. Ms. Thompson served on the Alaska Public Utilities Commission from 1995 to 1996.

Ms. Thompson is admitted to the practice of law in Alaska, since 1983, and Washington, since 1982. She has seventeen years of experience as a lawyer in private practice representing business and individual clients and as an Assistant Attorney General for the State of Alaska. After graduating with honors in International Relations from Stanford in 1978, she earned her law degree from the University of Washington in 1982.

Ms. Thompson is an active member of the National Association of Regulatory Utility Commissioners Committee on Telecommunications and was appointed to the Board of Directors in October of 2002, for a two-year term. She was appointed by the Federal Communications Commission (FCC) to serve on the Federal-State Joint Conference on Delivery of Advanced Services in November 1999, and served as State Chair from 1999 to 2001. She was appointed by the FCC to the Universal Service Joint Board in August 2000, and was elected State Chair in 2001.

Ms. Thompson is active in community activities. She served on the Salvation Army's Booth Home Advisory Board from 1989 to 1994, acting as President in 1994, and on the Campfire Boys and Girls Board from 1995 to 2000. She and her husband have five children ranging in age from 13 to 27.

*COMMISSIONER BERNIE SMITH*

*Commissioner Bernie Smith* was appointed to the Regulatory Commission of Alaska on July 1, 1999, with a term expiring on June 30, 2003.

Mr. Smith came to the Regulatory Commission of Alaska after serving sixteen years with Tesoro Alaska Petroleum Company. While employed with Tesoro he held positions as Manager of Alaska Government Affairs and Special Projects, Senior Engineer, and Project Engineer. In 1973, Mr. Smith graduated from Texas A&M University, with a Bachelor of Science degree in Engineering Technology. He has been active in several community organizations, currently serving as board member of the Chugiak-Eagle River Chamber of Commerce and a board member of the State Chamber of Commerce. At the time of his appointment, Mr. Smith was a member of the Alaska Board of Marine Pilots. He served as President and board member of the Boys and Girls Club of the Kenai Peninsula, and was a board member of Nikiski Fire Service Board.

Mr. Smith has two sons, ages 18 and 20.

## 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.

COMMISSIONER JAMES S. STRANDBERG



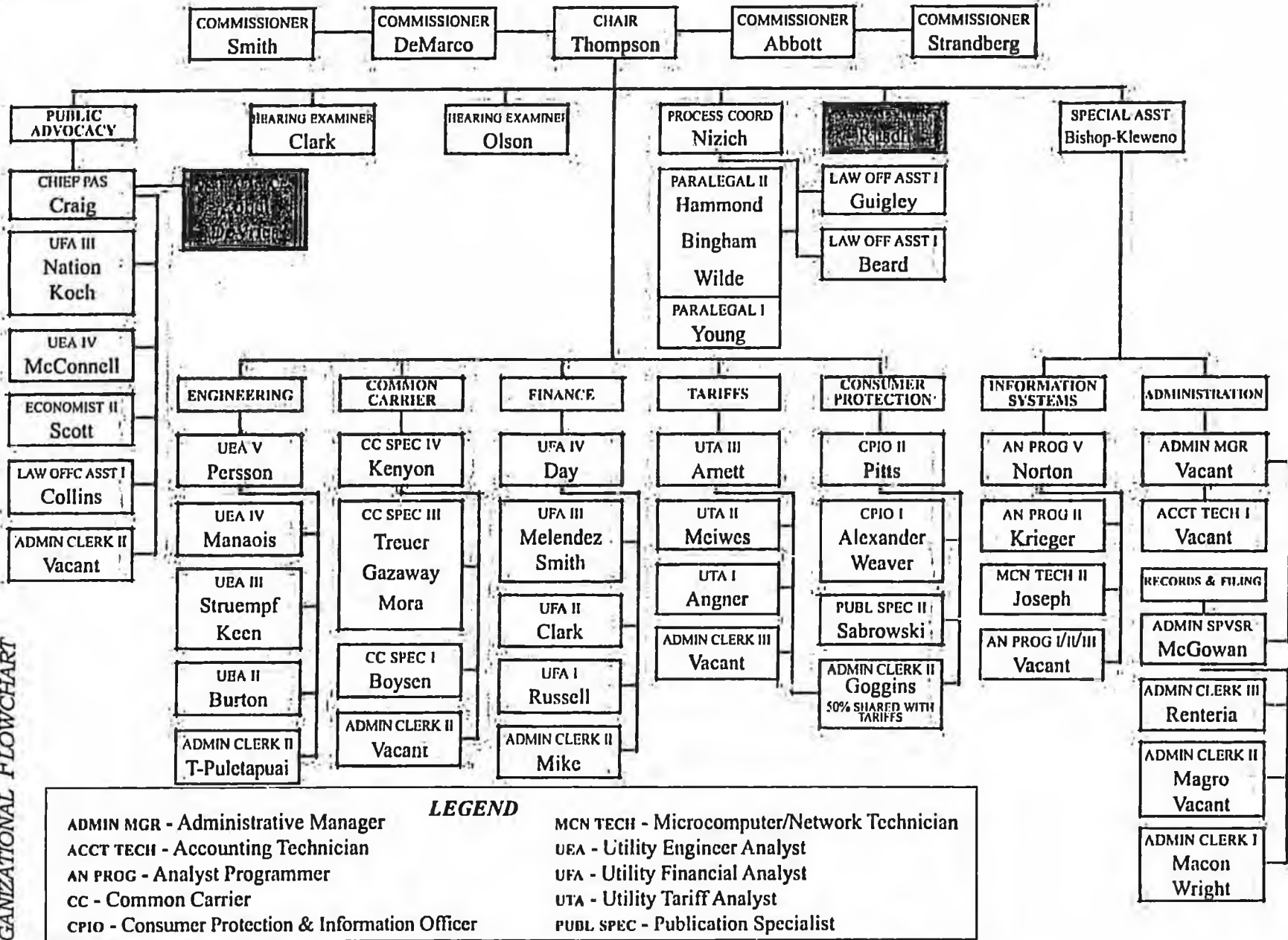
Commissioner James S. Strandberg was appointed to the Regulatory Commission of Alaska on July 1, 1999, and reappointed in 2000 for a six-year term. A life long Alaskan, Mr. Strandberg has twenty-nine years of experience as a Professional Engineer. Born in Anchorage, he attended the University of Alaska, Fairbanks and received a Bachelor of Science degree in Mechanical Engineering in 1970, and a Masters of Science in Arctic Engineering in 1983.

Mr. Strandberg is a registered mechanical and civil engineer in Alaska and has worked in rural and urban areas in his professional practice. Early in his career, Mr. Strandberg worked on the design team for the Trans-Alaska Pipeline, and was stationed in Anchorage, Fairbanks, and Houston, Texas. As a Mechanical and Utilities Designer, he worked in private practice designing heating, ventilating and air conditioning, district heating, and power plant systems.

Married for 30-years, Mr. Strandberg and his wife have two grown children.

FORMER COMMISSIONERS

Commissioner	Service Date
James M. Posey	1997 - 1999
Sam Cotten	1995 - 1999
Tim Cook	1994 - 1999
Dwight D. Ormquist	1993 - 1999
Alyce A. Hanley	1993 - 1999
Don Schroer	1991 - 1997
G. Nanette Thompson	1995 - 1996
James E. Carter, Sr.	1992 - 1995
Daniel Patrick O'Tierney	1989 - 1994
Mark A. Foster	1990 - 1993
Susan M. Knowles	1975 - 1993
Don May	1990 - 1992
Peter Sokolov	1987 - 1991
Kathleen E. Whiteaker	1985 - 1990
Louis E. Aigi	1983 - 1989
Carolyn S. Guess	1975 - 1989
Marvin R. Weatherly	1975 - 1987
Diana E. Snowden	1981 - 1985
Stuart C. Hall	1976 - 1983
Gordon J. Zerbetz	1963 - 1981
B. Richard Edwards	1974 - 1976
James R. Hendershot	1971 - 1975
John M. Stern, Jr.	1971 - 1973
Loren H. Lounsbury	1967 - 1971
James R. Clouse, Jr.	1967 - 1971
T. Stanton Wilson	1966 - 1966
Harold Moats	1965 - 1966
Maurice Cherkov	1965 - 1965
Joseph Fitzgerald	1964 - 1965
Karl Walter, Jr.	1960 - 1964
Charles Herbert	1960 - 1963
Clyde Courtnage	1960 - 1963



**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.

## RCA ROSTER

The Commission is divided into nine major sections and employs 61 people with an operating budget of \$5,871,300 for the fiscal year 2002. The Chair supervises staff and serves as a liaison between staff and Commissioners, and between the Commission and the Legislature.

### Commissioners

Abbott, Will ..... COMMISSIONER  
DeMarco, Patricia ..... COMMISSIONER  
Smith, Bernie ..... COMMISSIONER  
Strandberg, James ..... COMMISSIONER  
Thompson, G. Nanette ..... COMMISSIONER, CHAIR

### Commission Support Staff

Beard, Brian ..... LAW OFFICE ASSISTANT I  
Bingham, Mary Margaret ..... PARALEGAL II  
Bishop-Kleweno, Dawn ..... SPECIAL ASSISTANT  
Clark, Patricia ..... HEARING EXAMINER  
Guigley, Jennifer ..... LAW OFFICE ASSISTANT I  
Hammond, Anita ..... PARALEGAL II  
Olson, Paul ..... HEARING EXAMINER  
Nizich, Rosalie ..... PROCESS COORDINATOR  
Rusch, Virginia ..... ASST. ATTORNEY GENERAL<sup>1</sup>  
Wilde, Ann ..... PARALEGAL I  
Young, Yvette ..... PARALEGAL I

### Common Carrier Staff

Boysen, Robin ..... COMMON CARRIER SPECIALIST I  
Gazaway, Richard ..... COMMON CARRIER SPECIALIST III  
Kenyon, Lorraine ..... CHIEF COMMON CARRIER SPEC. IV  
Mora, Michael ..... COMMON CARRIER SPECIALIST III  
Treuer, Philip ..... COMMON CARRIER SPECIALIST III

### Consumer Protection (CP) Staff

Alexander, Tamara ..... CP & INFORMATION OFFICER I  
Goggins, Judy ..... ADMINISTRATIVE CLERK II  
Pitts, Agnes ..... CHIEF CP & INFORMATION OFFICER II  
Sabrowski, Catherine ..... PUBLICATION SPECIALIST II  
Weaver, Rose ..... CP & INFORMATION OFFICER I

### Engineering Staff

Burton, Jerry ..... UTILITY ENGINEER ANALYST II  
Keen, James ..... UTILITY ENGINEER ANALYST III  
Persson, Brad ..... CHIEF UTILITY ENGINEER ANALYST V  
Manaois, John Paul ..... UTILITY ENGINEER ANALYST IV  
Struempf, James ..... UTILITY ENGINEER ANALYST III  
Tuaese-Puletapuai, Dorothy ..... ADMINISTRATIVE CLERK II

### Finance Staff

Clark, Tyler ..... UTILITY FINANCIAL ANALYST II  
Day, Keith ..... CHIEF UTILITY FINANCIAL ANALYST IV  
Melendez, Felix ..... UTILITY FINANCIAL ANALYST III  
Mike, Laurentia ..... ADMINISTRATIVE CLERK II  
Russell, Buell ..... UTILITY FINANCIAL ANALYST I  
Smith, Chris ..... UTILITY FINANCIAL ANALYST III

### Information Systems Staff

Joseph, Vince ..... MICROCOMPUTER/NETWORK TECH. II  
Krieger, Christin ..... ANALYST PROGRAMMER II  
Norton, Keith ..... CHIEF ANALYST PROGRAMMER V

### Public Advocacy Staff

Collins, Deborah ..... LAW OFFICE ASSISTANT I  
Craig, Lew ..... CHIEF PUBLIC ADVOCACY SECTION  
DeVries, Steve ..... ASST. ATTORNEY GENERAL<sup>1</sup>  
Koch, Katherine ..... UTILITY FINANCIAL ANALYST III  
McConnell, Tim ..... UTILITY ENGINEER ANALYST IV  
Nation, Parker ..... UTILITY FINANCIAL ANALYST III  
Scott, Antony ..... ECONOMIST II  
Zobel, Ron ..... ASST. ATTORNEY GENERAL<sup>1</sup>

### Records & Filing Staff

Macon, Lceteasha ..... ADMIN. CLERK I, RECEPTIONIST  
McGowan, Joyce ..... ADMINISTRATIVE SUPERVISOR  
Magro, Holly ..... ADMINISTRATIVE CLERK II  
Renteria, Letitia ..... ADMINISTRATIVE CLERK III  
Wright, Carolyn ..... ADMINISTRATIVE CLERK I

### Tariff Staff

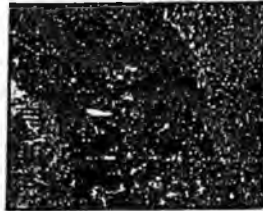
Angner, Matthew ..... UTILITY TARIFF ANALYST I  
Arnett, Wendy ..... CHIEF UTILITY TARIFF ANALYST III  
Goggins, Judy ..... ADMINISTRATIVE CLERK II  
Meiwes, Jennifer ..... UTILITY TARIFF ANALYST III

<sup>1</sup> Employee of the Department of Law contracted to the Commission. Last revised November 15, 2002.



## 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.*

## ENGINEERING STAFF

Engineering staff develops and recommends policies concerning utilities for electric, natural gas, steam heat, refuse, water and wastewater, and pipeline carriers. Staff administers rates, services, and facilities for certificated utilities and pipeline carriers. Staff also reviews legal descriptions for service areas, plans for plant expansion, plant-in-service schedules, and depreciation schedules. Staff presents analyses and evaluations to the Commission for adjudication.



(Front row, from left) James Keen, Dorothy Tauaese-Puletapuai, Brad Persson, (back row, from left) James Struempf, John Paul Manaois, and Jerry Burton.

## FINANCE STAFF

Finance staff analyzes and evaluates utilities and pipeline carriers financial records, including cost of service studies, Power Cost Equalization, and revenue requirements. Staff audits utility financial statements, examines historical operating year data, and *pro forma* financial adjustments for all certificated utilities and pipeline carriers.



(Front row, from left) Chris Smith, Tyler Clark, Keith Day, (back row, from left) Felix Melendez, and Buell Russell.

## INFORMATION SYSTEMS STAFF

Information Systems staff develops computer programs for the agency's operations, educates staff on software programs, and provides computer support to the Commission. Staff also maintains the Commission's web site and works to automate parts of the Commission's processes.



Vince Joseph, and (seated) Christin Krieger.



## 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, and utilities. Staff processes new filings and documents, maintains current and archive filings, and posts public documents to the Commission's web site.

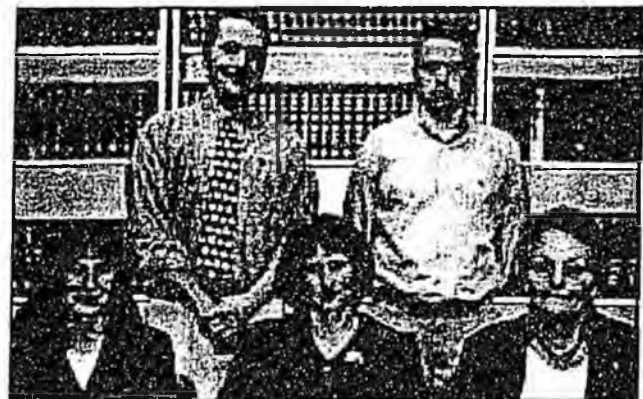


(Front row) Joyce McGowan, (back row, from left) Letitia Renteria, Holly Magro, and Carolyn Wright.



## 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.

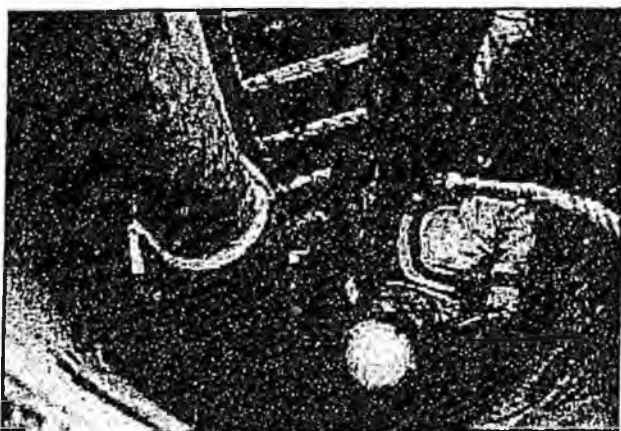
## 2002 OVERVIEW

The Commission has worked with the hundreds of public utilities in Alaska with the mission to ensure reliable continued service, sound utility management, and fair rates for residents in all communities of the state.

- ⑥ In 1981, the agency's role was expanded to include oversight of pipeline carriers and pipelines when it merged with the Alaska Pipeline Commission.
- ⑥ In 1999, the Legislature reorganized and renamed the agency to the Regulatory Commission of Alaska and established the Public Advocacy Section to advocate public interests.

Utility commissions were originally created to protect consumers, because most utility services are provided by monopolies. Today, commissions are faced with the challenge of evaluating regulations and considering policy changes to encourage telecommunications and refuse competition, while protecting consumer interests.

The Regulatory Commission of Alaska (RCA) strives to balance the utilities' and pipeline carriers' investment recovery and the public's right to receive quality service at a fair price. In doing so, the Commission issues certificates of public convenience and necessity to qualified service providers. The RCA regulates the rates, services, practices, or facilities of 257 utilities and 16 pipeline carriers in Alaska.



A service technician with Anchorage Water and Wastewater Utility (AWWU) works inside a caisson. Photo is courtesy of Municipality of Anchorage d/b/a AWWU.



A "Menzi muck" machine carves out a trench to bury power lines. Photo is courtesy of Alaska Electric Light & Power Company.

- ⑥ The RCA has specific jurisdiction over the operation of electric utilities, natural gas utilities, refuse collection, water and wastewater treatment, steam heat producers, telephone companies (local and instate services), as well as oil and gas pipeline carriers.
- ⑥ The Commission computes the power costs and resultant state assistance amounts for customers of electric utilities participating in the Power Cost Equalization program.
- ⑥ The Commission carries out its regulatory responsibilities through several means. It conducts audits, investigations, public meetings, Tariff Action meetings, informal and formal proceedings, and resolves consumer complaints.
- ⑥ The Commission functions as a quasi-judicial body when rendering decisions in formal proceedings and as a quasi-legislative body when establishing and enforcing its regulations. The statutes and regulations of the state govern the Commission's proceedings and determinations.

## 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.

<i>Fiscal Year</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>% Change (2001-2002)</i>
<i>Appropriations</i>					
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	
<i>Total Appropriations</i>	<i>\$4,476,400</i>	<i>\$4,699,200</i>	<i>\$5,359,600</i>	<i>\$5,871,300</i>	<i>9.5%</i>
<i>Expenditures</i>					
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	
<i>Total Expenditures</i>	<i>\$4,120,473</i>	<i>\$4,289,232</i>	<i>\$5,258,171</i>	<i>\$5,654,065</i>	<i>7.5%</i>
<i>Revenue Receipts<sup>1</sup></i>					
General Fund	\$3,926,597	\$4,289,232	\$5,258,171	\$5,654,065	
Program Receipts <sup>2</sup>					
<i>Total Revenues</i>	<i>\$3,926,597<sup>3</sup></i>	<i>\$4,289,232</i>	<i>\$5,258,171</i>	<i>\$5,654,065</i>	<i>7.6%</i>

<sup>1</sup> 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).

<sup>2</sup> 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 30<sup>th</sup>, but collected in July of the following fiscal year.

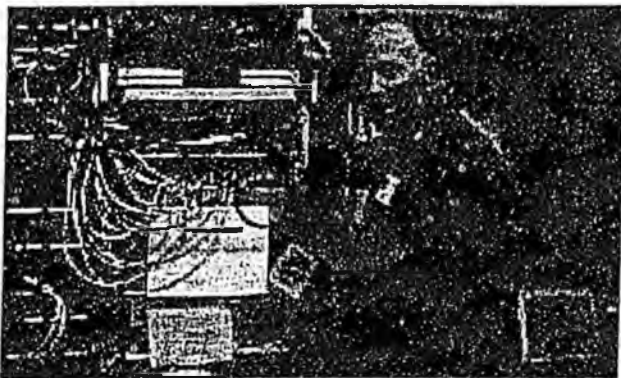
<sup>3</sup> Reporting did not include the transfer of \$332,478.63 on August 20, 1999 and \$12,171.32 on November 9, 1999.

## ECONOMIC DEVELOPMENT

The Commission supports economic development through the use of the following three tools to ensure reliable utility services at affordable rates:

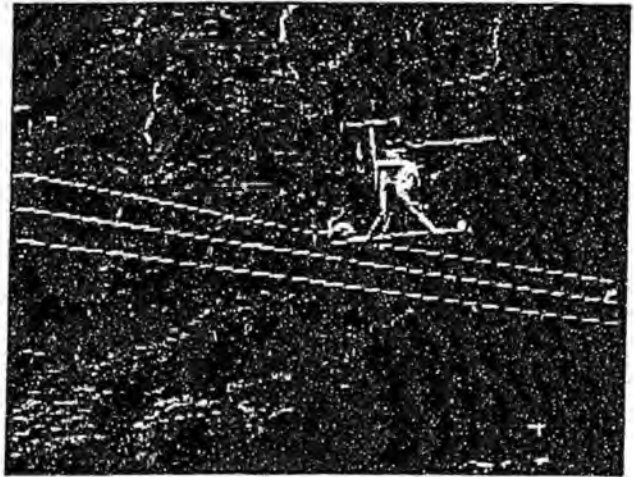
- ⑥ *Comparative Information*  
Consumer Protection staff provides public information to consumers about comparative utility services and rates based on filed tariffs.
- ⑥ *Certification Proceedings*  
The Commission issues certificates of public convenience and necessity to qualified applicants that possess the financial, technical, and management capabilities to stimulate economic development and meet the present and future demands for services.
- ⑥ *Rate Regulation*  
The Commission regulates utilities and pipeline carriers to ensure consumers have reasonable and just rates, with fair rates of return to the utilities. The Commission considers and approves economic development incentive rates, special contracts, and promotions that are in the public interest.

Encouraging rural economic development requires innovative solutions. One of the keys is the improvement of infrastructure to offer advanced telecommunications and energy services in rural areas. Better delivery systems mean a lower cost of power and phone service. Once these communities are linked to the "communications superhighway", there will be more local opportunities for economic interaction in the global marketplace.



Thomas Knight, Network Administrator, grasps the OC3 fiber patch panel "where he will tap light speed". Photo is courtesy of Matanuska Telephone Association, Inc.

## 2003 COMMISSION PLAN



A helicopter crew replaces old aircraft marker balls on the 69kv transmission line in Juneau. Photo is courtesy of Alaska Electric Light & Power Company.

The Commission will continue to . . .

- ⑥ Review and approve electric rates charged by regulated electric utilities statewide.
- ⑥ Monitor refuse services statewide and allow competition when it is in the public interest.
- ⑥ Review rates of existing gas utilities and applications to expand the availability of natural gas heating in the state.
- ⑥ Resolve disputes over pipeline tariff rates and participate in the process to develop a regulatory framework to operate a natural gas pipeline from the North Slope.
- ⑥ Fulfill the directives of the 1996 Telecommunications Act to allow competition and to provide choices to consumers.
- ⑥ Support improvements to the statewide network to allow the delivery of affordable high-speed data and voice services to all communities in Alaska.
- ⑥ Coordinate with state and federal agencies to implement the Federal Clean Water Act standards. The Commission will complete its effort to design an alternative regulatory framework for small and government-owned water and wastewater systems.

**FINANCIAL OPERATIONS AND  
REPORTED CUSTOMERS**

Prepared by Felix Melendez

<b>Fiscal Year</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
<b>Net Plant</b>				
Cable Television <sup>2</sup>	\$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 <sup>1</sup>	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 <sup>3</sup>	417,024,290	660,653,316	625,546,641 <sup>1</sup>	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
<b>Total Net Plant</b>	<b>\$2,095,272,889</b>	<b>\$2,428,267,233</b>	<b>\$2,401,259,226<sup>1</sup></b>	<b>\$2,424,106,092</b>
<b>Gross Revenue</b>				
Cable Television <sup>2</sup>	\$5,372,000	\$5,811,000	\$6,189,000	\$6,563,000
Electric	504,513,606	513,714,260	525,626,713 <sup>1</sup>	557,262,581
Natural Gas	100,865,752	110,451,278	99,580,257	117,028,010
Refuse	26,633,726	31,250,540 <sup>1</sup>	33,077,014 <sup>1</sup>	33,342,330
Steam Heat	Not reported	1,414,788	1,540,413	1,895,793
Telecommunications <sup>3</sup>	235,846,988	360,273,606 <sup>1</sup>	357,197,021 <sup>1</sup>	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
<b>Total Gross Revenue</b>	<b>\$940,353,830</b>	<b>\$1,090,763,221<sup>1</sup></b>	<b>\$1,091,759,087<sup>1</sup></b>	<b>\$1,155,300,334</b>
<b>Net Income</b>				
Cable Television <sup>2</sup>	\$784,000	\$972,000	\$981,000	\$757,000
Electric	41,455,886	42,773,482	36,904,719 <sup>1</sup>	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 <sup>3</sup>	24,105,402	32,992,147 <sup>1</sup>	37,839,669 <sup>1</sup>	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
<b>Total Net Income</b>	<b>\$95,166,228</b>	<b>\$101,062,764<sup>1</sup></b>	<b>\$97,454,769<sup>1</sup></b>	<b>\$90,383,591</b>
<b>Customers</b>				
Cable Television <sup>2</sup>	9,420	7,822	8,130	8,130
Electric	218,621	225,821	229,306 <sup>1</sup>	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 <sup>3</sup>	427,000 <sup>1</sup>	534,555 <sup>1</sup>	592,815	570,216
Wastewater	57,364	62,949	59,219	60,057
Water	58,212	60,586	60,292	60,150
<b>Total Customers</b>	<b>920,953<sup>1</sup></b>	<b>1,041,501<sup>1</sup></b>	<b>1,104,785<sup>1</sup></b>	<b>1,092,702</b>

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


<sup>2</sup> 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.

<sup>3</sup> Includes local exchange carriers only.


*ELECTRIC EVENTS*

 *Disputed Settlement Agreement Resolved; Chugach Electric Association, Inc.*

The Commission issued an order resolving disputes arising under a Settlement Agreement between Chugach Electric Association, Inc. (Chugach), and its two largest wholesale customers, Matanuska Electric Association, Inc. and Homer Electric Association, Inc./Alaska Electric Generation & Transmission Cooperative, Inc. The Settlement Agreement provided for the determination of Chugach's current wholesale rates and the effective rates since 1997 for the two wholesale customers. Docket: U-96-37, pending


 *Defining the Future Market Structure of Alaska's Electric Industry*

Through hearings and extensive comments from interested parties, the Commission examined the electric utility market structure study that was commissioned jointly with the State Legislature. Having considered gathered information and the issues highlighted by the study, the Commission found insufficient evidence in the record to show that retail electric competition would be in Alaska's public interest. There was no compelling evidence that rates would be lowered and pursuing competition would have required an extensive investment to create a well-functioning power market, exposing ratepayers to significant risks. The Commission decided to continue to monitor the dynamics that influence electric utility policy, specifically the natural gas supply and improvements to power transmission up and down the Railbelt, and should the Legislature take up policy concerning electric utility restructuring in the future, the Commission will strive for the greatest public benefit. Docket: R-97-10, closed (9/28/01)

 *Rate Increase and Methodology Change; Chugach Electric Association, Inc.*

After reconsideration, the Commission granted a 3.98 percent interim and refundable rate increase to Chugach Electric Association, Inc. (Chugach), and began proceedings to determine appropriate rates and the recovery of environmental remediation costs related to its Cooper Lake Hydro Project, and to change from a Times Interest Earned Ratio to a Rate Base Rate of Return methodology of establishing rates. The proceeding will constitute the first comprehensive review of Chugach's retail and wholesale rates since 1989. Docket: U-01-108, pending

*NATURAL GAS EVENT*

 *Approved Cook Inlet Natural Gas Supply Contract and Review of Base Rates; ENSTAR Natural Gas Company, a Division of SEMCO*

The Commission approved a gas supply contract to help satisfy projected long-term supply requirements for the customers of ENSTAR Natural Gas Company (ENSTAR), a Division of SEMCO, to stimulate further Cook Inlet natural gas exploration efforts. Docket: U-01-07, closed (6/10/02)

The Commission investigated ENSTAR's base rates and approved their request to update the revenue-requirement to the 2000 test-year as a result of the 1999 acquisition of ENSTAR by SEMCO Energy Company. The Commission bifurcated the proceeding into two phases. The first phase established an appropriate revenue-requirement and the second phase established the appropriate rate design for ENSTAR to recover its approved revenue-requirement. Dockets: U-00-88, pending



*An employee for ENSTAR Natural Gas Company (ENSTAR), a Division of SEMCO, repairs a residential gas meter on a new home. Photo is courtesy of ENSTAR.*



"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

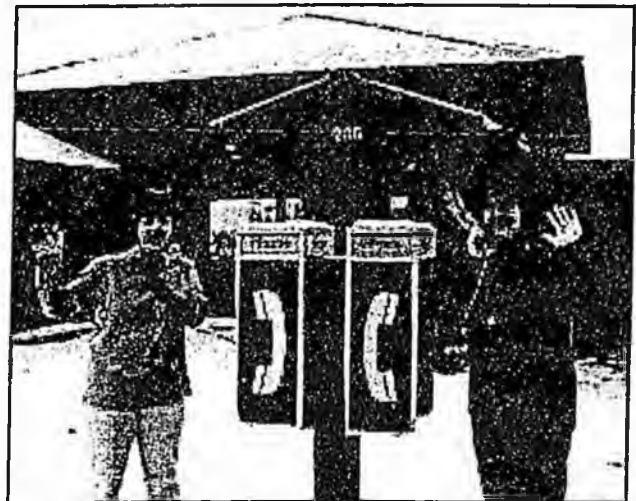
### Local Competition in Fairbanks and Juneau

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.

The Commission is considering the appropriate manner for incumbent carriers to recover the cost of using the local network to originate and terminate interexchange services, as part of the access charge reform review. One of the primary issues in the proceeding is whether these access costs should be recovered directly from consumers (e.g., through a flat monthly surcharge) or should the costs continue to be recovered through long distance rates.

The Commission is evaluating options for streamlining the processes for authorizing long distance carriers to operate in Alaska. Such streamlining may improve the agency's efficiency and reduce regulatory burden placed on utilities. Dockets: R-98-01, R-00-04, R-01-01, pending



*Disaggregate Study Areas for Distributing Federal Universal Service Funds*

The Federal Communications Commission allowed incumbent Eligible Telecommunications Carriers (ETC) to submit plans for distributing Federal Universal Service Funds within a geographic area in order to better target federal funding to high-cost areas and consequently reduce funding to low-cost areas. In 2002, the Commission received plans from each of the regulated incumbent ETCs. These plans were uncontested and have gone into effect as allowed under federal regulation. Docket: R-00-01, pending



*Universal Service Support for Local Service; GCI Communication Corporation*

The Commission granted GCI Communication Corporation (GCICC) status as an Eligible Telecommunications Carrier (ETC) in Fort Wainwright, Fairbanks, and Juneau study areas of Alaska. Through the ETC status, GCICC is allowed to file and obtain Federal Universal Service Fund support for the provision of local service. Docket: U-01-11, pending



*Granted Partial Interim and Refundable Rate Relief; Alaska Communications Systems, Inc.*

Alaska Communications Systems, Inc. (ACS) filed for the first time in ten years, a rate increase in the service areas of Anchorage, Fairbanks, Juneau, and Sitka. The Commission granted a 24 percent, interim and refundable rate increase to allow ACS to earn a reasonable rate of return on their investments. Docket: U-01-34, pending



*An Arctic Slope Telephone Association Cooperative, Inc. (ASTAC) telephone technician splices wires. Photo is courtesy of ASTAC.*

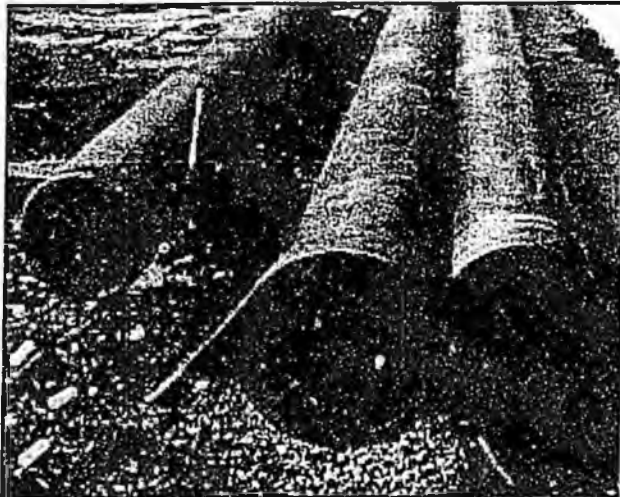


*Biennial Intrastate Interexchange Access Charge Review Methodology Adopted on a Test Basis*

On a test basis, the Commission adopted a biennial review methodology proposed by utilities that participated in the annual review of intrastate interexchange access charge rates. Under this process, the local exchange carriers (LEC) who participate in the annual pooled rate calculation file their revenue-requirements in alternating years, with approximately half of the LECs filing in a given year. The individual utility revenue-requirement reported in the prior year would be included in the pooled calculation for those LECs not filing in the current year. This methodology is anticipated to provide some overall reduction in costs for the LECs that are required to produce the revenue-requirement studies, while generally improving the quality of each annual regulatory review by reducing workload compression and allowing for a more detailed review of individual company revenue-requirements. Docket: U-01-49, closed (5/31/02)

### *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 sewer pipes to be installed in Anchorage. Photo is courtesy of Municipality of Anchorage d/b/a Anchorage Water and Wastewater Utility.*

## WATER & WASTEWATER EVENTS

### *Water Service Expanded to Girdwood; 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

## FINANCIAL OPERATIONS

Prepared by Felix Melendez

<i>Fiscal Year</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>
<i>Property</i>				
Gross	\$11,143,942,613	\$11,167,509,117	\$11,422,190,371	\$11,531,079,380
Net	4,409,150,310	4,202,504,850	4,169,113,782	4,107,233,114
<i>Revenue</i>				
Gross	\$1,395,820,949	\$1,440,629,200	\$1,307,978,918	\$1,531,197,148
Net	274,463,173	504,581,438	306,261,965	381,926,530
<i>Throughput<sup>1</sup></i>				
(barrels)	686,390,088	668,104,686	722,723,334 <sup>1</sup>	754,350,768
<i>Gross Revenue</i>				
(per barrel)	\$2.03	\$2.16	\$1.81 <sup>1</sup>	\$2.03
<i>Net Revenue</i>				
(per barrel)	\$0.40	\$0.76	\$0.42 <sup>1</sup>	\$0.51

This figure above shows the amount of Property and Revenue for regulated pipeline carriers. The Throughput of oil has increased 4% and \$0.22 per barrel in Gross Revenue from fiscal year 2000 to fiscal year 2001.

## COOK INLET PIPE LINE EVENTS

**Acceptance of Gas Sales Agreement; Alaska Pipeline Company**

The Commission accepted the amended Gas Sales Agreement (GSA) between Alaska Pipeline Company, a wholly-owned subsidiary of SEMCO Energy Inc., of which the ENSTAR Natural Gas Company (ENSTAR) is a Division of the Union Oil Company of California (Unocal). ENSTAR filed a tariff advice letter requesting approval of a new GSA between Unocal and ENSTAR. The tariff was suspended for six months to allow ENSTAR the opportunity to show that the GSA provisions were in the public interest, that a reasonably competitive procurement process was undertaken, and to explain the GSA's impact on long-term regional gas supply. The Commission amended the GSA after reviewing evidence, testimony, and public comments. The GSA serves to provide ENSTAR ratepayers with a reliable supply of reasonably priced gas, and creates an incentive for more than one gas producer to remain in Cook Inlet. Docket: U-01-07, closed (6/10/02)

**Rate Settlement; Cook Inlet Pipe Line Company**

The Commission approved a multi-year rate settlement based on an agreement between the State of Alaska and Cook Inlet Pipe Line Company. The Commission accepted filed rates for the periods of 1993 through 1997; rates prescribed by the Settlement Agreement for 1998, 1999, and 2000; a settlement methodology, whereby rates were calculated for the years of 2001 and 2002; and will be calculated for future years. Docket: P-92-05, pending

**Application for Certification; Kenai Kachemak Pipeline Company, LLC**

The Commission processed an application from Kenai Kachemak Pipeline Company, LLC (KKPL) for a certificate to construct and operate a gas pipeline from Ninilchik to Kenai. The pipeline will transport natural gas from supplies near Ninilchik for delivery to connecting pipelines at Kenai. If granted a certificate, KKPL will be the first certificated natural gas pipeline under Alaska Statutes 42.06. Docket: P-02-06, pending

<sup>1</sup> Figures have been restated to correct compilation errors in summarizing reported data.



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



#### *Pipeline Certification; 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

### TRANS ALASKA PIPELINE SYSTEM EVENTS



#### *Reopened Quality Bank Proceedings; Trans Alaska Pipeline System Carriers*

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

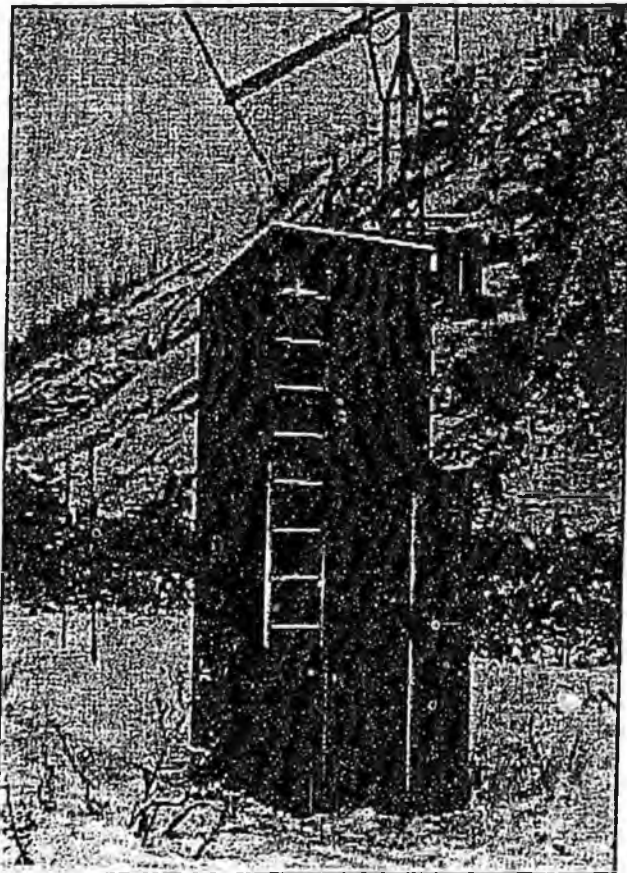


Alaska Power & Telephone Company (AP&T) wireless technician, Dave Pflaum works on the High Mountain Web Camera. Photo is courtesy of AP&T.

## ANNUAL REVIEW

The Public Advocacy Section (PAS) was established by the Legislature in 1999 to operate independently from the Commission and represent the public interest. As a party, the PAS investigates all relevant issues; presents the results of its investigation to the Commission, as necessary; and may submit stipulations of agreed upon issues for the Commission's approval. The PAS staff has the responsibility of participating as a party (when named by the Commission) and testifying in proceedings before the Commission.

The PAS generally investigates historical and subject area research of the utility proposal; conducts onsite audits of the utility's records; discovery and pre-filed written testimony; and prepares cross-examinations of utility witnesses at hearings. The PAS may also engage in settlement discussions.



*A remote weather station beams weather reports to Anchorage as part of a statewide reporting system. Photo is courtesy of Alaska Electric Light & Power Company.*

### *Public Advocacy Staff*

In fiscal year 2002, the PAS staffed two utility financial analysts, utility engineering analyst, law office assistant, and a section chief. Two Assistant Attorneys General provided a combined 150 percent of their time on legal support and representation for the PAS (with 50 percent of time devoted to Commission appeals). Outside consultants were employed for two cases during the fiscal year.

### *Summary of Utility Dockets*


The PAS staff filed testimony, reports or comments in 12 dockets, and participated in nine separate hearings before the Commission. In total, the PAS spent 31 days at hearing. The PAS also attended numerous prehearing and discovery conferences before Commission hearing examiners, and participated in workshops. The PAS regularly participated in settlement conferences to narrow or settle issues, and jointly filed stipulations to resolve issues in eight dockets. The PAS counsel regularly engaged in motion practice, including legal briefs when necessary. Currently, the PAS is named a party to 39 open dockets that are in various stages of investigation.

### *Summary of Regulation Dockets*


The PAS participated in two regulation proceedings. In Docket R-02-02, the PAS proposed to amend existing regulations and add a new section to the Commission's regulations that would define powers and duties of the Public Advocacy Section. The PAS petitioned the Commission to adopt the proposed amendments, presented argument at a public meeting, and filed extensive reply comments.

The PAS also participated in Docket R-02-03, regarding the proposed rules that govern fuel cost adjustment clauses. The PAS filed comments supporting regulations that would allow only costs directly associated with fuel to be passed on to ratepayers. In the proceeding, the PAS joined in a workshop with Commission staff and utilities.


## 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 allocation 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.*

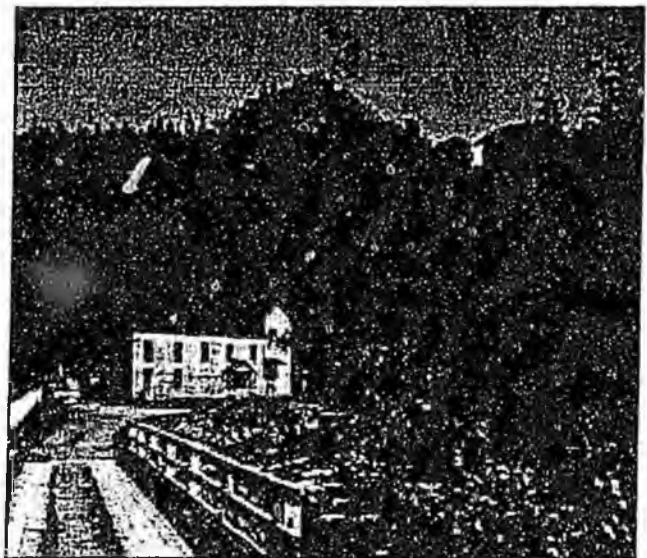
Chugach Electric Association, Inc. (Chugach) and its wholesale customers disagreed on how to measure and allocate line-loss. In fiscal year 2001, the PAS and other parties (Chugach, Alaska Electric Generation & Transmission Cooperative, Inc., Matanuska Electric Association, Inc., and Homer Electric Association, 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 Cost of 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 1998, this is one of two power houses built to generate power that used water from the Salmon Creek Dam. Photo is courtesy of Alaska Electric Light & Power Company.

**Contributions for Line Extensions;  
Chugach Electric Association, Inc.**

Chugach Electric Association, Inc. proposed to reduce contributions to the cost of primary line extensions for residential and commercial construction with the intent to eliminate its line extension credit to new homebuyers. The PAS and the Anchorage Homebuilders Association opposed the change. The Commission accepted a stipulation among the parties to provide continued contributions at reduced levels. Docket: U-01-01, pending

**Policy on Guaranteed Recovery Argued;  
Chugach Electric Association, Inc.**

Chugach Electric Association, Inc. (Chugach) filed its first complete general rate case since 1987. The filing included a revenue-requirement, depreciation study, cost of service study, and rate redesign. Chugach requested a rate increase of four percent. The Commission decided some issues in advance of considering the overall rate increases. One issue was a request by Chugach to create two regulatory assets by granting explicit approval for the guaranteed recovery of two specific expenditures. The PAS argued against the creation of a regulatory asset in both instances as being contrary to generally accepted rate making. The Commission approved the creation of the assets. The remainder of the rate increase is being considered in fiscal year 2003. Docket: U-01-108, pending

### NATURAL GAS EVENT

**Terms of Gas Sales Agreement Argued;  
ENSTAR Natural Gas Company, a  
Division of SEMCO Energy, Inc.**

ENSTAR Natural Gas Company (ENSTAR), a Division of SEMCO, Inc. requested approval of the Gas Sales Agreement (GSA) between Union Oil Company of California (Unocal) and Alaska Pipeline Company, a subsidiary of ENSTAR. The proceeding included the price index, peaking and transportation fee, GSA term, and opportunity for arbitrage. The PAS argued for an alternative price, against the peaking and transportation fees, a definition of termination, and a means to limit arbitrage. The Commission granted the existing terms for price, peaking and transportation fees, but set limits on the GSA term and Unocal's ability to arbitrage. ENSTAR filed

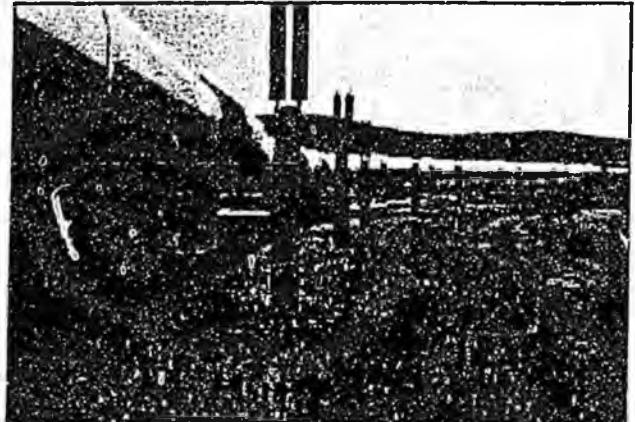
revenue-requirements without proposed rate changes. The PAS supported a decrease of 2.39% and the Commission approved a 1.96% decrease.

Dockets: U-00-88, pending; U-01-07, closed (6/10/02)

### PIPELINE EVENT

**Rates for the Trans Alaska Pipeline  
System Argued**

The owners of the Trans Alaska Pipeline System, affiliates of Amcrada Hess Pipeline Corporation have separate transportation tariffs that have been in contention since 1986. The PAS filed several briefs supporting a cost based transportation rate. Docket: P-97-04, pending




The Alaska pipeline. Photo is courtesy of Alaska Division of Community and Business Development.

### REFUSE EVENT


**Revenue-Requirement Studies Argued;  
Waste Management of Alaska, Inc.**

Waste Management of Alaska, Inc. (WMA) filed proposed revenue-requirement studies in an attempt to justify rate increases in eight areas they serve. The PAS investigated and recommended the studies be rejected due to critical deficiencies. At hearing, after PAS cross-examined WMA's expert witness, WMA requested that the Commission allow a withdrawal of filings and to submit new studies using a new test-year. The Commission approved a stipulation between WMA and the PAS to allow the submission of new test-year revenue-requirements. Docket: U-00-30, pending

## 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

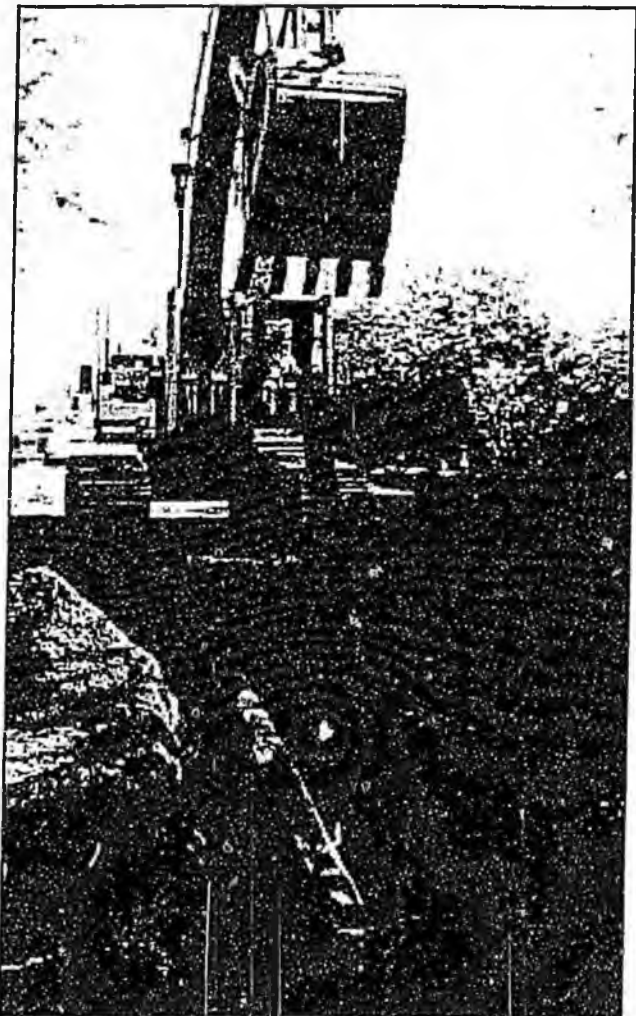


*Alaska Power & Telephone Company (AP&T) technician, Celinda Hanson is with the Power Division of Wales Island. Photo is courtesy of AP&T.*

## 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 d/b/a AWWU.*

## INFORMAL COMPLAINTS

Investigating and resolving complaints has become a vital element in the Commission's public protection role. The Commission urges consumers to resolve complaints directly with the utility or pipeline carrier. If the matter cannot be settled with the utility or pipeline carrier, consumers and pipeline shippers may seek relief from the Commission. If Commission Staff determines the complaint results from a violation of a tariff, Staff can require the utility or pipeline carrier to conform to the minimum standards spelled out in the tariff. Staff will investigate the complaint, review the tariff and contact the utility. Staff also reviews Commission orders, applicable statutes and regulations to determine the

validity of the complaint, and then recommend an appropriate course of action. Consumers are notified with a summary of the facts and explanation of the recommended resolution. Although a vast majority of complaints are resolved informally, if consumers are not satisfied with Staff's decision, a formal complaint may be filed directly with the Commission through the appeal process. A formal complaint that is accepted by the Commission for adjudication is assigned a docket number and an investigation is instituted into the issues raised in the complaint. In fiscal year 2002, six informal complaints appealed Staff's decision and were docketed for adjudication.

Prepared by Tamara Alexander

Complaints	1999	2000	2001	2002
Cable Television	1	1	3	0
Electric	77	67	78	72
Natural Gas	26	25	22	19
Pipeline	0	0	0	0
Refuse	5	13	14	25
Steam Heat	0	0	0	0
Telecommunications	638	450	548	
Wastewater	3	2	4	
Water	43	32	13	22
<b>Totals</b>	<b>793</b>	<b>590</b>	<b>682</b>	

The figure above shows the number of informal complaints filed by customers for regulated utilities and pipeline carriers.

Telephone Complaints	
153	Billing Practices
291	Quality of Service
13	Rates and Charges
130	Service Availability and Line Extensions
<b>587</b>	<b>Total</b>

The data demonstrates that electric and telephone utilities generate the majority of informal complaints received by the Commission. This is generally to be expected because these utilities account for the greatest number of customers, the largest plant investment, and the most frequent regulatory activities.

Contact Summary	1999	2000	2001	2002
Telephone	11,198	9,400	10,366	10,350
Conferences	298	383	340	951
<b>Totals</b>	<b>11,496</b>	<b>9,783</b>	<b>10,706</b>	<b>11,301</b>

The figure above shows the number of telephone contacts and personal conferences handled by the Consumer Protection Staff.

Informal Complaints	
234	Billing Practices
313	Quality of Service
44	Rates and Charges
137	Service Availability and Line Extensions
<b>728</b>	<b>Total</b>

(+6.7% change from fiscal year 2001.)

Prepared by Tamara Alexander

<b>Complaints</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
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


The figure to the right shows the number of informal complaints that were opened, processed, and closed. Complaints that were pending during the fiscal year were carried over into the next year.

### ELECTRIC EVENT

 *Customer Disputes 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 EVENT

 *Customers Blocked from Internet Access; Summit Telephone & Telegraph Company d/b/a Summit Telephone 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

## WATER & WASTEWATER EVENT

### Bulk Water Service Discontinued in Fairbanks; Golden Heart Utilities, Inc.

The Commission granted Golden Heart Utilities, Inc.'s (GHU) request to discontinue bulk water service to customers in Fairbanks who were not connected to GHU's water system. As a result, the Commission received informal complaints from GHU's bulk water customers who stated they had no other source of water supply in terms of the water's quality or rates. Also, customers complained they had not been given adequate notification to find a new bulk water supplier.

The Commission reopened the evidentiary record and scheduled a videoconference to take additional testimony in Fairbanks and Anchorage regarding the provision of bulk water service. The Commission learned that GHU had removed all equipment that would allow continuation of bulk water service at its former location. Golden Heart Utilities, Inc. testified it was not the only available source for bulk water. As a result, a request was filed by another entity, to provide bulk water service. The Commission granted a waiver of the certificate requirement, and approved the new applicant to provide service. Dockets: U-00-115, U-00-116, (closed 5/21/02)



View of Aspund Wastewater treatment facility near Pt. Woronzof in Anchorage. Photo is courtesy of Municipality of Anchorage d/b/a Alaska Water and Wastewater Utility.

## TARIFF FILINGS

Tariffs are the written terms, conditions, rules and rates governing a utility's conduct in providing public utility service. They are similar to the bylaws of a corporation. In approving a certificate of public convenience and necessity, the Commission reviews the applicant's tariff. All regulated utilities and pipeline carriers are required to maintain a tariff and to operate under its terms.

Regulated utilities and pipeline carriers must notify the Commission of any proposed changes to its tariffs. In most cases, the Commission must approve tariff revisions before they can take effect. The Commission considers most tariff filings at Tariff Action meetings, which are held in public bi-monthly. For certain kinds of utilities, the Commission allows proposed tariff revisions to take effect automatically at the end of a thirty-day period. The most common occurrence of tariff revisions taking effect automatically is with respect to interexchange telecommunications utilities.

Prepared by Wendy Arnett

Tariff Filings	2002	Percent
Cable Television	1	0%
Electric	154	29%
Natural Gas	9	2%
Pipeline	59	11%
Refuse	13	2%
Steam Heat	8	2%
Telecommunications	253	47%
Wastewater	12	2%
Water	27	5%
Totals	536	100%

The figure above shows the number and percentage of tariff filings by entity. The number of telecommunications tariff filings represents 168 filings made by local exchange carriers and 85 filings made by interexchange telecommunications carriers.



Prepared by Wendy Arnett

<b>Tariff Filings</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
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
<b>Totals</b>	<b>633</b>	<b>544</b>	<b>576</b>	<b>536</b>

The figure above the comparison of filed tariffs by category.

<b>Tariff Revisions</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
General Rate Change <sup>1</sup>	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 <sup>2</sup>	133	85	124	117
Rule Change	76	55	59	40
Miscellaneous	48	78	110	68
Promotions <sup>3</sup>	0	0	0	24
<b>Totals</b>	<b>633</b>	<b>544</b>	<b>576</b>	<b>536</b>
<b>Percent Change</b>	<b>+1.4%</b>	<b>-14.0%</b>	<b>+5.9%</b>	<b>-6.9%</b>

The figure above shows the number of requests for tariff changes by category. Each request is counted only once regardless of the number of proposed tariff changes it includes.

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> In previous annual reports, Promotions were counted under Miscellaneous.



## ORDERS & DOCKETS

Prepared by Joyce McGowan

<b>Orders Issued</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
Substantive	509	566	741	518
Procedural	144	34	33	28
<b>Totals</b>	<b>653</b>	<b>600</b>	<b>774</b>	<b>546</b>

The figure above illustrates the number of orders issued by category.

<b>Orders Issued</b>	<b>Substantive</b>	<b>Procedural</b>
Cable Television	6	0
Electric	99	9
Generic <sup>1</sup>	54	5
Natural Gas	12	0
Pipeline	62	3
Refuse	35	3
Telecommunications	224	8
Wastewater	2	0
Water	24	0
<b>Totals</b>	<b>518</b>	<b>28</b>

The figure above shows the number of orders issued by entity in fiscal year 2002.

<b>Docket Summary</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
Dockets Opened	171	205	172	152
Dockets Closed	198	206	285	194
Dockets Pending (start of fiscal year)	559	532	531	418
Dockets Pending (end of fiscal year)	532	531	418	376
<b>Percent Change<sup>2</sup></b>	<b>-5.1%</b>	<b>-0.2%</b>	<b>-21.3%</b>	<b>-10.0%</b>

The figure above shows the Commission's docket summary.

The Commission issued 546 decisions or orders in fiscal year 2002. They are categorized into two groups: substantive and procedural. Substantive orders reflect findings and conclusions based on evidence included in the formal record of the Commission. Procedural orders relate to the process and schedule used to handle a case.

All formal proceedings before the Commission are identified as "dockets". Dockets are numbered functionally to denote the type of proceeding, the year of its initiation, and numerical sequence in that year.

- ⊙ "R" represents regulatory dockets,
- ⊙ "P" represents pipeline dockets, and
- ⊙ "U" represents utility dockets.

For example, P-01-03 is the third pipeline docket opened by the Commission in the 2001 calendar year. All material, legal pleadings, and decisions are identified by this number and filed in the docket. After the Commission has issued a final order, the docket is closed.



<sup>1</sup> Generic refers to regulatory dockets involving more than one type of entity.

<sup>2</sup> The percentage figures have been restated to correct compilation errors reported in prior annual reports.

**CERTIFICATION PROCEEDINGS**

Prepared by Joyce McGowan

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 figure to the right shows the number of certification proceedings by entity.*

<b>Certification Proceedings</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
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
<b>Totals</b>	<b>87</b>	<b>84</b>	<b>73</b>	<b>63</b>

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.

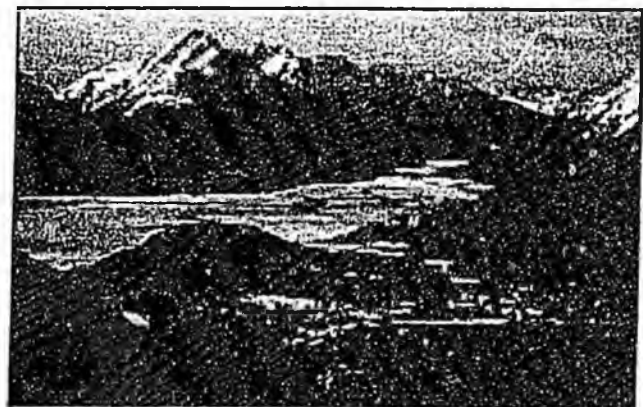
Most small electric utilities in the Power Cost Equalization program applied for certificates prior to fiscal year 1989. Several of these applications are still pending approval because of incomplete financial information or system safety considerations.

*The figure to the right shows the number of certification proceedings by category.*

<b>Certification Proceedings</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
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
<b>Totals</b>	<b>87</b>	<b>84</b>	<b>73</b>	<b>63</b>

**SUMMARY OF FILINGS**

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 is courtesy of Alaska Power & Telephone Company.*

Prepared by Tamara Alexander, Wendy Arnett, and Joyce McGowan

<i>Utility Type</i>	<i>Informal Complaints</i>	<i>Tariff Filings</i>	<i>Certification Proceedings</i>	<i>Formal Proceedings</i>
Cable Television	0	1	3	0
Electric	72	154	6	8
Generic <sup>1</sup>	0	0	0	6
Natural Gas	19	9	0	4
Pipeline	0	59	5	6
Refuse	25	13	3	5
Steam Heat	0	8	0	0
Telecommunications	587	253	37	54
Wastewater	3	12	2	2
Water	22	27	7	4
<i>Totals</i>	<i>728</i>	<i>536</i>	<i>63</i>	<i>89</i>

The figure above illustrates the distribution of the Commission's workload for filings made in 2002. The table does not include Commission obligations arising from government actions or from initiatives taken by the Commission. Telecommunications represents 168 filings made by Local Exchange Carriers and 85 filings made by Interexchange Telecommunications Carriers.

### FORMAL PROCEEDINGS

Prepared by Joyce McGowan

In addition to tariff and certification filings, the Commission institutes formal proceedings to consider: rate changes, rule changes, special contracts, complaints against utilities and pipeline carriers, investigations of service quality or management practices, and regulations. Frequently, requests for general rate changes include or necessitate a restructuring of rates. Formal proceedings impact the Commission's workload due to considerable time and resources required to audit, investigate, prepare prefiled testimony, conduct public hearings, determine and issue decisions, and process requests for reconsideration.

The figure to the right represents categories of formal proceedings, excluding certifications. Rate-related filings continue to dominate the Commission's formal proceedings.

<i>Formal Proceedings</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>
Access Charge Filing	21	21	19	3
Contracts	2	1	6	2
Generic/Regulations	5	10	5	9
<i>Investigations:</i>				
Complaints	0	7	12	9
Management Practices	0	0	3	2
Interconnection	2	1	4	7
Eligible Carrier				
Designation	0	0	1	3
Investigations: Other	3	7	2	10
<i>Rate &amp; Rule Change:</i>				
General Rate Change	6	18	1	14
Rate Restructure	0	5	9	1
Service/Equipment Offering	12	13	18	14
Rate Change: Other	6	1	2	0
Rule Change	1	0	7	0
<i>Miscellaneous</i>				
Equal Access Ballots	5	3	0	2
Protected/Confidential Status	8	16	3	1
Miscellaneous: Other	0	18	7	12
<i>Totals</i>	<i>71</i>	<i>121</i>	<i>99</i>	<i>89</i>

<sup>1</sup> The act involves more than one type of utility.


## 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

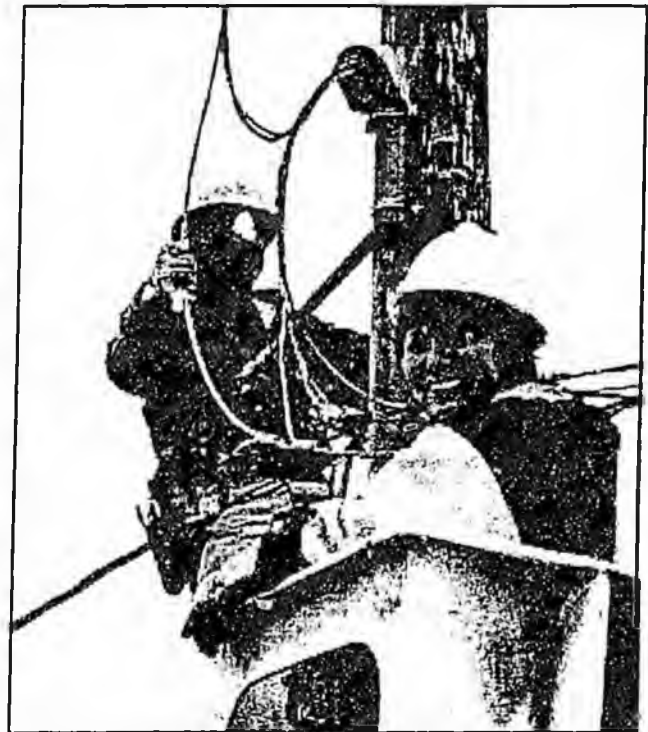
 *ACS of Alaska, Inc., ACS of the Northland, Inc., and ACS of Fairbanks, Inc. v. Regulatory Commission of Alaska and GCI Communication Corporation*

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. Regulatory Commission of Alaska*

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



Alaska Power & Telephone Company (AP&T) Metlakatla crew (Richard Booth and Kathy Brendible) are shown working on a power pole. Photo is courtesy of AP&T.

**ACS of Alaska, Inc., ACS of the Northland, Inc., and ACS of Fairbanks, Inc. v. Regulatory Commission of Alaska and GCI Communication Corporation**

The local exchange companies now known as the Alaska Communications Systems, Inc. (ACS) companies appealed the Regulatory Commission of Alaska's order terminating its rural exemption under the Telecommunications Act of 1996. After the Iowa Utilities Board II decision by the Eighth Circuit Court of Appeals, the ACS companies moved for a stay of the Commission's order. The superior court denied the stay, and the Alaska Supreme Court rejected a petition for review. The court also denied ACS' motion to vacate the Commission's decision. The superior court issued its substantive order affirming the Commission's decision. Cases: 3AN-98-4759 CI, 3AN-98-4903 CI, 3AN-98-4905 CI (Consolidated); Telephone Utilities of Alaska, Inc. et al. v. RCA, Cases: 3AN-99-3494 CI, 3AN-99-3499 CI (Consolidated), closed

**Alaska Exchange Carriers Association, Inc. v. Regulatory Commission of Alaska**

Alaska Exchange Carriers Association, Inc. (AECA) filed a proposed tariff revision to change the procedure for modifying the first point of switching. After receiving written comments regarding the proposed tariff revision, the Commission rejected it without holding an evidentiary hearing. Alaska Exchange Carriers Association, Inc. and Alaska Communications Systems, Inc. appealed the order, contending that the Commission could not deny the tariff revision without holding an evidentiary hearing. The superior court remanded these to the Commission for an evidentiary hearing. Case: 3AN-00-3714 CI, pending

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

Alaska Communications Systems, Inc. filed in the Alaska Superior Court for the same injunctive and declaratory relief it sought in the federal district court. Alaska Communications Systems, Inc. seeks relief from the local exchange interconnection terms arbitrated in U-99-141/142/143. The Superior Court appeal has been stayed while the same issue is litigated in the federal courts. Case: 3AN-00-3725 CI, pending

**GTE Communications Corporation v. Regulatory Commission of Alaska**

GTE Communications Corporation (GTE) appealed the Commission's order denying petitions to grant confidential status to financial statements filed in compliance with AS 42.05.451(b). Case: 3AN-00-3733 CI, closed

**Golden Heart Utilities, Inc. v. Regulatory Commission of Alaska**

Golden Heart Utilities, Inc. listed numerous points on appeal of the Commission's decisions in its last rate case. Case: 4FA-02-1444 CI, pending



Manager of Alaska Power & Telephone Co. (AP&T), Wendell Hewes, works in the Wrangell Central Office. Photo is courtesy of AP&T.

9<sup>TH</sup> CIRCUIT COURT OF APPEALS

**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 11<sup>th</sup> 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 9<sup>th</sup> Circuit's decision on the 11<sup>th</sup> 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.<sup>1</sup> 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.<sup>2</sup>
- (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.

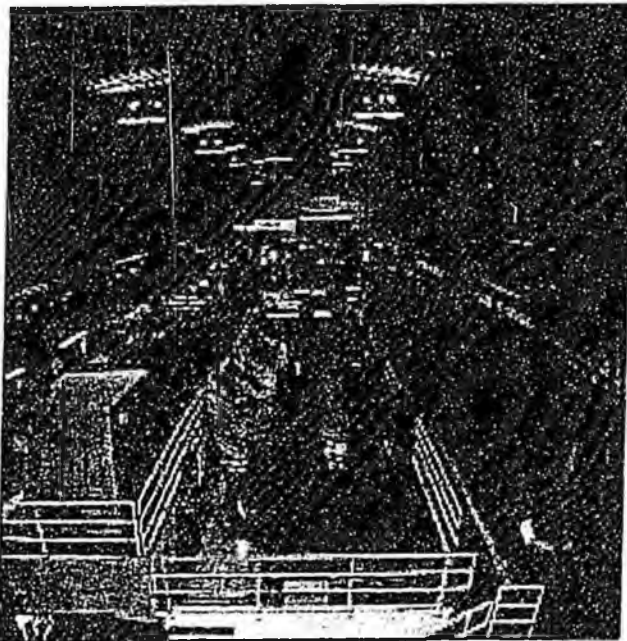
<sup>1</sup> Under AS 42.05.990(4)(E), "public utility" also includes a petroleum or petroleum product distributor "when the consumer has no alternative in the choice of supplier of an alternative product or service at an equal or lesser price;..." No entities meeting this definition of "public utility"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

<sup>2</sup> 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.

(6) The RCA also has discretion under AS 42.05.711(d) to exempt a utility from all or a portion of AS 42.05 if it determines the exemption is in the public interest. The Alaska Public Utilities Commission and the RCA have exercised discretion under this statute to exempt some utilities particularly small water and competing refuse utilities from economic regulation requirements.

### CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Alaska Statutes 42.05.221 requires a public utility to obtain a certificate of public convenience and necessity from the Regulatory Commission of Alaska (RCA) before commencing service to the public. A certificate describes the nature and extent of authority granted to the utility, including, if appropriate, a description of the authorized service area and the scope of operations of the utility. Before issuing a certificate, the RCA must, under AS 42.05.241, find that the applicant is fit, willing, and able to provide the service and that the service is required for the convenience and necessity of the public. Alaska Statutes 42.05.241 also authorizes the RCA to eliminate undesirable duplication of utility service. The RCA has authority under AS 42.05.271 to amend, modify, revoke, or suspend certificates.



Snettisham Powerplant produces 80-percent of Juneau's electricity. Photo is courtesy of Alaska Electric Light & Power Company.

### RATE REGULATIONS

The Regulatory Commission of Alaska (RCA) is responsible for making or requiring just, fair, and reasonable rates, classifications, regulations, practices, services, and facilities for public utilities. The rate review process, prescribed by AS 42.05.361-42.05.441, most often begins with a tariff filing by a utility. Within 45-days, the RCA approves the filing or suspends it for further investigation. The RCA may permit an interim and refundable rate increase. If after investigation, the RCA finds the proposed rate or term of service unjust and unreasonable, the RCA will determine a just and reasonable rate or term of service.

The RCA also works with the Alaska Energy Authority in administering the Power Cost Equalization program. The RCA determines the eligibility of electric utilities and the kilowatt-hour amount paid under AS 42.45.100-42.45.190.

### PIPELINE CARRIERS

The Regulatory Commission of Alaska (RCA) also regulates the intrastate transportation services of oil and gas pipelines in Alaska. Under AS 42.06.240-42.06.305, the RCA grants certificates of public convenience and necessity for pipeline transportation service, and for construction or operation of any pipeline facilities in the state. The RCA has authority under AS 42.06.350-42.06.420 to review and determine intrastate service rates and charges of pipelines in the state.

The RCA is also authorized under AS 31.15.010-31.15.050 to determine if unjust and unreasonable discrimination has occurred in the sale of oil offered for purchase within Alaska.

### ALASKA ADMINISTRATIVE CODE

As authorized under AS 42.05.151 and other statutory provisions, the Regulatory Commission of Alaska has adopted regulations to carry out its statutory duties. The Commission's regulations are set out in the Alaska Administrative Code at Title 3, Part 5, Chapter 47 (Regulatory Cost Charge); Chapter 48 (Practice and Procedure); Chapter 49 (Deregulation); Chapter 50 (Energy Conservation); Chapter 51 (Telecommunications Relay Service); Chapter 52 (Operation of Public Utilities); and Chapter 53 (Telecommunications).

## PHOTO CREDITS

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

- ⑥ *Alaska Division of Community and Business Development* (page 28)
- ⑥ *Alaska Division of Tourism* (pages 33, 34, and inside back cover)
- ⑥ *Alaska Electric Light & Power Company* (pages 5, 6, 16, 18, 25, 26, 27, 40, and back cover)
- ⑥ *Arctic Slope Telephone Association Cooperative, Inc.* (pages 22 and back cover)
- ⑥ *Danny Daniels Photography* (pages 4, 7, 8, 9, and 10)
- ⑥ *Dept. of Fish & Game, Div. of Tourism* (pages 33, 34, and inside back cover)
- ⑥ *ENSTAR Natural Gas Company, a Division of SEMCO* (pages 20 and back cover)
- ⑥ *Holly Parsons Photography* (pages 9, 13, 14, and 15)
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- ⑥ *Matanuska Telephone Association, Inc.* (page 18)
- ⑥ *Municipality of Anchorage d/b/a Anchorage Water and Wastewater Utility* (pages 16, 23, 29, 32, and back cover)
- ⑥ *Rex Melton, Alaska Division of Tourism* (pages 33, 34, and inside back cover)
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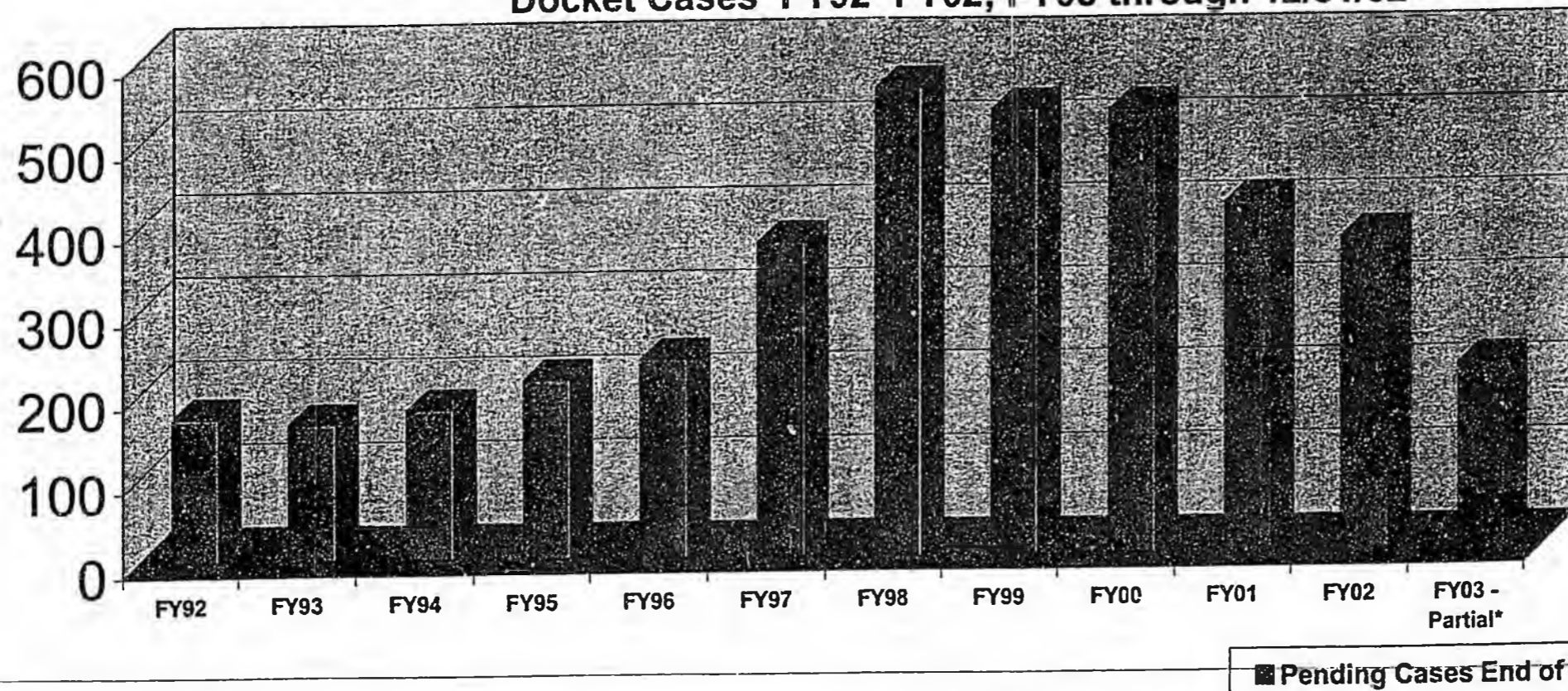
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# THE RCA CASE BACKLOG IS GONE

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



**DOCKET CASELOAD**  
Change in Docket Caseload FY97-FY03\*

	FY92	FY93	FY94	FY95	FY96	FY97	FY98	FY99	FY00	FY01	FY02	Y03 - Partial*
Pending Cases Beginning of Year	189	171	163	179	213	236	375	559	532	531	418	375
New Dockets Opened	111	91	143	97	110	219	266	171	205	172	152	62
Dockets Closed	129	99	127	63	87	80	82	198	206	285	195	216
Percentage of Pending Cases Closed	116.2%	108.8%	88.8%	64.9%	79.1%	36.5%	30.8%	115.8%	100.5%	165.7%	129.3%	348.4%
Percent Change in Pending Caseload	54.1%	79.1%	25.2%	119.6%	114.5%	71.2%	110.2%	211.1%	159.0%	143.0%	146.7%	256.5%
	FY92	FY93	FY94	FY95	FY96	FY97	FY98	FY99	FY00	FY01	FY02	Y03 - Partial*
Pending Cases End of Year	171	163	179	213	236	375	559	532	531	418	375	221

\*July 1, 2002-Dec. 31, 2002