

**HB**

**106**

**SFIN**

**FILE**

HB 106

was referred to the  
Senate Finance  
Committee

Hearing(s) were held

The bill did not move  
from Committee

SENATE FINANCE COMMITTEE  
5/29/2003 COMMITTEE ACTION

<b>Bill Number</b>	HB 106		
<b>Amendment</b>	Report from		
<b>Motion</b>	Committee		
<b><u>Motion by</u></b>	Taylor		
<b><u>Objection by</u></b>			
<b><u>Removed</u></b>			
<b><u>Second Objection by</u></b>			
<b><u>Committee Member</u></b>	<b>Y</b>	<b><u>Vote</u></b>	<b>N</b>
Senator Taylor	✓		
Senator Bunde	—	—	
Senator Hoffman	✓		
Senator Olson	✓		
Senator Stevens	—	—	
Co-Chair Green	✓		
Co-Chair Wilken	—	—	
<b><u>Tally</u></b>			
Yea	4		
Nay	—		
Absent	3		
<b><u>MOTION</u></b>	? Pass?		

rollcall taken after Co-Chair Sen. Wilken  
 a journaled meeting

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSHB 106(JUD)  
 (H) Publish Date: 5/18/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title Definition of Lobbying BRU Regulatory Commission of Alaska (399)  
 Component Regulatory Commission of Alaska  
 Sponsor House Judiciary  
 Requester House Judiciary Component No. 2417

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1141 - RCA Receipts						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: \_\_\_\_\_

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

CSHB106(JUD) provides for changes in telecommunications utility regulation and rates, policies regarding carrier interconnection agreements, expedited 90 day adjudication of certain carrier interconnection rate filings, and a report to the Legislature by the Commission concerning the status of competition in Alaska telecommunication markets. Accomplishing the mandates of this legislation may impact the commission's ability to meet its statutorily mandated performance measures for completing case work assignments in a timely manner. Provisions of this legislation may also conflict with federal law. This could result in indeterminate legal expense. The RCA's budget is funded through the Regulatory Cost Charge (RCC) mechanism and direct charge mechanisms. No general funds are allocated for support of the agency. The RCC is recalculated each year and allows the agency to recover its operating costs through an assessment on the revenues of the utilities and pipeline carriers it regulates.

Prepared by: Dave Harbour, Chair Phone 907-276-6222  
 Division: Regulatory Commission of Alaska Date/Time 5/20/03 6:19 PM  
 Approved by: Edgar Blatchford, Commissioner Date 5/20/2003  
 Agency: Department of Community & Economic Development

# Alaska State Legislature

Session:  
State Capitol  
Juneau, AK 99801  
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## Representative Lesil McGuire

Chair, Judiciary Committee

### CSHB 106(JUD) am SPONSOR STATEMENT

*"An Act relating to retail tariffing standards in a competitive local exchange service area; and to exemptions from retail tariff filing requirements and certain other provisions in competitive telecommunications markets; setting a policy regarding unbundled network elements in the telecommunications market; relating to depreciation expense rates for certain telecommunications utilities; requiring the Regulatory Commission of Alaska to conduct an investigation, take certain actions, withhold certain actions, and issue a report; and providing for an effective date."*

The regulatory policies we have in place today have performed admirably in providing incentives for competitors to enter the local exchange service business. However, now that we have effective competition in local markets, these policies need to change. As the regulators have slow to respond to changes in Alaska's telecommunications marketplace, it is incumbent upon us, the duly elected policy-making body of the State of Alaska to provide greater direction and guidance to the Regulatory Commission of Alaska in order to make responsible decisions in changing market conditions.

What we currently have is a system that provides incentives to competitors by obligating legacy carriers to lease their facilities at rates substantially below cost. It is plainly apparent that competitors will be successful if they have a substantial cost advantage over the incumbent carrier. As an example, in Anchorage, the main competitor now has approximately 45% of the market share. If we maintain these policies, the competitor's market share could foreseeable grow to an extent that the incumbent carrier's operations may cease to be profitable, effectively removing them from the marketplace, removing competition, and thus ultimately harming the consumer.

Where competition exists and consumers have a choice of facilities-based carriers, Alaska must remain consistent with provisions of the federal Telecommunications Act of 1996 and allow market forces to work. Alaska has been in the forefront with the most competitive local exchange markets in the country and it is imperative that we continue to lead the country by demonstrating that where competition exists, retail pricing should be deregulated.

Alaska's major cities no longer suffer from monopoly control of local exchange markets. All consumers in Anchorage, Fairbanks, and Juneau now have a choice of facilities based carriers. It is time to update Alaska's laws to reflect this new reality and I urge your support for CSHB 106.

# Alaska State Legislature

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Representative Lesil McGuire  
Chair, Judiciary Committee

## CSHB 106(JUD) am SECTIONAL ANALYSIS

*"An Act relating to retail tariffing standards in a competitive local exchange service area; and to exemptions from retail tariff filing requirements and certain other provisions in competitive telecommunications markets; setting a policy regarding unbundled network elements in the telecommunications market; relating to depreciation expense rates for certain telecommunications utilities; requiring the Regulatory Commission of Alaska to conduct an investigation, take certain actions, withhold certain actions, and issue a report; and providing for an effective date."*

Section 1 – Amends AS 42.05.145 by adding a new subsection provides that upon the commission's approval of a carrier's application to provide local telecommunication service in an incumbent carrier's service area the incumbent carrier is subject to the same standards as the new carrier in areas where the commission has determined there is competition among the carriers. *This provision provides guidance to the regulators to treat all competitors in a market equally under the law.*

Section 2 – Amends AS 42.05 by adding a new section, AS 42.05.433 that reflects FCC regulations to detariff all retail interstate long distance offers pursuant to provisions of the federal Telecommunications Act of 1996 by allowing a local exchange carrier to petition the commission for a determination that one or more of its markets is a competitive service area. This section deregulates retail rates in markets where consumers have a choice of facilities-based providers. *Deregulation is achieved by eliminating retail tariffing requirements either in the entirety of a provider's service areas or only in portions of those service areas deemed competitive.* Further, Section 2 amends AS 42.05 by adding an additional section, AS 42.05.435, establishing the state telecommunications policy regarding the pricing of unbundled network elements (UNE). This section ensures fair rates for leased facilities consistent with federal law. In particular, the statute specifies that lease rates will be based on forward-looking incremental costs and establishes a methodology for determining forward-looking incremental costs based on labor, materials, and fill factors, adjusted for inflation.

Section 3 – Amends AS 42.05.471 by adding a new subsection that provides that the RCA shall accept a utility's proposed depreciation rates in competitive service areas provided that the underlying plant service lines are no shorter than the general depreciation system service lines

used by the Internal Revenue Service for federal income tax computations. This provision allows for recovery of plant investments in more reasonable time increments and is fully consistent with the FCC's guidance for regulating telephone providers in competitive areas.

Section 4 – Amends the uncodified law of Alaska by explicitly declaring The Legislature's intent with regard to telecommunications regulator policies in Alaska. Under this section, the RCA is directed to investigate the telecommunications industry and take such actions as are necessary to ensure that all participants bear the same regulatory burdens. Further, the RCA is directed to report back to The Legislature on the status of the industry in Alaska, rules or regulations proposed or adopted, and recommendations to The Legislature for further action.

Section 5 – Provides that the Act takes effect immediately pursuant to AS 01.10.070(c).

# Telecommunications Terms

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**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.

Provided by Rep. McGuire

**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.

Provided by  
Gary Wilken

**Subject:** CSHB106 (JUD) am

**Date:** Tue, 20 May 2003 08:39:57 -0800

**From:** Dave Harbour <dave\_harbour@rca.state.ak.us>

**Organization:** Regulatory Commission of Alaska

**To:** "Senator\_Con\_Bunde@legis.state.ak.us" <"Senator\_Con\_Bunde"@legis.state.ak.us>

TO: Honorable Con Bunde  
Senate Finance Committee

FROM: Dave Harbour  
Regulatory Commission of Alaska

Dear Senator Bunde:

Since Chairman Wilken asked you to chair the HB 111 hearing yesterday, I am assuming you will also chair this morning's hearing on CSHB106 (JUD) am.

I hope you will find the information below to be of value in your consideration of this legislative proposal:

1. The version I downloaded from BASIS, if it is the same as your version, seems to contain a mistake at the beginning of what is now Section 4. The language of subsection (a) seems to have been mistakenly replaced with language which also appears in Section 2. Accordingly, this version appears to contain a clerical error and does not seem to represent the version the House actually passed.

2. CS FOR HOUSE BILL NO. 106(JUD)  
BILL ANALYSIS

· The bill is internally inconsistent.

o Sec. 2 provides conflicting instructions on when a market is a "Competitive Service Area" and subject to retail rate deregulation.

§ Under (a) the Commission must decide in 90 days whether to grant or reject a petition for deregulation.

§ Under (b) the petition is effective upon filing.

· The bill allows rate deregulation for customers with no competitive choice.

o This proposal would allow retail rate deregulation even though 50% of the carrier's retail customers in a community had no competitive choice.

§ For example, if customers in the downtown area had a competitive choice, and the carrier met the 50% benchmark, then service to the rural customers without a competitive choice would also be rate deregulated.

§ The carrier would no longer be required to provide *just and reasonable* retail rates to these rural customers.

o Depending upon interpretation, the proposal may allow a carrier the option of applying for deregulation if 50% of its Service Area faces competition.

§ If so, a carrier's entire service area would be deregulated even though it may face competition in only a few of its exchanges.

o It is unclear whether rate deregulation of local exchange service could occur if the area faced only cellular service competition.

· Various parts of Proposed AS 42.05.435 may conflict with Federal law or intent, leading to increased potential for litigation or preemption by the FCC.

o Section (a) allows rates to recover the carrier's "forward looking incremental costs." In contrast federal regulations require rates to be based on "total element long-run incremental costs" and a reasonable allocation of "forward-looking common costs". 47 CFR 51.505(a)(1).

o Paragraph (a) allows the carrier to recover the forward-looking costs the carrier "expects to incur" for unbundled network elements. While the meaning is somewhat vague, it may require the commission to accept the carrier's proposal even if consumers/competitors disputed costs.

o Paragraph (a)(1) states that to the maximum extent allowed by federal law, the "best evidence" of the forward looking incremental costs shall be based on "current reasonable costs" adjusted for inflation. In contrast, FCC regulations state that among the factors that cannot be considered when developing costs are the "costs that the incumbent LEC incurred in the past and that are recorded in the incumbent LEC's book of accounts." 47 CFR 51.505(d)(1).

The presumption of Paragraph (a)(3) that costs be developed using "the most efficient technology the telephone utility has actually deployed" violates a landmark Verizon Supreme Court case where this approach had been rejected.

· Section 3. The proposed depreciation section AS 42.05.471 offers no protection from unreasonable practices, leading to rate increases for carrier-to-carrier rates.

o This provision would apply to carrier's rates for services in a "competitive service area".

o As previously indicated, a competitive service area could include portions of a community where the incumbent held a monopoly or lacked effective competition.

o Given that retail rates in competitive service areas are rate deregulated under other provisions of this proposal, this section appears targeted at rates for carrier-to-carrier services.

o This provision does not require the utility to submit to the Commission the same depreciation expense or rate it developed for tax purposes.

o This provision allows the utility to submit to the Commission any depreciation rate provided it meets one simple rule --- any rate is justified provided the life employed is no shorter than the service life permitted by the IRS. The proposal removes virtually all other limitations, *including* that the utility stop recovering depreciation expense once the cost of an asset has been fully recovered.

o While the proposal limits the depreciation rate to the extent "allowed by law", it is ambiguous. When applied to interconnection rates, the proposal would appear to conflict with federal policies that require such rates to be set on a forward-looking cost basis and developed through negotiation and arbitration. This raises the question of whether the proposal can achieve its intended purpose.

o Given the prohibition on the Commission's ability to require a depreciation study, this proposal would appear to curtail the Commission's authority to enforce the existing statutory

requirement that depreciation rates for services not be excessive in "competitive service areas". AS 42.05.471 (FOOTNOTE BELOW)

Sec 4: IMMEDIATE REVIEW, INTENT

This section, in part, requires the Commission to file a report to the legislature in 180 days. Your approval of yesterday's version of HB 111 already requires production of a review and draft regulations covering a similar array of issues over a similar period of time.

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FOOTNOTE: This provision does not require compliance with IRS standards except for that of service life. In contrast see the IRS' Publication 946 comprising about 107 pages on limitations and requirements for setting depreciation expense for tax purposes.

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**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 "undesignated 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

Provided by Rep. Mc Guire

**BILL ANALYSIS - SENATE BILL 885**

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**HOUSE ACTION**

Comn ittee:           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

**BILL ANALYSIS - SENATE BILL 885**

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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:

## BILL ANALYSIS - SENATE BILL 885

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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

**BILL ANALYSIS - SENATE BILL 885**

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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 "undesigned 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 "undesigned 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.

**PROPOSERS/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

**BILL ANALYSIS - SENATE BILL 885**

Page 6

5/6/03

- 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.

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).
- This 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.

Provided by Rep. McGuire

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

FCC 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 (524-4228)



# AKPIRG

ALASKA PUBLIC

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May 19, 2003

Comment on CSHB 106

Dear Members of the Alaska Senate:

Post-It* Fax Note	7671	Date	# of pages ▶
To	SHEILA	From	STEVE
Co/Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	

CSHB 106 will usurp the RCA of regulatory authority over retail telephone service in Alaska. If CSHB 106 passes, consumers will pay the price in terms of higher rates, poorer quality and discrimination of service. I encourage you to not support CSHB 106.

ACS not only inherited the infrastructure of telephone equipment in each of Alaska's major cities, but by definition, 100 percent of the customer base. In addition, it has received favorable treatment from local taxing authorities.

Consumer complaints regarding customer service by ACS have been persistent to the RCA. Those statistics are available at that agency. Chief among these complaints was the refusal of ACS to extend copper wire to new housing developments because consumers might opt to go with GCI. ACS knew full well that this was its obligation when it purchased those properties. Apparently it assumed it could change the rules of the game before the RCA. When that failed, they are now want the Legislature to change the rules.

Another party to the amendments in CSHB 106 is the Alaska Telephone Association (ATA). The ATA is comprised of monopolies. What it desires is unregulated authority to retain the powers of a monopoly to dictate terms of entry into the market. Barriers to entry in the Alaska Market are higher than in the lower 48. So rewarding those phone companies that hold both the original infrastructure and the original customer base with a singular finding that any competition means complete deregulation will both allow those players to act in a predatory fashion to their customers and to would-be competitors.

Real competition will be retained and achieved only if the RCA is allowed to police the market to protect the consumers. How rarely was consumer protection or their interests mentioned in House hearings!

Here is an analysis of the bill:

1. The changes contemplated will kill off competition and allow for exploitation of both residential and business customers. The changes encourage perpetuation of monopolistic practices inimical to a competitive market. The bill's stated purposes are lies.
2. The RCA loses its authority to require just and reasonable rates, to prohibit rate discrimination between rural and urban areas, to require rate filings and to investigate rates.
3. To employ IRS rules of depreciation means guaranteed rate increases to customers, this for the same proponents who desire to be immune from requests for either retrofitting or improvement of their equipment.

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

4. As soon as the market is deemed "competitive," it will be deregulated. It will not be monitored- as in Illinois- for future changes or future predatory behavior by one or more players that perverts a truly competitive market. RCA will be permanently out of the picture.
5. If consumers want to know the telephone rates, they can either visit the company or check the web for updates. With the RCA out of the picture, there will be no mediator for consumers.

I am sure you are aware that Governor Murkowski has already made major changes in staff at RCA and sharply reduced the role of the Public Advocacy Section. Apparently this is not enough for the ACS and the ATA. They are demanding more blood from consumers for their future campaign contributions.

If CSHB 106 passes, you will sacrifice both residential and business consumers, both rural and urban. Please stop this special interest legislation today.

Sincerely,

/s/

Stephen Conn

Alaska Public Interest Research Group



Memorandum

Date: May 19, 2003

To: Members of the Alaska Senate

From: Marguerite Stetson  
AARP Executive Council Member for Advocacy

RE: HB 106 (House Judiciary) - Oppose

As you know, AARP has an interest in the work of the Regulatory Commission of Alaska and we look forward to its reauthorization. Our interest in the RCA and the entities it supervises is due to our interest in how consumers are affected by the rulings of the RCA. We are also very concerned that the RCA continue in existence because it is the only place where consumers can go to register a complaint.

We are aware that much of current discussion about the RCA has focused on the "phone wars." We asked one of our utility attorneys to look at HB 106 from the standpoint of consumers, not from the standpoint of the telephone companies. Our attorney recommends that HB 106 should be opposed for two reasons:

The "public interest" is not included in evaluation to approve or disapprove a petition for a determination that one or more of its markets is competitive. Also the RCA must approve a petition, unless the preponderance of the evidence shows the competitive service area standard has not been met. According to HB 106, a "competitive service area" is an area served by a local phone company in which at least 50% of all retail customers (in the entire service area or a specific community within a service area) have a choice of facilities-based service providers. The definition of who qualifies as a "facilities-based provider", however, is extremely broad, much too broad. This definition should be narrowed or quantified. Virtually any kind of provider could qualify as a facilities-based provider, thus justifying the deregulation of the local telephone market.

Obviously, this is a complex issue and we ask that, from the viewpoint of Alaska consumers, you vote "NAY" on HB 106.

We would be pleased to have our consumer utility attorney talk to any of you who have questions on this issue. In the meantime, if you have any other questions, please feel free to contact Marie Darlin, Coordinator of the AARP Capital City Task Force (586-3637) or Patrick Luby, AARP Legislative Representative (907-762-3314) or me (907-245-5259).

Thank you for your consideration.

SENATE FINANCE COMMITTEE

SIGN-IN

HB 106-TELECOMMUNICATIONS & RCA ACTIONS

NAME: Dana Tindell Subject/Bill No: 152  
Co./Dept./Title: Sr. VP, Phone: 907-245-5011  
Address: 2550 Debeli St Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: Kristi Catlin Subject/Bill No: 106  
Co./Dept./Title: Director, AT&T Alascom Phone: 907-229-7048  
Address: 210 E. Bluff Drive, Anch Zip: 99501

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

