

ALASKA LEGISLATURE

1968

HOUSE and SENATE FINANCE COMMITTEE FILES, 1999 - 2000

19

Tariff revisions (continued)

In FY98 there were nineteen proposed general rate changes, three simplified rate change filings, and two general rate restructurings. The three simplified rate filings were from electric utilities and were all approved. Ten of the general rate changes were from pipeline carriers and nine were from utilities. Of the nineteen general rate changes, fourteen were suspended, two went into effect automatically, and one was pending at year end.

One of the two general rate restructuring filings was from a telecommunications utility, and it was suspended; the other filing was from an electric utility and it was pending at year end.

Figure 12 presents a statistical breakdown of requests for utility and pipeline carrier tariff changes by category. Each request is counted only once regardless of the number of proposed tariff changes it includes.

Figure 12
Utility and pipeline tariff revisions

CATEGORY	FY95	FY96	FY97	FY98
General rate changes ¹	18	14	17	19
General rate restructurings	4	3	8	2
Simplified rate filings	6	8	4	3
New service/equipment offerings	25	55	79	183
Nonrecurring rates	10	14	5	20
Universal access surcharge	17	0	0	0
Regulatory cost charge	97	113	85	101
Contracts	21	18	12	12
Fuel, gas, and purchased power surcharges; power cost equalization filings; nonfirm power purchase rates	127	148	110	112
Rule changes	38	33	41	40
Miscellaneous	32	26	119	132
Totals	395	432	480	624
FY percent change	-7%	+9%	+11%	+30%

¹ In previous annual reports, some filings now shown in this category were classified as "miscellaneous." The "General Rate Changes Category" does not include simplified rate filings.

Tariff revisions (continued)

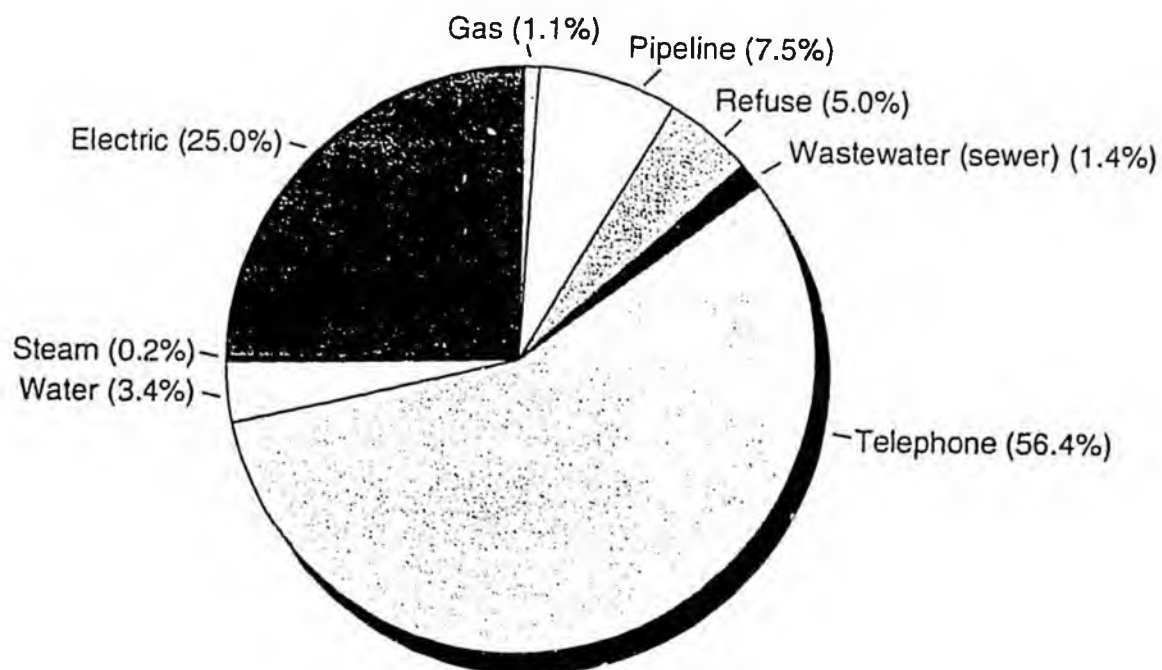
Figure 13 shows a summary of tariff filings used to generate the chart in Figure 14.

Figure 13
FY98 — Tariff filings

Type	Number of filings
Cable TV	0
Electric	155
Gas	7
Pipeline	47
Refuse	31
Steam	1
Wastewater (sewer)	9
Telephone	352
Water	21

Figure 14 is a summary of the tariff filings received in FY98 classified according to utility type and pipeline carrier.

Figure 14
FY98 — Tariff filings by type



Formal proceedings (excluding certification)

In addition to the certification and tariff filings, the Commission institutes formal proceedings to consider a number of matters including 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 also include or necessitate a restructuring of rates.

Rate-related filings continue to be the dominant component of the Commission's formal proceedings, excluding certifications, as shown in Figures 15 and 16. This statistic is significant because these proceedings tend to have a long-term impact on the Commission's workload. Considerable time and resources are required for audit, investigation, prefiled testimony preparation, public hearings, determination and issuance of a decision, and processing any requests for reconsideration.

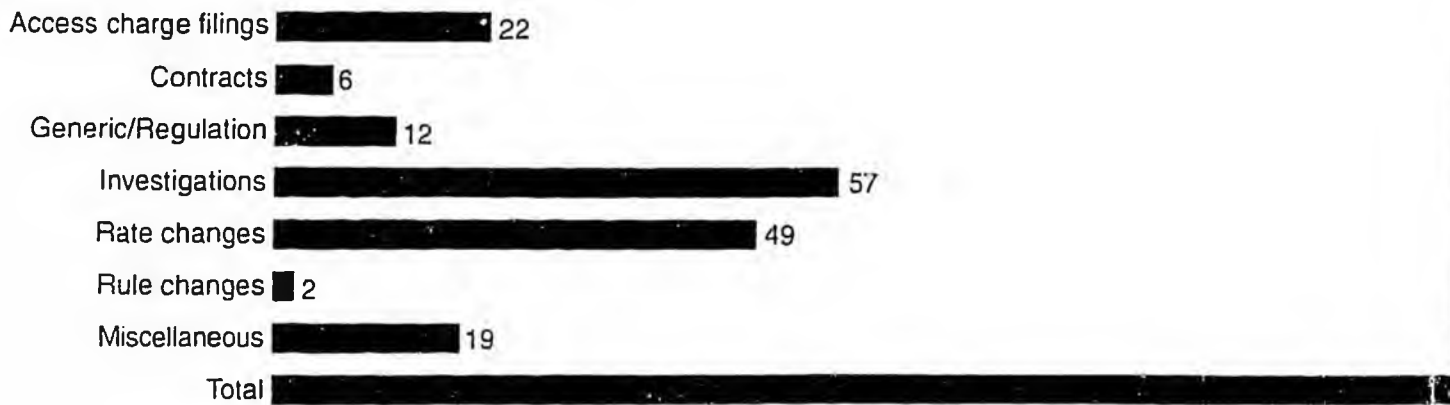
Figure 15
Formal proceedings
(excluding certification)
FY95-FY98

CATEGORY	FY95	FY96	FY97	FY98
Access charge filings	0	20	42 ¹	22
Contracts	1	3	4	6
Generic and regulation proceedings	7	8	14	12
Investigations:				
Complaints	7	7	19	12
Management practices	1	2	4	3
Interconnection	0	0	4	5
Eligible carrier designation	0	0	0	32
Other	9	2	7	5
Rate changes:				
General rate changes	9	4	7	4
Rate restructurings	4	3	3	3
Service/equipment offerings	3	9	15	36
Rates - other	7	3	25	6
Rule changes	1	2	3	2
Miscellaneous	1	4	13	19
Total	50	67	160	167

¹ Includes access charge proceedings for a two-year period.

Formal proceedings (excluding certification, continued)

Figure 16
Composition of FY98 formal proceedings
(excluding certification proceedings)



Administrative clerk Pamela Neale, administrative supervisor Barbara Miller and administrative clerks Ruthie Lee and Patricia Howard

Open dockets

All formal proceedings before the Commission are administered through dockets, which are numbered to denote the type of proceeding, the year of its initiation and its numerical sequence in that year. "R" designates a regulatory docket, "P" a pipeline case, and "U" a utility proceeding. For example, P-94-3 is the third pipeline docket opened by the Commission in fiscal year 1994. The materials, legal pleadings and decisions relevant to a case are identified by this number and filed in the docket. After a case is decided and any necessary costs are allocated, the docket is formally closed.

For the statistical analysis of open dockets presented in Figure 17, active dockets are those in which substantive decisions were pending at the end of FY98. Dockets in which substantive decisions were rendered, but additional administrative or procedural action was still required as of June 30, 1998, are classified as inactive.

Figure 17
Status of all open dockets FY95-FY98

	FY95	FY96	FY97	FY98
Suspended for investigation	32	48	129	173
Set for hearing	2	6	2	2
Awaiting filing	44	33	19	97
Substantive order in progress	34	32	37	91
Other / regulations	16	19	26	29
Total	128	138	213	392
FY percent change	+3%	+8%	+54%	+84%

Inactive dockets (post-substantive order)

	FY95	FY96	FY97	FY98
Awaiting filings	9	19	23	51
Awaiting cost allocation closing order	52	59	112	89
Subsequent phase to be scheduled	2	2	19	6
Court appeals	16	11	6	6
Other / reconsideration	6	7	2	15
Total	85	98	162	167
FY percent change	+55%	+15%	+65%	+3%

Open dockets (continued)

Figure 18 shows the change in the number of cases pending at the end of FY98. The Commission opened 266 new dockets in FY98, an 18 percent increase from FY97. This led to a 49.1 percent increase in dockets pending at the end of FY98.

Figure 18
Change in caseload
FY95-FY98

	FY95	FY96	FY97	FY98
Pending cases beginning of year	179	213	236	375
New dockets opened	97	110	219	266
Dockets closed	63	87	80	82
Pending cases end of year	213	236	375	559
Percent change in pending caseload at end of FY	+19.0%	+10.8%	+58.9%	+49.1%



Administrative clerk Rose Weaver, utility tariff analysts Jennifer Meiwes, Dawn Bishop-Kleweno, Wendy Arnett and administrative clerk Mark Armstrong

Summary of filings

Figure 19 summarizes the filings received by the Commission by type of utility or pipeline carrier and by type of filing. This illustrates the distribution of the Commission's workload in response to actions requested primarily by regulated entities. Responding to these filings could easily consume the resources of the agency.

The table does not include Commission obligations arising from government actions or from initiatives taken by the Commission. These activities are equally important to fulfill the APUC's regulatory responsibilities.

Figure 19
Summary of filings by type of entity

	Tariff filings	Formal proceedings	Informal complaints	Applications
Generic ¹	0	2	0	0
Steam	1	0	0	1
Water	21	2	37	11
Pipeline	47	7	0	3
Cable TV	1	0	0	0
Electric	155	23	135	4
Refuse	31	6	42	11
Gas	7	1	41	0
Sewer	9	0	2	3
Telephone	352	125	449	66
Cellular	0	1	0	0
Total	624	167	706	99

¹ This act involved more than one type of utility.

APUC orders on appeal in the courts

Appeals pending during Fiscal Year 1998

Anchorage Telephone Utility v. Alaska Public Utilities Commission. ATU appealed Commission orders disallowing approximately \$20,000,000 in investment for excess cable, outside plant and line cards on the grounds that these investments were not "used and useful." The superior court, per J. Woodward, held that the APUC had the statutory authority under AS 42.05.441 to disallow investments that were not used and useful but found a lack of substantial evidence to support the amount disallowed. The case was remanded for further proceedings.

The Quality Bank Price Index Appeals. For the purpose of computing the TAPS quality bank adjustments, the Commission has adopted the use of substitute price indexes by the administrator of the quality bank. Both Exxon and Tesoro have filed appeals of these orders. The appeals have been stayed until further order of the superior court pending resolution of the issues before the Federal Energy Regulatory Commission and the federal courts.

GCI Communications Corporation v. Alaska Public Utilities Commission. GCI filed a petition for review in the superior court seeking to modify the confidentiality provisions of a discovery order issued by the APUC in Docket U-97-34, which prevented GCI decision makers from having access to competitively sensitive information. The issue was pending before Judge Michalski at the end of the 1997 fiscal year. On July 18, 1997 Judge Michalski granted GCI's petition for review and remanded the matter to the APUC to delete the provision in the confidentiality order prohibiting the disclosure of confidential information to a competitor's decision makers and strategists. On August 7, 1997 the APUC filed a petition for review with the Alaska Supreme Court to review Judge Michalski's interlocutory order. On December 5, 1997, the Alaska Supreme Court denied the APUC's petition for review as moot in view of the APUC's approval of a stipulation resolving matters in Docket U-97-34.

GCI Communications Corporation v. Alaska Public Utilities Commission. In January 1998, GCI filed three administrative appeals from APUC orders in Docket Nos. U-97-60, U-97-65, and U-97-66 challenging the APUC's decision in each of these dockets precluding GCI from further participation in these proceedings. Based on the documentary record, the Commission determined that GCI had violated the confidentiality order governing the exchange of confidential information in these dockets. The APUC opposed GCI's appeals however, and moved for a remand in view of its decision to grant GCI evidentiary hearings to reconsider whether GCI complied with the confidentiality orders, and to determine what sanctions, if any, are warranted. On February 20, 1998 Superior Court Judge Murphy granted APUC's motion for a remand but retained jurisdiction over the appeals pending the completion and outcome of the administrative hearings.

GCI Communications Corporation v. Alaska Public Utilities Commission. On January 8, 1998, the Commission issued three orders denying GCI's petition to terminate rural exemptions under Section 251 of Telecommunications Act of three PTI companies, Telephone Utilities of Alaska, Inc. (TUA), Telephone Utilities of the Northland, Inc. (TUNI) and PTI Communications of Alaska, Inc. (PTIC). The Commission found that the impact upon universal service could not be determined until a new support system compatible with competition was established. On March 20, 1998, GCI filed administrative appeals of the three

APUC orders on appeal in the courts (continued)

orders. A group of rural telephone utilities, the Rural Coalition has been participating in the appeal. The appeals have been consolidated. GCI has raised issues concerning the burden of proof, due process and whether substantial evidence supported the findings of the Commission. The appeal is now being briefed.

Tlingit-Haida Regional Electrical Authority (THREA) v. Alaska Public Utilities Commission, Alaska Power Company (APC), and City of Klawock. This procedurally complicated litigation began following the APUC's decisions in Orders U-94-2(9) and U-94-2(10) revoking THREA's right to provide retail electric service to the City of Klawock and granting the exclusive right to provide such service to APC. THREA filed an administrative appeal challenging APUC's Orders U-94-2(9) and U-94-2(10). On April 24, 1995, Superior Court Judge Weeks upheld the APUC's authority to delineate the overlapping service territories of THREA and APC, but remanded the matter to the APUC to determine how Orders U-94-2(9) and U-94-2(10) would financially impact THREA and the ratepayers in THREA's service territory, and whether such impacts would frustrate the federal purpose of the Rural Electrification Act of 1936 (REAct). On remand, the APUC held evidentiary hearings to investigate the impact issues identified by the superior court. On July 3, 1997, the APUC issued Order U-94-2(19), in which it held that the decertification of THREA's right to serve Klawock would have only a de minimis impact on ratepayers in THREA's service territory, and that it would frustrate the REAct if THREA continued to serve Klawock. Order U-94-2(19) re-affirmed the decisions in Orders U-94-2(9) and U-94-2(10). THREA filed an administrative appeal challenging the APUC's decertification decision in Order U-94-2(19). On July 1, 1998, Superior Court Judge Weeks upheld the Commission's decertification decision and remanded the matter to the APUC for a determination of the fair value of THREA's property taken by the decertification decision. THREA has filed an appeal to the Alaska Supreme Court challenging Judge Weeks' decision. The City of Klawock and APC have jointly filed cross-appeals and the APUC has filed its own cross-appeal on portions of Judge Weeks' decision regarding the takings issue.



Assistant attorneys general Ron Zobel
and Marty Weinstein

Legal authority

Statutes

Created in 1959, the Alaska Public Utilities Commission has, since 1970, been a full-time administrative agency under the Alaska Public Utilities Commission Act (AS 42.05) charged with the duty of regulating public utilities within the state. The jurisdiction of the Commission extends to electric, gas, refuse (garbage), sewer (wastewater), steam, telecommunications (cable television, interexchange, and local exchange service), and water public utilities as defined by the Act. In 1981 the Legislature amended the Alaska Pipeline Commission Act (AS 42.06) to merge the Alaska Pipeline Commission into the Alaska Public Utilities Commission, and the Commission's jurisdiction was extended to pipeline carriers and pipelines.

The Commission is comprised of five commissioners appointed by the Governor and confirmed by the Legislature for six-year terms of office. In addition to the business, engineering, and law members, there are two consumer members of the Commission. The Commission is authorized to employ additional personnel to assist in the performance of its duties.

The Commission is responsible for making or requiring just, fair, and reasonable rates, classifications, regulations, practices, services, and facilities for public utilities and pipeline carriers. The Commission has the authority to investigate, hold hearings, prescribe systems of accounts, determine depreciation rates, require the filing of reports, adopt regulations, and take other lawful actions necessary to accomplish the stated purposes of AS 42.05 and AS 42.06. The Commission also determines the eligibility of electric utilities for power cost equalization and the kilowatt-hour subsidy amount under the provisions of AS 42.45.100 — 42.45.190. The Commission is also authorized under AS 31.15.010 - 31.15.050 to determine if there has been unjust and unreasonable discrimination in the purchase of oil offered for purchase within Alaska.

Under AS 42.05.221, a public utility¹ providing service to customers for compensation is required to obtain a certificate of public convenience and necessity² from the Commission. A certificate describes the nature and extent of authority granted to a public utility, including a description of the authorized service area and the scope of operations of the utility. Under AS 42.05.241, no certificate may be issued unless the Commission finds that the service is required for the convenience and necessity of the public and that the applicant is fit, willing and able to provide the utility service requested. Similarly, pipeline carriers subject to the Commission's jurisdiction must secure a certificate of public convenience and necessity. A certificate for pipeline carriers generally includes the same information found in a public utility certificate.

¹ The terms "public" and "public utility" are defined in AS 42.05.990(3) and (4), respectively. Generally, a public utility is one that provides utility service for compensation to ten or more customers or that sells wholesale service to a utility that serves ten or more customers.

² Electric and telephone utilities grossing less than \$50,000 are not required to be certificated unless their customers petition the Commission for regulation under AS 42.05.712(h), AS 42.05.711 (e).

Legal authority (continued)

A number of certificated utilities are statutorily exempt from economic regulation³ by the Commission, including:

(1) public utilities owned and operated by a political subdivision of the state, none of whose utilities is in competition with any other utility, unless the political subdivision elects to be regulated by the Commission (AS 42.05.711(b));⁴

(2) refuse utilities with annual gross revenues of \$300,000 or less, unless the subscribers of the utility petition the commission for regulation under AS 42.05.712(h) or customers paying 25 percent of a utility's gross revenues have petitioned the Commission for regulation (AS 42.05.711(i));

(3) cable television utilities, unless the customers petition the Commission under AS 42.05.712(h) for regulation (AS 42.05.711(k)); and

(4) electric and telephone utilities with gross revenues of less than \$50,000 are exempt from both certification requirements and economic regulation, unless 25 percent of their customers petition for regulation under AS 42.05.712(h).

AS 42.05.711 also specifies other utilities that may, under terms specified in AS 42.05.712, elect to become economically deregulated by the Commission. Utilities that may elect to deregulate are:

(1) electric or telephone utilities with annual gross revenues of less than \$500,000 (AS 42.05.711(f));

(2) utilities, other than electric or telephone utilities, with annual gross revenues of less than \$150,000 (AS 42.05.711(g)); and

(3) cooperative utilities organized under AS 10.25 (AS 42.05.711(h)).

In a deregulation election at least 15 percent of a utility's customers must return ballots. If a majority of those returning ballots vote for deregulation, the utility is exempt from economic regulation by the Commission (AS 42.05.712(b)). The same election procedures apply to the reregulation of a utility that was deregulated by vote of its member/subscribers. For details on the elections held under AS 42.05.712, see *Results of Utility Regulation Elections* in the Statistical Information section of this annual report.

The Commission is also authorized under AS 42.05.711(d) to exempt a utility from all or a portion of AS 42.05 if such an exemption is in the public interest. Under this provision, the Commission has exempted a number of small utilities from ratemaking regulation. Competition in refuse collection services has also been introduced in a number of areas around the state.

³ "Economic regulation" (defined in 3 AAC 48.820(43)) means that the Commission's jurisdiction extends to matters concerning rates and charges for public utility or pipeline carrier services, quality of service provided by a utility or pipeline carrier to its customers or shippers, management practices of a utility or pipeline carrier, and customer or shipper complaints concerning the services furnished by a utility or pipeline carrier. The foregoing matters comprise the principal regulatory activities of the Commission other than certification under AS 42.05.221 — 42.05.281, to which the indicated utilities remain subject under AS 42.05.711.

⁴ 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.

Legal authority (continued)

Regulations

As authorized under AS 42.05.151 and other statutory provisions, the Commission 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).



**Utility engineer analysts Brad Persson, Bill Marshall,
Paul Morrison and Donald Baxter**


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THE ALASKA PUBLIC UTILITIES COMMISSION

A New Structure

In the course of the sunset review of the Alaska Public Utilities Commission (APUC), two facts became clear: There is a continuing need for the existence of the Commission and there is a need to change the manner in which it operates. This white paper will discuss the APUC's mission and its organizational structure.

Mission:

There is a need to focus on the mission statement of the APUC as laid out in statute. There are two basic functions to be served by the APUC. One is to protect the public interest; the other to assure the continued viability of the utilities.

In the case of the former, the APUC should have the mandate of assuring that utility rates are just, fair and reasonable. In the process of carrying out this mandate, they must determine appropriate rate of return, either on an industry or an individual company basis. To do so, they must make a determination of the costs of providing service, establish what is used and useful in rate base and be assured that management practices are prudent.

The latter function is equally important. If utilities are not financially viable, then service will be eroded and if carried to the absurd, service could become unavailable. It is in the public interest to protect the viability of the utilities.

As the APUC carries out these two functions, it must be mindful of the appropriate economies. They must, in other words, accomplish these two mandates by use of the most efficient and economical means possible to assure that the cost of regulation is not a major contributor to the cost of service. It is in neither the public interest nor that of the utilities for the staff of the APUC to engage the utility in a proceeding, the cost of which is ten to twenty times more than the cost or rate in question within that proceeding.

Structure:

There is a need to address the structure of the APUC using the Federal Communications Commission (FCC) as a model. Restructuring the APUC in this manner will provide for a more efficient operation and eliminate certain inequities which now exist.

The current structure of the Commission has staff moving back and forth in two roles. On the one hand, they are often party to dockets, representing the public interest. On the other hand, they serve in an advisory capacity to the Commission. To put the situation into context, the Commission serves as a quasi judicial body. Allowing the staff to move back and forth as both party to and advisors to the Commission in the same docket is much the same as allowing either

the plaintiff or defendant in a legal proceeding to advise the judge on his final decision, rather than just presenting evidence for the record.

Utilizing the FCC model, that portion of the staff designated as representative of the public interest would be established separate from the Commission itself. This "Staff" would serve under the direction of the commission's executive director and would be party to dockets as appropriate. Their participation in dockets would be as an autonomous party and they would be subject to the same rules regarding ex parte contact with the Commission as are other parties to dockets.

The commissioners, on the other hand, should have personal staff, as well as their own counsel, to assist them in research, writing orders and, in general, filling an advisory role.

As commissioners serve in the role of judges, they should not launch investigations or open dockets on their own motion. They should not issue notices of inquiry or engage in writing regulations. These functions should be the sole purview of "Staff".

The designated seats concept should be eliminated. The designated seats (accountant, legal and engineering) originated in the early days of statehood when the Commission was a part time body with no staff. In those days, it was necessary to have an engineer, a lawyer and an accountant on the Commission because they had no staff with such expertise. The two consumer seats were added in the mid seventies in the mistaken belief that the three assigned seats were charged with representing their special vocational interests. The fact is that the commissions must be neutral judges and should not be representing any special interest group. Under the structure outlined above, "Staff" would represent the public interest. To further emphasize the separation of "Staff" and the Commission, it must be clearly understood that the executive director will be in charge of the "Staff". *The "Staff" positions must be designated as exempt to allow the hiring of truly qualified people in these positions, who can be held accountable for the quality of work they produce.*

Doing away with the assigned seats on the Commission will also require language to make it clear that candidates for the Commission must be professional with some knowledge of utilities. There must also be a restriction which allows no more than one commissioner from anyone vocation.

Included here are examples of organizational structures.....

Current Operating Authority:

As a final note, one other amendment to current statute is proposed. AS 42.05.141(1) must be amended to eliminate the language "...the powers of the commission shall be liberally construed to accomplish its stated purpose." This language has become one of the most obvious barriers in relating to the Commission. The commissioners and the staff have used this language to offer differing interpretations of regulations and statute on a case by case basis.

The phrase has also allowed the Commission to state that it does not set precedent. Both utility management and the general public are placed in a precarious situation when they are unable to rely on past decisions of the Commission to determine proper conduct in relation to any particular issue because the Commission feels free to develop differing interpretations to similar conditions on a case by case basis. As a quasi judicial body, the Commission must be held accountable to its own decisions and interpretation.

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March 9, 1999

Honorable Bill Hudson
Chairman
House Utility Restructuring Committee
State Capitol
Juneau, Alaska 99801

RE: Alaska Public Utilities Commission

Dear Rep. Hudson:

This letter is prompted primarily by HB 62 which deals with extending the Alaska Public Utilities Commission for four more years. As you have heard in my testimony before your committee, the ATA does not want the commission to enter into a "wind down" year. That happened five years ago and it was burdensome to industry, the commission and our customers. The Telecommunications Act of 1996 generated a very substantial increase in the amount of work for all of us and Alaskans will benefit if both industry and the commission devote their efforts toward that work rather than to the confusion of "wind down."

However, the sunset review process gives us a welcome opportunity to offer some suggestions for change within the structure of the commission. ATA has long espoused a more defined separation between advocacy staff and staff that is counsel to the commission. We think that the current structure that has a staff person as an advocate on one docket and the same individual as counsel on another docket lends itself (even without intent) to conflict with ex parte rules.

ATA recommends that there be an organizational separation where advocacy staff, under the direction of the executive director, represent the interest of the public in matters before the commission. Commissioners, acting in an adjudicative role, should have access to professional advisory staff so they can be properly prepared to weigh the issues presented by representatives of industry and the advocacy staff.

Presently the commission has authorization to hire nine additional employees, but due to the state-hiring freeze, the positions remain unfilled. ATA strongly supports full staffing for the commission and recommends it as necessary for the agency to complete its tasks in a reasonable time. Furthermore, the beneficiaries of an efficient APUC are the utility customers; the same people who pay the Regulatory Cost Charge that funds the commission. ATA also believes that with full staffing, the commission should implement the separation of staff mentioned previously.

Another facet that should be included in the restructuring is a delineation of the powers and responsibilities of the Chairman. Clearly, it is important to preserve the autonomy of each commissioner to vote his/her mind on an issue, but the responsiveness of the commission might be held more accountable with the responsibility of leadership placed in the hands of one individual.

Finally, ATA questions the continued necessity of commission seats being designated as engineering, attorney, business and consumer (two seats). Undoubtedly, it is valuable to have the professional disciplines represented on the commission, however, especially in light of the increased number of professional staff, that value may be outweighed by the elimination of exceptionally capable candidates whose experience is in another field.

In summary, ATA proposes

- Reauthorization of the APUC;
- Clear separation of advocacy staff from advisory staff;
- Hiring to fill the nine vacant staff positions;
- Delineation of the powers and duties of the Chairman;
- Abolish requirement for designated seats.

Thank you for the opportunity to offer comments on these issues. Members of the ATA are available to answer questions or provide assistance on all matters before this committee.

Sincerely,



James Rowe

REPORT ON THE ALASKA PUBLIC UTILITIES COMMISSION

by

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October 1998

This report was prepared with funding provided by the Alaska Public Utilities Commission. The views and opinions expressed herein do not necessarily state or reflect the views, opinions, or policies of the National Regulatory Research Institute (NRRI), the National Association of Regulatory Utility Commissioners (NARUC) with which the NRRI is affiliated, or NARUC member commissions.

INTRODUCTION

While claims of dramatic change and great challenge in a field are usually an exaggeration, that is probably not the case where the subject is the regulation of public utilities. Current developments in industry organization, technology, customer expectations, and attendant public policy are altering the provision of most utility services in fundamental ways. Intimately related to all this are the state public utility commissions as both responders to necessary change and initiators of constructive change. These roles often center around changes in mission, process, and timeliness. In electricity, gas, telecommunications and, to a lesser extent, water, the changes taking place are changes in kind and not just degree. Most importantly to state public utility commissions, the introduction of market forces and competition into the utility industries may substantially supplant the need for continuing, comprehensive, and traditional public utility regulation.

As each state public utility commission undertakes an effort to transform itself to meet the demands of this emerging environment, it is often useful to begin the process with a self-assessment to identify the major issues involved, the necessary timing of change, staff attitudes about change, and potential impediments to change. Such a self-assessment also presents an opportunity for commission staff to provide input into the direction of commission change.

After several preliminary discussions in early spring, the National Regulatory Research Institute (NRRI) was invited in May to submit a proposal "To Assist the Alaska Public Utilities Commission (APUC) in an Organizational Self-Assessment As

It Undertakes Efforts Toward Large-scale Change." A contract for this work was subsequently entered into, and the onsite team visit took place over the period June 17-22, 1998.

To accomplish this self-assessment, NRRI staff interviewed sixteen Alaska PUC staff, the five Commissioners, and four former employees, and asked the interviewed staff to complete a short assessment instrument. The results of the overall NRRI inquiry are contained in this report. Part I of the report describes the assessment instrument and presents the results obtained by its application. Part II of the report presents NRRI findings by major subject component. For each component, the NRRI draws some conclusions and offers accompanying observations. Part III provides summary conclusions. Specific comments received by NRRI in the interviews are included in the Appendix.

Reports of this type are inherently judgmental and subjective. In that sense they are always limited and imperfect. The task, of course, is to be fair and accurate, and we have tried to be both in our assessment. In trying to accomplish this we have avoided the extreme stances — "the sky is falling" at the APUC (it isn't) or "we have no problems" at the APUC. We have employed "discount factors" where they seemed appropriate and have only treated things that could be called recurring themes coming from multiple interviewees, thus minimizing the outlier phenomenon. We have attempted to make our frame of reference either *horizontal* comparisons, that is, differences in conditions within the APUC and with other commissions, or *vertical* comparisons, that is, differences in conditions at the APUC now as against the APUC at an earlier time. We have also avoided references to the behavior of specific individuals. It was not our purpose to evaluate individual performance; comments directed toward individuals were only included if they could be regarded as applying to the position held by the individual in some generic sense. Finally, the report is the collaborative product of the three-person team that conducted the exercise; it contains only those observations and conclusions that could be agreed to by all of the authors.

For a report to be contributory to agency self-assessment and to be useful to the leadership it must be a candid one — even if occasionally painfully so. Accordingly, while not seeking sharply pointed assessments, we have not glossed over areas of important perceived deficiencies with indirect writing. It should be said that all participants demonstrated a great deal of goodwill toward the assessment initiative and genuinely cared about an improved APUC as a place to work and contribute.

PART I

APPLICATION OF THE COMPETING VALUES MODEL

Robert Quinn of the University of Michigan has developed one typology of organizational change that may hold great promise for the analysis of public utility commissions as they undergo transformation in response to their evolving environment. His model focuses on the inherent contradictions of organizational life and is referred to as the competing values model.¹

Quinn identifies four ways of categorizing organizations and arrays them in a two-by-two grid, which is illustrated in Figure 1. In the upper right-hand quadrant (I) is the open systems approach. Organizations in this quadrant are oriented toward taking risks, excitement, and innovation. Success is measured by being on the leading edge.² An interdisciplinary team working on industry restructuring would help pull the commission in the direction of quadrant I.

In the lower right-hand quadrant (II) is the rational goal approach. These organizations tend to be achievement oriented, emphasize logical direction, and are competitive. Success is measured by acquiring resources and defeating competitors.³ As commissions confront their new environments and adapt to new market and consumer needs, they move toward quadrant II.

In the lower left-hand quadrant (III) is the internal process approach. This organization is control-oriented and mechanistic. Organizations in this quadrant are

¹ Robert E. Quinn, *Beyond Rational Management: Mastering the Paradoxes and Competing Demands of High Performance* (San Francisco, CA: Jossey-Bass Publishers, 1989).

² Ibid., 36.

³ Ibid.

hierarchical and value security and perpetuation of the status quo.⁴ Some portions of every organization are better suited to quadrant III than others. For example, commission administrative operations probably fall mostly within quadrant III.

The upper left-hand quadrant (IV) is the human relations model or the consensual or team approach. Organizations here emphasize mutual dependence and focus on feelings. They tend to value harmony and consideration of all individuals.⁵ Commissions tend to have strong internal cohesiveness, a trait which pulls them toward quadrant IV.

These quadrants represent attributes of organizations, though no organization can be fully contained in any one quadrant. For example, every organization has some functions or offices that are more hierarchical than others, and, over time, an organization may shift its emphasis from one quadrant to another. As a matter of fact, there is a tendency for organizations to drift toward quadrant III. That is not to imply that the control/management quadrant is inappropriate. The attributes contained within that quadrant are necessary for every organization, even the most innovative. What is to be avoided is excessive reliance on control and management at the expense of appropriate levels of innovation and flexibility.

Because every organization contains elements of each quadrant, a quadrangle-shaped map can be drawn for an organization. The NRRI asked the Commissioners and staff interviewed to completely assess how the APUC fits each quadrant, once to attempt to describe the APUC as it exists *now* and again to describe how they would *prefer it to be*. Eleven persons completed the questionnaire (which may limit the statistical significance of the outcome). Figure 2 shows the results of the analysis of the APUC as it exists now; Figure 3 describes the APUC as those who completed the analysis would prefer it to be.

⁴ Ibid., 37.

⁵ Ibid.

Figure 2 (the APUC as it exists now) displays the typical kite-shape expected of government agencies. The score in the control/management quadrant (III) is very high. The scores in each of the other three quadrants are much lower and nearly identical to one another. The net result is that those who completed the instrument regard the APUC as being skewed toward control, perhaps even further than could be expected of government agencies.

The quadrangle describing the APUC as respondents prefer it to be (Figure 3) is quite different. The quadrangle clearly indicates a preference for a more balanced organization, for substantially less reliance on control, for a very slight increase in reliance on the rational goal approach (Quadrant II), a tilt toward the open systems model and innovation (Quadrant I), and, most dramatically, a substantial increase in attention to the human relations model (Quadrant IV).

These results are consistent with several of the themes articulated by those interviewed. The majority of the problems identified in this report are internal to the APUC, and it is clear from the results of this analysis and the comments of many of those interviewed that substantial repairs need to be made to internal relationships if the APUC is to thrive. Though the APUC continues to serve the public and perform its established role, mitigation of morale problems and the application of leadership could go far to create better internal cohesion that is sought by many.

Figure 1

Public Organization Profile

Collaboration: Human Relations Model

- Emphasis on interpersonal relations, teamwork, participation and consensus
- Family-like
- Sensitivity to customers
- High commitment to organization
- Being things better

Creativity: Open Systems Model

- Emphasis on flexibility, risk taking, experimentation, innovation
- Success measured by being on the leading edge
- Success measured by long-term growth and new resources
- Doing different things

IV

I

Control/Management: Internal Process Model

- Emphasis on stability, management, following procedures, policies, predictability
- Machine-like
- Pursuit of efficiency
- Incremental change

III

II

Competition: Rational Goal Model

- Results oriented, goal directed
- Emphasis on production, building a reputation, increasing productivity
- Success measured by acquiring resources and defeating competitors
- Being things faster

Adapted from Robert E. Quinn and Jeff DeGraff, University of Michigan.

Figure 2

Commission Organization Profiles Now

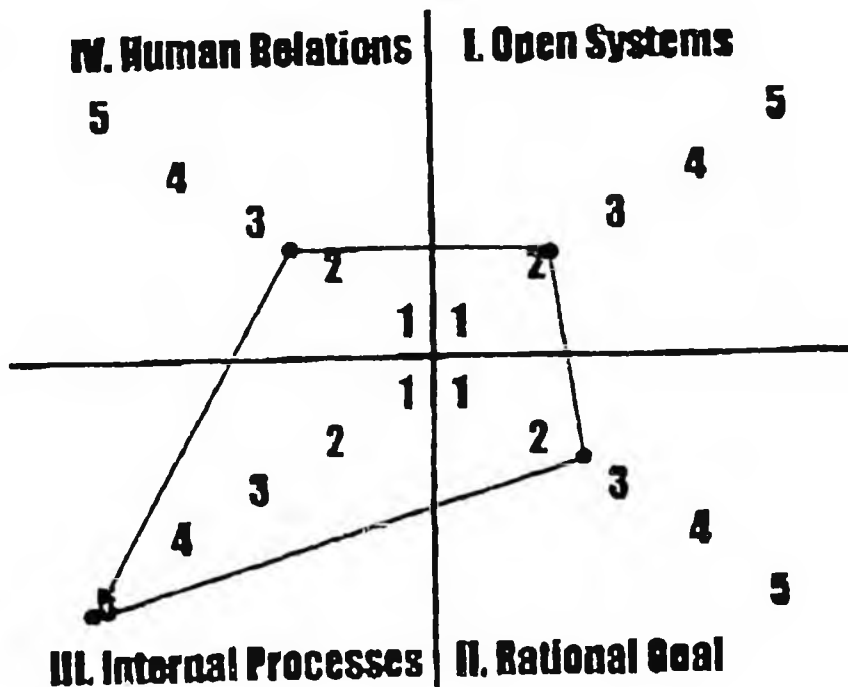
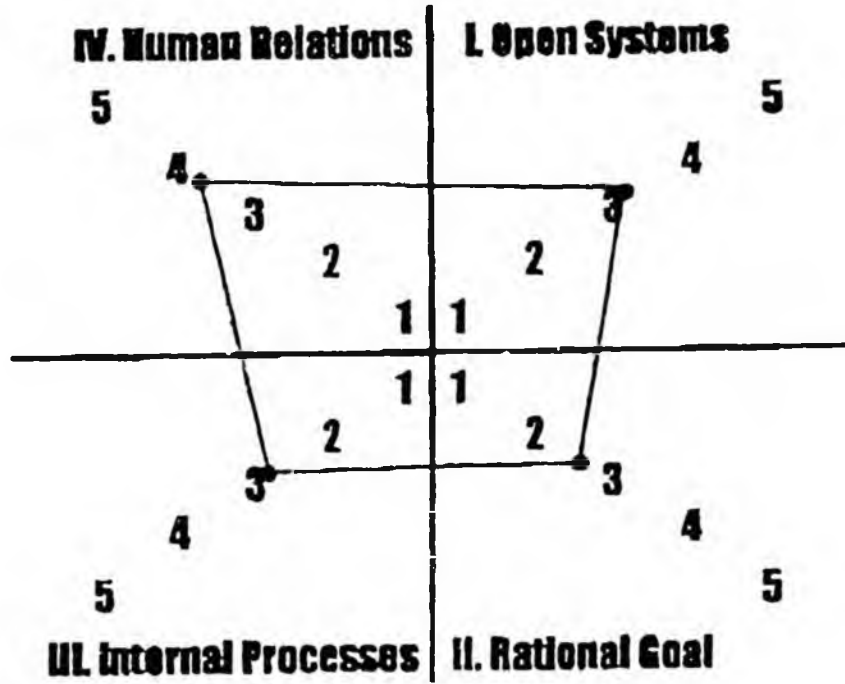


Figure 3

Commission Organization Profiles Preferred



PART II ANALYSIS OF ORGANIZATIONAL COMPONENTS

The components examined and explained in Part II are:

- General Factors Including Leadership
- Morale
- Commission Structure
- Staffing
- Management Information Systems
- Process
- External Relations
- Consumer Protection
- Information Flows/Communications

GENERAL FACTORS

Overall Commission Functioning

Observation: Though problems exist and the workload is extremely high, overall the APUC is regarded as having done a competent job of handling its responsibilities.

Despite the range and depth of problems cited by those interviewed, several of those interviewed cited the fact that APUC decisions are rarely overturned in court. Most cited the competence of the staff and its ability to focus on the real task of the Commission despite constant emergencies and a very heavy workload. Though some are concerned that current difficulties may eventually limit the ability of the APUC to do its job, there seemed to be no doubt that overall the APUC has accomplished its mission up to this point even considering the substantial increase in the APUC workload following industry restructuring.

Leadership

It is widely agreed that leadership is an important and sometimes determinative component of agency success. Small organizations comprised of highly motivated and self-directed persons sometimes do not require much leadership. Effective agency leadership is particularly desirable during a period of churn and change, like the current environment at public utility commissions, including the APUC.

Also of note in the context of multi-member public utility commissions is the fact that there are at least two kinds of "leadership" that can be examined. One is the traditional view of the chairperson as the locus of leadership, and the other (less frequently examined) is the *collective leadership* of the Commissioners. Both will be considered here.

Observation: Several opportunities exist at the APUC for the application of leadership to perceived problems.

Interestingly, the word "leadership" was not actually spoken by any of the interviewees, but a number of the perceived difficulties emphasized by them hark back to the leadership question, both from the Chairman's office and from the Commissioners as a collective. Several opportunities for asserting general leadership on big themes would seem to present themselves in the course of fixing a number of particular problems incorporated in them as reported by interviewees. One of these is improving vertical communication throughout the agency. (Reportedly, horizontal communication is adequate.) Another opportunity is to introduce and conduct a systematic training and orientation program for new personnel at all levels. (This was a deficiency identified by those interviewed.)

A third, and perhaps most important, opportunity is in dramatically clearing the docket backlog including tariff filings and devising procedures and practices that lead to prompt resolution of cases. Some amount of regulatory lag is, of course, inherent in complex filings, and users of the system are often unduly impatient. However, even allowing for this, those interviewed were critical of

unnecessary delays in case processing, of too frequent use of suspensions and extensions, and of applications taking effect by default.

Observation: Because of the structure of public utility commissions, collective leadership is required.

In the public utility commission model (1) there is a proper and sharp distinction between technical staff and commissioners; (2) commissioners are to a very great extent co-equal in responsibilities and authority (in the Alaska case there is not even extra pay for the chairperson); (3) loyalties are presumptively "upward" to the governor and not "sideways" to each other; and (4) the overall *effectiveness* of the organization hangs crucially on the willingness and ability of a majority of the commissioners to support the chairperson on issues vital to the agency *as an institution*. This last is about recognizing that the commission functions well or badly depending in good measure on whether commissioners pull together in the traces or pull apart. The argument here is that adopting the former approach allows for the very considerable benefits to the agency of collective leadership, and pursuing the latter course precludes these benefits and probably forecloses any real chance of individual leadership as well.

In the course of sustained discussions with those interviewed, several opportunities for collective leadership by the Commissioners (mostly of the "lead-by-example" variety) were identified. It is, of course, true that staff do not always know or appreciate what exactly constitutes a Commissioner's workday. However, perceptions that Commissioners do not "pull their weight" were voiced several times in interviews. Addressing those perceptions is a difficult but worthwhile task.

MORALE

Observation: The morale at the APUC appears to be low.

Given the level of turmoil and uncertainty inherent in utility industry restructuring and the extremely high workload of commissions around the nation, morale problems might be expected. Comments from quite a few, though not all,

interviewees indicate that a morale problem exists at the APUC that might exceed national norms. Fortunately, the earlier turmoil that surrounded the attempt to remove two Commission staff and the dispute over the appointment of a Commissioner were perceived by interviewees as "over and done with" and no longer a factor in morale matters.

Improving morale in a troubled organization is difficult at best. It has a chance of being achieved with the following conditions: (1) the existence and understanding of a persuasively articulated vision of the agency; (2) a wholesale "buying in" to that vision so that it becomes a shared one; and (3) a workplace demonstrably characterized by civility and professionalism, by fair treatment, and by appropriate recognition and appreciation of good performance. The task of creating this environment falls to the Chairperson *and* the collective leadership.

Happily, there is much to build upon. There are a number of pockets of real excellence and dedication within the agency, and these can be celebrated and enhanced. The Commission has a long and reputable history of service. The traditional mission of consumer protection in the sectors of the economy that most fundamentally touch the Alaskan citizenry — the utility sectors — is a high calling. Now the added mission of inducing, presiding over, and adroitly shaping the restructuring of the energy and communications sectors provides an opportunity for a new level of cohesiveness among the APUC staff. Regulatory oversight is not yet "a declining industry," but rather has an essential and particularly demanding role in the context of transformation. This sort of challenge can appeal to the best instincts of an informed and energized staff.

COMMISSION STRUCTURE

Structure refers to an organization's relatively stable activities over a period of time, often reified as an organization chart. Organizations are ordinarily structured to support well-established programs that can operate most efficiently within given boundaries. A U.S. regulatory commission structure, like that of corporations and other government agencies, has traditionally been hierarchical, with several levels of authority and numerous compartments representing cohesive activities that contribute to overall functioning. Commissions are typically characterized by a strict structural delineation between commissioners and staff, due to the quasi-judicial nature of their activities and the traditional

model of commission process that considers staff the provider of technical expertise to the commissioners as judges (the "technocratic model"). It is common to have a strong executive director who supervises technical staff. In several states the bifurcation of staff and commissioners is maintained by having two separate agencies — a commission and a public staff.

The APUC is divided into four major layers. The Commissioners and paralegals assigned to them form one level; the Hearing Examiner, Assistant Attorney General, Executive Director, Administrative Law Judge, and Associate Attorney form a second. At the third level, several paralegals and secretaries report to the Associate Attorney, and the technical staff report to the Executive Director. Six sections, representing the bulk of the commission's manpower, are supervised by the Executive Director: Engineering, Common Carrier, Finance, Tariffs, Consumer Protection, and Administration. The sections are organized by function rather than industry, with the exception of the Common Carrier section.

Observation: Administrative authority is best consolidated at commissions.

Based on the NRRI's interviews, it appears that some APUC Commissioners are too involved with administration. This involvement could inhibit their consideration of the important issues facing the commission. One way to avoid this would be to strengthen the Chairman's direction of purely administrative matters. If all Commissioners were less involved with administration, they would have time for more substantive matters, could take on substantive lead assignments, and, thereby, might improve the functioning and, perhaps, the product of the Commission.

Observation: Existing structure that combines functional and subject matter groupings seems to be appropriate to recent programmatic needs.

The APUC technical staff are organized largely by discipline (e.g., Engineering) with the exception of the Common Carrier section that has responsibility for communications-sector matters. Overall, the structure, which is duplicated at other commissions around the nation, appears to be an appropriate

one. Some interviewees remarked that the Common Carrier section holds a special status within the technical staff. But the success of the Common Carrier section in weathering and indeed mastering changes in telecommunications policy the last several years is good reason for them to be "the fair haired division," as one person we interviewed put it. The hybrid organization of sections (with both utility and functional sections) works well for commissions when combined with a team approach to assigning responsibility for cases. For the APUC, other sections need to be strengthened, rather than the Common Carrier section weakened.

Some concern was expressed that the assignment of management information systems (MIS) responsibilities to the Engineering section had the potential to overwhelm that section and to get in the way of other engineering functions.

Observation: The location of the APUC in the Department of Commerce and Economic Development encourages cooperation with allied functions.

Many state commissions stand alone as quasi-judicial agencies somewhat independent from either the legislature or executive branch. With the responsibilities of commissions being redefined, it is of particular help to the APUC to have good communications with the state functions of promoting economic development and other allied functions. At the same time, the Commission's expertise in consumer interests and in the complex field of public utilities is an important resource for the rest of the Department. Striking a balance between involvement and independence is the key.

STAFFING

Observation: Commissioners need more staff support for decisionmaking.

As the issues facing commissions become more complicated (often involving issues of market power and consumer protection) and more often involve policymaking, commissioners across the country and at the APUC will need more staff assistance. Those interviewed expressed concern that the

assignment of existing staff resources of the APUC did not give adequate attention to the advisory function. Two general options are available for providing more staff assistance to Commissioners.

First, the APUC could hire additional advisory staff or permanently assign staff to Commissioners from existing staff resources. Adding small numbers of advisory staff can be problematic because of the wide range of expertise across all utility sectors required of those staff. In a commission as small as the APUC, the permanent reassignment of staff as advisors to the Commissioners further reduces the expertise available to the advocacy function. A contrary view was expressed by at least one of those interviewed, who suggested that the permanent assignment of a staff member as an advisor to the Commissioners would substantially alleviate the problem.

Second, the APUC could adopt administrative models that allow Commissioners to have greater access to existing experts on the staff. Several states, including Ohio, Iowa, and Florida, have created models which do not impose a rigid *ex parte* wall between commissioners and technical staff. At least one of those models defines staff as "participants" in cases but not "parties." They have full, statutory discovery rights but are not subject to discovery by others. As participants in cases, staff cannot contest commission actions and cannot apply for rehearings.

Observation: Legal support of the Commission is a critical function and could be improved.

Attorneys are assigned by the Attorney General to support APUC needs. Two part-time attorneys are available. Concern was expressed, however, about the level of support provided and the potential for a conflict of interest. Given the quasi-judicial nature of most APUC actions, several of those interviewed expressed the sentiment that more legal input into case preparation would be desirable. In fact, at least one suggested that an attorney should be assigned as the team leader in case preparation. Full-time assignment of two attorneys might be desirable.

Because the attorneys assigned to the APUC do not serve either a strict advisory or advocacy role, there is the possibility in the minds of some that a conflict of interest could be created for attorneys. The same attorney who assisted with the development of the staff position could be also assigned to

represent the APUC on appeal in a situation in which the Commission decided in opposition to the staff position. A solution would be to assign one of the attorneys to the Commission staff to help craft staff positions and assign the other to provide advice to the Commissioners and to represent the Commission on appeal. This is commonly done in other commissions by the formal split between staff counsel and chief (commission) counsel. If a permanent split of the attorneys between advocacy and advisory functions would create uneven workloads between the two attorneys, they could be split on a case-by-case basis. Hearing examiners, though often attorneys, are separate from both.

MANAGEMENT INFORMATION SYSTEMS

Observation: The Commission needs improved management information systems, but increased computerization will not solve information problems by itself.

Both commissioners and staff strongly believe that systems for managing commission processes at the APUC need to be improved. Consideration is being given to hiring an outside consultant to design a computer information system for the commission. A well-designed computer system can indeed facilitate many management functions.

But Commissioners and staff expressed problems that run deeper than the technical means that are used to enable organizing, planning, and other management functions. One person at the APUC who we interviewed said, "I sometimes feel that procedures are crumbling here." Another remarked, "We're in meltdown." A computer system, no matter how elegant, cannot set priorities and cannot say what information is needed by whom, where, and in what format. The computer equipment and software available to APUC members is not directly to blame, since the Commission is commendably up-to-date on computer quality and speed. It seems likely, however, that the available technology is not being used to its greatest effect. A larger state commission has different management information needs than the APUC. So does a federal agency such as the FCC, which relies on "paper hearings" rather than a typical state commission process of oral, face-to-face hearings.

Observation: A computer information system can be developed in synchrony with other efforts to identify, analyze, and address Commission management information needs.

A concerted initial effort to reduce case backlog and identify areas where timeliness must be improved will help to clarify the needs for outside help on developing a computerized management information system. Lack of computer support or inadequate use of computers were frequently mentioned as problems. Here an outside consultant may be very helpful in setting up a system where, among other things, industry files cases electronically, the same information is entered only once into the computer system, and the status of cases and the text of decisions are available to every interested person in the APUC via their desktop computers. Such a system should allow management to ascertain the time it takes for each case to go through each step in the process and assess whether prioritized goals are being met. The computer system may be used as well to accomplish tasks that the commission has not attempted as yet, such as analyzing complaint filings to be able to anticipate new issues.

COMMISSION PROCESS

Observation: There is widespread concern that the APUC does not act promptly enough on cases before it.

Many APUC members referred with dismay to a lack of timeliness in decisions, a concern that staff felt was shared by the regulated industries. This problem is associated with a backlog of cases that appears to be getting worse. One person we interviewed claimed that there are 500 open dockets and that this number has doubled over a relatively short period of time. Suspension periods are routinely extended, which avoids an immediate expenditure of scarce resources but in itself takes time, thus compounding the problem. Interviewees identified a number of possible sources of slowdowns in Commission processes. One is simply an increased caseload, particularly in telecommunications. Promotional offerings in telecommunications are "coming in by the gross," we were told, at the same

time this industry expects, if anything, faster decisions consistent with a competitive environment. Filings by electric, gas, water, sewer, and garbage utilities are increasing as well.

At least one Commissioner expressed the belief that staff is generally slow in getting cases before the Commission. Particular concerns about timeliness at the staff level were the lack of speed with which documents move between the fourth and third floors and the amount of work that has to be corrected or even redone, especially order writing, which is time-consuming and duplicative. Commissioners were also faulted for a lack of timeliness, both on making needed decisions and getting them out the door when a decision has been made. More than one staff member remarked that a final order may sit on Commissioners' desks for a period of time before being signed and taking effect. More serious, perhaps, was a sense of an absence of clear priorities throughout the APUC that contributes to a crisis mentality. "We have management by emergencies," said one person we interviewed. "It feels like we're under fire all the time."

Observation: Steps must be taken as early as possible to bring the backlog under control and address the issue of speedy processing of Commission business.

The lack of timeliness and growing case backlog is a measure of impaired Commission effectiveness. Though the dramatic increase in the APUC's workload might be a contributory factor, delays in case processing were cited by many of those interviewed. Several specific problems that might impact the speed with which the APUC disposes of cases were noted. They included striking the appropriate balance between efficiency and careful maintenance of due process (some citing undue attention being paid to the maintenance of due process; others citing not enough attention), the assignment of staff including the hearing examiner, and the role of Commissioners. The sense of slipping behind is also a drag on morale and a sense of accomplishment.

The first step is to identify more clearly the nature of the backlog by industry and current status. The Executive Director may want to reinstitute meetings on the status of all current dockets. Such meetings can be used to rearticulate priorities and possibly batch similar cases, such as

telecommunications promotional offerings, for expedited treatment. The Commission may wish to consider using temporary resources to help reduce the backlog at this stage, although simply hiring permanent staff as quickly as possible in key areas may be enough.

The second step is to identify bottlenecks and other problems. A flow chart can show the actual sequence of events in Commission case processing. This will help to identify problem areas, redundancy, and unexpected complexity. It also will help to identify information needs that a computer system can be designed to address. There are several checklists in use at various points in the Commission process. These can be used to help develop a more complete, integrated understanding of the flow of events from the date a case is filed until the date on which an order goes into effect.

Particular consideration needs to be given to solving problems upstream in the Commission process. Better order writing early (which is addressed later), so that rewriting and editing do not have to be done at the end of the process, can reduce overall workload and the sense of constant emergency. It is a mistake to rely overmuch on any one person to make sure that the procedural and substantive record is adequate, especially one placed at the end of the process. The APUC should also look for areas where industry can help, for example by contributing information upon filing that the staff has routinely been taking upon itself to gather. We are not suggesting always taking short cuts where they are available. Failure to follow due process can result in as many problems downstream as failure to fully address substantive issues.

Observation: The use of streamlined administrative processes and alternative methods for hearing cases should be explored.

Several methods for streamlining case processing were identified by those interviewed. They included the issuance of one-page orders for procedural issues, an attempt to limit the number of pre-hearing conferences, allowing the hearing examiner to conduct pre-hearing conferences, better use of the paralegals, and making better use of stipulations. Other small commissions have made use of more informal processes to expedite case handling. In North Dakota, for example, informal, open meetings are held following most formal proceedings. No notice is made of these meetings although they are included

on the Commission calendar. Meetings are tape recorded. No sworn testimony is presented, but the party bringing an issue is asked to present the issue. Staff is allowed to respond. In these informal meetings, no decisions are made. If a Commission decision is required, it is held for the next formal meeting. If it is apparent that controversy will develop, the issue is sent to a hearing. According to staff, these meetings have substantially streamlined the Commission process.

More dramatically, the APUC might also consider changing the manner in which cases are heard. Currently, Commissioners hear all cases with the hearing officer in attendance as a legal advisor, though her role has been limited. Other approaches are available. In some cases around the nation, a single commissioner will hear a case; in other instances, several commissioners (less than the full commission) can hear cases. In other states, albeit typically larger ones, hearings are conducted by hearing examiners, who later present their findings to the commissioners for ratification or amendment. The commissioners must still make their decisions based on the established case record. This latter option may be appropriate for the APUC where the concern is the identification of the appropriate balance between due process and speed. This option also has the advantage of allowing commissioners to focus on policymaking and questions of industry structure and develop specific expertise.

Observation: As the work of the APUC shifts towards more policymaking and away from the kinds of fact finding embedded in traditional rate cases, the APUC may want to further explore the use of nontraditional means of making decisions.

A majority of the substantive work of the APUC has been performed through formal adjudicatory processes that emphasize due process, which includes the requirements that Commission rulings be based on the public record accumulated in the course of the proceedings and that there be a separation of functions between those who make the decisions and those who argue before them on behalf of specific positions. These adjudicatory and often confrontational processes work best in matters of retrospective fact-finding and in those cases where winners and losers can be identified. They worked well when the majority of the Commission's work was the setting of utility rates and when specific utility interests conflicted with the interests of ratepayers.

Unfortunately, they do not work as well for future-oriented establishment of policy or in finding creative or collaborative solutions to public policy problems.

Despite the fairly standard requirements that govern public utility commission adjudicatory processes, the application and design of these adjudicatory processes vary across commissions and across time. The APUC process is fairly formal and rigorous in its interpretation of *ex parte* requirements. The APUC staff are charged with presenting the staff case in adjudicated proceedings and are generally regarded as serving an *advocacy* function, a function that is particularly critical since there is no separately constituted consumers' counsel in Alaska. Other intervenors also present their views, which are entered into the case record. Those staff members who are to be separated from Commissioners are designated by memorandum for each proceeding. Staff not so designated may be used by Commissioners as resources; they are regarded as being *advisory*. This split between the staff's advisory and advocacy roles is commonly referred to as bifurcation of a commission. In some cases, the staff attempts to reach a settlement with parties prior to the presentation of a case.

As the work of the APUC shifts towards more policymaking and away from the kinds of fact-finding embedded in traditional rate cases, the APUC will need to further explore the use of nontraditional means of making decisions. Options include designating more Commission actions as "rulemaking" rather than adjudication and using more mediation, negotiated rulemaking, workshops, technical conferences, and task forces. Training in mediation for Commissioners and staff or the use of external mediators/facilitators may be useful as well.

Observation: Commission orders are perceived as being not well written and take too long to prepare and issue.

Several of those interviewed expressed strong dissatisfaction with the time required to write orders and the quality of the content of those orders. Currently, the responsibility for writing orders is fragmented among staff, paralegals, the hearing examiner, and (potentially) Commissioners. Most who commented on the training that had been provided for writing orders regarded the training exercise as a failure. Some felt that training must be on-going in

order to be effective. Some feel that paralegals lack the expertise to write good orders.

In addition to providing more training in the writing of orders, the APUC may want to consider the consolidation of responsibility for writing orders. One option is the expanded use of hearing examiners to write orders. This is standard practice around the nation and has the opportunity to create a good balance between the provision of an adequate background in orders and clear policy direction. If hearing examiners are to write the preponderance of Commission orders, more examiners would need to be added to the current one.

Observation: Additional statutory deadlines are not a preferred solution to APUC problems of timeliness.

Some APUC members suggested that because statutory deadlines are for the most part being met, perhaps the legislature should enact more. These types of guidelines are common around the nation but do little to expedite proceedings, at best serving only to force commissions to pay close attention to the prompt handling of cases. New deadlines would not necessarily help the Commission address the highest priority issues before it. Externally-set deadlines also encourage invention of ways to get around them if necessary to meet changing priorities. And the Commission, like other administrative agencies, needs flexibility to manage itself. Our suggestion is, instead, a determined, concerted effort, with the aid of an outside consultant experienced in the development of support systems for management, to improve the timeliness of case processing.

EXTERNAL RELATIONS

Observation: Maintaining a good working relationship with the legislature will be necessary to ensure that the APUC can maximize its contributions to industry restructuring.

By most accounts, the APUC enjoys a good working relationship with the legislature, aided in part by the legislative experience of two of the Commissioners. Those linkages will become increasingly important in the future

as the Commission further adopts a more legislative rather than judicial role. Commissions around the nation are increasingly recognizing that developing and maintaining good relationships with external stakeholders is critical to their emerging missions. In the past, public service commissions may have adopted a "less-attention-is-better" strategy toward the media and legislature, only responding when required. At least one comment to the NRRI indicated the belief that the APUC's legislative strategy has been largely reactive. Commissions are now recognizing that a proactive media strategy is one key to the success of consumer education.

In addition, with the movement toward deregulation some members of the public do not understand the mission of public service commissions. A proactive media strategy can assist the APUC in its efforts to inform the public about its programs and continuing roles.

CONSUMER PROTECTION

Observation: Increases in consumer complaints are beginning to strain the capacity of the Consumer Protection section.

Although everybody the NRRI interviewed who commented on the Consumer Protection section agreed that it is functioning very well, there are incipient signs of overload. The section is quite self-sufficient, while not isolated from other sections, but does receive support from other staff on particularly knotty technical complaints. Complaints on telecommunications service have increased dramatically, due to the advent of competition. Disposition of a complaint takes up to six weeks and the average time before resolution is becoming longer because complaints are not only more numerous but more complicated than in the past. Interviewees reported an increase in carrier-to-carrier complaints, which are now being treated as informal complaints but may need to be upgraded to formal ones if they continue at the current rate. Solely on the basis of the strain on the capacity of the section due to increasing consumer complaints, a case can be made for providing additional support to this section, both clerical and professional.

Observation: The overall mission of state regulators throughout the United States is shifting towards new means of consumer protection, especially through consumer education.

The major responsibilities of the Consumer Protection section, as listed in the Commission's FY 1997 *Annual Report*, are to investigate and resolve consumer complaints, disseminate information, and provide public relations support to the Commission. Although the consumer protection staff does some community outreach, the complaint load prohibits much consumer education and public relations effort.

In Commissioners' Summit conferences held under the aegis of the NRRI and NARUC, commissioners from around the United States have agreed that in the near future much of the work of public utility commissions will be directed toward protecting consumers in restructured markets and educating them. Competition cannot work well unless consumers have the information, ability, and motivation to make informed choices. A proactive media strategy is also a tool for consumer education, especially since the movement towards deregulation means that some legislators and members of the public may not fully understand the APUC's changing role. Consumer affairs, including complaint handling, consumer education, and public relations, will not be a tangential function, but a central one. Many state commissions are actively engaged in shifting towards a "consumer-centered" orientation.

Although a substantial commitment of time and energy will be required to perform effective consumer education in the short run, this need may decline over time as competition becomes the norm. The APUC may want to consider flexible, interim options to support its consumer protection section in addition to some increase in permanent positions. Consultants, temporary staff, or existing networks that already have links to consumer groups, are options that might be explored. Whatever combination of permanent staff or temporary help is chosen, the Commission will need to analyze information needs of consumers, their current level of awareness, and how they receive messages about the industries under the purview of the Commission. Preparation of appropriate literature and outreach to Alaskan communities can follow.

Observation: Since there is no separate consumer protection agency in Alaska, the Commission role is even more important than in many other states.

For electricity and gas regulation, Alaska's situation is idiosyncratic *vis-a-vis* the rest of the country, but the transition to competition is already affecting the Commission in telecommunications. Since there is no separate state consumer protection agency in Alaska, the Commission's advocacy role is even more important than in many of the states that have such a specialized agency. Both Commissioners and staff will need to be involved in recentering APUC goals on the consumer, with particular attention to residential and small business consumers. This can happen in the context of traditional concerns in Alaska for economic development through utility infrastructure and within the constraints of Commission jurisdiction. The good working relationship of the Consumer Protection section with larger utilities is commendable, as are the efforts to deal expeditiously with the carrier-to-carrier complaints the section has begun to see in telecommunications.

INFORMATION FLOWS/COMMUNICATIONS

Observation: Information needs at all commissions are becoming more complex and less easily categorized.

An efficient communications system for any organization ensures that the people who contribute to organizational results have the right information, including adequate feedback, at the right time. Coordination of information flows or communications is a management function that ensures that individuals and work groups are neither overburdened with information nor starved for this vital resource.

Both APUC Commissioners and staff interviewed by the NRRI expressed frustration with information flows and communications within the Commission and sometimes blamed each other for communications problems. While these criticisms deserve attention, it is important to place them in the context of the increasing complexity of information requirements and the increasingly uncertain, amorphous nature of the information actually available at any and all commissions in this time of regulatory transition.

In a traditional commission, staff is highly specialized not only in their tasks but in the type of information they present as testimony. Both substantive and process information are necessary to smooth commission operations. Process information includes such matters as case dockets, timetables, budgets, and assignments. Cases are developed and executed in the form of testimony (the primary substantive information) presented by all parties from their individual points of view, with a decision rendered on the evidence by the full commission. There is a presumption that the staff point of view, company point of view, and the views of other interested parties are sufficient to give commission decisionmakers the ability to decide for that particular company in that rate case. In the traditional commission organization, marked by adversarial proceedings, communication is very much on a "need-to-know" basis. If errors are to be made, the traditional commission preference is to make them on the side of too strictly limiting information flows rather than allowing too much out into the open.

The APUC, because of the state's unique energy situation, is to a greater extent than many commissions in the lower 48 still appropriately a traditional regulatory agency. But the Commission is affected by transition in the electric industry and is fully involved in restructuring of the telecommunications industry. In this time of great change, everyone at the APUC is struggling to make sense out of ambiguity. In this environment, more emphasis is needed on substantive communications about nonprogrammed activity, especially that related to initiating and establishing new programs. Process information, so essential to the efficient functioning of a traditional agency, becomes more the servant of substantive informational needs in an agency in transition. For all involved, both Commissioners and staff, the available information is likely to seem incomplete and unsatisfactory compared to earlier times.

Observation: Lateral communications within the Commission appear to be quite good.

Within the major working groups — the commissioners, technical staff, and administration — the exchange of ideas and information seems to be substantial and open. One Commissioner remarked particularly that the Chairman is very forthcoming with information.

Observation: Commissioners tend to complain that they cannot always easily acquire information from staff, while staff tend to complain that Commissioners are uninformed.

Commissioners say they find it difficult to obtain the information they need to frame issues and make decisions. One Commissioner commented that staff likes to work independently but that Commissioners need to hear the opposing viewpoints from staff. Commissioners remarked that they do not have contact with individual staff and that information is tightly controlled. Sometimes staff input may be quite technical and quantitative, without an understanding of the context of the hearing, suggested a Commissioner. One Commissioner remarked that a presentation from Alascom, set up in an effort to broaden external sources of information, provided more information "than we ever could have otherwise [gathered]."

Several staff remarked that before a hearing they do not always know the scope of the proceeding or what questions the Commissioners would like to have answered. Staff were concerned that Commissioners in some cases do not have a full understanding of the substantive information they need to make a decision and that they focus on administrative details instead. One staff member said it was disheartening to be named to brief a subject and have a Commissioner argue with the staff member from what s/he considered a superficial knowledge of the subject. Others said they believed the Commissioners rely more than they should on industry to set priorities and provide a context for their decisions. Another remarked that in their opinion Commissioners do not send information down to staff and do not know the extent of the demand they are placing on staff when they request information. However, both Commissioners and staff remarked on people at the Commission who are able because of exceptional ability and their positions in the organization to master a breadth of vital information and coordinate its use.

Observation: Commissioners and the Executive Director need to work together to improve Commissioners' knowledge of substantive utility matters.

Clearly, Commissioners need to have more information earlier about cases they will be deciding. But this is not a one-way street. It requires effort on the part of Commissioners as well as staff. In the past, commissions decided issues that were arcane but well-bounded. Today the issues are often strategic ones, but decisions still depend for their impact on complicated operational considerations. One way to help commissioner preparation on cases expected to come before them is for the Commissioners to prepare an "issues list" comprised of questions they would like answered and circulate it to staff well before a hearing. Staff might also provide Commissioners with "must read" documents, again well before an actual hearing, perhaps even before the circulation of the list of issues. Commissioners would read the documents and prepare their questions, so that they can learn what they need to know in each major case and generic proceeding.

The use of teams to create a coordinated staff viewpoint has been an efficient way to develop policy perspectives within staff and to avoid overwhelming the Commission with unnecessary analysis. In a time of increasing substantive complexity, however, there may well be greater need for presentation of conflicting and somewhat redundant data and analysis from multiple sources. In other words, it is possible to provide too much orchestration to the development of some staff positions and end up overly restricting Commissioners from access to the expertise and accumulated wisdom of staff. One way for the Executive Director and other technical staff to accomplish this might be to institute issue roundtables that include the participation of Commissioners. The use of teams among staff has done much for cross-fertilization of knowledge. With nonroutine problems, the use of roundtables, which could include industry participation as well, would broaden that team approach. Another means of enhancing understanding of current issues throughout the commission might be a series of tutorials. We caution, however, that these suggestions, if they prove of interest to the APUC, must be taken on in a structured, incremental progression, rather than all at once, so as not to impede tackling some of the other problems discussed in this report.

PART III OVERALL CONCLUSIONS

There is much to be proud of at the APUC. Despite a heavy workload, it has, by all accounts, served the public interest. There is a fear, however, that the agency cannot continue to perform its important functions without real reform. The areas most in need of attention seem to be:

Commissioner-staff and Commissioner-to-Commissioner relations, which includes issues of leadership and morale

Timeliness

The quality and speed of Commission orders

The increase in consumer complaints, the likelihood that complaints will increase further, and the implications for the adequacy of current staffing levels.

Electronic filing and management information systems.

The APUC has many competent and dedicated professionals. By focused application of their talents, the challenges facing it can surely be met.

APPENDIX

COMMENTS RECEIVED IN INTERVIEWS

OVERALL COMMISSION FUNCTIONING

In some respects, not much has changed over time at the Commission. The upcoming "sunset" review of the Commission will be important. The current level of discontent with the Commission is higher than in the past over a variety of carriers. Some utilities seek help/relief from the Commission. There is a mix of adversarial and cooperative relationships with utilities. Stakeholders are not looking for radical change.

Despite the turmoil and recent loss of staff, staff is generally doing a good job of focusing on the task. The Commission environment is characterized by constant emergencies. The workload has increased dramatically (tripled or quadrupled). There are not enough resources. There is a risk that the workload will overwhelm Commission consideration of the big picture.

The Commission is full of good people. The staff are the strength of the Commission. Staff have the feeling that the work of the Commission is important. There is an us-versus-them attitude between Commissioners and staff. Commissioners are experienced. The funding source is stable.

The foundation is crumbling. There is some inclination to adopt the status quo.

LEADERSHIP

The Commissioners are experienced. Equally important, they have significant legislative experience. The chairman especially has access to the legislature. There is bipartisan legislative experience within the Commission itself.

It was divisive to have a dispute on timekeeping in public.

I don't think the [timekeeping dispute] was particularly debilitating. I have seen some battles and some morale problems.

The staff considers it a distraction to have Commissioners who are absent.

An earlier attempt by the Governor to remove a Commissioner was in the press.

I've heard from industry that staff shows disrespect for Commissioners.

We have Commissioners who want to administer rather than do strategic planning and an Executive Director who does substantive stuff because that's where the vacuum is.

Each Commissioner has his own personality and brings some strength to the process.

It's hard to know what a problem is if you are only getting one Commissioner's opinion.

We're slow in production and do finger pointing, a common industry complaint.

We have good ability to work with industry. They don't have a difficult time getting a point across to us.

Some Commissioners are not as easy to get along with. Commissioners could be more supportive — treat people with courtesy.

Our major strength is a committed, knowledgeable staff and our major weakness is the Commissioners. They should show up for work. There is infighting. At hearings, they haven't read the filings, haven't read the staff memos with one exception.

Commissioners often come into a hearing with their minds made up.

The Commissioners don't have a sense of urgency. But there are cases where Commissioners get excited and involved. Then they make an effort.

People earning the high salaries are not accountable. The buck doesn't stop anywhere.

It's demoralizing to have staff come down with something to sign but nobody's in.

Commissioners have a total lack of appreciation for the work that has to be done. There is never a thank you from a Commissioner.

It's bad for morale to have lazy Commissioners.

All five of the Commissioners came with zero knowledge and aren't interested in working hard to learn their job.

Industry has fear of reprisals.

You can't make too much of dissatisfaction but I believe utility dissatisfaction level is considerably higher than when they had extremely knowledgeable and hardworking Commissioners.

There is a double standard for Commissioners which is wearing on staff. Former Commissioners read stuff.

The current Commissioners are not particularly technically adept. One of them is conscientious. They even do things that give worse impressions than they have to — cable TV in their offices.

There are differences of opinion partly because we have Commissioners that aren't thinking alike.

We never had a sense of where we were going. This is endemic to a regulatory commission.

Having hearings at 8:30 was impossible.

Friends in industry call and say "what's happening." They feel they're not going to be heard, that there are biases. Utilities see the place in disarray, ineffective, dysfunctional.

We don't have the feeling we have the support of Commissioners. It didn't used to be this way.

Leadership could be better but I am afraid it never will be. It could be a lot worse than we have. I'm happier now than in the past.

MORALE

Staff comes to work because they feel they're doing something worthwhile.

The people [here] are dedicated, knowledgeable and good team players.

There are lots of hard working people. People are one of our assets.

Staff are hardworking, have good experience, are committed — excellent.

There has been some loss of morale — have and have nots on promotions.

The APUC staff is a real small group. Everybody has input and is listened to.

Morale is okay, but there is some frustration. Disputes among Commissioners [are one cause]. On the staff side there is frustration over workload and interruptions that impede scheduling. Commissioners have time lines that don't take into account the individual's workload.

[Commenting on morale]: Commissioners need to have an idea of what they are asking for.

Everybody is overworked and puts in extra hours. We're a close group — you can get assistance from other sections.

There is high stress.

Everybody is supportive. [Morale varies] section by section.

This is a sick agency. There is a distinct minority of dedicated, hard working people and they're worked to the bone. A distinct minority of people have a feeling of serving the public interest.

We have extremely high stress and tension levels, which is probably contributing to attrition. We have the lowest morale of any commission.

Low morale is leading to attrition.

There is too much focus on negatives and not enough on fixing things.

The trend is in a bad direction.

In general, employees are not treated well.

We're in meltdown.

I believe in public service — serving every consumer in the state.

The Telecommunications Act hasn't helped morale. But overall there's no inspiration to go the extra mile.

Trend is downhill quick. Philosophical view is that we will probably settle somewhere but can be in quite a bit of danger while we're going down.

Despite all the turmoil, staff is doing a good job of keeping their nose to the grindstone.

A lot of people with bad morale have left. Three to five years ago morale was worse.

Things have changed so much in the last six months that I am optimistic.

COMMISSION STRUCTURE

The Common Carrier group is the most open to calling on other sections and serving other sections.

The location of APUC in Department of Commerce and Economic Development allows good communications with allied functions. The Executive Director has bi-weekly meetings with representatives of related functions in the Department.

Staff feels they used to get more support from assistant Attorneys General. It would be helpful if the A.G.s sat down with staff to say "this is the strategy." Should attorneys be team leaders?

There is some feeling by others in the Commission that common carrier people are the "stars."

The hybrid structure works well as an allocation of resources. Resources are where the tasks are. If organized by utility sector, expertise would be tailored by sector. Structure gives flexibility because you can form teams.

It is difficult to have partially exempt staff who don't work for the Commission. The Chairman can't supervise them.

Telecommunications is the fair-haired division. They are unaccountable for their work or their errors.

The computer support function may take up too much of the Engineering Section's time, and the engineering function may suffer.

It's not the structure that's the problem. It's the people.

It would help accountability to reorganize.

The Chairman doesn't have a clear line of authority on administrative matters. Consensus is a poor way to manage a work force.

The Commission structure is not efficient. There is a high concentration of bosses to Indians. Cases mix across sectoral boundaries [implying that there are too many sections].

If the Commission were restructured, it would cause apprehension and affect morale — not that that's so bad.

The Executive Director is the person with veto power [on cases] but it is usually one lead staff person who develops a position and tries to sell it to the group.

There has always been a question of how much authority the Chairman has. There is minimal management at the Commissioner level which is sometimes good and sometimes not.

STAFFING

The process does not support Commissioners.

Commissioners can't get staff to devote time to their projects. Commissioners complain of a lack of information being received from staff.

Staff are represented by attorneys assigned by the Office of the Attorney General. The Commission can't contract for additional assistance.

The same attorney who argued the staff case may have to defend the Commission on appeal even if the Commission disagreed with staff.

Though the attorneys are very busy and not always timely, they come through in a crunch. There is not enough legal support. The Commissioners should have their own legal counsel.

The workload for attorneys may not be balanced between representing staff and filling an advisory role, but there should be a split of the two attorneys on a case-by-case basis.

The legal advice received is sound. It would be helpful to have more attorney input in case development. In the past, more support from attorneys was received.

MANAGEMENT INFORMATION SYSTEMS

I sometimes feel that procedures are crumbling here.

We have management by emergencies. It feels like we're under fire all the time.

We should get more efficiency rather than hiring more people.

We're not getting basic management information [and this harms accountability and performance evaluation].

We're in meltdown. [The problem] starts with records and finance, one of the most critical parts of the organization. We don't get filings.

Computers are good [up to date in quality and speed] and a lot is done on them. It would be nice to have electronic filings. There should be two full-time computer support staff.

There is duplication of entering information into computers. We are using computers as typewriters. We need an integrated information system. We are not at the request for proposal stage on this. It is difficult to dedicate resources to solving this problem.

The mail is slow getting from the fourth floor to the third floor. Urgent documents do not get downstairs fast enough.

It's slow to get information and documents electronically available.

Rates and Finance doesn't get mail downstairs or filings downstairs in a timely manner. We lose several days.

We have more computer tools but don't have someone to help use them.

We need a data input person. We need to create calendars so people don't miss deadlines. We need to go to electronic filings.

We have fairly reasonable computer support, though software is a problem and we need to replace [the data processing] person who left.

COMMISSION PROCESS

Procedural time lines are lacking. Current statute allows the Commission wide discretion to set deadlines. Some pipeline cases have been open since 1986. Cases are not being handled promptly. Statutory deadlines should be imposed. Time delays are the result of bad process, not a lack of resources.

The Commission isn't performing well substantively, procedurally, or timely. We have several checkoff lists [to manage processes] agency wide. Procedural tracking could be done better than it is. When a docket or tariff reaches a certain point it is sent to the third floor for further processing and it is difficult to know what's going on. Stuff gets lost. A month later it may show up. We have lots of internal procedures that aren't written down anywhere and we don't know when they change. A procedures manual would help. There is good industry support for getting the Commission the resources it needs to process cases quickly. Increased caseload is stretching resources and we are getting further behind. Deadlines are not being met. Utilities expect faster decisions under a competitive environment. Should statutory maximums for decisions be made tighter? To fix slowness we need to see where the delays are more precisely. Statutory deadlines are usually met.

Commissioners find it hard to keep track of filings, schedule, and substance as well.

It takes longer if you try to take shortcuts. We should do proper motions in the first place [talking about due process]. [There are] no priorities. [It takes] lots of work to coordinate technical staff. Prioritizing is a weakness. The magnitude of the work is a problem and the feeling that everything has the same value. How do you address backlogs? How do you meet the public interest and still simplify workflow?

Need a standard reporting process on the status of projects.

The Commission is improving on production and efficiency. There is growing participation by Commissioners in making sure once a decision has been made it goes out the door. Staff for the most part does their work on a timely basis. We now have more people who write orders so that's improving. Paralegals write them. Staff writes lots of orders, especially engineering and finance staff. The adjudication phase also takes time.

Adjudication packets are still being put together at the last minute. Often orders are approved but sit within the Commission. They have to be signed by all five Commissioners [but sit on their desks]. The Commission process is slower than before because Commissioners don't have a sense of urgency. Some issues get priority and the Commission does see to getting them done. I can get an order drafted within days and it can sit for three months on a Commissioner's desk. Circulation of an order can take months. Staff is always late.

Commissioners are not clear about their expectations of advisors; sometimes an active role is expected; sometimes it is not. More three-Commissioner panels could be employed. Procedural orders are too detailed. There is no need for multiple pre-hearing conferences. The one-page order for procedural issues is helpful.

There are not enough staff to have full staff separation in important cases. The Executive Director splits staff to provide advantage to the advocacy side. Negotiation between the Executive Director and the Commissioner managing the docket would be helpful. There is a lack of staff responsiveness to Commission desires. The first priority of staff is to provide effective advocacy; effective advisory support is secondary. The lack of a consumers' counsel means that staff must protect the public interest. Previously, staff didn't have an advisory role and were wholly advocacy. Replacement of advocacy staff or addition of advocacy staff in the middle of a process requires due-process notification. In complex cases, one side might get shortchanged and might need outside resources. The role of staff even in an advocacy role is to round out the record, not to "win" the case; it is hard for staff to understand that. Staff do not respect the process or the Commissioners. Commissioners need to hear opposing viewpoints.

The assignment of a lead staff person for case preparation is sometimes ambiguous and sometimes shifts. Much case work interaction is informal. How the primary staff person assigns duties to the other staff is unclear.

"Splitting the staff" is a major concern. Because of small staff size, splitting creates frustration among the staff. Commissioners often regard staff in an advocacy role as "the enemy." The paralegals have not helped the process, and their skills have not been fully employed by Commissioners. The paralegal experiment was a "disaster." Supplementing the advocacy staff in mid-stream has been a problem.

There are frustrations among those involved with the APUC about the time required to complete cases. There is also some perception that the Commission values form over substance. Schedules agreed to in pre-hearing conferences are not held to. Delays are caused by hidden agendas, lack of case management, lack of competence, and inadvertent delay. The delays are caused by lack of a sense of urgency on the part of Commissioners. Documents can take months to circulate among Commissioners. The process of producing orders is getting better. The increased caseload has outstripped the increase in resources; the Commission is falling further behind. Cases have increased significantly. The staff side is generally timely; the fault lies on the Commissioner side.

Some cases are procedurally defective when brought to the Commission. The Chairman assigns Commissioners to cases as Docket Managers. The quality of

pre-filed testimony and exhibits is "scary." There is some question as to who sets schedules. Some Commissioner expectations of timing are not communicated well. The Commissioner may spend too much time attempting to make the perfect case and opinion; they may need to relax in the interest of speed. The Commissioner needs to find the right balance between due process and speed.

The Commission has a fairly good record of not being overturned. In some cases, decisions should have been appealed but weren't, perhaps because parties might feel that the Commission might have been vindictive. There seems to be some unevenness in the application of due process — sometimes overly rigid.

There has been little use of alternative methods of dispute resolution (ADR). The lack of skilled staff and the governing statutes prohibit better use of ADR. Stipulations are sometimes reached after dockets are filed. In a fairly high percentage of cases, there is some stipulation. Sometimes Commissioners want a detailed overview of stipulations. Staff might be too disputative to serve as mediators.

The Executive Director leads the advocacy team and does a final review of the staff case. The Docket Manager is the day-to-day leader. All voices are heard in case development. Sometimes the Executive Director overrules staff.

EXTERNAL RELATIONS

The legislative experience of Commissioners is an asset. The Legislature has been responsive to the difference between the APUC and other agencies. The Commission is frequently asked for advice by the Legislature. The Legislature regards the Commission as a resource. The Commission has a good relationship with the Legislature. The Commission attempts to avoid lobbying. The relationship with the Legislature has been reactive except in limited situations.

The environment is more political than in the past. There is now more interaction with the Governor. Commission decisions are rarely overturned. There is now more contact with the public, which is more knowledgeable than before.

Commissioners have limited contacts with external stakeholders due to lack of time. Overall, external relations are good. Public contact is increasing and the public is now more knowledgeable. The public doesn't understand the Commission process.

Some regulated utilities might be afraid to be direct with the Commission for fear of reprisals. They are definitely frustrated by the lack of timeliness and the concern with form over substance.

CONSUMER PROTECTION

The Consumer Protection section is working well.

I'm totally satisfied with the job Consumer Protection does. I see no problems in consumer affairs [Consumer Protection]. [As a technical staff person] I get involved in lots of the complaints.

The state does not have a consumer protection agency. Consumer protection needs to be beefed up. It should be at the forefront of what we do.

There has been a dramatic increase in complaints in telecommunications. We now have three competitors in Anchorage.

The number of complaints has doubled and there are only two intake people. The section cannot do administrative stuff [because the complaint handling takes all the time]. The section was promised a half time clerk but received a one-quarter [-time clerk] instead. Disposition of a complaint takes up to six weeks. It's taking longer because complaints are becoming more complicated. Telecommunications is the majority of the complaints.

There are not enough resources and [there is] high stress. The Consumer [Protection] section should have enough resources to do what other commissions are doing in this area.

They [Consumer Protection section] keep to themselves. They get a lot of work. Complaints have risen. They do call on me [a technical staff person] for assistance, such as drafting letters. Sometimes (but rarely) I talk to consumers.

There is not enough community outreach. I would like the Consumer Protection section to do more.

A Consumer [Protection] section representative does do some outreach — visiting churches and senior groups.

The amount of time it takes the Commission to decide issues harms [the] Consumer Protection [section]. Often the Commission has to be defended for delays. Consumers may think that information is being withheld [when in fact there has not been a decision].

Commissioners should not promise results from the Consumer Protection section. Often the issues they refer are not even jurisdictional to the Commission.

The Consumer [Protection] section reports to the Commission once a month in a public meeting.

The Consumer [Protection] section does not prepare literature on the Commission.

The Commission used to be more consumer conscious. As the state becomes more deregulated it will become more important to consider consumers.

The Consumer [Protection] section has cooperative relationships with larger utilities [for complaint resolution].

The Consumer Protection section is starting to get utility-to-utility complaints, or a utility filing complaints on behalf of customers of another utility. These are now being treated as informal complaints but are typically complex issues. The APUC wants to [handle a complaint of this sort] quicker as an informal complaint but may have to bump them up to formal complaint status.

Consumer complaint processing is a slow process. It would be good to shorten the time period for a utility to respond to a complaint.

INFORMATION FLOWS/COMMUNICATIONS

The Commission arranged a presentation from Alascom in an effort to broaden external sources of information. This was successful — more information than we ever could have otherwise.

Communications among Commissioners are good. The Chairman is very informative.

Communications are fairly good: this is a small community. But sometimes the Commission has questions for staff that come out at a hearing but would be nice to know about ahead of time. It would be good to know what information they're seeking. The scope of a proceeding and Commissioner questions are sometimes not clear. I'm not sure how you'd do this effectively. The staff is less politically aware [than Commissioners] and technical staff may respond to Commissioner concerns in numbers, without input in the context of a political situation.

There probably is some isolation for Commissioners.

We have problems with information flow. Every Commissioner who is not the Chair complains they have no idea what's going on.

Staff likes to work independently but Commissioners need to hear opposing viewpoints in staff. We don't have contact with individual [staff]. Information is tightly controlled.

External communications are limited for the Commission. The Commissioners keep getting down to details and don't have time to understand the substantive issues.

There is room for improvement on vertical communications. We are an hourglass with the Executive Director in the neck.

It's not always clear what Commissioners want. We have Commissioners who want to administer and an Executive Director who does substantive stuff because that's where the vacuum is.

Internal communications are poor.

Lack of communication [is a problem]. Lateral communications are better than vertical but lateral aren't great. If you're not working on an order it doesn't get to you. We should have electronic means to see a brief summary of an order [because there may be one related to one you are working on].

These Commissioners rely a lot on industry. They get a sense of what's important and what industry wants. Often the Commissioners come in with their minds made up. In adjudicatory hearings it's even more obvious.

Out of necessity, the Administrative division has become very close.

Commissioners do not respond to their e-mail.

We have differences of opinion partly because we have Commissioners that aren't thinking alike [aren't evenly prepared on substantive matters].

Communications are laterally good and vertically relatively cordial.

The Commission considers staff the enemy because "you're staff" or because "they know more than we do."

It is disheartening when you are named to brief the subject and they [the Commissioners] argue with you with no information.

There is not always clear direction from Commissioners about what they want [from staff advisers]. Since you don't know what they want, it is hard to prepare.

This place is a big gossip house. But you don't get communications on things you need to know and aren't told. Commissioners' information doesn't flow down. They don't know what demands they're placing on us.

HB

187

HFIN

FILE

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: April 26, 1999

FURTHER REFERRALS:

Date of Committee Action: 5/6/99

The FINANCE Committee considered:

HB 187

HOUSE BILL NO. 187

CERTIFICATES OF NEED FOR HEALTH FACILITY

"An Act relating to the certificate of need program for nursing care facilities and other facilities; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 187 (FIN) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) DHSS 4/26/99

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Theriault</i>	Theriault			X	
<i>Tom Bunde</i>	Bunde				
<i>Wm Kohring</i>	Kohring			X	
<i>William Austinman</i>	Austinman			X	
<i>John J. Davis</i>	J. Davis	X			
<i>Ben Grossman</i>	Grossman			X	
<i>Carl E. Moses</i>	Moses			X	
<i>John A. Davis</i>	A. Davis			X	
<i>W.H. Williams</i>	Williams			X	
<i>Tom</i>	Tom	X			

60 CHAIR'S SIGNATURE *Gene Theriault*

FISCAL NOTE

No: 1

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: HB 187
(H) Publish Date: 4/26/99

Revision Date: _____
Title: An Act relating to certificates of need for nursing home beds and providing an effective date
Sponsor: House HESS
Requestor: _____

Dept. Affected: Health and Social Services
BRU: Administrative Services
Component: Health Planning and Facilities Management
COMPONENT SERIAL NO. 2020
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY00	FY01	FY02	FY03	FY04	FY05
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	1.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	25.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.5	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS						
TOTAL OPERATING	26.5	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGES IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	13.3	0.0	0.0	0.0	0.0	0.0
1003 GF Match	13.3	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (please specify)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	26.5	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	none	none	none	none	none	none
PART-TIME	none	none	none	none	none	none
TEMPORARY	none	none	none	none	none	none

Estimate of any current year (FY99) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

Chapter 84, SLA 96 placed a moratorium on nursing home beds and established a Legislative Working Group on Long-Term Care. One recommendation of the Legislative Working Group was the importance of developing a State plan which outlines the desired long-term care system in a comprehensive manner. The Division of Senior Services already produces a comprehensive long-term care plan but it does not include nursing home beds. New standards for the approval of new nursing home beds need to be developed and a plan section written. Certificate of need applicants would be required to demonstrate how well their proposal fits into the standards and the plan to be approved. The fiscal note is for the cost of hiring a consultant, travel and supplies to research and develop new State nursing home review standards. Standards would take into consideration the existing and desired system, trends in care and nursing home use rates in Alaska; the effect of home health, assisted living and adult day care on the need for new nursing home beds; barriers to the development and use of home and community based services; gaps in services; and would develop a model that can be used to estimate the future need for nursing beds, and alternatives to institutional care such as assisted living. The standards would be used to review projects and develop a plan section that could be added as an appendix to the annual Division of Senior Services plan. This bill is a cost saving measure designed to avoid potential future costs to the state general fund of up to \$9.8 million annually due to construction of up to 234 new nursing home beds in the next 5 to 15 years.

Prepared by: Janet Clarke
Division: Administrative Services
Approved by Commissioner: Karen Ferdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-1630
Date: 04/15/99
Date: 4/16/99

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1-LS0708D ✓
Lauterbach
5/6/99

adopted NO 103j 5-6-99

CS FOR HOUSE BILL NO. 187(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): **HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE**

A BILL

FOR AN ACT ENTITLED

1 "An Act removing a requirement that a certificate of need is needed before
2 elimination of a category of health services provided by a health care facility;
3 prohibiting a person from converting a building or part of a building to a
4 nursing home that requires licensure unless authorized by a certificate of need;
5 setting a standard of review for applications for certificates of need relating to
6 nursing homes and nursing home beds and relating to that standard of review;
7 providing that the standard of review for applications for certificates of need
8 for beds other than nursing home beds or for a health care facility other than
9 a nursing home is the availability and quality of existing health care resources
10 or the accessibility to those resources compared to the current or projected
11 requirement for health services required to maintain the good health of citizens
12 of this state; defining the term 'nursing home bed'; eliminating statutory

1 references to the office of planning and research in the Department of Health
2 and Social Services; and providing for an effective date."

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

4 * **Section 1. FINDINGS.** The legislature finds that

5 (1) ch. 84, SLA 1996, placed a two-year moratorium on the issuance or
6 modification of certificates of need under AS 18.07 for nursing beds and created a working
7 group to analyze issues relating to long-term care and the certificate of need program;

8 (2) it is anticipated that the long-term care system in Alaska will face a crisis
9 in its ability to provide services to a growing and increasingly aging population by the twenty-
10 first century unless the system can provide services in a more efficient and appropriate
11 manner;

12 (3) in 1996, the state spent \$120,000,000 in long-term care service for
13 approximately 5,000 Alaskans; approximately two-thirds of these expenditures, \$80,000,000,
14 were made from the state general fund;

15 (4) moderate assumptions about population and inflation would project that
16 more than \$545,000,000 will be needed to pay for long-term care services in Alaska by the
17 year 2015;

18 (5) a shift from the current significant reliance on costly institutional care to
19 a more balanced continuum of home-based and community-based services is needed;

20 (6) a two-year moratorium on the issuance or modification of a certificate of
21 need for the addition of nursing home beds was enacted into law in 1996 to

22 (A) encourage the development of home-based and community-based
23 services;

24 (B) direct the state's resources toward the services that can best meet
25 the needs of the clients; and

26 (C) facilitate actions to provide a more balanced system of care and
27 more appropriate placement of clients, enlarge client choice, and avoid unnecessary
28 new long-term care costs;

29 (7) appropriate planning is necessary to ensure that a certificate of need for
30 new or replacement nursing home beds is not approved without a

- 1 (A) demonstrated long-term need for those beds on a regional basis;
 2 (B) demonstration that the project is financially feasible and fosters the
 3 least reliance on the state general fund for provision of the most appropriate service;
 4 (C) demonstration of public participation in the planning process and
 5 support by affected groups; and
 6 (D) showing that the approval or modification of the certificate of need
 7 is consistent with existing state plans for delivery of care in Alaska; and

8 (8) this Act provides a minimum framework to ensure that the approval of new
 9 or replacement nursing home beds enhances access to the appropriate level of care to meet
 10 the needs of Alaskans and does not foster reliance on the state general fund to finance the
 11 operating and capital costs.

12 * Sec. 2. AS 18.07.021 is amended to read:

13 **Sec. 18.07.021. Administration** [OFFICE OF PLANNING AND
 14 RESEARCH]. The [OFFICE OF PLANNING AND RESEARCH IN THE]
 15 department shall administer the certificate of need program under this chapter and
 16 perform other functions prescribed in this chapter.

17 * Sec. 3. AS 18.07.031 is amended to read:

18 **Sec. 18.07.031. Certificate of need required.** (a) A person may not make
 19 an expenditure of \$1,000,000 or more for any of the following unless authorized under
 20 the terms of a certificate of need issued by the department [OFFICE]:

- 21 (1) construction of a health care facility;
 22 (2) alteration of the bed capacity of a health care facility; or
 23 (3) addition [OR ELIMINATION] of a category of health services
 24 provided by a health care facility.

25 (b) Notwithstanding the expenditure threshold in (a) of this section, a person
 26 may not convert a building or part of a building [THAT IS LICENSED AS AN
 27 ASSISTED LIVING FACILITY UNDER AS 47.33] to a nursing home that requires
 28 licensure under AS 18.20.020 unless authorized under the terms of a certificate of need
 29 issued by the department [OFFICE].

30 * Sec. 4. AS 18.07.041 is amended to read:

31 **Sec. 18.07.041. Standard of review for applications for certificates of need**

1 relating to non-nursing home beds and services. The department [OFFICE] shall
 2 grant a sponsor a certificate of need or modify a certificate of need that authorizes
 3 beds other than nursing home beds or that is for a health care facility other than
 4 a nursing home if the availability and quality of existing health care resources or the
 5 accessibility to those resources is less than the current or projected requirement for
 6 health services required to maintain the good health of citizens of this state.

7 * Sec. 5. AS 18.07 is amended by adding a new section to read:

8 **Sec. 18.07.043. Standard of review for applications for certificates of need**
 9 **relating to nursing homes and nursing home beds.** (a) The department shall
 10 develop review standards for an application for a certificate of need, or for a
 11 modification of a certificate of need, issued under this chapter for a health care facility
 12 that is a nursing home or has nursing home beds.

13 (b) In developing the review standards under (a) of this section, the department
 14 shall consider whether

15 (1) a public process and existing appropriate statewide, regional, and
 16 local plans were included in planning and designing the additional nursing home beds
 17 or the health care facility;

18 (2) the additional nursing home beds or the health care facility meets
 19 minimum required use rates for new nursing beds, and the effect on use rates for
 20 existing nursing home beds;

21 (3) the additional nursing home beds or the health care facility
 22 demonstrates consideration of the community, regional, and statewide needs for new
 23 nursing home beds;

24 (4) the additional nursing home beds or the health care facility meets
 25 the minimum number of new nursing beds that should be required in a facility to
 26 ensure efficiency and economies of scale;

27 (5) the additional nursing home beds or the health care facility
 28 demonstrates the proposed service will provide a quality of care equivalent to existing
 29 community, regional, or statewide services;

30 (6) the additional nursing home beds or the health care facility
 31 demonstrates financial feasibility, including long-term viability, and what the financial

1 effect will be on consumers and the state; and

2 (7) the sponsor has demonstrated cost effectiveness through considering
3 the availability of appropriate, less costly alternatives of providing the services
4 planned.

5 (c) The department shall grant a sponsor a certificate of need or modify a
6 certificate of need that authorizes nursing home beds or that is for a health care facility
7 that is a nursing home if the department finds that the sponsor meets the standards
8 established in or under this chapter.

9 * Sec. 6. AS 18.07.061 is amended to read:

10 **Sec. 18.07.061. Modification and termination of activities.** The certificate
11 holder shall apply to the department [OFFICE] for a modification of the certificate
12 before terminating part of the activities authorized by the terms of issuance, but the
13 certificate holder is not required to obtain the acquiescence of the department
14 [OFFICE] before terminating all the activities authorized by the certificate. If a
15 certificate holder terminates all of the activities authorized by a certificate, the
16 certificate holder is required to notify the department [OFFICE] 60 days before
17 termination and to surrender the certificate to the department [OFFICE] within 30
18 days of termination.

19 * Sec. 7. AS 18.07.071 is amended to read:

20 **Sec. 18.07.071. Temporary and emergency certificates.** (a) The
21 department [OFFICE] shall grant a sponsor an emergency certificate for the
22 construction of a health care facility for which a certificate is required under
23 AS 18.07.031 if the sponsor shows, by affidavit or formal hearing, that the act of
24 construction consists of effecting emergency repairs.

25 (b) The department [OFFICE] may grant a sponsor a temporary certificate for
26 the temporary operation of a category of health service [,] if the sponsor shows by
27 affidavit or formal hearing

28 (1) the necessity for early, immediate, or temporary relief; [,] and

29 (2) adverse effect to the public interest by reason of delay occasioned
30 by compliance with the requirements of AS 18.07.041, 18.07.043, and application
31 procedures prescribed by regulations under this chapter.

1 (c) A temporary certificate granted under (b) of this section does not confer
2 vested rights on behalf of the applicant. The department [OFFICE] shall impose
3 those special limitations and restrictions concerning duration and right of extension that
4 the department [OFFICE] considers appropriate. A temporary certificate may not be
5 granted for a period longer than necessary for the sponsor to obtain review of the
6 action certified by the temporary certificate under AS 18.07.051. Application for a
7 certificate of need under AS 18.07.041 or 18.07.043 must commence within 60 days
8 of the date of issuance of the temporary certificate.

9 * Sec. 8. AS 18.07.081(a) is amended to read:

10 (a) The department [OFFICE], a member of the public who is substantially
11 affected by activities authorized by the certificate, or another applicant for a certificate
12 of need may initiate a hearing to obtain modification, suspension, or revocation of an
13 existing certificate of need by filing an accusation with the commissioner as prescribed
14 under AS 44.62.360. A revocation, modification, or suspension of an outstanding
15 certificate may not be undertaken unless it is in accordance with AS 44.62.330 -
16 44.62.630.

17 * Sec. 9. AS 18.07.081(c) is amended to read:

18 (c) A certificate of need shall be suspended if an accusation is filed before the
19 commencement of activities authorized under AS 18.07.041 or 18.07.043 that charges
20 that factors upon which the certificate of need was issued have changed [,] or new
21 factors have been discovered that significantly alter the need for the activity
22 authorized. A suspension of a certificate may not exceed 60 days. At the end of this
23 period or sooner, the department [OFFICE] shall revoke or reinstate the certificate.

24 * Sec. 10. AS 18.07.081(d) is amended to read:

25 (d) A certificate of need may be revoked if

26 (1) the sponsor has not shown continuing progress toward
27 commencement of the activities authorized under AS 18.07.041 or 18.07.043 after six
28 months of issuance;

29 (2) the applicant fails, without good cause, to complete activities
30 authorized by the certificate;

31 (3) the sponsor fails to comply with the provisions of this chapter or

1 regulations adopted under this chapter;

2 (4) the sponsor knowingly misrepresents a material fact in obtaining the
3 certificate;

4 (5) the facts charged in an accusation filed under (c) of this section are
5 established; or

6 (6) the sponsor fails to provide services authorized by the terms of the
7 certificate.

8 * **Sec. 11.** AS 18.07.101 is amended to read:

9 **Sec. 18.07.101. Regulations.** The commissioner shall adopt, in accordance
10 with AS 44.62 (Administrative Procedure Act), regulations that establish procedures
11 under which sponsors may make application for certificates of need required by this
12 chapter and that govern the review of those applications by the department [OFFICE],
13 establish requirements for a uniform statewide system of reporting financial and other
14 operating data, and otherwise carry out the purposes of this chapter.

15 * **Sec. 12.** AS 18.07.111(2) is amended to read:

16 (2) "certificate" means a certificate of need issued by the department
17 [OFFICE] under AS 18.07.41, 18.07.043, or 18.07.071 [AS 18.07.071];

18 * **Sec. 13.** AS 18.07.111 is amended by adding a new paragraph to read:

19 (13) "nursing home bed" means a bed not used for acute care in which
20 nursing care and related medical services are provided over a period of 24 hours a day
21 to individuals admitted to the health care facility because of illness, disease, or
22 physical infirmity.

23 * **Sec. 14.** AS 18.07.111(11) is repealed.

24 * **Sec. 15. TRANSITION.** (a) A matter described in former AS 18.07.031 that is
25 authorized under a certificate of need issued before the effective date of this Act shall be
26 reviewed and completed in accordance with the applicable statutes and regulations as they
27 existed on the day before the effective date of this Act.

28 (b) Except as provided in (a) of this section, pending applications and any other
29 matters described in former AS 18.07.031 or in AS 18.07.031, as amended by this Act, shall
30 be reviewed and completed in accordance with the provisions of this Act.

31 * **Sec. 16.** This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

No: 1

STATE OF ALASKA
199 LEGISLATIVE SESSION

Bill Version: HB 187
(H) Publish Date: 4/26/99

Revision Date: _____
Title: An Act relating to certificates of need for nursing home beds and providing an effective date
Sponsor: House HESS
Requestor: _____

Dept. Affected: Health and Social Services
BRU: Administrative Services
Component: Health Planning and Facilities Management
COMPONENT SERIAL NO. 2020
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY00	FY01	FY02	FY03	FY04	FY05
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	1.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	25.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.5	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS						
TOTAL OPERATING	26.5	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGES IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	13.3	0.0	0.0	0.0	0.0	0.0
1003 GF Match	13.3	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (please specify)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	26.5	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	none	none	none	none	none	none
PART-TIME	none	none	none	none	none	none
TEMPORARY	none	none	none	none	none	none

Estimate of any current year (FY99) cost: \$0.0

ANALYSIS. (Attach a separate page if necessary)

Chapter 84, SLA 96 placed a moratorium on nursing home beds and established a Legislative Working Group on Long-Term Care. One recommendation of the Legislative Working Group was the importance of developing a State plan which outlines the desired long-term care system in a comprehensive manner. The Division of Senior Services already produces a comprehensive long-term care plan but it does not include nursing home beds. New standards for the approval of new nursing home beds need to be developed and a plan section written. Certificate of need applicants would be required to demonstrate how well their proposal fits into the standards and the plan to be approved. The fiscal note is for the cost of hiring a consultant, travel and supplies to research and develop new State nursing home review standards. Standards would take into consideration the existing and desired system, trends in care and nursing home use rates in Alaska; the effect of home health, assisted living and adult day care on the need for new nursing home beds; barriers to the development and use of home and community based services; gaps in services; and would develop a model that can be used to estimate the future need for nursing beds, and alternatives to institutional care such as assisted living. The standards would be used to review projects and develop a plan section that could be added as an appendix to the annual Division of Senior Services plan. This bill is a cost saving measure designed to avoid potential future costs to the state general fund of up to \$9.8 million annually due to construction of up to 234 new nursing home beds in the next 5 to 15 years.

Prepared by: Janet Clarke
Division: Administrative Services

Phone: 465-1630
Date: 04/15/99

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Date: 4/16/99

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AMENDMENT

Offered in the House Finance Committee

by Rep. Bunde

TO: HB 187

Page 3, line 3:

Delete "A"

Insert "Except as provided in (c) of this section, a [A]

Page 3, following line 14:

Insert a new bill section to read:

"*Sec 4. AS 18.07.031 is amended by adding a new subsection to read:

(c) A certificate of need is not required for the

(1) construction of a day surgery center or imaging center;

(2) alteration of the bed capacity of a health care facility if the alteration is necessary solely to accommodate the addition of day surgery or imaging services to the facility; or

(3) addition of day surgery or imaging services to a health care facility."

Renumber the following bill sections accordingly.

Page 7, line 3:

Delete "a new paragraph"

Insert "new paragraphs"

Page 7, following line 3:

Insert new paragraphs to read:

“(13) “day surgery” means surgery performed on a patient who arrives at the surgery facility on the day of surgery and is not expected to remain overnight at the facility after the surgery is performed;

(14) “imaging” means diagnostic testing, such as fluoroscopy or an x-ray, computerized axial tomography (CAT scan), bone scan, ultrasonography, scintigraphy, or magnetic resonance imaging (MRI), that produces a picture or conception with a likeness to an objective reality by providing clarity, contrast, and detail through the use of colored fluids, radionuclides, or other materials introduced to the human body; ionizing or nonionizing radiation; or an external magnetic field.”

Page 7, line 4:

Delete “(13)”

Insert “(15)”



3200 Providence Drive
P.O. Box 196604
Anchorage, Alaska
99519-6604

Tel 907.562.2211

Thursday, May 06, 1999

House Finance Committee members
Alaska State Legislature
Twenty-first Legislature -- First Session
Juneau, Alaska

Dear Representative Theriault,

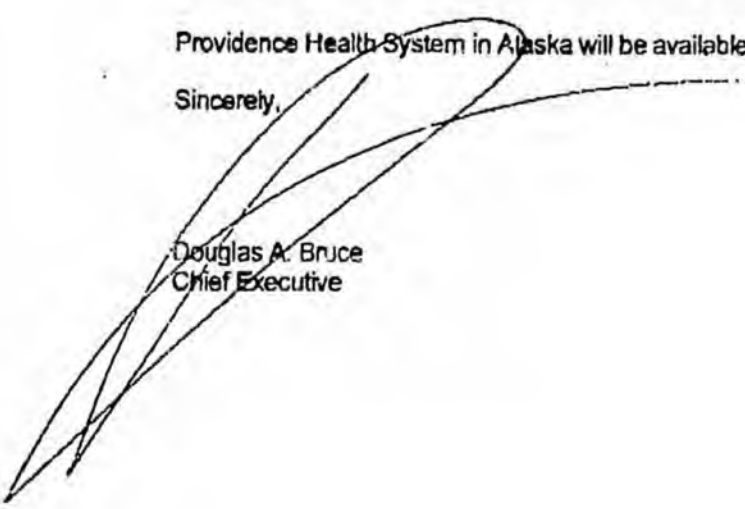
Providence Health System in Alaska supports the passage of HB 187. The work and recommendations of the Long term Care Task Force are contained in the revisions of HB 187, specifically relating to nursing homes.

We understand that an amendment was introduced that relates to acute care. This amendment suggests that day surgery and imaging services be exempted from the CON requirement of the Department. The primary purpose of CON laws has been to prove need to avoid unnecessary duplication and ultimately, cost to consumers, payers and the State. A public review of the need for services, through the CON process, assures a shared understanding of need and impacts to the community, providers and payers. Capricious changes to CON laws can have long term impact on the cost of care and services, so must be carefully considered. We are opposed to this amendment.

Over the past several months, we have been participating in discussions with the Department along with other members of ASHNA. The talks have been productive and healthy.

Providence Health System in Alaska will be available to testify via teleconference today at 1:30 p.m.

Sincerely,


Douglas A. Bruce
Chief Executive

**Greater
Fairbanks
Community
Hospital
Foundation, Inc.**

May 5, 1999

Interior Legislative Delegation
Alaska State Legislature
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Therriault,

*Owners of Fairbanks
Memorial Hospital
and Denali Center*

P.O. Box 71396
Fairbanks, AK 99707

(907) 458-5550
fax: (907) 458-5551

We understand discussion has arisen related to the relationship between the Greater Fairbanks Community Hospital Foundation, owners of Fairbanks Memorial Hospital and Denali Center (FMH/DC) and Lutheran Health Systems, who operate FMH/DC.

The Foundation has contracted on an annual basis with Lutheran Health Systems to operate FMH/DC for the last 30 years through a lease arrangement. This lease provides for a management fee consistent with industry standards. Over 95 percent of the revenues stay in the community. All revenues are used to fund depreciation, develop services needed in the community and to operate the facility.

Steve Stephens
President

David D. Ransley
1st Vice President

Ann Swift
2nd Vice President

Harry Porter
Treasurer

Joe Faulhaber
Secretary

Trustees:

Walter Carlo

Jeff Cook

William H. Doolittle, M.D.

Clarice Dulceminier, M.D.

Roger Floerchinger

Andrea Gelvin

Gail Hatran

John Hill

Mike Kelly

Helen Lazeration

William W. Mendenhall

Dave McNary

Ouida Paden

Richard Selfert

Margaret Soden

Charles Steiner, M.D.

Sandra Stringer

William G. Stroecker

David Swanson

Emeritus Members:

Julius A. Kornfeld

G.A. Al Seeliger

William R. Wood

Business Manager:

Karen Porter

It is our understanding that a discussion arose when HB 187, Certificate of Need (CON) for long-term care facilities was in the House HESS Committee. An amendment was offered to exempt day surgery and imaging services from current CON laws, which require Department of Health and Social Service approval of construction of medical facilities in excess of \$1 million. We would welcome the opportunity to discuss the advantages and disadvantages of the current CON law. However, it should not be in a piecemeal approach with little discussion of the entire issue. We strongly oppose that amendment.

The Foundation has demonstrated its stewardship to the community through reasonable pricing, quality health care and consistent management. Fairbanks enjoys a 15 to 20 percent price advantage over comparable Alaskan facilities.

The relationship between the Fairbanks community, the Hospital Foundation, and Lutheran Health Systems is indeed unique and is a tribute to 30 years of hard work and partnership. We appreciate the opportunity to comment on this relationship and to clarify what may have been misunderstandings regarding this relationship.

Sincerely,

Stewart C. Stephens

Stewart C. Stephens
President

Harry J. Porter

Harry J. Porter
Treasurer

cc: M. Powers

Alaska State Legislature



Official Business

State Capitol
Juneau AK
99801-1182

Long-Term Care Task Force

House Bill No. 187

An Act relating to the certificate of need program for nursing care facilities and other facilities; and providing for an effective date.

Alaska has had a Certificate of Need (CON) law since 1976. The purpose of this law is to insure the development of an accessible, cost-effective health care system with quality service. Currently the Department of Health and Social Services reviews all nursing home expansion projects that cost over \$1 million. However, the review of each request is limited to the factors of *accessibility* and *quality*, that is whether the service is currently available and can be provided in a quality manner.

Under this proposed legislation, a new standard of need is adopted for nursing home certificate of need requests. The revised standard allows decisions to be made based on additional criteria such as need, financial feasibility and availability of alternatives. Under this change, a new nursing home project will need to demonstrate the cost-effectiveness of each request and the appropriateness of the service.

The Department of Health and Social Services estimates that on average, ten new nursing home beds increase the Medicaid budget by about \$1 million annually. The decision to expand existing nursing home facilities has long-term implications to both the state treasury and our seniors and persons with disabilities. This legislation will give the Department of Health and Social Services the needed tools in which to make a more informed decision.