

**ALASKA LEGISLATURE**

**2320**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 2001 - 2002**

When the RCA was established, several structural changes were made. They included:

- The legislation establishing the RCA requires a time-accounting system, and the charge to the utilities for support of the RCA is now based on time charges rather than utility revenues.
- An MIS system is being put in place as an aid to external users and internal management.
- The RCA is now using the Internet to publish information, orders, and dockets.
- The Chair was provided more authority.
- The legislation gave the RCA the authority for three Commissioners to hear cases. (One person interviewed believes that this authority existed before but was not used.) This is more efficient than the requirement that all five sit on cases.
- The legislation gives the RCA the authority to use arbiters and hearing officers.
- The Executive Director position was abolished. An assistant to the Chair (described by one person as a "Super Assistant" position) has assumed some of the coordinative duties previously accomplished by the Executive Director and, reportedly, some additional duties have fallen to the Chair.
- A Public Advocacy Section (PAS) was established. This section performs the advocacy function formerly performed by a much larger number of staff. It is assigned to cases by the Chair or can petition to intervene. The establishment of a PAS-like entity had been supported by industry.

Of these changes, the creation of the PAS seems to be the most significant. For one thing, it should provide Commissioners more staff advisory assistance, *which appeared to be lacking in the NRRI review of the APUC. Those interviewed then expressed concern that the assignment of existing staff resources of the APUC did not give adequate attention to the advisory function.*

Clearly, the PAS is just getting underway, and it may be too early to tell how it might affect the RCA and the regulatory process. There is some concern that it may not have enough staff to accomplish

the desired functions. There is also some concern that the other Commission staff (those assigned now to the "advisory" function since the PAE will handle "advocacy") may not have fully adjusted to their new role.

That clear separation of duties may evolve with time. Some concern was also expressed that some external stakeholders may be uncomfortable with the closeness of advisory staff to Commissioners and that advisory staff input is not subject to cross-examination. This too might abate over time.

Overall, it appears that the RCA is functioning well without an Executive Director. Two of those interviewed stated that it is sometimes unclear who to go to on particular issues and that a gap exists, but the majority of those interviewed expressed the belief that the lack of an Executive Director is not a problem. On the plus side, the Commissioner Assistant seems to be picking up coordinative duties well, department heads have more authority now, and there is now more direct staff access to the Chair.

In the new organization, the Chair was provided more authority, including decision authority in procedural matters. Overall, that seems to be an improvement. Those interviewed observe that the Chair and her Assistant are highly thought of, that things are being worked out, that the Chair is not a "power monger," that the other Commissioners defer to her appropriately and support her leadership, and that she is giving more authority to department heads. If problems exist, they may be embedded in her work load and the extent to which the substantial success of the RCA might be related to her competence and hard work. (It should be noted that all five Commissioners were cited for their attitude and hard work; the Chair seems to be regarded as the most able person in a very able group.) Some commented that more delegation from her may be necessary.

## Staffing

In response to questions about the adequacy of staff support, comments were again directed toward the evolving advisory versus advocacy role of staff. It was noted that the RCA is not overstaffed by any means. Problems noted were the lack of strong leadership on the staff at the "sergeant" level, the backlog, recruiting difficulties, the need for the PAS to get staffed up, the need for a new paralegal, and that some staff are not reliable (one comment).

*Concern was expressed in the review of the APUC about the level of legal 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. Legal support is now regarded as probably better than before, though the departure of an attorney was described as hurtful. Comments in the RCA review were mixed about whether legal support is adequate. Some expressed concern that staff don't get enough legal support, particularly given the backlog; others said that there is no scarcity of legal support and that, in the advisory role, staff need less support than before.*

## Management Information Systems

*In the review of the APUC, both Commissioners and staff strongly believed that systems for managing commission processes at the APUC needed to be improved. Lack of computer support and inadequate use of computers were frequently mentioned as problems. Consideration was being given to hiring an outside consultant to design a computer information system for the commission. In the current review, there was near-unanimous support for the creation of the MIS section, which previously had been a part of Engineering. In addition, the recent upgrading of systems and standardization of systems was much appreciated. The MIS staff was described as responsive and knowledgeable. The RCA use of electronic systems to make documents available has*

been well-received, and one person reported that the willingness to share information has improved information access. Much is expected of the MIS system currently under construction, though there is some expectation that it won't accomplish everything expected of it and that there will be transition problems.

## Process

Of critical importance to the RCA is the perception that its decision-making processes are timely. *In the review of the APUC, the lack of timeliness and growing case backlog were regarded as measures of impaired Commission effectiveness. Though the dramatic increase in the APUC's workload might have been a contributory factor, delays in case processing were cited by many of those interviewed. Several specific problems that might have impacted the speed with which the APUC disposed 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. Particular concerns about timeliness at the staff level were the lack of speed with which documents moved between the fourth and third floors and the amount of work that had 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 had been made.*

It appears that stakeholders believe that the RCA is moving orders as quickly as possible. The RCA is making an effort to clear the backlog and to keep on top of current cases. Though perceptions are very positive, concerns were raised about the speed of adjudication, the desire for perfect information in some cases, and a tendency for the RCA to take on too much.

A key to commission effectiveness is the ability to establish an appropriate balance between due process protection (fairness) and commission effectiveness. Across the nation, commissions are attempting to move toward more effective decision-

making methods without, at the same time, unduly diminishing fairness. In the case of the RCA, there is the general impression that an attempt is being made to end an over-emphasis on process. One person noted that there has been a dramatic change in this regard. As was noted by one person interviewed: some people want speed; some want deliberation, but the RCA has made a good compromise. Any attempt to move toward a more effective process will cause concern on the part of some that fairness has been diminished. There were a couple of concerns in this regard in the RCA interviews. The ability of legal staff to pull the Commission back when it moves too fast was also cited.

*In the NRRRI's review of the APUC, a number of complaints were expressed about the timeliness and content of Commission orders. Several of those interviewed expressed dissatisfaction with the time required to write orders and the quality of the content of those orders. The responsibility for writing orders was regarded as 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 paralegals lacked the expertise to write good orders.*

The writing of Commission orders is, in the words of one person interviewed, "improving but still in need of work." The content of orders appears to be adequate. Commissioners are writing orders in some cases, paralegals in others, and parties in procedural orders can submit draft orders. This distributed responsibility seems to be regarded as productive rather than fragmentation of responsibility as was the case with the APUC. Orders are said to contain fewer "weasel words."

There are still perceived problems with the issuance of orders. Orders are cited as being held up, though the source of the administrative delay was not further specified. One complaint was that some orders are needlessly detailed and that work needs to focus on the important orders and, by implication, to limit time spent on less important, procedural orders. Docket managers may need to follow up on orders.

Streamlining administrative processes is being pushed by Commissioners, though one person indicated that staff is resistant. Prehearing conferences are being used and several cases are being arbitrated by hearing examiners. The system of

assigning three Commissioners seems to work, and some cases are being consolidated. One person interviewed cited the potential danger of one Commissioner being able to dominate the others, which has a greater potential if three Commissioners are hearing a case as compared to five. No specific Commissioner was cited, and no example of this happening was given.

*A majority of the substantive work of the APUC was performed through formal adjudicatory processes that emphasize due process. According to those interviewed, the APUC process was fairly formal and rigorous in its interpretation of ex parte requirements. Several potential 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.*

The RCA is perceived, as was noted earlier, as being less constrained by formal judicial processes than the APUC. In addition to making better use of the hearing examiners, the RCA was cited as using workshops, mediation, and arbitration. In one case cited, mediation had failed because the parties were too far apart. It may be too early to determine the success of these attempts to employ processes that are less judicial.

As the work of the RCA shifts towards more policymaking and away from the kinds of fact-finding embedded in traditional rate cases, the RCA may 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.

## **External Relations**

Legislative linkages will become increasingly important in the future as the

Commission further adopts a more legislative (i.e., policy making) 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 was largely reactive. The passage of legislation disbanding the APUC may provide further attestation to the possible shortcomings of APUC legislative relations.*

By all accounts, RCA legislative relations are very good, and the legislature appears to be supportive of Commission work. Relations with the utilities are cited as being in a process of transition. Commissioners are currently being careful about communications with the industry and the potential for *ex parte* violations. According to one person interviewed, they may be being too careful. Industry may, according to one person, be a bit intimidated by this Commission, which is well-prepared and willing to attack sacred cows.

The public was cited as being at worst neutral to the RCA, though one person noted that there is some work to be done with consumers.

### Consumer Protection

*Although everybody the NRRI interviewed in its review of the APUC who commented on the Consumer Protection section agreed that it is functioning well, there were incipient signs of overload. Complaints on telecommunications service had increased dramatically, due to the advent of competition. Disposition of a complaint took up to six weeks and the average time before resolution was becoming longer because complaints were not only more numerous but more complicated than in the past. Interviewees also reported an increase in carrier-to-carrier complaints. Solely on the basis of the strain on the capacity of the section due to increasing consumer complaints, a case was made for providing additional support to this section, both clerical and professional.*

Since that review, the Consumer Protection Section has been provided more resources and appears, in the view of those interviewed, to be less stressed than before. The Section is highly regarded. Many of those interviewed still believe that the Section has a large work load and that they are barely keeping up. Of concern to some was the responsibility for that Section to prepare the Annual Report to the Legislature. One person suggested that a person be designated as fully responsible for that Report. Delegating pieces to other sections is also an option. Another concern was the replacement of Agnes Pitts when she retires. The Section would like to do more outreach to consumers but has been constrained by lack of resources. Carrier-to-carrier complaints have declined. Other complaints may be tapering off but may increase as other communities are impacted by local telecommunications competition.

### General Comments

*In the NRRI review of the APUC, the areas most in need of attention seemed to be:*

- *Commissioner-staff and Commissioner-to-Commissioner relations, which included 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.*

Each of these areas has seen substantial improvement since the formation of the RCA, and overall the RCA seems to be functioning at a very high level of energy and competence. There are a few areas, however, that may ultimately lead to

problems at the RCA. They are:

22. The High Workloads. No one interviewed at the RCA is opposed to high levels of productivity and hard work on the part of Commissioners and staff. However, it appears from comments that the current pace may be unsustainable in the long run. The current heavy workload has been occasioned largely by the 750-case backlog. When that backlog is reduced, workloads might decrease. If workloads don't decrease, they might, over time, prove disheartening to staff and diminish morale. The result might be an increase in staff turnover and low levels of staff motivation. The situation should be monitored closely and more resources provided the RCA if workloads don't decrease as the backlog is diminished.
  
23. The Continued Evolution of the PAS and the Role of the Advisory Staff. The PAS appears to be a promising mechanism for the effective representation of consumer interests and the provision, through the remainder of the RCA staff, of adequate advisory support for Commissioners. By all accounts, the PAS is in the process of development. It is not certain that the staffing levels provided to it currently will be adequate for its role; its ability to perform its role should be monitored. Because of the formation of the PAS, the role of the remainder of the staff will need to change from advocacy to decision-support. Several of those interviewed suggested that the staff has not yet fully assumed that role. This should be monitored. External stakeholders will be impacted considerably by these changes in staff roles. Close contact should be maintained with them to monitor their opinions and perceptions.
  
24. The Staffing and Role of the Consumer Affairs Section. Across the country, more resources are being dedicated to consumer affairs, partly because of the increase in consumer complaints and concerns caused by the opening of utility markets to competition. By all accounts, the RCA Consumer Affairs Section is competent and performing services of value to consumers. If national trends hold, the workload in that Section can be expected to increase. In addition, other commissions have found

outreach to consumers, in the form of brochures or advertisements, to be a useful strategy for educating consumers. The RCA Consumer Affairs Section has not yet been able to turn its attention to that consumer outreach. Additional resources in the Consumer Affairs Section might be warranted, either by hiring new staff or increasing the availability of other RCA staff to the Consumer Affairs Section. An alternative to placing more resources in that Section is to reduce the workload; the task most appropriate for reassignment to another RCA section might be the preparation of the Annual Report to the Legislature.

25. Staff Training. High turnover among staff is an unfortunate aspect of the regulatory environment around the country, and there is little hope that it can be slowed without dramatic increases in staff salaries. Ongoing training for new staff is, therefore, necessary for commission effectiveness. Complicating the need for training is the increasing complexity of regulatory issues. Training is available for commission staff at a number of locations around the country and may be a wise investment. Participation in NARUC events and work may be another way to plug the "expertise hole" caused by staff turnover.
  
26. Heavy Reliance on the Chairman. As was noted earlier, several of those interviewed expressed concern about the reliance of the RCA on the talents of the Chairman. For the long-term health of the organization, a concerted effort to delegate more duties to others, appointment of a vice-chair, or ensuring that other Commissioners are exposed to the duties of the Chairman might be warranted. At least one person interviewed expressed confidence in the ability of other Commissioners to step in as Chairman if Chairman Thompson were to leave.
  
27. The Overall Pace of Change. By all accounts the RCA has come a very long way in a very short time. Though organizational change can be exhilarating, it can also be draining and there is a danger in taking on too much change at once. The RCA may

wish to consider judicious choice of change targets so that some stability can be achieved. Development of a strategic plan may assist the RCA identify those areas most in need of change and help it prioritize its efforts.

The NRRJ has been pleased to be able to conduct these two evaluations of the public utility regulatory institutions in Alaska. It is particularly gratifying to observe the tremendous positive changes that have occurred since our first visit. We would be pleased to assist in any other way that we can.

## INTRODUCTION<sup>1</sup>

In an era of rapid change for the regulation of the nation's public utilities, the State of Alaska in 1999 elected to hasten that change process by abolishing the former Alaska Public Utilities Commission (APUC) and establishing the new Regulatory Commission of Alaska (RCA) in Senate Bill 133. Though that new regulatory commission might still be regarded in being in its formative stages, the members (Commissioners) of the RCA and its Chair determined that an early assessment of the Commission was warranted in order to identify early problems and assess the extent of the new Commission's success. Such a self-assessment also presents an opportunity for commission staff and stakeholders to provide input into the direction of commission change. In February 2000, Chairman G. Nanette Thompson contacted the National Regulatory Research Institute (NRRI) to inquire as to the feasibility of a contract with the NRRI to review the operations of the RCA. A contract was finalized in May, though interviews with key stakeholders began in April.

The NRRI has some familiarity with regulatory operations in Alaska. In 1998, the NRRI conducted a similar review of the APUC. That review was presented to the Public Utilities Commission in a report entitled *Report on the Alaska Public Utilities Commission* dated October 1998.<sup>2</sup> That report identified a number of significant challenges facing the Public Utilities Commission.

To accomplish this current assessment, the author interviewed nine RCA staff, the five Commissioners, and four external stakeholders. The persons interviewed are identified in Appendix 1. Their aggregated comments are included in Appendix 2. Commitments were made to those interviewed to keep input confidential (i.e., not to link names to comments). The results of the NRRI inquiry are contained in this report, grouped generally by the major components used in the first NRRI report. A brief

---

<sup>1</sup> Special thanks is given to Dr. Vivian Witkind Davis, a co-author of the NRRI report on the APUC, for her review of this report.

<sup>2</sup> David W. Wirick, Vivian Witkind Davis, and Douglas N. Jones, *Report on the Alaska Public Utilities Commission* (Columbus, Ohio: National Regulatory Research Institute, 1998).  
NRRI

summary of the findings of the first report are included for each component so that comparisons can be drawn. Those findings of the NRRRI report on the APUC are printed in *italics* to distinguish them from the findings of this current report.

Reports of this type are necessarily somewhat subjective. In that sense they are always limited and imperfect. The task, of course, is to attempt to be fair and accurate, and the author has tried to be both in his assessment. His comments are informed by his extensive exposure to state public utility commissions throughout the country. Though the circumstances that surround the RCA are unique, as are the circumstances of each state public utility commission, some comparisons can be drawn and judgements made. The report avoids references to the behavior of specific individuals, unless the performance of the individual presents a challenge for the organization as a whole. Fortunately, in the case of the RCA it was only exemplary behavior of key persons (and the potential difficulty of replacing them if they were to leave) that was most commonly cited.

As will be seen, this report is largely and, perhaps uncommonly, positive in its assessment and tone. That tone should not be regarded as arising from an unwillingness to be critical of regulatory commission operations if a critical response is warranted. Nor has the report glossed over necessary areas for improvement with indirect writing. In fact, this report does point out a number of areas that may cause problems at some later point. But, overall, those interviewed for this report provided nearly unanimous, though occasionally guarded, support for the work of and prospects for the RCA. The tone of the report is necessarily reflective, therefore, of the tone of stakeholders.

## ANALYSIS OF ORGANIZATIONAL COMPONENTS

The components examined and explained in this report are:

- General Factors
- Communications

- Morale
- Commission Structure, including discussion and analysis of the changes in structure caused by the legislation that established the RCA.
- Staffing
- Management Information Systems
- Process
- External Relations
- Consumer Protection
- General Comments

Each component is discussed in turn.

### General Factors

*In the first report, a considerable range and depth of problems was cited by those interviewed. Problems included leadership, though interestingly, the word "leadership" was not actually spoken by any of the interviewees at that time. But a number of the perceived difficulties emphasized by them harken back to the leadership of the APUC. 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 did not "pull their weight" were voiced several times in interviews.*

*To be fair, several of those interviewed cited the fact that APUC decisions were rarely overturned in court, and most cited the competence of the staff and its ability to focus on the real task of the APUC despite constant emergencies and a very heavy workload. Some were concerned that the then current difficulties might eventually limit the ability of the APUC to do its job.*

For this review (of the RCA), those interviewed were first asked if the Commission is accomplishing its mission. Responses were positive but sometimes cautious. Representative comments were:

- There is a more cooperative effort among Commissioners, which is apparent to staff.
- The Commission is doing its job but it has taken work and is very challenging.
- The boat is turning but won't turn overnight.
- This Commission is making a difference.
- It may be too soon to know about substance.
- There is a lot of stress on staff and no extra help. Productivity is up.
- The Commission is on a learning curve. In the long-run, it is likely to be positive.

Those interviewed were then asked if things were better now than before the abolishment of the APUC. They all suggested that things are, in fact, much better than before. Representative comments include:

- Things are going really well.
- A better structure is in place now.
- The RCA is functioning as a Commission.
- There is a conscious effort to get things done.
- I have the utmost respect for Nan (i.e., Chairman Nan Thompson).
- It is much better than before and as good a commission as Alaska has ever had.

Overall, comments regarding the ability of the RCA to accomplish its mission were positive as were the assessments that the RCA is doing better than its predecessor. Cautions were expressed about the learning yet to be done, the extreme work load (in part occasioned by the backlog that will be discussed later), and the RCA's reliance on the current Chairman, about which more will be said later in this report. *Concerns that Commissioners were not "pulling their weight"* seemed to be

dramatically changed with the arrival of the five new Commissioners, whose work ethic is highly regarded. More about that is said later in this report.

## Communications

*In the first report, those interviewed identified a number of communications problems. One of these was improving vertical communication throughout the agency. (Reportedly, horizontal communication was adequate.) Another opportunity cited was to introduce and conduct a systematic training and orientation program for new personnel at all levels. A third, and perhaps most important, problem identified was the impact of the docket backlog including tariff filings and devising procedures and practices that lead to prompt resolution of cases. 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.*

Perceptions are that vertical communications are much better now. Commissioners are cited as being approachable, and section heads are meeting with their staffs regularly following their meetings with the Chair. Communications can always bear improvement, and they continue to be worked on at the RCA.

Given the amount of turnover and new hires, the orientation and training of new staff is key. Fortunately, some of those new staff came to the RCA with knowledge of the industry. On-the-job training appears to be the norm, though some training is provided at external training opportunities (such as "Camp NARUC"), and existing staff are cited as being helpful.

The docket backlog is a clear problem, but one that is being worked on. Some cite the backlog as being 500 cases in the system plus another 250 that had not been assigned when the RCA was created. It is also cited as being a frustration. The orders that are being issued for those backlogged cases are, according to at least one of the persons interviewed, of little value because of their age. Commission efforts to clear the backlog are being applauded.

As to whether the interaction between Commissioners and staff is productive,

comments were generally positive. Staff cite the approachability of Commissioners; Commissioners, in turn, describe staff as cooperative. A feeling of mutual respect appears to exist. There is some sentiment, however, that some staff may not be fully committed to the changes being made.

Commissioners are cited as working well together, which had reportedly been a problem for the APUC. Again, an attitude of mutual respect seems to prevail. In addition, staff and stakeholders are impressed with the work ethic of the Commissioners. They are putting in long hours and have, in the words of one person interviewed, "a sense of the public interest."

There seems to be a concerted effort to ensure more effective information flows at the RCA. The Chairman, one person noted, will intervene when necessary. Though from many perspectives, information flow is adequate, some cite problems. One person suggested that there is still a bit of the "I know something you don't know" mentality, and that mail sits when someone is out. (Using the courier for mail has helped.) Staff are cited as providing necessary information to Commissioners, though the workload and backlog have gotten in the way.

Overall, it appears that communications within the RCA are good. That they are regarded so highly given the rapid pace at which the Commission is moving, the high work volume, and the extent of the changes being made is remarkable. Commissioners, staff, and stakeholders appear to have high expectations for performance of the RCA; caution might be warranted to ensure that unrealistically high expectations are not created and that the pace of work, though necessary in the short term, does not serve to create staff and commissioner burn-out if continued for the long term.

## Morale

In this era of rapid change for regulatory commissions, it is not uncommon to discover fairly low morale, particularly among staff for whom employment might be more uncertain than in the past, for whom the job requirements and skills necessary are changing, and toward whom substantial stakeholder dissatisfaction with the regulatory process is being directed. *In the NRRI review of the APUC, comments from quite a few, though not all, interviewees indicated that a morale problem existed at the APUC that might exceed national norms.*

It is apparent that morale at the RCA is much improved. Better communications, the perceived better treatment of staff by Commissioners, and staff confidence that things are changing were cited as reasons. Impediments to higher levels of morale are the workload and the turnover particularly among clerical staff. Two of the people interviewed expressed concern that morale might be lower among the staff most closely affiliated with the Commissioners because of the extent of the changes there. The Commissioners have sponsored and organized staff events, which seem to have been well-received, and a new evaluation form has been created to provide staff feedback on their performance. One cited deficiency was the lack of an RCA mission statement. As the regulatory environment changes, an evolving mission statement might help staff clarify its role.

### Commission Structure

Structure refers to an organization's relatively stable activities over a period of time, often reified as an organization chart. In this report, it also refers to the new tools and processes adopted by the RCA or mandated by its defining legislation. *It was reported in NRRI's interviews for the first report that some APUC Commissioners were perceived as being too involved with administration and that this involvement might inhibit their consideration of the important issues facing the commission. 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.*

When the RCA was established, several structural changes were made. They included:

- The legislation establishing the RCA requires a time-accounting system, and the charge to the utilities for support of the RCA is now based on time charges rather than utility revenues.
- An MIS system is being put in place as an aid to external users and internal management.
- The RCA is now using the Internet to publish information, orders, and dockets.
- The Chair was provided more authority.
- The legislation gave the RCA the authority for three Commissioners to hear cases. (One person interviewed believes that this authority existed before but was not used.) This is more efficient than the requirement that all five sit on cases.
- The legislation gives the RCA the authority to use arbiters and hearing officers.
- The Executive Director position was abolished. An assistant to the Chair (described by one person as a "Super Assistant" position) has assumed some of the coordinative duties previously accomplished by the Executive Director and, reportedly, some additional duties have fallen to the Chair.
- A Public Advocacy Section (PAS) was established. This section performs the advocacy function formerly performed by a much larger number of staff. It is assigned to cases by the Chair or can petition to intervene. The establishment of a PAS-like entity had been supported by industry.

Of these changes, the creation of the PAS seems to be the most significant. For one thing, it should provide Commissioners more staff advisory assistance, *which appeared to be lacking in the NRRI review of the APUC. Those interviewed then expressed concern that the assignment of existing staff resources of the APUC did not give adequate attention to the advisory function.*

Clearly, the PAS is just getting underway, and it may be too early to tell how it might affect the RCA and the regulatory process. There is some concern that it may not have enough staff to accomplish

the desired functions. There is also some concern that the other Commission staff (those assigned now to the "advisory" function since the PAS will handle "advocacy") may not have fully adjusted to their new role.

That clear separation of duties may evolve with time. Some concern was also expressed that some external stakeholders may be uncomfortable with the closeness of advisory staff to Commissioners and that advisory staff input is not subject to cross-examination. This too might abate over time.

Overall, it appears that the RCA is functioning well without an Executive Director. Two of those interviewed stated that it is sometimes unclear who to go to on particular issues and that a gap exists, but the majority of those interviewed expressed the belief that the lack of an Executive Director is not a problem. On the plus side, the Commissioner Assistant seems to be picking up coordinative duties well, department heads have more authority now, and there is now more direct staff access to the Chair.

In the new organization, the Chair was provided more authority, including decision authority in procedural matters. Overall, that seems to be an improvement. Those interviewed observe that the Chair and her Assistant are highly thought of, that things are being worked out, that the Chair is not a "power monger," that the other Commissioners defer to her appropriately and support her leadership, and that she is giving more authority to department heads. If problems exist, they may be embedded in her work load and the extent to which the substantial success of the RCA might be related to her competence and hard work. (It should be noted that all five Commissioners were cited for their attitude and hard work; the Chair seems to be regarded as the most able person in a very able group.) Some commented that more delegation from her may be necessary.

## Staffing

In response to questions about the adequacy of staff support, comments were again directed toward the evolving advisory versus advocacy role of staff. It was noted that the RCA is not overstaffed by any means. Problems noted were the lack of strong leadership on the staff at the "sergeant" level, the backlog, recruiting difficulties, the need for the PAS to get staffed up, the need for a new paralegal, and that some staff are not reliable (one comment).

*Concern was expressed in the review of the APUC about the level of legal 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. Legal support is now regarded as probably better than before, though the departure of an attorney was described as hurtful. Comments in the RCA review were mixed about whether legal support is adequate. Some expressed concern that staff don't get enough legal support, particularly given the backlog; others said that there is no scarcity of legal support and that, in the advisory role, staff need less support than before.*

## Management Information Systems

*In the review of the APUC, both Commissioners and staff strongly believed that systems for managing commission processes at the APUC needed to be improved. Lack of computer support and inadequate use of computers were frequently mentioned as problems. Consideration was being given to hiring an outside consultant to design a computer information system for the commission. In the current review, there was near-unanimous support for the creation of the MIS section, which previously had been a part of Engineering. In addition, the recent upgrading of systems and standardization of systems was much appreciated. The MIS staff was described as responsive and knowledgeable. The RCA use of electronic systems to make documents available has*

been well-received, and one person reported that the willingness to share information has improved information access. Much is expected of the MIS system currently under construction, though there is some expectation that it won't accomplish everything expected of it and that there will be transition problems.

## Process

Of critical importance to the RCA is the perception that its decision-making processes are timely. *In the review of the APUC, the lack of timeliness and growing case backlog were regarded as measures of impaired Commission effectiveness. Though the dramatic increase in the APUC's workload might have been a contributory factor, delays in case processing were cited by many of those interviewed. Several specific problems that might have impacted the speed with which the APUC disposed 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. Particular concerns about timeliness at the staff level were the lack of speed with which documents moved between the fourth and third floors and the amount of work that had 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 had been made.*

It appears that stakeholders believe that the RCA is moving orders as quickly as possible. The RCA is making an effort to clear the backlog and to keep on top of current cases. Though perceptions are very positive, concerns were raised about the speed of adjudication, the desire for perfect information in some cases, and a tendency for the RCA to take on too much.

A key to commission effectiveness is the ability to establish an appropriate balance between due process protection (fairness) and commission effectiveness. Across the nation, commissions are attempting to move toward more effective decision-

making methods without, at the same time, unduly diminishing fairness. In the case of the RCA, there is the general impression that an attempt is being made to end an over-emphasis on process. One person noted that there has been a dramatic change in this regard. As was noted by one person interviewed: some people want speed; some want deliberation, but the RCA has made a good compromise. Any attempt to move toward a more effective process will cause concern on the part of some that fairness has been diminished. There were a couple of concerns in this regard in the RCA interviews. The ability of legal staff to pull the Commission back when it moves too fast was also cited.

*In the NRRI's review of the APUC, a number of complaints were expressed about the timeliness and content of Commission orders. Several of those interviewed expressed dissatisfaction with the time required to write orders and the quality of the content of those orders. The responsibility for writing orders was regarded as 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 paralegals lacked the expertise to write good orders.*

The writing of Commission orders is, in the words of one person interviewed, "improving but still in need of work." The content of orders appears to be adequate. Commissioners are writing orders in some cases, paralegals in others, and parties in procedural orders can submit draft orders. This distributed responsibility seems to be regarded as productive rather than fragmentation of responsibility as was the case with the APUC. Orders are said to contain fewer "weasel words."

There are still perceived problems with the issuance of orders. Orders are cited as being held up, though the source of the administrative delay was not further specified. One complaint was that some orders are needlessly detailed and that work needs to focus on the important orders and, by implication, to limit time spent on less important, procedural orders. Docket managers may need to follow up on orders.

Streamlining administrative processes is being pushed by Commissioners, though one person indicated that staff is resistant. Pre-hearing conferences are being used and several cases are being arbitrated by hearing examiners. The system of

assigning three Commissioners seems to work, and some cases are being consolidated. One person interviewed cited the potential danger of one Commissioner being able to dominate the others, which has a greater potential if three Commissioners are hearing a case as compared to five. No specific Commissioner was cited, and no example of this happening was given.

*A majority of the substantive work of the APUC was performed through formal adjudicatory processes that emphasize due process. According to those interviewed, the APUC process was fairly formal and rigorous in its interpretation of ex parte requirements. Several potential 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.*

The RCA is perceived, as was noted earlier, as being less constrained by formal judicial processes than the APUC. In addition to making better use of the hearing examiners, the RCA was cited as using workshops, mediation, and arbitration. In one case cited, mediation had failed because the parties were too far apart. It may be too early to determine the success of these attempts to employ processes that are less judicial.

As the work of the RCA shifts towards more policymaking and away from the kinds of fact-finding embedded in traditional rate cases, the RCA may 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.

## External Relations

Legislative linkages will become increasingly important in the future as the

Commission further adopts a more legislative (i.e., policy making) 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 was largely reactive. The passage of legislation disbanding the APUC may provide further attestation to the possible shortcomings of APUC legislative relations.*

By all accounts, RCA legislative relations are very good, and the legislature appears to be supportive of Commission work. Relations with the utilities are cited as being in a process of transition. Commissioners are currently being careful about communications with the industry and the potential for *ex parte* violations. According to one person interviewed, they may be being too careful. Industry may, according to one person, be a bit intimidated by this Commission, which is well-prepared and willing to attack sacred cows.

The public was cited as being at worst neutral to the RCA, though one person noted that there is some work to be done with consumers.

### **Consumer Protection**

*Although everybody the NRRI interviewed in its review of the APUC who commented on the Consumer Protection section agreed that it is functioning well, there were incipient signs of overload. Complaints on telecommunications service had increased dramatically, due to the advent of competition. Disposition of a complaint took up to six weeks and the average time before resolution was becoming longer because complaints were not only more numerous but more complicated than in the past. Interviewees also reported an increase in carrier-to-carrier complaints. Solely on the basis of the strain on the capacity of the section due to increasing consumer complaints, a case was made for providing additional support to this section, both clerical and professional.*

Since that review, the Consumer Protection Section has been provided more resources and appears, in the view of those interviewed, to be less stressed than before. The Section is highly regarded. Many of those interviewed still believe that the Section has a large work load and that they are barely keeping up. Of concern to some was the responsibility for that Section to prepare the Annual Report to the Legislature. One person suggested that a person be designated as fully responsible for that Report. Delegating pieces to other sections is also an option. Another concern was the replacement of Agnes Pitts when she retires. The Section would like to do more outreach to consumers but has been constrained by lack of resources. Carrier-to-carrier complaints have declined. Other complaints may be tapering off but may increase as other communities are impacted by local telecommunications competition.

### General Comments

*In the NRRI review of the APUC, the areas most in need of attention seemed to be:*

- *Commissioner-staff and Commissioner-to-Commissioner relations, which included 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.*

Each of these areas has seen substantial improvement since the formation of the RCA, and overall the RCA seems to be functioning at a very high level of energy and competence. There are a few areas, however, that may ultimately lead to

problems at the RCA. They are:

22. The High Workloads. No one interviewed at the RCA is opposed to high levels of productivity and hard work on the part of Commissioners and staff. However, it appears from comments that the current pace may be unsustainable in the long run. The current heavy workload has been occasioned largely by the 750-case backlog. When that backlog is reduced, workloads might decrease. If workloads don't decrease, they might, over time, prove disheartening to staff and diminish morale. The result might be an increase in staff turnover and low levels of staff motivation. The situation should be monitored closely and more resources provided the RCA if workloads don't decrease as the backlog is diminished.
  
23. The Continued Evolution of the PAS and the Role of the Advisory Staff. The PAS appears to be a promising mechanism for the effective representation of consumer interests and the provision, through the remainder of the RCA staff, of adequate advisory support for Commissioners. By all accounts, the PAS is in the process of development. It is not certain that the staffing levels provided to it currently will be adequate for its role; its ability to perform its role should be monitored. Because of the formation of the PAS, the role of the remainder of the staff will need to change from advocacy to decision-support. Several of those interviewed suggested that the staff has not yet fully assumed that role. This should be monitored. External stakeholders will be impacted considerably by these changes in staff roles. Close contact should be maintained with them to monitor their opinions and perceptions.
  
24. The Staffing and Role of the Consumer Affairs Section. Across the country, more resources are being dedicated to consumer affairs, partly because of the increase in consumer complaints and concerns caused by the opening of utility markets to competition. By all accounts, the RCA Consumer Affairs Section is competent and performing services of value to consumers. If national trends hold, the workload in that Section can be expected to increase. In addition, other commissions have found

outreach to consumers, in the form of brochures or advertisements, to be a useful strategy for educating consumers. The RCA Consumer Affairs Section has not yet been able to turn its attention to that consumer outreach. Additional resources in the Consumer Affairs Section might be warranted, either by hiring new staff or increasing the availability of other RCA staff to the Consumer Affairs Section. An alternative to placing more resources in that Section is to reduce the workload; the task most appropriate for reassignment to another RCA section might be the preparation of the Annual Report to the Legislature.

25. Staff Training. High turnover among staff is an unfortunate aspect of the regulatory environment around the country, and there is little hope that it can be slowed without dramatic increases in staff salaries. Ongoing training for new staff is, therefore, necessary for commission effectiveness. Complicating the need for training is the increasing complexity of regulatory issues. Training is available for commission staff at a number of locations around the country and may be a wise investment. Participation in NARUC events and work may be another way to plug the "expertise hole" caused by staff turnover.
26. Heavy Reliance on the Chairman. As was noted earlier, several of those interviewed expressed concern about the reliance of the RCA on the talents of the Chairman. For the long-term health of the organization, a concerted effort to delegate more duties to others, appointment of a vice-chair, or ensuring that other Commissioners are exposed to the duties of the Chairman might be warranted. At least one person interviewed expressed confidence in the ability of other Commissioners to step in as Chairman if Chairman Thompson were to leave.
27. The Overall Pace of Change. By all accounts the RCA has come a very long way in a very short time. Though organizational change can be exhilarating, it can also be draining and there is a danger in taking on too much change at once. The RCA may

wish to consider judicious choice of change targets so that some stability can be achieved. Development of a strategic plan may assist the RCA identify those areas most in need of change and help it prioritize its efforts.

The NRRI has been pleased to be able to conduct these two evaluations of the public utility regulatory institutions in Alaska. It is particularly gratifying to observe the tremendous positive changes that have occurred since our first visit. We would be pleased to assist in any other way that we can.

Subject: [Fwd: RCA Sunset]

Date: Thu, 23 May 2002 15:04:30 -0800

From: Wendy Arnett <wendy\_arnett@rca.state.ak.us>

Organization: RCA

To: Nan Thompson <nan\_thompson@rca.state.ak.us>

Bob called to say he was copying us on this email- I couldn't tell from the addresses how many people were copied. So here it is and ignore my odd voicemail.

----- Original Message -----

Subject: RCA Sunset

Date: Thu, 23 May 2002 17:46:11 -0500

From: "Lindquist, Robert" <Rlindquist@wm.com>

To:

"Senator\_Alan\_Austerman@legis.state.ak.us" <Senator\_Alan\_Austerman@legis.state.ak.us>  
"Senator\_Ben\_Stevens@legis.state.ak.us" <Senator\_Ben\_Stevens@legis.state.ak.us>,  
"Senator\_Bettye\_Davis@legis.state.ak.us" <Senator\_Bettye\_Davis@legis.state.ak.us>,  
"Senator\_Dave\_Donley@legis.state.ak.us" <Senator\_Dave\_Donley@legis.state.ak.us>,  
"Senator\_Donny\_Olson@legis.state.ak.us" <Senator\_Donny\_Olson@legis.state.ak.us>,  
"Senator\_Gary\_Wilken@legis.state.ak.us" <Senator\_Gary\_Wilken@legis.state.ak.us>,  
  
"Senator\_Gene\_Therriault@legis.state.ak.us" <Senator\_Gene\_Therriault@legis.state.ak.us>  
  
"Senator\_Georgianna\_Lincoln@legis.state.ak.us" <Senator\_Georgianna\_Lincoln@legis.state.ak.us>  
"Senator\_Jerry\_Ward@legis.state.ak.us" <Senator\_Jerry\_Ward@legis.state.ak.us>,  
"Senator\_John\_Cowdery@legis.state.ak.us" <Senator\_John\_Cowdery@legis.state.ak.us>,  
  
"Senator\_John\_Torgerson@legis.state.ak.us" <Senator\_John\_Torgerson@legis.state.ak.us>  
"Senator\_Johnny\_Ellis@legis.state.ak.us" <Senator\_Johnny\_Ellis@legis.state.ak.us>,  
"Senator\_Kim\_Elton@legis.state.ak.us" <Senator\_Kim\_Elton@legis.state.ak.us>,  
"Senator\_Loren\_Leman@legis.state.ak.us" <Senator\_Loren\_Leman@legis.state.ak.us>,  
"Senator\_Lyda\_Green@legis.state.ak.us" <Senator\_Lyda\_Green@legis.state.ak.us>,  
  
"Senator\_Lyman\_Hoffman@legis.state.ak.us" <Senator\_Lyman\_Hoffman@legis.state.ak.us>  
"Senator\_Pete\_Kelly@legis.state.ak.us" <Senator\_Pete\_Kelly@legis.state.ak.us>,  
  
"Senator\_Randy\_Phillips@legis.state.ak.us" <Senator\_Randy\_Phillips@legis.state.ak.us>  
"Senator\_Rick\_Halford@legis.state.ak.us" <Senator\_Rick\_Halford@legis.state.ak.us>,  
"Senator\_Robin\_Taylor@legis.state.ak.us" <Senator\_Robin\_Taylor@legis.state.ak.us>

Dear Senators

I serve as Director of Regulatory Affairs for Waste Management of Alaska, a refuse company serving over 59,000 businesses and households throughout the state. Kirk Duncan, general manager of Waste Management's Alaska Division, requested that I forward to each of you an e-mail sent to Senator Halford on Monday afternoon. This e-mail expressly sets out Waste Management's sentiments regarding re-authorization of the RCA.

I look forward to hearing from any senate member to discuss further Waste Management's position on this issue.

Robert K. Lindquist  
Waste Management of Alaska  
6301 Rosewood Street  
Anchorage, AK 99516

{Fwd: RCA Sunse<sup>1</sup>

Tel? (907) 273-2754  
Fax (866) 728-7336  
Cell (907) 230-6466  
\*<mailto:rlindquist@wm.com>>

The information contained in this e-mail message is privileged,  
confidential  
and protected from disclosure. If you are not the intended recipient,  
any  
dissemination, distribution or copying is strictly prohibited. If you  
think  
that you have received this e-mail message in error, please e-mail the  
sender at [rlindquist@wm.com](mailto:rlindquist@wm.com)

<<Robert Lindquist.vcf>>

-----Original Message-----

From: Duncan, Kirk-Alaska  
Sent: Monday, May 20, 2002 4:24 PM  
To: 'Senator Rick Halford@legis.state.ak.us'  
Subject: RCA Sunset Review

Dear Senator,

Waste Management is a regulated refuse utility with district offices  
throughout the state. We serve 59,000 residential and commercial  
customers  
from Nome to Ketchikan and from Fairbanks to Dutch Harbor, including  
Anchorage, Mat-Su Borough, Kenai Peninsula Borough, Kodiak Island  
Borough  
and the City and Borough of Juneau. We advocate the re-authorization of  
the  
RCA. To do otherwise will severely hamper our ability to facilitate  
tariff  
revisions that are necessary to meet the changing demands of our 59,000  
customers. Accordingly, in the strongest terms, Waste Management of  
Alaska, Inc. is asking you and the Senate to work towards authorizing  
the  
RCA for another term.

Please feel free to distribute this email to other members of the Senate  
or  
your caucus. I look forward to hearing from you or other Senate members  
should you have questions regarding our position.

Thanks,

Kirk Duncan  
Division Manager  
Waste Management of Alaska, Inc.  
6301 Rosewood Street  
Anchorage, Alaska 99518  
tel: (907) 273-2727  
[kduncan@wm.com](mailto:kduncan@wm.com)

---

Robert Lindquist < <a href="mailto:Rlindquist@wm.com">Rlindquist@wm.com</a> > Director of Regulatory Compliance Waste Management of Alaska
--

Life Member  
IEEE

**LANG**  
CONSULTING

Henry P. Lang, P.E.  
ELECTRIC POWER ENGINEER

8117 Deleh Drive  
Anchorage, Alaska 99517

Member  
ASPE

Tel/Fax: (907) 874-7448  
e-mail: lang@lang.com

Post-Net Fax Note	2071	Date	5/17/02	Page	2
To	Ann	From	Henry P. Lang		
Subject	Commissioner REA				
Phone #	226 6 222	Phone #			
Fax #	274 0160	Fax #			

Dear Mayor George Wuerch,

Nov. 23, 01

It was a pleasure to have met you today while shopping. Your remark that an outside organization was interested in buying M&A P was of interest. I expressed my concern about such a buy-out as not in the best interest for the Utilities in the rail belt area. As a M&A P consumer, I have a copy of the Customer Newsletter, Jan/Feb, 2001 where in Mr. Michael Scott, General Manager, gave some remarks on this subject.

As a Professional Engineer, I have an ongoing interest in this subject. I have already given my deposition to Rep. Norman Rukelborg's Joint commission in conference in Anchorage, Aug. 6, 1998. And to your Department of Community Planning & Development, April, 4, 2000. (see incl.)

As of this date, I have not heard any more from my contacts in Juneau: Rep. Ethan Derkowitz and Sen. Norman Lehman. I would appreciate being kept informed on this subject.

Sincerely,

Incl.

*Henry P. Lang*  
Henry P. Lang, P.E.

memo 5/17/02  
Called Rep. Ethan Derkowitz & Sen. Loren Leman today - in special session to continue support of REA funding.  
The Times Magazine, May 20, article "California Scheming" highlights the need for "regulation" Nations Energy of Chicago is proposing to build a PP in its old Ship Creek plant - to sell power to Ft. Rich. See my memo Sakata Feb 2, 02.  
We need to keep the REA viable to prevent outside interests encroaching in this area.  
Combined utilities: LEA, M&A P & MEA would provide economy of scale etc.

8117 Deleh Drive  
Anchorage, Alaska 99517

Tel/Fax: (907) 874-7448  
e-mail: lang@lang.com

Project: KAPP to EAFB - LOAD FLOW EXPD.  
Job # \_\_\_\_\_

INTERNAL COMMUNICATIONS

Telephone     Conference     Memo     Other \_\_\_\_\_

FROM: Person Henry Lang    Firm \_\_\_\_\_  
TO: Person Albert Sakata    Firm Sakata Engineering  
SUBJECT: Review of Project dated 1/25/02 - Sakata Engr. Service

Background: ADN Jan 17, 02 Restoring the flow  
The Ship Creek PP was built by CEA in the 1950s. Randy Hahbs, one of the current owners of the plant, said his company is working with Nations Energy of Chicago to repal produce power at the plant.

We discussed my review comments regards questions that may be asked by officers in his presentation in general, the report reads: "at will remove reference of 'short circuit' on page 6."  
with FR out to M&A P & CEA to provide a SS at the Ft. Rich PP & power - what will be the impact on KAPP proposal to provide power and at what energy cost/kwh  
who will dispatch power in contingency & planned outages?  
How will Ft. Rich & EAFB handle catastrophe power outages, terrorism, earthquake etc?  
will KAPP have a contingency plan?  
I gave Albert copy of ADN Jan 19, 2002 article on "Restoring the Flow" - listing Nations Energy, Randy Hahbs etc.

Copy To: This was a probing review - a professional courtesy. Bobt Wishes Amy

Don C. Schroer

May 17, 2002

Members of the Alaska State Senate  
Members of the House of Representatives  
Juneau, Alaska

Dear Senators and Representatives:

I was the Chairman of the Alaska Public Utilities Commission for six years, from 1991 to 1997. From that experience I am very familiar with the nature of the agency (and its successor, the Regulatory Commission of Alaska), its workload, and its relationship with utilities. I also continue to be in contact with the current Chair, Nan Thompson, and with members of the regulated industry.

The RCA has an enormous workload and due process requirements are time-consuming. Furthermore, if it is doing its job correctly the RCA is destined to issue decisions that do not satisfy some of the major utilities in the state. After all, the consumer interest must be considered and the Commission cannot always rule in favor of utilities. Some cases involve one utility against another. Thus, opposition to the RCA from some utilities is inevitable.

From my observations, the current RCA is doing its job as efficiently and effectively as reasonably possible. While there is always room for improvement, I cannot imagine how the situation could be improved by failing to extend the Commission's life for 4 more years. Confusion and uncertainty would result and no doubt it would add costs to the consumers. For these reasons, I urge you to pass legislation re-authorizing the Commission.

Sincerely,



Don C. Schroer

MAYHOOK LAW, PLLC  
508 NW 189<sup>th</sup> Street  
Ridgefield, Washington 98642

J. Jeffrey Mayhook  
*Admitted in WA and AK only*

Laura A. Mayhook  
*Admitted in OR, HI and IL only*

May 14, 2002

VIA FAX and EMAIL

Senator Robin Taylor  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

Re: CSHB333 – RCA Sunset Bill

Dear Senator Taylor:

As a 20-year member of the Alaska Bar with regulatory experience extending throughout the western United States, including Alaska, Washington, Oregon, California, Arizona, New Mexico, Texas, Idaho, Utah, Hawaii, Guam, and the Marianas Islands, I urge you to forego sunseting the Regulatory Commission of Alaska (RCA).

While I may not have always agreed with the RCA's past decisions, I have always trusted the integrity of its process, and, where appropriate, resorted to the court system to appeal any adverse decisions based on the merits of the issues. That's the way it's supposed to work.

More importantly, since the enactment of the Telecommunications Act of 1996, I have come to respect and appreciate the many challenges state regulatory bodies face in contending with the sea-change in national telecom policy and entrenched special interests. I have been particularly impressed with the RCA's moderate, careful approach to contending with these powerful forces, and the result, to be sure, is reflected in the fact that Alaska remains unscathed by the telecom melt-down that has occurred in the Lower 48.

Finally, I have nothing but the highest regard for the RCA's current chair, Nanette Thompson, who brings a refreshing degree of intelligence and level-headedness to an area of the law noteworthy for both its complexity and contentiousness. As the RCA exhibits the same competence and good attitude, I can fathom no reasonable reason for undoing the RCA's good work and winding down this essential agency. Thus, as a matter of due process and sound public policy, I urge you to place CSHB333 before the Judiciary Committee, so it can at least deliberate over whether to reauthorize the RCA.

Sen. Robin Taylor  
May 14, 2002  
Page 2 of 2

Very truly yours,

J. Jeffrey Mayhook

c.c.: Gov. Tony Knowles  
Sen. Dave Donley  
Sen. John Cowdery  
Sen. Gene Therriault  
Sen. Johnny Ellis

May 10, 2002

The Honorable Robin Taylor  
Alaska State Senate  
State Capitol, Room 30  
Juneau, Alaska 99801-1182

Re: *Reauthorization of the Regulatory Commission of Alaska*

Dear Senator Taylor:

As attorneys and consultants who regularly practice before the Regulatory Commission of Alaska ("RCA"), we urge you to hold hearings and vote before the end of this year's legislative session on legislation passed by the House that would reauthorize and improve the Commission. We are concerned by recent press reports that the reauthorization bill may not be acted on this year. Based on our many years of collective experience, we believe that the wind down process would be costly and inefficient, and should be avoided. It would create uncertainties for the utilities we represent, expensive delays, and potential disadvantages for Alaskan consumers.

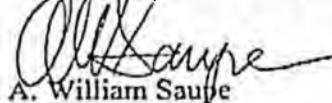
The termination of the Alaska Public Utilities Commission and its replacement just three years ago by the RCA was disruptive, but appropriate under the circumstances. The situation today is very different. While by no means perfect, the RCA has worked hard to clear up the backlog it inherited and to move forward with new matters. The new commissioners are dedicated, hardworking, and nonpartisan. They deserve a chance to continue with their work.

If passed by the Senate, the bill already passed by the House, CSHB 333 (FIN), would not only extend the RCA, but it would also amend the Commission's authorizing statute, AS 42.05, by setting statutory deadlines for RCA decisions. Thus, CSHB 333 (FIN) would extend and improve an agency whose work is critical to Alaska's economic well-being.

Please allow the reauthorization legislation to be considered and voted on before the session ends. Thank you for considering our views.

Very truly yours,

ASHBURN & MASON, PC



A. William Saupe

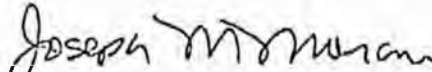
KEMPPPEL, HUFFMAN AND ELLIS, PC




Dean D. Thompson

The Honorable Robin Taylor  
May 10, 2002  
Page 3

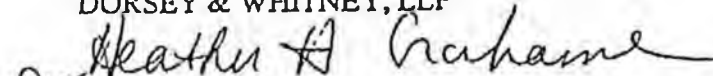
DeLISIO MORAN GERAGHTY & ZOBEL, PC

  
Joseph M. Moran


ASHBURN & MASON

  
William S. Cummings

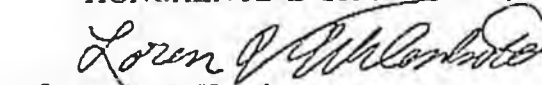
DORSEY & WHITNEY, LLP

  
for Steven E. Mulder

KEMPEL, HUFFMAN AND ELLIS, PC

  
Roger R. Kempel by DDT

HONCHEN AND UHLENKOTT, INC.

  
for Larry G. Honchen

cc: All Members of the Alaska State Senate  
The Honorable Brian Porter, Speaker of the House  
The Honorable Eldon Mulder

N:\SJ\WA\WS\T\Taylor2

The Honorable Robin Taylor  
May 10, 2002  
Page 2

BRENA, BELL & CLARKSON, PC

*Robin O. Brena*  
Robin O. Brena

GENERAL COMMUNICATION, INC.

*James Jackson by mmw*  
James R. Jackson, Jr.

DORSEY & WHITNEY, LLP

*Heather H. Grahame*  
Heather H. Grahame

HONCHEN AND UHLENKOTT, INC.

*Loren V. Uhlenkott*  
Loren V. Uhlenkott

GENERAL COMMUNICATION, INC.

*Martin M. Weinstein*  
Martin M. Weinstein

ASHBURN & MASON

*for Ashburn & Mason*  
Julian L. Mason

LAW OFFICE OF ROBERT E. STOLLER

*Robert E. Stoller*  
Robert E. Stoller



**Colville Incorporated**

Pouch 340012  
Prudhoe Bay, Alaska 99734  
(907) 659-3198  
FAX (907) 659-3190

May 10, 2002

Senator Robin Taylor, Chairman, and Members of the Senate Judiciary Committee  
Alaska State Senate  
State Capitol, Room 30  
Juneau, AK 99801-1182

Dear Senator Taylor and Members of the Judiciary Committee,

I manage Colville, Inc., a small solid waste company started by my family over 20 years ago. Colville is a ratepayer to a large municipal utility run by the North Slope Borough.

During the past three years, since the Regulatory Commission of Alaska (RCA) took over regulation of utilities, Colville has had one case decided by the RCA, and we currently have another case pending. I have found the RCA to be competent and responsible in fulfilling their statutory mandate to regulate the providers of utility services and to protect the interests of the ratepaying public.

As you probably know, the RCA is self-funded by user charges and does not impose a burden on the general funds of the State of Alaska.

I understand that the legislation to continue the operation of the RCA is pending in your committee. I ask that you give the legislation favorable consideration. The Commissioners are doing a good job in an area that is critical for the protection of the public interest for all Alaskans.

Best wishes,  
Colville, Inc.

A handwritten signature in cursive script that reads "Mark Helmericks".

Mark Helmericks,  
President

(907) 659-3198 Office  
(907) 529-5775 Cell / Voice Mail

cc: Members of the Alaska State Senate  
Regulatory Commission of Alaska

**AT&T** Alascom

Michael T. Felix  
President/CIO

2101 Hill Drive  
Anchorage, AK 99501-1100

May 6, 2002

The Honorable Senator Robin Taylor  
State Senate  
Alaska State Capitol  
Juneau, Alaska 99801-1182

SUBJECT: HB 333 - REGULATORY COMMISSION OF ALASKA SUNSET BILL

Dear Senator Taylor:

AT&T Alascom supports continuation of the RCA and urges you to pass HB 333 out of the Senate Judiciary Committee. Allowing the RCA to go into the sunset "wind-down" would seriously hamper its regulatory activities. While we do not always agree with the RCA rulings, the agency serves an important function.

In view of the economic winds of change blowing through the telecommunications industry both nationally and in Alaska, we will need to work with the Commission through the regulatory process to resolve the problem of unequal regulation of interexchange carriers in this highly competitive market.

Thank you for your assistance and support.

Sincerely,

A handwritten signature in black ink that reads "Michael T. Felix".

Michael T. Felix  
President/CIO





ENSTAR Natural Gas Company  
A Division of SEMCO ENERGY, Inc.  
3000 Spenard Road  
P.O. Box 190288  
Anchorage, Alaska 99519-0288  
(907) 277-5551

May 3, 2002

Senator Robin Taylor  
Alaska State Legislature  
State Capital (MS 3100)  
Juneau, Alaska 99801-1182

Dear Senator Taylor:

ENSTAR Natural Gas Company strongly supports the reauthorization of the Regulatory Commission of Alaska. The regulatory oversight of Alaska's utilities and pipelines is an essential governmental function for both the consumers and the regulated entities.

ENSTAR has reviewed the reauthorization bill that passed the House, HB 333, and is now before the Senate Judiciary Committee. We believe that new timelines for issuance of final orders and the new settlement language incorporated in HB 333 have merit and we enthusiastically support them. We also think that the new termination date for the RCA should be no earlier than the date specified in HB 333, June 30, 2006, and, in fact, would support even a longer period.

While ENSTAR may not always agree with the decisions of the RCA, we consider it extremely important to Alaskans that the RCA continues the job it has started.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Izzo".

Anthony M. Izzo  
President

CC: Senate Judiciary Committee members  
Senate Finance Committee members  
Regulatory Commission of Alaska

May 2, 2002



Senator Robin Taylor  
State Capitol, Room 30  
Juneau, AK 99801-1182

Re: Reauthorization of the Regulatory Commission of Alaska - HB 333 (Fin)

Dear Senator Taylor:

GCI, along with all other utilities that have testified at legislative hearings this session on the reauthorization of the Regulatory Commission of Alaska, supports HB 333 (Finance).

A legislative audit, conducted during the interim, concluded that the RCA "operates in a reasonably effective and efficient manner and should continue to regulate public utilities and pipelines. We believe that the public interest is being served by requiring public utilities and pipelines to be certificated and economically regulated by the commission. The regulatory process stabilizes the availability of utility services. Economic regulation by the commission ensures that, despite the absence of competition, utilities provide service at reasonable rates. We recommend that AK 44.66.010 (a) (4) be amended to extend the termination date of the RCA to June 30, 2006".

If HB 333 does not pass this session, the RCA begins the "sunset" process. During the wind down year, the RCA cannot take up new dockets and will be quite limited in the issues it will take up. Enforcement of commission orders will suffer. It will be more difficult to retain staff who may assume that the RCA will be completely out of business on July 1, 2003.

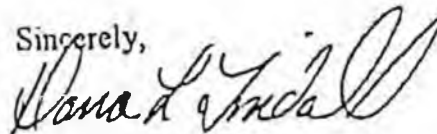
Since no utility is on the public record in support of "sunsetting" the RCA, we do not understand the justification for failing to even schedule HB 333 (Finance) or its Senate counterpart (SB 253) for a public hearing. In our view, many utilities and consumers will be adversely impacted if no action is taken this session. Among other things, local telephone competition, which has brought lower rates to consumers in Anchorage, Fairbanks and Juneau will become much more difficult to implement.

Senator Robin Taylor  
May 2, 2002  
Page 2 of 2

As the Legislature is now in the last two weeks of the session and the bill has one more committee of referral, we would greatly appreciate an opportunity to participate in a public hearing on HB 333 before it is too late for a bill to pass this session.

If you do not plan on hearing and moving some version of HB 333, we would appreciate your views as to why the RCA should go into "sunset".

Sincerely,

A handwritten signature in black ink, appearing to read "Dana L. Tindall". The signature is fluid and cursive, with a large loop at the end.

Dana L. Tindall  
Sr. Vice President  
General Communication, Inc.

**Alaska Telephone Association**

Steve Hamlen  
President

201 E. 56th, Suite 114  
Anchorage, AK 99518  
(907) 563-4000  
FAX (907) 562-3776  
www.alaskatel.org

James Rowe  
Executive Director  
jrowe@alaskatel.org

May 1, 2002

Senator Robin Taylor  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801

RE: CSHB333 – RCA Sunset Bill

Dear Senator Taylor:

As proposed legislation extending the sunset date and setting timelines for the Regulatory Commission of Alaska is before the Senate Judiciary Committee, I thought you would be interested to know why the Alaska Telephone Association has offered testimony before House committees in support of HB333.

Funding for rural telecommunications is very dependent upon universal service support which permits companies to offer local service at affordable rates. The fourteen members of the Association all serve rural communities and share in the nearly \$75 million in high cost support earmarked for Alaska this year. Anchorage customers receive no support from the fund. The \$75 million estimate is based on projections filed with the Federal Communications Commission by the Universal Service Administrative Company (See attached).

For a rural telephone company to receive support from the universal service fund, the state regulatory body must annually affirm to the FCC that the company is an Eligible Telecommunications Carrier and that it is using universal service fund support for the intended purposes. If the necessary documentation is not filed with the FCC on a timely basis, rural Alaskans will be denied the benefit of universal service support; affordable local telephone service. Your constituents – voters from Wrangell – will be among those impacted.

Additionally, all regulated utilities (electric, telephone, and water and sewer) will be subject to antitrust lawsuits each time they make a tariff change. Certainly local and long distance telephone utilities will be in court fighting over unaided access charge tariffs. You can see why we need a regulatory body and why we don't want the commission to go into a "wind down" year.

Thank you for your attention. If you have questions about this, I'd be happy to speak with you or meet with you in Juneau.

Sincerely,



Jim Rowe

Attachment: FCC Estimate USF by State (12/18/01)



# PUBLIC NOTICE

Federal Communications Commission  
445 12th St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Fax-On-Demand 202 / 418-2830  
TTY 202 / 418-2555  
Internet: <http://www.fcc.gov>  
[ftp.fcc.gov](ftp://ftp.fcc.gov)

DA 01-2927

December 18, 2001

## COMMON CARRIER BUREAU RELEASES ESTIMATED STATE-BY-STATE HIGH-COST UNIVERSAL SERVICE SUPPORT AMOUNTS FOR NON-RURAL CARRIERS FOR 2002

CC Docket No. 96-45

Today the Bureau released an order adopting updated line count input values for the new high-cost universal service support mechanism for non-rural carriers for purposes of calculating and targeting support amounts for the year 2002.<sup>1</sup> Specifically, the Bureau adopted updated line count data for use in the universal service cost model to estimate non-rural carriers' forward-looking economic costs of providing the services supported by the federal high-cost mechanism, consistent with the framework established in the *Twentieth Reconsideration Order* and the *2001 Line Counts Update Order*.<sup>2</sup> Support amounts will continue to be adjusted each quarter to account for line growth based on the wire center line count data reported quarterly by non-rural carriers.<sup>3</sup> In addition, we update the company-specific data used in the model to calculate investment in general support facilities and switching costs.

The spreadsheet attached to this Public Notice shows estimated state-by-state support amounts based on the revised cost estimates generated by the model using as input values year-end 2000 line count data filed by non-rural carriers on July 31, 2001. The Turbo-Pascal version of the cost model used to generate these estimates is posted on the Commission's web site at ([www.fcc.gov/gov/ccb/and/hcom](http://www.fcc.gov/gov/ccb/and/hcom)). The non-rural support estimates were adjusted to reflect the quarterly line counts filed by non-rural carriers on September 30, 2001. The attached spreadsheet also shows annualized interim hold-harmless, long term support, and interstate access support for non-rural carriers, as well as support amounts for rural carriers based on projections for the first quarter of the year 2002 filed by the Universal Service Administrative Company (USAC) on November 2, 2001.<sup>4</sup> For further information regarding this Public Notice, please contact Katie King or Tom Buckley at (202) 418-7400.

<sup>1</sup> *Federal-State Joint Board on Universal Service, Order, CC Docket No. 96-45, DA 01-2928 (Com. Car. Bur. rel. December 18, 2001) (2002 Line Counts Update Order).*

<sup>2</sup> *See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Twentieth Order on Reconsideration, FCC 00-126 (rel. April 7, 2000) (Twentieth Reconsideration Order); Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, 15 FCC Rcd 23960 (Com. Car. Bur. 2000) (2001 Line Counts Update Order).*

<sup>3</sup> *2001 Line Counts Update Order, 15 FCC Rcd at 23964, para. 10.*

<sup>4</sup> USAC files quarterly projections with the Commission for the high-cost and other universal service programs, which the Bureau then makes available on the Commission's Web site at [http://www.fcc.gov/ccb/universal\\_service/quarter.html](http://www.fcc.gov/ccb/universal_service/quarter.html). The interim hold-harmless amounts on the attached spreadsheet have been adjusted to reflect the phase-down adopted by the Commission. *See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Thirteenth Report and Order and Further Notice of Proposed Rulemaking, FCC 00-428 (rel. December 8, 2000).*

State	Non-Federal Comparisons			Universal Service Fund			Total High Cost Support
	High Cost Model Support	High-Priority Support	ITS Support	Interstate Access Support	HCL, LSS, and ITS Support	Interstate Access Support	
AL	43,124,510	0	0	16,531,404	26,530,156	703,176	88,045,248
AR	0	0	0	6,439,884	712,103,316	0	77,670,200
AZ	0	0	0	0	212,412	0	212,412
CA	0	0	0	15,761,412	36,105,564	5,134,604	57,001,580
CO	0	0	0	26,655,598	45,516,000	5,418,108	82,482,120
CT	0	0	0	15,942,096	46,472,616	0	82,415,312
DC	0	0	0	642,026	642,026	0	1,630,082
DE	0	0	0	37,670,020	0	0	37,670,020
FL	0	0	0	12,401,768	31,418,128	16,897,182	92,717,038
GA	0	0	0	11,637,240	85,177,296	245,016	97,059,482
GU	0	0	0	2,020,320	2,020,320	0	2,020,320
HI	0	0	0	2,241,296	3,104,796	0	5,530,032
IA	0	0	0	0	31,277,544	6,517,184	37,794,728
ID	0	0	0	0	30,052,404	14,866,740	44,962,144
IL	0	0	0	11,057,892	25,652,000	1,600,532	42,309,228
IN	0	0	0	21,065,408	19,618,520	2,817,704	43,503,032
KS	0	0	0	3,283,488	75,574,612	5,893,020	84,721,230
KY	2,510,326	0	0	13,163,428	29,565,900	594,424	45,924,218
LA	0	0	0	10,564,328	70,437,092	0	80,802,182
MA	0	0	0	153,452	344,348	0	1,077,640
MD	0	0	0	3,020,592	745,092	0	4,568,284
ME	5,420,882	0	0	672,048	21,370,464	0	27,463,284
MI	0	0	0	140,694	41,034,272	0	41,174,832
MN	0	0	0	64,807,040	0	3,103,396	68,022,436
MO	0	0	0	9,222,296	53,370,168	8,186,428	71,223,296
MS	101,362,630	0	0	11,300,616	26,784,656	0	139,452,202
MT	10,587,567	0	0	251,160	47,810,376	376,216	59,025,339
NC	0	0	0	12,337,360	25,724,244	0	46,162,107
ND	0	0	0	684,256	26,896,368	0	27,584,624
NE	0	0	0	0	24,914,304	1,527,292	26,411,616
NH	0	0	0	1,818,764	7,504,860	0	9,381,624
NJ	0	0	0	4,472,696	1,217,736	338,112	6,076,536
NM	0	0	0	2,939,976	35,233,487	4,856,804	43,069,272
NV	0	0	0	4,131,396	14,471,676	3,762,796	22,381,080
NY	0	0	0	15,626,700	36,500,240	7,097,136	59,624,076
OH	0	0	0	7,620,032	17,455,932	7,604,888	33,069,504
OK	0	0	0	4,012,132	71,245,664	0	78,108,020
OR	0	0	0	20,806,572	41,760,840	2,445,612	65,201,244
PA	0	0	0	3,022,980	22,737,816	10,225,320	35,986,116
PR	0	0	0	0	0	0	103,876,930
RI	0	0	0	61,824	0	0	91,824
SC	0	0	0	15,024,624	41,857,112	1,513,612	58,186,148
SD	0	0	0	73,782	27,585,856	0	28,058,708
TN	0	0	0	4,926,204	34,339,780	2,902,886	42,210,050
TX	0	0	0	24,431,644	132,368,032	13,525,086	149,819,318
UT	0	0	0	18,242,344	0	0	18,242,344
VA	0	0	0	1,423,408	12,578,304	972,196	15,316,008
VI	0	0	0	47,152,176	11,872,520	5,880,624	64,985,270
VT	0	0	0	0	25,677,852	0	25,677,852
WA	0	0	0	2,023,776	12,655,224	0	24,045,200
WI	0	0	0	21,443,904	40,564,500	1,757,652	70,196,364
WV	0	0	0	2,342,844	54,331,072	234,296	60,883,104
WY	0	0	0	114,116	20,862,620	5,721,640	27,916,453
WT	0	0	0	5,694,308	24,270,480	458,904	39,520,733
Total	207,020,513	25,830,003	108,674,215	448,653,732	1,790,420,828	144,116,400	2,674,206,860

Estimates based on revised cost estimates generated by the model using year-end 2000 line count data and adjusted to reflect the 0.5% line count levy by non-voice carriers on 8/30/01.  
 \* Figures based on USAC's projections for the quarter of 2002 based on 1/17/01



# ARECA

Alaska's Electric Association  
*"Electric Service for 556,000 Alaskans"*

---

February 27, 2002

Honorable Eldon Mulder  
Cochairman, House Finance Committee  
Alaska State Legislature  
Juneau, Alaska

Subject: RCA Sunset Review, HB 333

Dear Representative Mulder

As you know, ARECA and its electric utilities throughout Alaska do not agree that the RCA Sunset should be extended through June 2006 as would happen under HB 333. Our position has been carefully considered. ARECA supported the reconstitution of the old APUC into the present RCA. We participated in that process of change even in the face of those that cautioned against such change. We were even consulted on the composition of the new Commissioners and are largely supportive of the professional attitude that they have brought to the agency.

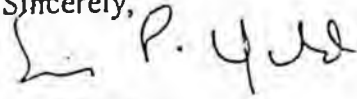
Despite these positive changes, we still have serious problems with the pace with which the regulatory process creeps forward. The transformation from the APUC to the RCA came with the legislature authorizing nine new positions with which to speed up the regulatory process. The RCA inherited a 700 case backlog from the old commission and these new positions appeared warranted. We were heartened to see that the new RCA was making a concerted effort to reduce that backlog in the face of new cases being introduced. But their effort has lagged and the time required to get important cases through the process continues to be slow and cumbersome. Last year the legislature authorized five additional new positions for the RCA to speed up the process. Nevertheless, according to correspondence to me from Commissioner Thompson on January 9, 2002, the RCA has closed 556 cases since the inception of the RCA but opened 464 new cases, presumably resulting in a present case backlog of 608 cases. Fourteen new positions have resulted in a 13 percent caseload reduction. What this really means is that the regulatory process is still broken and must be fixed. The present process costs the electric utility industry much time and much money to run the regulatory gauntlet.

We would very much like to see a meaningful immediate effort to identify changes that can be made to the regulatory process. In our opinion, this will not take place if we allow a four-

year sunset review. We also understand, however, that the one-year sunset originally supported by the electric utility industry may not be sufficient to allow comprehensive assessment of the situation. Commissioner Thompson has committed to an annual review before the legislature and has further committed to an informal "bench and bar" session to be conducted every other month with the regulated industry. We feel that both of these efforts will help identify ways to streamline the process, but believe that this will be further facilitated by a legislative oversight that would extend the RCA sunset through June 2004 rather than the four years called for in HB 333. We strongly believe that the process must be streamlined and hope that you will support a two-year conditional extension as called for in the amended ARECA Resolution 2-19 (Attached).

We would like to have a good regulatory process and feel that this can be accomplished if the industry, legislature, and the RCA will work toward that end.

Sincerely,



Eric P. Yould  
Executive Director

CC: ARECA Managers and Board of Directors  
Commissioner Thompson, RCA



# ARECA

Alaska's Electric Association

*"Electric Service for 556,000 Alaskans"*

---

## ARECA Resolution 02-19

### A Resolution Supporting Legislation to Conditionally Extend the Life of the Regulatory Commission of Alaska for Two Years

Regulated utilities depend on the RCA for prompt and fair regulatory decisions. Since its establishment, the RCA continues to struggle with its workload. The RCA has created an additional load of work for itself by initiating dockets and inquiries without having first cleared the backlog of old matters. The RCA must work to resolve cases decisively and finally.

ARECA supports the extension of the life of the RCA for only two additional years contingent on an explicit legislative requirement that the RCA complete the activities described below:

- Establish a dialogue with regulated utilities to discuss reform of the regulatory process.
- Prepare an annual report to the legislature addressing the following:
  1. How the RCA will reduce the backlog of cases and other matters pending before it.
  2. How the RCA can revise its processes to assure that fewer issues must be tried in trial-type proceedings.
  3. How deadlines for adjudication and other approval processes can be incorporated in RCA procedures to produce better and timelier decisions.
  4. Identify areas for which the RCA is currently responsible for regulation that provide the highest public benefit and areas in which regulation produces lower public value.
  5. Recommend areas of regulatory oversight that may be eliminated.

Adopted February 22, 2002



SAMPLE BEING SENT BY E-MAIL AND US MAIL TO AARP ACTIVISTS

TO: AARP Alaska Members and Friends
FROM: Marguerite Stetson
AARP Alaska Executive Council Member for Advocacy
DATE: June 17, 2002

WE NEED YOUR HELP!

As you know from the media, Governor Knowles has asked the Legislature to come into special session to deal with the reauthorization of the Regulatory Commission of Alaska (RCA).



AARP supports the reauthorization of the Regulatory Commission of Alaska and requests that you contact your Senator and Representative and ask them to vote "AYE" for RCA reauthorization.

BACKGROUND:

AARP is a consumer organization. Half of our members are over age 65 and half are younger. Most of our members are heads of their households. Our members use a variety of utilities: gas, electric, telephones and the internet. When utilities want to change their services, they must submit a proposed change to the Regulatory Commission of Alaska. It is the responsibility of the RCA to be a consumer "watchdog" and, under the rules and guidelines provided by the Legislature, to assure that our utility companies and telephone companies "do the right thing" and provide us needed services at reasonable rates. Consumer organizations like AARP rely on the RCA because it is the only organization that exercises some oversight and control over utilities.

The RCA is the only organization our members can turn to if they have a consumer complaint about their utility or telephone company.

The reauthorization of the RCA has become embroiled in partisan politics and telephone company squabbles. AARP has no interest in the politics of this debate nor do we care to participate in inter-company name-calling.

We are, however, very interested in the continuing existence of the Regulatory Commission of Alaska. As consumers, we need the RCA's oversight authority. After

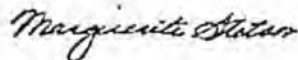
watching the last session of the Legislature when virtually no important problems were resolved, we do not have confidence that the reauthorization of the RCA should wait for the next session in January, 2003. We believe the RCA should be reauthorized and it should be done now, when the special session convenes on June 24.



Please contact your Senator and Representative and ask them to vote "AYE" and reauthorize the Regulatory Commission of Alaska.

Thank you for your consideration.

Sincerely,



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

\* If you have an email address please send that address with your full name to:  
[ak@aarp.org](mailto:ak@aarp.org)

*"This Alert is being sent by AARP Alaska State Office, 3601 "C" Street, Suite 1420, Anchorage, AK 99503, 907.341.2277, [ak@aarp.org](mailto:ak@aarp.org). Please visit [www.aarp.org](http://www.aarp.org) for more information about AARP, generally, and [www.aarp.org/privacy.html](http://www.aarp.org/privacy.html) to read AARP's privacy policy. Copyright 2002, AARP. All rights reserved."*

*To unsubscribe from this alert and remove your name from the distribution list, please call, email, or mail us a note to the above address with that request.*

*AARP is nonpartisan and does not support, oppose, or give money to candidates or any political party.*

*AARP educates on the peace-of-mind issues of most concerns to voters age 50+.*

# Audit Report

DEPARTMENT OF COMMUNITY AND  
ECONOMIC DEVELOPMENT  
REGULATOR'S COMMISSION OF ALASKA  
SUNSET REVIEW

November 23, 2001



Audit Control Number

08-2001-02

Division of Legislative Audit

209 Box 3800, Juneau, Alaska 99811-3300

## FINDINGS AND RECOMMENDATIONS

In our previous sunset audit,<sup>1</sup> we made two recommendations. One of these suggested that RCA utilize findings from a study by the National Regulatory Research Institute. RCA has now reviewed the institute's report and responded to its findings with a variety of improvements. We thus consider RCA to have fully implemented this recommendation.

The other prior audit recommendation concerned the implementation of a management information system with a number of components. This recommendation was subsequently incorporated as a requirement within RCA's enabling legislation.<sup>2</sup>

At this time, most components of the management information system have been substantially implemented, but on a piecemeal basis. We understand that RCA expects to have a fully integrated system, including the employee time tracking component mandated by statute,<sup>3</sup> in operation by February 2002.

### Recommendation No. 1

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

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

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

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

---

<sup>1</sup> Department of Commerce and Economic Development, Alaska Public Utilities Commission, audit control no. 08-1459-99 (December 23, 1998).

<sup>2</sup> Section 26 of ch. 25, SLA 1999 directs RCA to "*develop its management information system and make the system accessible to the general public through the Internet for the purpose of tracking, scheduling, and managing all dockets within the commission.*"

<sup>3</sup> AS 42.04.070(a)(2) directs RCA's chair to "*establish and implement a time management system for the commission.*"

The legislature has entrusted RCA with the legal responsibility for enforcing the certificate requirement,<sup>4</sup> but RCA takes no action to detect noncompliance. RCA has responded to certificate applications and to complaints, but has not pursued utilities that lack certificates, even though it is generally aware of the scope of this problem.

RCA should more proactively protect the public by investigating the status of new water and sewer systems as they come on line. The following options are available:

- Commence enforcement actions to compel certification applications.
- Streamline the certification filing requirements for small utilities to better reflect their operating environment. The data requirements may not need to be as comprehensive for smaller utilities. This may be one of the reasons for the reluctance of these utilities to apply for certification.
- Exempt certain classes of utilities from certification under AS 42.05.711(d). The criteria could include such factors as the community size, number of customers, type of operating entity, and the system's predominant funding source.

If RCA elects to streamline the filing requirements or exempt certain classes of utilities, it should do so by regulation.<sup>5</sup>

### Recommendation No. 2

#### RCA should issue regulations that clarify use of its public advocacy section.

RCA has a public advocacy section of six employees. There is little statutory guidance as to the section's use, with AS 42.04.070(c) simply stating:

*The chair of the commission shall direct the public advocacy section to participate as a party in a matter when the commission believes that it is in the public interest to do so.*

Out of a total of 330 formal RCA proceedings filed since FY 00, the public advocacy section has been appointed in 71 (22%). However, RCA currently has no published procedures and criteria that guide when the section should be assigned to a case and how its intervention is to be accomplished.<sup>6</sup> Utility representatives expressed some concern to us about their uncertainty as to when a case would involve the section.

<sup>4</sup> See AS 42.05.181 – 42.05.201, 42.05.551 – 42.05.621 (administrative orders; injunctions; civil penalties).

<sup>5</sup> A regulation is required under the Administrative Procedure Act for a standard that "affects the public or is used by the agency in dealing with the public." See AS 44.62.640(a)(3).

<sup>6</sup> For instance, submission of a brief, testimony, or comment, rather than full formal participation as a party, may be adequate in some cases.

RCA should enact regulations that clarify the role of its public advocacy section. We further recommend that RCA's chair establish a definite linkage between patterns of complaints detected in its consumer complaint section and the priorities for public advocacy intervention.

Recommendation No. 3

RCA's chair should ensure that the publication of notices of formal proceedings is monitored.

Under RCA's statutes and regulations, whether RCA orders public notification of a proceeding, and the specific method to be used, is left to RCA's discretion to determine on a case-by-case basis.

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

We selected 90 out of a total of 330 formal proceedings filed in FY 00 to FY 01 and reviewed RCA's elective choice to place newspaper notices in 55 of those cases. We found RCA's discretion in that selection to have been uniformly reasonable in light of the particular subjects and potential consumer impacts of the 90 cases examined.

However, we did discern a need for RCA to better confirm that newspapers actually print the requested ad and print it correctly. Of the 55 ads that RCA ordered, case files for only 36 contained any verification that the ad was printed.



TONY KNOWLES  
GOVERNOR  
governor@gov.state.ak.us

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

P.O. Box 110001  
Juneau, Alaska 99811-0001  
(907) 465-3500  
Fax (907) 465-3532  
www.gov.state.ak.us

June 24, 2002

The Honorable Brian Porter  
Speaker of the House  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Speaker Porter:

I am transmitting a bill that extends the life of the Regulatory Commission of Alaska to avoid its termination of that agency on June 30 of this year. The bill also includes provisions, developed with industry input, that set deadlines for commission actions and clarify its authority to accept stipulations from parties to commission proceedings.

It is important to pass this bill before the commission's termination date. The commission regulates utilities in the state and regulates pipelines to the extent of their intrastate operations. The commission's role is essential to consumers in the state as well as to the regulated entities.

Failure to extend the commission this session will significantly interfere with its work. Though there is a "wind down" year, the commission will have to redirect its time and energy to plan for closing shop. The commission may not be able to take on new filings or applications, or even complete currently filed ones. Failure to extend the agency leaves the regulated entities as well as consumers in a state of confusion and uncertainty.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink that reads "Tony Knowles".  
Tony Knowles  
Governor

w/7

22-GH?115\C.2  
Craver  
6/24/02

AMENDMENT |

OFFERED IN THE HOUSE

BY REPRESENTATIVE MULDER

TO: CSHB 3001(FIN), Draft Version "C"

- 1 Page 4, line 11, following "carriers;":
- 2       Insert "interexchange carriers;"

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

**Interconnection Agreements**

Issue:

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

Potential Remedial Action:

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

**Rural Exemption**

Issue:

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

Potential Remedial Action:

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

## **Deregulation and Rate Cases**

### Issue:

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

### Potential Remedial Action:

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

## **Other Matters**

### Issue:

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

### Potential Remedial Action:

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

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

**RCA Management Structure; Advisory Staff vs. Public Advocacy Section**

Issue:

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

Potential Remedial Action:

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

**Lack of Codified Ex Parte Rules**

Issue:

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

Potential Remedial Action:

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

## Open Meetings Act

### Issue:

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

### Potential Remedial Action:

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

## Due Process and Evidentiary Hearings

### Issue:

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

### Potential Remedial Action:

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

22-LS1841C  
Craver  
6/24/02

*Adopted*

*Amended*

*HOUSE FINANCE CS  
for HOUSE BILL NO. 3001*

*pg 4*

*line 2*

IN THE LEGISLATURE OF THE STATE OF ALASKA

TV. ENTY-SECOND LEGISLATURE - THIRD SPECIAL SESSION

BY THE HOUSE FINANCE COMMITTEE

Introduced:  
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act setting timelines for issuance of final orders by the Regulatory Commission of  
 2 Alaska, amending the authority of the commission to enter compromise settlement  
 3 orders, extending the commission's termination date to June 30, 2004, requiring the  
 4 commission to hold monthly meetings to allow discussion of the commission's process  
 5 and procedures; and directing the commission chair to establish an advisory committee;  
 6 and providing for an effective date."

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

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

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

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

1 (3) to transfer a certificate of public convenience and necessity; and

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

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

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

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

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

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

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

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

26 (g) The commission shall file quarterly reports with the Legislative Budget  
27 and Audit Committee identifying all extensions ordered under (f)(2) of this section  
28 during the previous quarter, and including copies of the written orders issued under  
29 (f)(2) of this section.

30 (h) If the commission does not issue and serve a final order regarding an  
31 application or suspended tariff under section (a), (b), or (c) of this section within the

1 applicable timeline specified, and if the commission does not extend the timeline in  
2 accordance with (f) of this section, the application or suspended tariff filing shall be  
3 considered approved and shall go into effect immediately.

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

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

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

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

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

21 (4) Regulatory Commission of Alaska (AS 42.04.010) -- June 30, 2004  
22 [2002];

23 \* Sec. 4. Section 6 of this Act is repealed June 30, 2004.

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

26 PRIOR DOCKETS. The provisions of AS 42.05.175, added by sec. 1 of this Act do  
27 not apply to dockets of the Regulatory Commission of Alaska that are initiated before July 1,  
28 2002.

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

31 MONTHLY MEETINGS. The Regulatory Commission of Alaska shall,

1 approximately once a month, hold open meetings at which the public and representatives of  
2 all regulated utilities may discuss issues involving the process and procedures of the  
3 commission. The meetings shall be transcribed and shall be attended by at least one  
4 commissioner.

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

7 ADVISORY COMMITTEE; REPORT. (a) Not later than October 31, 2002, the chair  
8 of the Regulatory Commission of Alaska shall appoint a committee to investigate and propose  
9 reforms to the commission's regulatory process. The committee must include one member to  
10 represent each of the following: the commission; incumbent local exchange carriers;  
11 competitive local exchange carriers; electric utilities; natural gas utilities; water or sewer  
12 utilities; and the public advocacy section of the commission. Where possible, the chair shall  
13 honor nominations from the represented group. The committee shall hold open meetings and  
14 receive comment from the public and all regulated utilities.

15 (b) Not later than October 31, 2003, the committee shall prepare a written report to  
16 the commission and the legislature addressing the following issues: how to reduce the  
17 backlog of cases and other matters pending before the commission; how to revise the  
18 processes of the commission to ensure that fewer issues must be tried in trial-like  
19 proceedings; whether the deadlines established in AS 42.05.175, added by sec. 1 of this Act,  
20 require further amendment; the areas for which the commission is currently responsible for  
21 providing the highest public benefit and the areas producing lower public benefit; and  
22 identification of areas of regulatory oversight that may be eliminated.

23 (c) The committee shall present the written report required by (b) of this section to the  
24 Second Regular Session of the Twenty-Third Alaska State Legislature within the first two  
25 weeks of that session. The committee terminates on January 31, 2004.

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

*Adopted*

22-GH2115\C.1  
Craver  
6/24/02

AMENDMENT |

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSHB 3001(FIN), Draft Version "C"

- 1 Page 1, line 5:
- 2 Delete "commission chair to establish"
- 3 Insert "establishment of"
- 4
- 5 Page 4, lines 7 - 8:
- 6 Delete "chair of the Regulatory Commission of Alaska shall appoint"
- 7 Insert "president of the senate, speaker of the house of representatives, and the
- 8 governor shall jointly appoint the members of"
- 9
- 10 Page 4, line 12:
- 11 Delete "chair"
- 12 Insert "persons jointly making the appointments"

*Page 4, line 9  
insert after "Reforms"  
"limited"*

22-GH2115\C  
Craver  
6/24/02

**CS FOR HOUSE BILL NO. 3001(FIN)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SECOND LEGISLATURE - THIRD SPECIAL SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

**Offered:**  
**Referred:**

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

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act setting timelines for issuance of final orders by the Regulatory Commission of  
2 Alaska, amending the authority of the commission to enter compromise settlement  
3 orders, extending the commission's termination date to June 30, 2004, requiring the  
4 commission to hold monthly meetings to allow discussion of the commission's process  
5 and procedures; and directing the commission chair to establish an advisory committee;  
6 and providing for an effective date."

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

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

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

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

1 (3) to transfer a certificate of public convenience and necessity; and

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

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

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

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

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

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

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

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

26 (g) The commission shall file quarterly reports with the Legislative Budget  
27 and Audit Committee identifying all extensions ordered under (f)(2) of this section  
28 during the previous quarter, and including copies of the written orders issued under  
29 (f)(2) of this section.

30 (h) If the commission does not issue and serve a final order regarding an  
31 application or suspended tariff under section (a), (b), or (c) of this section within the

1 applicable timeline specified, and if the commission does not extend the timeline in  
2 accordance with (f) of this section, the application or suspended tariff filing shall be  
3 considered approved and shall go into effect immediately.

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

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

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

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

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

21 (4) Regulatory Commission of Alaska (AS 42.04.010) -- June 30, 2004  
22 [2002];

23 \* Sec. 4. Section 6 of this Act is repealed June 30, 2004.

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

26 PRIOR DOCKETS. The provisions of AS 42.05.175, added by sec. 1 of this Act do  
27 not apply to dockets of the Regulatory Commission of Alaska that are initiated before July 1,  
28 2002.

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

31 MONTHLY MEETINGS. The Regulatory Commission of Alaska shall,

1 approximately once a month, hold open meetings at which the public and representatives of  
2 all regulated utilities may discuss issues involving the process and procedures of the  
3 commission. The meetings shall be transcribed and shall be attended by at least one  
4 commissioner.

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

7 ADVISORY COMMITTEE; REPORT. (a) Not later than October 31, 2002, the chair  
8 of the Regulatory Commission of Alaska shall appoint a committee to investigate and propose  
9 reforms to the commission's regulatory process. The committee must include one member to  
10 represent each of the following: the commission; incumbent local exchange carriers;  
11 competitive local exchange carriers; electric utilities; natural gas utilities; water or sewer  
12 utilities; and the public advocacy section of the commission. Where possible, the chair shall  
13 honor nominations from the represented group. The committee shall hold open meetings and  
14 receive comment from the public and all regulated utilities.

15 (b) Not later than October 31, 2003, the committee shall prepare a written report to  
16 the commission and the legislature addressing the following issues: how to reduce the  
17 backlog of cases and other matters pending before the commission; how to revise the  
18 processes of the commission to ensure that fewer issues must be tried in trial-like  
19 proceedings; whether the deadlines established in AS 42.05.175, added by sec. 1 of this Act,  
20 require further amendment; the areas for which the commission is currently responsible for  
21 providing the highest public benefit and the areas producing lower public benefit; and  
22 identification of areas of regulatory oversight that may be eliminated.

23 (c) The committee shall present the written report required by (b) of this section to the  
24 Second Regular Session of the Twenty-Third Alaska State Legislature within the first two  
25 weeks of that session. The committee terminates on January 31, 2004.

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

REPRESENTATIVE  
BILL WILLIAMS  
Co-Chair  
(907) 465-3424  
Fax: (907) 465-2793

INTERIM ADDRESS  
50 Front Street, Suite 203  
Ketchikan, Alaska 99901  
(907) 247-4627  
Fax (907) 225-7157

Alaska State Legislature  
House Finance Committee



State Capitol, Juneau, Alaska 99801-1182

REPRESENTATIVE  
ELDON MULDER  
Co-Chair  
(907) 465-2647  
Fax: (907) 465-3518

INTERIM ADDRESS  
716 W. 4th Avenue  
Anchorage, Alaska 99501  
(907) 269-0265  
Fax: (907) 269-0264

## HOUSE BILL 3001

# An Act Extending the Sunset Date of the Regulatory Commission of Alaska

Committee Substitute for House Bill 3001 will extend the sunset date for the Regulatory Commission of Alaska from June 30, 2002 to June 30, 2004. Pursuant to AS 44.66.010(c) the legislature may extend the termination date for this agency for a period not to exceed four years. HB 3001 allows an extension for two years.

The Division of Legislative Audit published its audit report on November 28, 2001. The report concluded that the Regulatory Commission of Alaska operates in a reasonably effective and efficient manner and should continue to regulate public utilities and pipelines.

The measure adds a new section (AS 42.05.175) to the statute to establish timelines for RCA action. We believe that they will assist in assuring that decisions are made in a timely fashion so that regulated utilities will not face unnecessary delays in regulatory actions. It also amends AS 42.05.191 to allow the RCA to approve settlements supported by all parties to an action.

In addition this bill adds an advisory committee, appointed by the Governor, the Speaker of the House, and the President of the Senate, to review the RCA and make recommendations to the RCA and the Legislature on changes that should be made to improve RCA operations. It also mandates monthly informal meetings between the RCA and regulated utilities to address process issues in the interim.

HB 3001 would be effective immediately, thus the Regulatory Commission of Alaska would not need to begin the process of shutting down its operations pursuant to AS 44.66.010(b).

22-GH2115\C.1  
Craver  
6/24/02

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSHB 3001(FIN), Draft Version "C"

- 1 Page 1, line 5:
- 2 Delete "commission chair to establish"
- 3 Insert "establishment of"
- 4
- 5 Page 4, lines 7 - 8:
- 6 Delete "chair of the Regulatory Commission of Alaska shall appoint"
- 7 Insert "president of the senate, speaker of the house of representatives, and the
- 8 governor shall jointly appoint the members of"
- 9
- 10 Page 4, line 12:
- 11 Delete "chair"
- 12 Insert "persons jointly making the appointments"



N A R U C  
National Association of Regulatory Utility Commissioners

June 10, 2002

Hon. Rick Halford, *President*  
Alaska Senate  
P.O. Box 190  
Chugiak, AK 99567  
Fax 907-694-0549

Hon. Brian Porter, *President*  
Alaska House of Representatives  
716 West 4<sup>th</sup> Avenue  
Anchorage, AK 99501  
Fax 907-269-0154

Dear Mr. Presidents:

We understand that you are soon to decide in special session how and to what extent public resources should be used to protect consumers' interests in utility matters. We hope you find the following comments helpful as you decide whether or not to re-authorize the Regulatory Commission of Alaska.

In states and countries around the world, vital utility services (energy, telecommunications, and—in some cases—water) are provided by a unique mix of monopoly and competitive providers.

Where the state has granted monopoly status to one or more providers, legislatures—recognizing that unchecked monopolies might overprice their services or underserve their customers—established commissions to ensure quality service at rates which are just and reasonable to shareholders and investors as well as to customers. Such rates should provide financial returns sufficient to attract needed capital and incent proper management behavior, while preventing providers from exploiting their monopoly (or dominant) positions.

While some utility services (water systems and electricity transmission and distribution systems) seem likely to continue as monopolies, new technology is making it possible for formerly monopoly activities (electricity generation and telecommunications) to be opened to competition. As these markets develop, their prices often reflect uncertainty or inappropriate manipulative behavior (e.g., Enron in the California market). Regulators, as authorized by legislatures, write market rules that help wring uncertainty from those markets, lowering prices and enabling customers to choose effectively among potentially complex alternatives. Working with the regulated utilities, many utility commissions have devised reasonable but strict service quality standards to ensure customers get what they pay for.

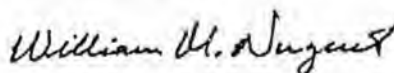
In addition, legislatures across the country and around the world are directing utility commissions to protect consumers from "slamming" (the switching of customers from one supplier to another without the customers' knowledge), "bait and switch" pricing practices, and other consumer abuses.

In a country of 280 million people it is unlikely that distant Federal agencies will provide any significant protection against unfair rates, poor utility services, or abusive treatment of individual consumers. Indeed, in moving to open the telecommunications industry to competition (the Telecommunications Act of 1996), Federal lawmakers placed many detailed, case-specific responsibilities on state regulatory authorities because Federal agencies did not have the capacity to handle the extraordinary volume of state-specific matters in accommodating expanded competitive opportunities.

For more than a century, regulatory commissions in the U.S. and in scores of countries abroad have ensured consumer access to quality utility services at fair rates. Administering laws written by legislatures, the commissions have helped create conditions in which utilities have prospered. As competition comes to the utility industry, experienced regulatory bodies are an effective tool by which lawmakers can continue to protect their constituents and their states' economies.

If we can provide you with additional information or be of any other service, please do not hesitate to contact me at 207.287.3831 or Charles Gray, NARUC's Executive Director at 202.898.2208.

Sincerely,



William M. Nugent, President  
NARUC

NARUC PRESIDENT LETTER TO ALASKA LEGISLATORS CONSIDERING WHETHER TO EXTEND THE CHARTER OF THE ALASKA COMMISSION EMPHASIZES IMPORTANCE OF STATE AGENCY OVERSIGHT

Contact: Brad Ramsay 202.898.2207 or jramsay@naruc.org

WASHINGTON, D.C. June 10, 2002 - Today, the President of the National Association of Regulatory Utility Commissioners, Maine Commissioner William M. Nugent, sent a letter to key legislators in Alaska describing how state utility regulators work to "ensure quality service at rates which are just and reasonable to shareholders and investors as well as to customers." The Alaskan legislature has slated a hearing this Wednesday on whether to re-authorize the Regulatory Commission of Alaska.

According to President Nugent:

"Administering laws written by legislatures, the commissions have helped create conditions in which utilities have prospered. As competition comes to the utility industry, experienced regulatory bodies are an effective tool by which lawmakers can continue to protect their constituents and their states' economies.... Working with the regulated utilities, many utility commissions have devised reasonable but strict service quality standards to ensure customers get what they pay for."

\*\*\*\*\*

The National Association of Regulatory Utility Commissioners is a non-profit organization founded in 1889. Its members include the governmental agencies that are engaged in the regulation of utilities and carriers in the fifty States, the District of Columbia, Puerto Rico and the Virgin Islands. NARUC's member agencies regulate telecommunications, energy, and water utilities. NARUC represents the interests of State public utility commissions before the three branches of the Federal government and the Independent Federal agencies. Additionally, NARUC files briefs and pleadings before the U.S. Supreme Court and other Federal courts in support of State utility commission interests. NARUC also provides the Executive Branch with policy proposals and works with the Departments on the formulation of regulatory policies. NARUC works closely with the Federal Energy Regulatory Commission, the Federal Communications Commission, and the Nuclear Regulatory Commission, the Securities and Exchange Commission and the Federal Trade Commission to ensure the State perspective is considered in their proceedings.

The National Association of Regulatory Utility Commissioners  
1101 Vermont Avenue NW Suite 2000  
Washington, D C. 20005

Phone: 202.898.2200  
Fax: 202.898.2213  
Webpage: www.naruc.org

###

## The National Regulatory Research Institute



1080 Carmack Road  
Columbus, Ohio 43210-1002

Phone: 614/292-9404  
FAX: 614/292-7196

June 10, 2002

Representative Brian Porter  
3430 Fordham Drive  
Anchorage, AK 99508

Dear Representative Porter:

In the summer of 1998, I was asked by the Alaska Public Utilities Commission to conduct a review of its organization and operations in advance of the upcoming sunset review of the Commission. Dr. Douglas N. Jones and Dr. Vivian Witkind Davis assisted with that review, which resulted in a report to the Commission in October 1998.

In our review, we found a Commission in substantial disarray and identified a fear that the agency could not continue to perform its functions without real reform. The backlog of cases was substantial, orders took an excessive amount of time and were judged as poorly written, and morale was poor. We suggested that improvements were most required in interpersonal relations, timeliness of Commission action, the quality and speed of orders, handling of consumer complaints, and information systems.

With our report in hand the Alaska Legislature took the extraordinary, but probably necessary, step of abolishing the Public Utilities Commission and establishing the Regulatory Commission of Alaska.

In 2000, the Chair of the RCA asked me to review the new agency, make recommendations, and determine whether or not improvements had been made. My report, which was issued in June 2000, found substantial improvement in each of the areas identified in the first report as needing attention. I found that the RCA was functioning at a very high level of energy and competence. Those interviewed for the second report, which included external stakeholders, provided nearly unanimous support for the work of and prospects for the RCA.

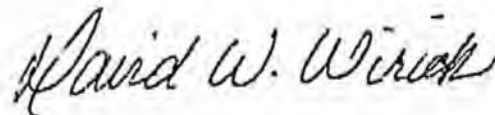
Over the past several years, I have worked onsite with more than 30 state regulatory commissions around the nation. As might be expected, they function at differing levels of effectiveness and efficiency. I regard the RCA to be one of the most professional and hard-working.

Page Two

Most of the public utility regulatory commissions around the nation have been in existence for nearly 100 years. We have learned that public utility regulation is a process, not an event. In every state, there are times when some interests are disappointed with commission action. What matters, however, is the long-term ability of the commission to create a balance among the stakeholders involved. Even those who might disagree with single commission actions are advantaged by a stable regulatory agency. I have no doubt that over the long term the citizens of Alaska will be well served by the RCA.

In the process of conducting my two examinations, I have developed great affection for the citizens, the public servants, and, of course, the natural beauty of the State of Alaska. I would be pleased to assist your decision-making process in any way that I can.

Sincerely,

A handwritten signature in cursive script that reads "David W. Wirick". The signature is written in dark ink and is positioned above the printed name.

David W. Wirick

**Subject: Reauthorization of the Regulatory Commission of Alaska (RCA)**

**Date: Fri, 7 Jun 2002 11:38:54 -0800**

**From: e\_anderson@telalaska.com**

**To: nanette\_thompson@rca.state.ak.us**

**CC: Senator\_Robin\_Taylor@legis.state.ak.us, Senator\_Dave\_Donley@legis.state.ak.us,  
Senator\_John\_Cowdery@legis.state.ak.us, Senator\_Gene\_Therriault@legis.state.ak.us,  
Senator\_Johnny\_Ellis@legis.state.ak.us**

Commissioner Thompson and Senate Judiciary Committee members:

A hard copy of the following letter will be mailed to you next week.

Sincerely,

Everette Anderson  
Administrative Office Manager  
TelAlaska

June 6, 2002

The Honorable Robin Taylor, Chair  
Senate Judiciary Committee  
Alaska State Legislature  
State Capital, MS 301  
Juneau, AK 99801-1182

Re: Reauthorization of the Regulatory Commission of Alaska (RCA).

Dear Senator Taylor:

When we met in March, I expressed my concerns and my unequivocal support for the reauthorization of the Regulatory Commission of Alaska (RCA) for two major reasons: the loss of full and timely receipt of Universal Service Fund support for affordable telephone service and the possible derailment of an effort to address staff issues that have inhibited the performance of the RCA and its predecessor, the Alaska Public Utilities Commission (APUC). For the telephone industry, a primary concern is certification to receive Universal Service Support (USF). The state regulatory body must certify each local telephone company as an eligible telecommunications carrier annually to receive USF. This year, for Alaska, USF was nearly \$75 million. These funds are applied directly to the cost of providing local service and are the only reason local rates remain affordable in high cost areas. With the exception of Anchorage, every other community in the State of Alaska benefits from these funds. Without these funds, it is quite likely that there would be no affordable phone service outside Anchorage, Fairbanks and Juneau. Without a state regulatory body to certify the local telephone companies, we would have to individually apply to the FCC for certification. This process could well jeopardize part or all of this funding.

Additionally, there are two organizations, the Alaska Exchange Carriers Association (AECA) and the Alaska Universal Service Administrative Company (AUSAC), whose continued operation and administration may be called into question if the state regulatory body goes into wind-down. While these organizations are private nonprofit corporations, the courts have nevertheless ruled that they are extensions of the state regulatory body. AECA administers the collection and distribution of \$30 million per year in access charges, again for the small telephone companies outside of Anchorage, Fairbanks and Juneau. AUSAC administers the collection and distribution of \$1.9 million in state universal service funding (AUSF) which pays for "life line and link up" programs for low income households

throughout the state. It is not clear how these organizations would function without a state regulatory body or what their legal obligations are within the frame work of a wind-down year. The uncertainty and possible legal entanglement again places a sizable portion of the small telephone companies' revenues and continued service to low income households at risk.

In RCA Chair Thompson's May 20th letter to you she provided a laundry list of her legal obligations once the agency enters a wind-down year. There are two items which are especially disturbing. Chair Thompson, at the very least, places in question whether or not the RCA will have the resources available to conduct the USF certification in 2002. Timing is critical, there are no second chances if we must apply directly to the FCC. We must have as much lead time as possible with the as yet unknown FCC processes.

The other issue that concerns me as a rural provider is the cessation of work on regulation dockets. In my opinion, an extensive part of the problem with the APUC and now the RCA, is with the "staff" and how it functions. During the Second Session of the Twenty-Second Legislature, Chair Thompson testified before several Committees that she would deal with this problem through regulation for the Public Advocacy Section of the Commission. True to her word, the RCA opened Docket R-02-2 by the end of May. While it is never certain that any agency will truly reform itself from within, the opening of this docket at least provides for that opportunity in this case. If the RCA is not reauthorized and goes into a wind-down year, all work on this docket will cease; thus, delaying the resolution of what truly has been the fundamental underlying problem of the state regulatory body for 20 years or more. The creation of a new commission by the next Governor and Legislature, presuming a new slate of commissioners, could delay resolution of this problem for several more years.

This letter is intended to restate my strong support for reauthorization of the RCA because of the risk its disruption carries for rural Alaskans and the companies that serve their communications needs. Dissolution and the interim wind-down of the agency threatens Universal Service Support. Without that support it is quite likely that there will be no affordable phone service available outside of Anchorage, Juneau and Fairbanks. Certification of companies to receive USF support will transfer to the FCC through lengthy and obscure procedures that will certainly stall and probably reduce available funds. An additional concern is derailing the RCA Chair's effort to address the underlying staff problem through an existing docket. This issue is long overdue for attention and I fear that it will languish during the wind-down.

I understand that an old Attorney General's opinion was floated during the legislative session, that the regulatory body could conduct business as usual in a wind-down year, on the premise that we have been through all of this before and it is not a major concern. Let me point out that it is obvious Chair Thompson does not subscribe to that opinion. When the APUC went through wind-down, state commissions had not been given the responsibility to certify eligibility to receive USF support. For reasons that I am unaware of, at that time no one had considered the question of AECA and AUSAC continued operation.

My concern is that in order to make whatever gains you intend, harm will result in fundamental areas that affect communications services in rural Alaska and the companies providing those services. I urge you to reconsider your position and support efforts to reauthorize the RCA.

Sincerely,

Jack Rhyner, CEO  
TELAlaska

**Alaska Telephone Association**

201 E. 56th, Suite 114  
Anchorage, AK 99518  
(907) 563-4000  
FAX (907) 562-3776  
www.alaskatcl.org

Steve Hamlen  
President

James Rowe  
Executive Director  
jrowe@alaskatcl.org

June 6, 2002

Senator Robin Taylor  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801

RE: Judiciary Committee Hearing

Dear Senator Taylor:

Thank you for scheduling Senate Judiciary Committee hearings to consider reauthorization of the Regulatory Commission of Alaska. We concur with remarks attributed to you in the Anchorage Daily News on May 10, that this discussion should take place in a public forum. We look forward to participating in this process next week. A number of representatives of member companies have indicated interest in sharing their thoughts with the committee and, hopefully, addressing some of their concerns that have delayed reauthorization.

As I mentioned in a previous letter to you, funding for rural telecommunications is very dependent upon universal service fund support which permits companies to offer local service at affordable rates. Dependent upon annual certification from the state commission to the FCC, Alaska residents received the benefit of nearly \$75 million in high cost support this year.

While appreciating the legislative oversight of state agencies through the sunset review process, we also recognize that even this safeguard does not come without a dollar cost to the state and industry and that cost is, at last, borne by the customer. A public utility commission is absolutely necessary for Alaska and a "wind down" year preceding the empanelling of a new commission is even more burdensome.

Moreover, the learning curve for new utility commission members is steep. When the current commissioners were confirmed three years ago, they faced a daunting educational challenge of coming up to speed on issues of telecommunications, power, pipeline, refuse, and water and sewer. After a year and a half or two years, we began to see significant improvement in their understanding of the complexity of the telecommunications issues. Our customers paid for much of that education and citizens of Alaska paid for all of it. We do not want to waste that investment by underestimating the value of experience.

Before closing, I'd like to mention a final attribute that is rarely present in any state commission. RCA Chair Nan Thompson is the State Chair of the Federal-State Joint Board on Universal Service. That is the most influential non-federal position on national telecommunications