

ALASKA LEGISLATURE

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HOUSE and SENATE FINANCE COMMITTEE FILES, 2001 - 2002

policy matters for rural Alaskans. We will not have access to the State Chair when that person is from Florida or Illinois or Missouri, but we have it now.

Thank you for permitting me to share some of these thoughts with you. I look forward to seeing you next week.

Best Regards,

A handwritten signature in cursive script that reads "Jim Rowe". The signature is written in black ink and extends across the width of the page.

Jim Rowe

cc: Members Alaska State Senate



OFFICE OF
THE COMMISSIONER

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 5, 2002

Representative Scott Ogan
State Capitol, Room 3
Juneau, Alaska 99801-1182

Dear Representative Ogan:

I understand that the Alaska Legislature is conducting proceedings concerning the reauthorization of the Regulatory Commission of Alaska. I have been asked to share my perspective as a Commissioner of the Federal Communications Commission and as Chair of the Federal-State Joint Board on Universal Service on my experiences working with Chairman Nan Thompson. Without commenting on how the legislature ultimately should structure the state regulatory commission, I am pleased to comment on Chairman Thompson's contributions to federal-state processes. In short, having worked closely with Chairman Thompson over the past year, I have observed first-hand her commitment to the people of Alaska, and to Americans generally. She ably represents their interests on critical matters relating to universal service and the deployment of advanced telecommunications and information services.

The Federal-State Joint Board on Universal Service (Joint Board), which was established pursuant to section 254(a) of the Communications Act of 1934, as amended, advises the FCC in most universal service proceedings that affect state interests. The FCC often formally refers a matter to the Joint Board for its recommendation, and in other cases the state members of the Joint Board file comments or informally advise the FCC. The National Association of Regulatory Utility Commissioners (NARUC) appointed Chairman Thompson to the Joint Board, and the state members of the Joint Board elected her State Chair.

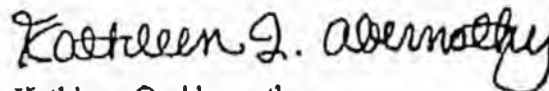
Chairman Thompson has proven an extremely effective leader and valuable colleague. Largely as a result of her organizational skills and hard work, the Joint Board is operating more efficiently than ever before. Even more importantly, from a substantive standpoint, Chairman Thompson has been a leading voice in debates over the administration of the federal universal service support mechanisms. For example, the Joint Board is presently considering whether to modify the list of services supported by the federal mechanisms, how to improve the administration of the federal low-income assistance programs (Lifeline and LinkUp), and how to distribute high-cost support to

non-rural carriers. In each of these proceedings, Chairman Thompson has effectively articulated the interests of Alaska consumers.

In addition to her work on the Joint Board, Chairman Thompson has been active in collaborative federal-state efforts to promote the deployment of broadband services. Former FCC Chairman William Kennard, in conjunction with NARUC, appointed her as Chair of the Joint Conference on Advanced Services, which provides a forum for federal and state commissioners to consider a wide range of crucial policy issues. Congress directed the FCC to take steps to encourage the deployment of advanced services, and we cannot accomplish that pivotal task without working closely with our state colleagues — particularly leaders like Chairman Thompson.

In sum, Chairman Thompson is a dedicated public servant and has been a highly effective partner in federal-state policymaking efforts. I hope to have the opportunity to continue working with her in the telecommunications arena.

Sincerely,



Kathleen Q. Abernathy
Commissioner, FCC

**Before the
House Finance Committee
24 June 2002**

*Testimony of Wesley E. Carson
Alaska Communications Systems*

Mr. Chairman, members of the Committee, on behalf of Alaska Communications Systems I wish thank you for the opportunity to present testimony before the House Finance Committee. My name is Wesley E. Carson. I was involved in founding Alaska Communications Systems and serve as its President & Chief Operating Officer.

With regard to the Legislature's consideration of the proposed re-authorization of the Regulatory Commission of Alaska ("RCA"), we state most emphatically our belief that the regulatory status quo is unacceptable. We have serious concerns about how the RCA's regulatory processes and substantive decisions are impacting the long-term public interest of Alaskans, as well as the economic strength of the State's regulated utilities. Our concerns and those expressed by many other utilities throughout Alaska must be addressed by the Legislature in a thorough and comprehensive manner *before the RCA is re-authorized.*

At this juncture, it should be abundantly clear that it would not be prudent for the Legislature to simply re-authorize the RCA and perpetuate the status quo. No matter how well intentioned the commissioners and staff may be, there are procedural flaws, public policy and legal issues that must first be addressed.

Attached to my testimony are outlines of legal and procedural issues we suggest be included in the Legislature's review of the RCA. Many of our procedural concerns are shared by other regulated utilities in the State. However, there are several telecommunications legal and policy matters that primarily affect ACS at this time. I would like to highlight several of these matters for the Committee.

This testimony will focus on the four ACS local telephone companies that build and maintain the Public Switched Telephone Network, serving 75 percent of the State's population. These ACS companies are: ACS of Anchorage (formerly ATU); ACS of Fairbanks (formerly FMUS); ACS of Alaska (serving Juneau); and ACS of the Northland (serving the highest cost and most remote of our service areas). It is important to distinguish these ACS local telephone companies from the Regional Bell Operating Companies (or RBOCs) that provide service in every one of the other 49 states. Alaska is the only state that is not, and has never been, served by an RBOC.

Verizon, the largest RBOC, owns approximately one-third of the nearly 200 million telephone lines in the country and SBC Communications owns almost another one-third. Together, the RBOCs account for 87 percent of the country's telephone lines. All four of the ACS companies taken together represent about 330,000 telephone lines or less than 2/1000ths of the nation's total. In drafting the Telecommunications Act of 1996, Congress was cognizant of the differences between the RBOCs and small independents such as ACS. Special protections were afforded smaller, and especially "rural" telephone companies. It would appear that the RCA has in some cases viewed ACS as if it were an RBOC, depriving us of protections specifically afforded under the Act to smaller companies.

TELECOMMUNICATIONS LAW AND POLICY

The RCA purports to simply implement State and Federal law and regulations, and to take its policy direction from the Legislature. We believe the RCA creates its own public policy and legal interpretations where necessary to support its positions. And we contend the RCA seeks to promote competition in local telephone service at any cost – to ACS and, in the long-term, the rural Alaskan consumer. We offer the following examples in support of our view.

Anchorage Interconnection Agreement

The Interconnection Agreement between General Communications, Inc. (“GCI”) and Anchorage Telephone Utility (“ATU”), one of the first in the nation, was approved by the Alaska Public Utility Commission (“APUC”) in January, 1997 in Order U-96-89(9). It established the terms for local telephone competition in Anchorage, including the rate at which GCI would lease from ATU unbundled network element (“UNE”) loops. The UNE loop is the telephone circuit or line connecting a customer with the Public Switched Telephone Network. By leasing the UNE loop, GCI is able to use the telephone company’s facilities to connect a customer and charge the customer for retail telephone service.

In the 1997 order, the APUC established a *temporary* UNE loop rate of \$13.85 per month. This rate was intended to be a short-term substitute for, and to be replaced by, a final price based on a cost study in compliance with federal law. In the Commission’s own words, “all prices in the arbitrated interconnection agreement are temporary in nature and will require a full study based upon a cost methodology to be determined by this Commission at a later date.”

ACS of Anchorage, Inc., as the successor to ATU, sought, but failed to obtain, an agreement with GCI for new cost-based rates. ACS then asked the RCA to set new rates in compliance with federal law in January 2000, arguing that the then three-year old rate of \$13.85 was so low as to effectively force ACS to subsidize GCI's competing local telephone service. Undoubtedly, this non-compensatory rate, which gives GCI a cost of goods advantage over ACS, has contributed to making Anchorage the most competitive local telephone market in the nation. It thus explains, in part, the following remark made by RCA Chair G. Nanette Thompson in a speech on July 30, 2001, at the Anchorage Chamber of Commerce:

"My colleagues on other state commissions are astonished to hear that a competitor has captured 35-40 percent of the Anchorage market."

The RCA, on March 6, 2000, opened a docket to set new rates, and expressly recognized that the existing rates were both temporary and "not based upon an accepted forward-looking cost methodology." Nevertheless, the RCA took no action on the open docket. Finally, a year and a half after requesting new forward-looking rates, with no resolution in sight, ACS asked for at least a new "temporary" rate.

The RCA held a hearing during the latter part of 2001 in which ACS submitted extensive evidence supporting a UNE loop rate of \$24.00. ACS requested an "interim and refundable" UNE loop rate increase. This means that in the event a finally adjudicated rate was less than the interim rate, ACS would refund to GCI any overpayment – thereby protecting GCI from economic harm. On the other hand, if the interim rate was set too low, and the finally adjudicated rate was higher than the interim rate, ACS may have no recourse to collect the underpayments from GCI.

At the hearing, GCI's counsel made an oral representation – unsupported by any cost studies submitted in connection with the hearing – that their models could not justify a rate greater than \$14.92. The RCA agreed with GCI, despite the absence of any supporting evidence, and issued an order granting an interim refundable rate of \$14.92.

Two and a half years after requesting new rates in compliance with federal law, and five and a half years after initiating interconnection competition, ACS still has never had an Anchorage UNE loop rate established in compliance with federal law. In fact, ACS has been unable to obtain even a schedule for resolving this matter. And, as our submitted cost studies indicate, ACS is still not receiving adequate compensation for UNE loops.

Termination of ACS Rural Exemptions

Telephone companies classified as “rural” (i.e., serving high cost areas) by the Telecommunications Act of 1996 are exempt from the obligation to interconnect and lease their loops and other facilities to competitors. State Commissions may terminate a rural exemption, but only, according to the Act, if the state commission finds that it is technically feasible, is not unduly economically burdensome, and would be consistent with universal service to do so. The Act recognized the fragile economics of most rural telephone companies and the folly of trying to bring market economics to high cost telecommunications services that cannot exist without significant subsidies.

GCI requested in 1997 that the APUC terminate rural exemptions for Fairbanks, Juneau and other ACS rural service territories. The APUC placed the “burden of proof” on GCI and found that the economics of interconnection competition would be unduly

burdensome on the companies. The APUC therefore ruled that the exemption should be preserved.

GCI appealed the order and the Alaska Superior Court remanded the case back to the APUC with the instruction to place the burden of proof on ACS. The APUC did so, then terminated the rural exemptions of the ACS companies and ordered interconnection with GCI on June 30, 1999. ACS appealed the APUC's decision to the new RCA. Without a hearing, the RCA sustained the termination of the rural exemption.

ACS appealed the termination. In July 2000, the 8th Circuit Court of Appeals, in a decision that was binding on all other circuits, held that the burden of proof must be on the competitor, not the rural telephone company, and the economic burden on the rural telephone company associated with competitive entry must be considered.

Obviously recognizing that these rural exemptions had been terminated in a manner contrary to federal law, GCI appealed to the U.S. Supreme Court to review the 8th Circuit's ruling on these specific issues. The U.S. Supreme Court denied the GCI request, leaving the 8th Circuit's decision on these matters as the law of the land.

Yet the RCA refused to comply with the law, stating: *"The 8th Circuit's ruling on the assignment of the burden of proof in a rural exemption proceeding does not persuade us to revisit that issue here."* This was a clear case of the RCA ignoring a federal decision that did not comport with its own policy to force competition in rural areas. ACS has appealed the matter to the Alaska Supreme Court, where it is now pending review.

The RCA also terminated the exemption for ACS' most rural company, ACS of the Northland, despite GCI's testimony in 1997 and again in 1999 that it was seeking

interconnection only in North Pole and not anywhere else in the ACS of the Northland service territory. Given GCI's position, and the absence of a dispute concerning most of the ACS of the Northland territory, we do not believe any specific evidence was introduced of the impacts of competition on the economic burden or universal service in Northland's small communities such as Seldovia, Ninilchik, Delta Junction and Nenana.

The RCA, in declaring its intent that the rural exemption be terminated for these small communities, stated: "We have a responsibility to carry out the intent of Congress in adopting the Telecommunications Act of 1996, which is *to require competition in the provision of local telecommunications services*" (Docket No. U-97-144, Order No. 12).

We contend that the RCA has a responsibility to carry out the *full intent of the Act*, not just the provisions that support the commission's own agenda. The Act permits a state commission to terminate a rural exemption *only* if there is an affirmative finding that allowing interconnection competition is technically feasible, will not be unduly economically burdensome on the rural telephone company, and is consistent with preserving universal service. And, consistent with the 8th Circuit Court of Appeals decision, the burden of making this case must be on the competitor, not the rural telephone company.

Interconnection Agreements in Fairbanks and Juneau

As a result of the termination of the rural exemption, ACS has been compelled to permit GCI to interconnect and lease UNE loops in Fairbanks and Juneau. In sharp contrast to its dilatory handling of the ACS request for legal UNE loop rates in Anchorage, the RCA very promptly set rates for Fairbanks and Juneau in response to a request by GCI. The actual ACS cost for an average loop in Fairbanks is about \$33.50, based on cost

information submitted by ACS to justify receipt of federal universal service funds. The RCA, however, set a UNE loop price for Fairbanks of \$19.19 – giving GCI a cost of goods that is just 57% of the ACS cost.

At the time it terminated the rural exemptions, the RCA stated that “negotiations regarding appropriate UNE pricing can achieve an acceptable level of economic impact” and promised that it would play a continuing supervisory role to ensure that the “economic burdens borne by the incumbent carrier in a market where local competition is newly introduced are not too great.” The Company testified in the Fairbanks rural exemption proceeding that economic harm would result from a UNE loop rate as low as \$27.30. The RCA flatly rejected the Company’s economic harm argument, declaring: “*That UNE price is unrealistically low.*” The RCA then promptly arbitrated a rate of \$19.19.

Again, we believe the RCA pursued its own policy agenda and was determined to grant GCI a competitive advantage so as to replicate the Anchorage experience in these rural markets. To establish the UNE loop rate, the RCA rejected ACS’ detailed cost study, relied on an improper economic model, and elected to set prices based on Lower 48 costs (with an “Alaska differential” in some cases) rather than *actual ACS costs*.

The RCA relied upon the “Synthesis Model” used by the FCC to allocate Universal Service Funds. As long ago as 1999, the FCC cautioned against using the model for UNE pricing, stating that “[t]he federal cost model was developed for the purpose of determining federal universal service support, and it may not be appropriate to use nationwide values for other purposes, such as determining prices for unbundled network elements” (Tenth Report and Order, 14 FCC Rcd 20156, ¶32 (1999)). The FCC reiterated this position in an order issued just this month, stating: “The Commission has

cautioned against using the results of the Synthesis Model to set rates.” (Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps, Order, FCC 02-161, para 36 (June 5, 2002)).

Furthermore, it is worth noting that the Rural Task Force of the Federal-State Joint Board on Universal Service, co-chaired by Chair Thompson, reviewed the reliability of the FCC’s Synthesis Model and concluded: “[T]he costs generated by the Synthesis Model are likely to vary widely from reasonable estimates of forward-looking costs. As a result it is the opinion of Task Force that the current model is not an appropriate tool for determining the forward-looking cost of Rural Carriers” (Rural Task Force Recommendation to the Federal-State; Joint Board on Universal Service, September 22, 2000, at 18).

Exacerbating the economics of forcing competition in these high cost markets, the RCA also issued an order granting GCI the right to receive the federal universal service fund subsidy – specifically intended by federal law for the support of constructing and maintaining high cost loops – for every customer they take by means of a leased UNE loop. The RCA granted this windfall to GCI, despite the fact that GCI does not build or maintain any loops in these markets. The end result is to discourage investment to build and maintain the high cost networks that connect customers in these areas.

Rate Case Proceedings

Many utilities have expressed concern about the level of effort and resources required to adjudicate rate cases before the RCA. ACS shares this concern. The current ACS rate cases were mandated by the commission as a condition of transferring the certificates of public convenience and necessity to ACS in 1999. By commission order, these rate cases

commenced on July 1, 2001, using information from 2000 financial results. We now anticipate rates sometime in 2003, based on data that will then be three years old. This matter has already cost ACS roughly \$1.8 million and we expect the full proceeding to cost approximately \$3.0 million.

ACS has produced more than 13,000 documents to date, and provided more than 2,500 responses to more than 80 separate discovery requests – the bulk of which came from our chief competitor, GCI. All of this effort is paid for by the consumers, either directly via the “RCC” charge on utility bills or indirectly as recoverable expenses through rates.

Earlier this month, the RCA finally issued a depreciation decision in the rate case proceedings that appears to conflict with the U.S. Supreme Court’s decision this May in Verizon v. FCC. The U.S. Supreme Court criticized attempts to minimize depreciation and slow depreciation rates, yet that is precisely what the RCA has ordered. The depreciation rates established by the RCA for ACS are not only much lower than the rates employed by its competitors, but these rates appear to be significantly lower than any other telephone utility in Alaska. In fact, they appear to be lower than any known depreciation rate for any telephone utility, big or small, anywhere in the country.

This is exactly the opposite result from what one would expect in the most competitive marketplace in the nation where there is heightened pressure to modernize equipment or lose customers. The effect of this decision will be to leave ACS burdened with capital tied up in stranded, obsolete facilities while the competitors invest in newer technologies. Many utilities have expressed fears that testimony against re-authorization of the RCA could result in retaliatory rulings by the commission in the future. We are left to wonder if ACS has been the RCA’s first victim.

The "quid pro quo" for the regulation imposed on the ACS companies should be an opportunity to earn a return on our investment. That would be fair. But the reality is that the RCA can compel us to build and serve – but we do not have a way to assure a return on investment. This is a commission that claimed "sovereign immunity" when ACS sought to have a matter under the Telecommunications Act reviewed by a federal district court. Where is justice when the Commission refuses to be held accountable for their decisions? And why wouldn't state commissioners welcome a review to make absolutely certain the decisions they were making were consistent with the law and promoting the public interest?

The Legislature must be concerned about the impacts these regulatory policies have on ACS and, more importantly, on Alaskan consumers in the long run. ACS and its predecessors have invested substantial funds to build and upgrade the network that connects three-fourths of the State's population with each other and the rest of the world. We must be able to generate adequate financial returns if we are to continue to construct and operate the modern telecommunications facilities that keep Alaskans connected. I can assure you that the capital markets are scrutinizing the impact of this commission's regulatory decisions on the Alaskan markets. We must have access to capital from those markets to continue to invest in the business.

Looking at ACS of Anchorage, we have seen a steady decline in revenues from 1999 to 2001 that is directly proportional to the increase in UNE loops. Over that same period, we have gotten more efficient each year. Our cash expenses per line have decreased. That is one of the benefits of competition. It makes you become more efficient. In fact, it is worth noting that ACS is a more efficient operation than many of our peer group companies. For 2001, annual cash expense per telephone line for ACS of Anchorage was

\$242. The comparative spending per line for Alltel was \$276; CenturyTel was at \$402 and the TDS expense was \$435.

We have continued to invest in the network. We have made these investments with the hope that the RCA would, through our current rate case and the Anchorage UNE proceeding, perm. us to earn a reasonable return on that investment. Thus far, we have certainly been disappointed.

I reference again the recent RCA order reducing our depreciation rates. We were seeking a rate of 9.30 percent, which is comparable to our primary competitor's depreciation rate. Interestingly enough, though, it was GCI arguing against our depreciation rate – not the RCA's Public Advocacy Staff. Staff relied entirely on GCI to formulate a position and the RCA reduced our rate from the existing 7.80 percent to 4.78 percent, which was remarkably close to the GCI recommendation of 4.49 percent.

Am I implying that ACS is concerned about the frequency with which the RCA sides with GCI in such matters? Absolutely. We reviewed commission decisions on disputed issues before the RCA from July 1999 to the present. In those matters where GCI advocated a position, the RCA ruled in GCI's favor 81.3 percent of the time. The commissioners might well tell you they are only implementing the law. I believe an objective review of matters such as the five and one-half year old "temporary" Anchorage UNE loop rate, the disregard of the 8th Circuit Court of Appeals ruling on the burden of proof in a rural exemption proceeding, and the termination of the rural exemption for ACS of the Northland communities without a record establishing the findings required by the Act suggest otherwise.

Recommendations for the Legislature

We believe the legislators must carefully review the current regulatory regime before re-authorizing the RCA. The Legislature must assure that State regulation of utilities promotes the public interest, and that every utility receives fair and open, unbiased, and rational treatment that encourages continued investment in Alaska's infrastructure.

With regard to ACS' specific concerns, we would ask that the Legislature consider how continued investment in the network will be assured in the long run; how capital will be generated to build the local telephone network and pay the expense of operating it; and how the future of telecommunications in Alaska, the state more dependent upon modern telecommunications than any other state in the Union, will be guaranteed. There is great urgency for ACS. The RCA has made significant decisions adverse to ACS that are very difficult to remedy as time goes on. How shall ACS recover revenues lost as a result of years of unlawful interconnection rates or due to forced interconnection agreements in rural areas? There is no time for delay and maintenance of the status quo is not acceptable.

ACS makes the following recommendations to the Legislature relative to the proposed re-authorization of the RCA:

1. *Immediately establish a Legislative Oversight Committee to monitor the RCA's actions and to formulate recommendations for consideration in the 2003 legislative session.* The charter of the Legislative Oversight Committee should be to assure that regulatory policy is aligned with long-term public interest, that regulatory processes are completed in a timely fashion, that due

process is afforded to all, and that substantive law is being applied appropriately.

2. *Use the findings and recommendations of the Legislative Oversight Committee, along with testimony provided in these and related legislative committee hearings, to guide the 2003 Legislature's deliberations of the proposed re-authorization of the RCA.* The Legislature should also utilize the State Telecommunications Study as it considers the appropriate statutory, regulatory and policy directions necessary to guide the regulators in telecommunications matters. We offer the issues set forth on the attachments to this testimony for inclusion in Legislature's deliberations.
3. *Require that the chair of the RCA be rotated so as to spread the responsibilities and prevent a single commissioner from exercising undue influence.* As pertaining to ACS specifically, we are concerned about the appearance of impropriety in Chair Thompson's interactions with GCI; what we perceive as bias against ACS in regulatory processes and decisions; and the possibility of retribution against ACS by the RCA in current and future regulatory orders as a result of ACS testifying before this Legislature. Consequently, and in light of the significant power currently vested in the RCA's chair, we believe it would be appropriate for another commissioner to be appointed to the position of chair and to require that Commissioner Thompson disqualify herself from matters relating to ACS.

Mr. Chairman and members of the Committee, we again thank you for this opportunity. This concludes the testimony of ACS.

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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).

A M E N D M E N T

OFFERED IN THE HOUSE
TO: CSHB 3001(FIN)

BY REPRESENTATIVES MULDER AND
DAVIES

1 Page 3, lines 26 - 28:

2 Delete all material.

3 Insert "APPLICATION OF TIMELINES TO NEW AND EXISTING DOCKETS.

4 The timelines provided in AS 42.05.175, added by sec. 1 of this Act, apply to all new dockets
5 of the Regulatory Commission of Alaska filed on or after July 1, 2002. For dockets
6 commenced before July 1, 2002, the date of July 1, 2002, shall be used as the date of filing for
7 the purpose of applying the timelines in AS 42.05.175."

**TESTIMONY
HOUSE FINANCE COMMITTEE
JUNE 24 2002**

TESTIMONY OF:

**KRISTI CATLIN
DIRECTOR, GOVERNMENT RELATIONS
AT&T ALASCOM**

Good Afternoon Mr. Chairman, and members of the Committee.

I would like to begin by thanking you for the opportunity to testify on the reauthorization of the Regulatory Commission of Alaska. For the record, my name is Kristi Catlin, and I am the Director of Government Relations for AT&T Alascom.

AT&T Alascom supports the reauthorization of the RCA. We support this reauthorization for 4 years, or for the longest period possible, such as the 2 years contained in this committee's draft bill.

With the current state of telecommunications and market forces in this state, not reauthorizing the Commission and allowing it to go into its wind-down year, or even a short reauthorization (for example: a one year reauthorization) may not necessarily serve the best interests of the process. Regulated industries need the attention of the Commission. Critical decisions must be made within the next year, otherwise the telecommunications infrastructure of this state will be in serious jeopardy. For those decisions to be made, it is best for the Commission to have its attention directed toward regulatory matters rather than toward reauthorization, which would resurface in either case again in January. For these reasons, AT&T Alascom supports a minimum reauthorization of 2 years.

The RCA, if it is allowed to do so, is in the best position to deal with complex regulatory issues because of the expertise it has developed in the areas over which it regulates. This expertise does not come easily or quickly. Amassing this expertise takes a great deal of time and effort on the part of the commissioners themselves, but also on the part of commission staff and all affected industry players. If you play a sunset out to its logical conclusion, the prospect of educating another commission is daunting and introduces a great deal of uncertainty for all involved.

This committee has expended a great deal of effort to create language that all interested parties can accept. AT&T Alascom has reviewed the language. With slight modification to include an interexchange (or long distance) carrier in the make-up of the advisory committee, AT&T Alascom supports the amended language. Without an LXC representative, a huge portion of the RCA's regulated market is left out of the discussion. Without an LXC representative on the committee, Alascom could not support the amendment.

Thank you for the opportunity for AT&T Alascom to testify in support of reauthorization of the RCA.

This concludes my comments. I would be happy to entertain your questions.

MEMORANDUM

State of Alaska

Department of Law

TO The Hon. Paul Fuhs
Commissioner
Dept. of Commerce &
Economic Affairs

DATE June 21, 1994

FILE NO. 661-94-0744

TEL. NO. 269-5211

SUBJECT Alaska Public Utilities
Commission Sunset

FROM Jeffrey D. Landry
Assistant Attorney General
Virginia A. Rusch
Assistant Attorney General
Fair Business Practices Section
Anchorage

In your May 18, 1994 memorandum to Attorney General Bruce Botelho, you asked this office to advise you how the legal authority of the Alaska Public Utilities Commission has been affected by the failure of the legislature, during the session just completed, to extend the commission's life. As you pointed out, AS 44.66.010(a)(4) provides that the commission "expires" or "terminates" on June 30, 1994. Under AS 44.66.010(b), the commission "continue[s] in existence until June 30 of the next succeeding year for the purpose of concluding its affairs." In addition, statutory language specifying the continuation of powers that appears in the Sunset Law applicable to licensing boards (AS 08.03.020) does not appear in the Sunset Law applicable to the commission (AS 44.66).

SUMMARY

We conclude that the commission's authority to make decisions and issue orders in accordance with the statutory powers and duties granted and conferred in AS 42.05, AS 42.06 and AS 42.45.100-190 is not withdrawn or diminished during the sunset (or wind-down) year. The commission should comply with the Sunset Law by preparing for the exigency of closing shop; this does not mean, however, that the commission cannot carry on its usual business of regulating utilities and pipelines. Since many of the commission's statutory duties are mandatory, the commission must reconcile performance of those duties with the provisions of the Sunset Law. We advise that the commission should continue to perform its statutory duties to the extent possible while developing a plan to phase out its work by the close of the sunset year. In deciding how to do this, the commission has a considerable amount of discretion.

This conclusion is based on an extensive review of the

legislative history of the Sunset Law¹ and is consistent with advice the Department of Law gave the Alcoholic Beverage Control Board nearly fifteen years ago. In fact, because a number of agencies terminated by the sunset law have continued their business as usual during the wind-down year, we think the view that an agency's authority is not diminished during a sunset year has by now taken on the status of a longstanding interpretation implicitly endorsed and relied upon by the legislature. Finally, this conclusion is consistent with the legislature's apparent intent in fully funding the commission for the coming year without any changes in the statutory duties assigned to the commission.

DISCUSSION

In your request for advice, you express concern that the commission's "authority for any case decided during the 'wind-down' year may be challenged" In fact, the literal language of the sunset legislation applicable to the commission² might suggest that the commission and its power to carry out the

¹ We reviewed approximately twenty-four hours of committee hearing tapes, including the tape recordings of the House State Affairs Committee's hearing on HB1 and CSHB1 in 1977, as well as the House Commerce Committee's hearings and the Senate HESS Committee's hearings on SB 241 in 1979, which among other things amended AS 08.03 by adding section AS 08.03.020. See note 7, below.

² AS 44.66.010 provides in part:

AS 44.66.010. Termination of state boards and commissions. (a) Boards and commissions listed in this subsection expire on the date set out after each:

.
(4) Alaska Public Utilities Commission (AS 42.05.010)--June 30, 1994;

.
(b) Upon termination, a commission listed in (a) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs.

regulatory scheme set out in the Alaska Public Utilities Commission Act, AS 42.05, and the Pipeline Act, AS 42.06, do cease to exist on June 30, 1994. The terms "expire" and "termination" that appear in AS 44.66.010 usually mean "come to an end." See Webster's Third New International Dictionary of the English Language Unabridged 801, 2359 (1971). The words of AS 44.66.010(b) could mean that, during the sunset year, the commission has authority only to "conclude its affairs," that is, to dismantle the agency.³ However, our examination of available legislative history has persuaded us that such an interpretation is clearly contrary to the intent of the legislature.⁴

A. Legislative history

Alaska's version of sunset legislation was considered and adopted during the first session of the 10th Alaska legislature in 1977. Representative Clark Gruening sponsored HB 1, originally entitled "An Act relating to the termination, continuation, or reestablishment of certain agencies, boards and

³ In a memorandum to Tuckerman Babcock, Director, Division of Boards and Commissions, the Department of Law advised that "[t]his one-year period would primarily be for the purpose of concluding matters pending before the Alaska Public Utilities Commission rather than the commencement of new regulatory activity." 1993 Inf. Op. Att'y Gen. (Mar. 31; 663-93-0354).

⁴ The Alaska Supreme Court has said the goal of statutory interpretation is to give effect to the intent of the legislature, with due regard for the meaning the statutory language conveys to others. Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co., 746 P.2d 896, 905 (Alaska 1987). Statutory construction begins with an analysis of the language of a statute construed in view of its purpose. Peninsula Marketing Ass'n v. State, 817 P.2d 917, 920 (Alaska 1991). However, the court does not adhere strictly to the "plain meaning" rule in interpretation of statutes. Lagos v. City and Borough of Sitka, 823 P.2d 641, 643 (Alaska 1991). Even where the statutory language considered alone seems to leave room reasonably for only one meaning, the court may consult legislative history and the rules of statutory construction, realizing that sometimes language that seems clear in the abstract takes on a different meaning when viewed in context. Homer Elec. Ass'n v. Towsley, 841 P.2d 1042, 1044 (Alaska 1992).

Paul Fuhs, Commissioner
Department of Commerce and
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Page 4

commissions, and establishing a procedure for zero-base periodic review and evaluation of their programs and activities." See Attachment 1. Section 2 of this bill proposed to amend Title 44 of the Alaska Statutes by adding a new chapter (AS 44.66), which would have terminated 84 state boards and commissions, including the Alaska Public Utilities Commission. The proposed AS 44.66.010(e) said:

Upon termination, each agency, board or commission shall continue in existence until July 1 of the next succeeding year for the purpose of concluding its affairs. Termination or dissolution shall not reduce or otherwise limit the powers of the agency, board or commission. One year after termination or dissolution each agency, board or commission shall cease all activities.

Committee substitutes for HB 1 modified the original bill in several ways. Most significant to the question addressed here is the reorganization which first appeared in the House State Affairs Committee substitute bill. (CSHB 1 (State Affairs); see Attachment 2). This amendment divided the sunset legislation between two different titles of the Alaska Statutes. Section 2 of the committee substitute proposed to amend Title 8 by adding a new chapter (AS 08.03), which would terminate 22 state boards involved in regulation of professions and occupational licensing. This proposal contained AS 08.03.010(c), which read:

Upon termination, each board listed in (a) and (b) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities. (emphasis added.)

CSHB1 (State Affairs) also proposed, in Section 3, to amend Title 44 by adding a new chapter (AS 44.66). The proposed AS 44.66.010(a) would terminate an additional five boards and commissions. Among these was the Alaska Public Utilities Commission, scheduled for termination on June 30, 1980. The language of AS 44.66.010(b) in the committee substitute was

identical to the statute as it appears today;⁵ it did not contain the two sentences underlined above in AS 08.03.010(c).

On March 29, 1977, Representative Gruening, the prime sponsor of the original bill and author of the committee substitute, testified before the House State Affairs Committee regarding the proposed committee substitute for HB 1.⁶ Gruening described how the committee substitute was intended to work. In his discussion, Gruening used the Alaska Transportation Commission as an example of an affected agency. The Transportation Commission, like the Public Utilities Commission, was on the sunset list in Title 44, not in Title 8. Gruening said, in pertinent part:

Under that, July 1, 1979, the agency would be terminated. But there is written into the bill a grace period, so that if, if the, the agency has a year to wrap up its affairs, do whatever it wants to to carry out the remaining time it has, and that is exactly one year.

Tape of the House State Affairs Committee hearing on CS for HB 1, March 29, 1977 (emphasis and punctuation added).

The amended sunset bill, including the division of the sunset provisions into two different titles of the Alaska Statutes, was passed by the House on April 29, 1977. Two Senate committees then considered the bill, further amending it in ways not relevant here, and the Senate passed it on May 26, 1977. The House concurred in the Senate amendment on May 27, 1977. The Governor signed the bill into law on June 18, 1977. Ch. 149, SLA 1977.⁷

⁵ See note 2, above.

⁶ The Alaska Supreme Court has recognized that "[s]tatements made by a bill's sponsor during legislative deliberations are relevant evidence when the court is trying to determine legislative intent." Beck v. State Dept. of Transp. and Public Facilities, 837 P.2d 105, 117 (Alaska 1992) (citing Madison v. Alaska Dept. of Fish and Game, 696 P.2d 168, 176 (Alaska 1985)).

⁷ In 1979 the legislature reorganized AS 08.03. It repealed AS 08.03.010(c), (d), and (e), re-enacted AS 08.03.010(c), and amended AS 08.03 by adding a new section, AS 08.03.020. Ch. 74, SLA 1979. The new section was identical to the repealed AS

We believe the legislative history reveals that the legislature did not intend to limit the powers and authority of the boards and commissions terminated under AS 44.66.010(a) during the wind-down year. As noted above, the common meaning of the words "expire" and "termination" is to come to an end. But it is obvious from the entire section as contained in both the original and subsequent versions that the legislature did not intend these words to have the meaning of a final ending. The drafters of the original bill did not think it was inconsistent for an agency to "expire," and at the same time, to "continue in existence for a year." The drafters also did not think it was inconsistent for an agency to continue for a year "for the purpose of concluding its affairs," and at the same time to have no reduction or limitation of powers for the one year of continued existence.

Reading these provisions together in an effort to give meaning to all of them, one must conclude that "expiration" under the Sunset Law triggers a period of special scrutiny by the legislature, and that an agency must prepare to phase out its operations, but that its authority to carry out its assigned functions during the sunset year continues undiminished. A board, commission, or agency that "expires" under the Sunset Law would cease its activities only at the end of an additional year. The sponsor of the bill described the one year of continued existence as a "grace period."

The committee substitute that divided the sunset provisions between Titles 8 and 44 of the Alaska Statutes clearly continued the "grace period" concept described above in the Title

08.03.010(c), (d), and (e). In 1980 the legislature amended AS 08.03.020(a) by adding the language "unless the board is continued or reestablished for a longer period under AS 08.03.010." See, e.g., sec. 2, ch. 36, SLA 1980. Otherwise, the legislature has not amended AS 08.03.020 since 1980. The legislature has, however, amended the re-enacted AS 08.03.010(c) continuously since 1980 as it reauthorized the various professional boards. Similarly, the legislature has amended AS 44.66.010(a) on an almost yearly basis since 1978 as it either reauthorized various boards and commissions or created new boards and commissions that became subject to sunset review. AS 44.66.010(b) and (c) have not been amended.

8 portion of the sunset provisions. AS 08.03.020(a).⁸ However, the last two sentences of AS 08.03.020(a) were left out of the sunset provisions in Title 44, which applies to the Public Utilities Commission. AS 44.66.010(b).⁹ In our extensive review of the available legislative history, we found nothing to explain the difference, or to indicate that a distinction was intentionally made. Representative Gruening's explanation of the intended "grace period" during which the Transportation Commission could "do whatever it wants" makes clear that the sponsor of the bill did not contemplate any different treatment of the agencies included in the Title 44 sunset provisions.

B. Interpretation since enactment

In 1979, after the legislature failed to extend the Alcoholic Beverage Control Board, the Deputy Commissioner of the Department of Revenue wrote to the Department of Law asking about the effect of that action on the Board's activities during the sunset year. Like the Public Utilities Commission, the Alcoholic Beverage Control Board is an agency falling under the Title 44 sunset provisions. The Department of Law advised the Board that "there was no intention to strip the regulatory boards terminated under AS 44.66 of their powers during the year in which they are closing out." 1979 Inf. Op. Att'y Gen. (Nov. 9; J-66-103-80). See Attachment 3.

In the seventeen years since the Sunset Law was adopted, at least five different Title 44 boards and commissions, on seven different occasions, have expired under AS 44.66.010(a) and functioned during the succeeding year under subsection (b).

The Alaska Transportation Commission expired on June 30, 1979, functioned during the succeeding year, and was continued by the legislature in 1980. Sec. 1, ch. 115, SLA 1980. (This agency was eventually terminated by an initiative. 1983 Initiative Proposal No. 2, sec. 6.)

The Alcoholic Beverage Control Board also expired on

⁸ Except for internal cross-references reflecting the subsequent reorganization, this statute is identical to the CSHB 1 (State Affairs) version quoted at p. 3.

⁹ See note 2, above.

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June 30, 1979, functioned during the succeeding year, and was continued by the legislature in 1980. Sec. 11, ch. 131, SLA 1980.

The State Board of Parole has expired twice, June 30, 1980, and June 30, 1982, functioned during the succeeding years, and was continued by the legislature in 1981 and 1983, respectively. Sec. 1, ch. 32, SLA 1981; Sec. 1, ch. 20, SLA 1983. This year, the legislature again failed to extend this Board, so it will once again expire on June 30, 1994.

The Alaska Code Revision Commission expired June 30, 1985, functioned during the succeeding year, and was continued by the legislature in 1986. Sec. 1, ch. 121, SLA 1986. This commission expired again on June 30, 1993, and was not extended by the legislature in the session just completed.

The Alaska Women's Commission has a more convoluted legislative history. It expired on June 30, 1987, functioned during the succeeding year, but was not continued by the legislature in 1988. On June 23, 1988, Governor Cowper signed Administrative Order No. 110 establishing the Interim Women's Commission in the Office of the Governor. The order took effect July 1, 1988, so that there would be no time gap between the discontinued Alaska Women's Commission and the Interim Women's Commission. Under the order, the Interim Women's Commission was to remain in existence until the adjournment of the next legislative session. In 1989, the legislature extended the duration of the Interim Women's Commission to June 30, 1989, and reestablished the Alaska Women's Commission, effective July 1, 1989, as a continuation of the Interim Women's Commission. In 1993, the Governor, by Executive Order No. 84, merged the Women's Commission with the Alaska Commission on Children and Youth to create a new Alaska Human Relations Commission in the Governor's Office.

The Alaska Supreme Court has recognized that, in statutory interpretation, some weight should be given to an administrative interpretation, "and especially so if it is longstanding." Nat'l Bank of Alaska v. State, Dept. of Revenue, 642 P.2d 811, 815, n.5 (Alaska 1982). In Matanuska-Susitna Borough v. Hammond, 726 P.2d 166, 178 (Alaska 1986), the court also recognized that the legislature may be assumed to have acquiesced in a longstanding agency interpretation. With regard to this issue, the legislature has done nothing in fifteen years to express disagreement with the Department of Law's 1979

Paul Fuhs, Commissioner
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interpretation that the powers of an agency that expires under Title 44 are not curtailed during the wind-down year. It appears that the legislature has acquiesced in, and even come to rely on, the Department of Law's advice that an agency's powers are not curtailed during a sunset year.

C. Budget and powers

Finally, we think that the authorization of the full budget of the Public Utilities Commission in the FY 95 budget passed by the legislature and signed by the Governor on June 15, 1994 is evidence that the legislature did not intend to reduce or otherwise limit the authority of the commission between July 1, 1994, and June 30, 1995. Spending authority at the full amount requested by the commission would appear unnecessary if the commission's only function during the year is to dismantle itself.

We think the spending authority was intended to support functioning in accord with the commission's statutory powers and authority, AS 42.05 and AS 42.06, which were not repealed by the legislature.

CONCLUSION

We conclude the impact of AS 44.66.010(a)(4) on the Alaska Public Utilities Commission is to impose an additional duty to prepare for closing, but not to eliminate the commission's power to conduct its regulatory functions. The Commission should comply with the sunset law by preparing for the exigency that it may be required to cease all activities, lay off all staff and close its doors at the end of the next fiscal year. We suggest the commission should examine the time demands and completion dates of its current workload, determine what additional investigations can be accomplished by the end of the sunset year, develop a plan to conclude as many matters as possible before the end of the year, and publicize plans to wind down and phase out by June 30, 1995. We emphasize that how to do this is within the commission's discretion since the statutes offer little guidance.

JDL/VAR/rmg

Attachments: 3

cc: Don Schröer, Chairman, Alaska Public Utilities Commission
Bob Lohr, Exec. Dir., Alaska Public Utilities Commission

Paul Fuhs, Commissioner
Department of Commerce and
Economic Affairs
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Kristie Leaf, Director
Boards and Commissions

Lynn Bartlett, Office of the Governor's Chief of Staff

June 19, 2002

Representative Eldon Mulder
State Capitol, Room 3
Juneau, Alaska 99801-1182

Dear Representative Mulder,

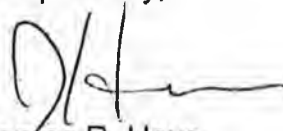
I have had personal experience as a complainant with the Regulatory Commission of Alaska. (U-98-95 on 6/8/97). In order to have my complaint reviewed by the commission I was told that I had to follow the formal compliant process, which entailed hiring attorneys, special expert witnesses, and untold amounts of my personal time. All in order to have the commission do the job they are chartered to do – review the cost basis that a utility uses when imposing rates in a non-regulated market. Ultimately, my complaint was found to be justified and Matanuska Electric Association was ordered to recalculate their rate formula as they inappropriately charged the rate base for costs that are non-recurring and not allowable under the tariff.

My point is simple: the Commission is not properly acting on behalf of consumers. Rather, in my case it appears that the utility in question had to be proven guilty before the Commission would even entertain a docket – all at the cost to the consumer.

I strongly urge you to not reauthorize the RCA. This process is flawed and biased. At the very least I support a complete review of the politics and biases that seem to permeate the Commission's decisions and actions.

My understanding of the current issue in the telephone industry is that ACS, through the failed guise of deregulation, is forced to lease its facilities to GCI at a loss. We have seen what unregulated industry watch dogs have wrought with Enron. Please do what is appropriate to reign in the RCA, or replace it with a true and unpoliticized consumer watchdog that has no other special interest.

Respectfully,



James R. Hays



N A R U C
National Association of Regulatory Utility Commissioners

William M. Nugent, *President*
Maine Public Utilities Commission

David A. Svanda, *First Vice President*
Michigan Public Service Commission

Stan Wise, *Second Vice President*
Georgia Public Service Commission

Constance B. White, *Treasurer*
Utah Public Service Commission

Charles D. Gray, *Executive Director*
Washington, DC Office

June 25, 2002

Hon. Eldon Mulder
Hon. Bill Williams
Co-Chairs
House Finance Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Gentlemen:

In follow-up to my testimony before your Committee yesterday, I offer the following information:

--In response to Representative Croft's question, I understand there are no instances around the country in which a dominant telecommunications carrier has fewer than 85% of the subscribers in its local exchange market(s); there appears to be one major market in which the dominant carrier has fewer than 85% of the business subscribers, but the underlying information is deemed competitively sensitive and unavailable (to me).

--The Maine Public Utilities Commission's spending for the fiscal year which ends 30 June is approximately \$6 million (\$5.3 million from the FY02 budget and \$700,000 from authorized carry-over funds). We have a 57-person staff (including three commissioners) and oversee annual utility billings of more than \$1.8 billion. Therefore, MPUC's expenditures represent approximately one third of one percent of utility billings.

--Maine commissioners' salaries have been pegged to those of superior court judges. The Commission serves as a specialized court; its decisions are directly appealed to the Maine Supreme Court.

Thank you for the opportunity to address your Committee on the matter of the reauthorization of the RCA.

Sincerely,

William M. Nugent, President
and Commissioner, Maine PUC



Homer Electric Association, Inc.

Corporate Office
3977 Lake Street
Homer, Alaska 99603-7680
Phone (907) 235-8551
FAX (907) 235-3313

Central Peninsula Service Center
280 Airport Way
Kenai, Alaska 99611-5280
Phone (907) 283-5831
FAX (907) 283-2394

TELEFAX COVER SHEET

*From the office of the General Manager
Fax (907) 235-3323*

DATE: June 20, 2002

TO: G.Nannette Thompson, Chair, Regulatory Commission of Alaska

FROM: N. L. Story, General Manager
 Susan Saxton, Executive Assistant

Number of pages (including this page) 5 Hard copy to follow by mail.

We are using a Xerox Pro 745. If you do NOT receive all the pages, please contact the sender at telephone (907) 235-8551 or (907) 235-8167.

FAX.FRM/ss (1/99)



Homer Electric Association, Inc.

Corporate Office
3977 Lake Street
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Phone (907) 235-8551
FAX (907) 235-3313

Central Peninsula Service Center
280 Airport Way
Kenai, Alaska 99611-5280
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FAX (907) 283-7122

June 20, 2002

Senator Robin Taylor
Chairman, Senate Judiciary Committee
PO Box 1441
Wrangell, AK 99929

Re: Regulatory Commission of Alaska - Sunset Review

Dear Senator Taylor:

Homer Electric Association, Inc., is an electric cooperative serving most of the 50,000 residents of the Kenai Peninsula with electric power. Homer Electric has been closely following the sunset review of the Regulatory Commission of Alaska. Issues have arisen related to the review that have the potential to directly affect the cost of power to the customers of Homer Electric.

Homer Electric purchases practically all of its wholesale power from Chugach Electric Association under the terms of a wholesale power contract. The contract provides that the rate for power will be set by the RCA.

Homer Electric has a concern that Chugach's communications with the committee have created an erroneous impression about a current rate case in which Homer Electric is a significant party. It is totally inappropriate to create pressure on a regulatory body to rule in favor of one litigant over another by tactics such as these. Homer Electric vehemently objects to any attempt by Chugach to use the legislative review process to inappropriately influence a regulatory body in a pending adjudicatory matter.

Homer Electric has supported the ARECA position regarding the continuation of the Commission. HEA believes that the legislature should indicate the issues that need to be addressed and then give the commission up to two years to address those issues. The issues are complex. Thus, if the commission is extended in this manner the RCA should be given clear direction as to the issues to be addressed. HEA believes that such a course of action will avoid placing an additional and complex burden on a number of legislative committees who already are immersed in the multitude of other pressing issues confronting the State.

Attached is Homer Electric's response to the issues raised by Chugach. Chugach asserts they are losing money. However, CEA is not losing anything. They are just recovering less than what they asked for. Additionally, Chugach's filing does not include six years worth of data in it. It is true that their filing is influenced by what decisions the RCA has made over the last six years, but it is also influenced by what the APUC decided back in 1986 and 1987. It would be as inaccurate to claim that their filing includes data going back 15 years (to 1986), as it would be to assert that it includes these six years of data. Their filing includes one year of data.

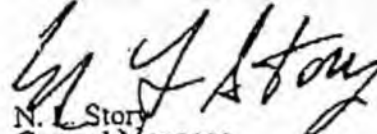
Letter to Senator Robin Taylor
June 20, 2002

Page 2

Thank you for letting Homer Electric present its views.

Sincerely,

HOMER ELECTRIC ASSOCIATION, INC.



N. L. Story
General Manager

F:\GM\NL\LETTERS\002\senate judiciary committee.ltr.wpd
attachment

cc: Senate Judiciary Committee:
Senator Dave Donley
Senator John Cowdery
Senator Gene Theriault
Senator Johnny Ellis

G. Nanette Thompson, Chair, Regulatory Commission of Alaska

Senator John Torgerson
Senator Jerry Ward
Representative Mike Chenault
Representative Ken Lancaster
Representative Drew Scalzi

**Homer Electric Association, Inc.
Comments on Chugach Electric's Testimony
June 19, 2002**

Pending before the Commission at this time is a request by Chugach to increase its rates and to significantly alter its rate structure as regards its wholesale customers. One issue of particular interest to Homer Electric has been the testimony of Chugach Electric Association to the committee and the apparent intent of that testimony to influence the rate case pending before the RCA.

Homer Electric has reviewed the prepared testimony of Chugach general manager Joe Griffith and the letter of board president Bruce Davison. Neither witness represents the views of Homer Electric and neither witness is speaking on behalf of the nearly 20,000 members of HEA. Homer Electric was not consulted concerning the testimony, either before or after it was presented. Homer Electric appreciates this opportunity to present a different perspective on some of the issues that we believe were somewhat distorted by the Chugach testimony.

Chugach's main theme was that Chugach is being ill-used by the RCA in a rate proceeding before that quasi-judicial body, and that this body is taking too long to make decisions in its dockets. The three main complaints made by Mr. Griffith are responded to in the paragraphs below in some detail. But first it is important to bring to the judiciary committee's attention a basic distinction between two very different time lines within a docket.

The first time-line involves the proceedings from the time of filing through the hearing process. Please understand that there is typically more than one party to a proceeding involving a request for a rate increase, and in many cases the positions of the parties are diametrically opposed. There is a certain amount of time that is necessary for adverse parties to accumulate the information necessary to understand and verify the data presented by each other. This process can take either more or less time, depending on the degree of cooperation by the utility that is being requested to make the information available. As discussed below, Chugach has been less than cooperative in this matter. It is important that the time for conducting discovery not be truncated. A 'rush to judgment' which sacrifices the ability of the parties to present accurate and sufficient information to the RCA is not in the public interest. It is crucial to the public interest to allow all the parties access to information necessary to validate whether and to what extent the rate increase requested can be supported.

The other time-line involves the time it takes the RCA to make a decision, once all the parties have had a chance to present their views to the Panel. This is usually done at a hearing. If the parties do their jobs, the information put before the RCA should allow the Panel to make its decision on the requested rate increase within three months. It is true that it has taken the RCA up to six months on occasion. Taking this long to make a decision is unnecessary and the practice should be sanctioned or at least discouraged.

Homer Electric Association, Inc.
Comments on Chugach's Testimony
June 19, 2002

Page 2

Chugach raises three primary problems in its testimony. Homer Electric will respond to them in the order raised.

First, Chugach complains that the Commission took too long to make a decision in a specific case after the hearing was concluded. Chugach expressed concern that it might experience a similar delay in processing its 2001 rate case. Because of the distinction explained above, Homer Electric doesn't view the two situations as analogous. The first matter alluded to by Chugach was the result of a complicated procedural snarl involving the need to address rate issues arising in three separate years. Nevertheless, Homer Electric agrees that the case could have been resolved in a more timely fashion. The Chugach rate case filed in July of 2001 is different. It is the first major litigated rate case involving Chugach since 1987. The Chugach filing presents the RCA and the Chugach customers with significant new and untested issues, affecting potentially 110,000 consumers, including the members of Homer Electric, who is significant party to the case.

On April 15, 2002, CEA made several major changes to its original July, 2001 filing. The changes have required that the proceeding be extended to allow the other the parties time to review and understand these changes. The issues in the case are of such importance and complexity that adequate time for preparation, including discovery, must be afforded all parties to the case.

Next, Chugach argues that the commission does not control its proceedings well. As an example Chugach complains that it has had to produce approximately 57,000 pages of documents to date in its rate case. It is Homer Electric's observation that the volume of documents that Chugach has produced is the result of Chugach's own doing. For example, shortly after making its filing Chugach declined a request by Homer Electric to establish a more informal discovery process which would have provided for meeting between the parties to exchange information related to the docket. Such a process would have avoided the need for the formal request of a large number of the documents. Other examples can be provided. Indeed, one does not have to be too cynical to believe that Chugach has chosen to maximize the amount of pages it has been required to produce, in order to justify complaining to the RCA that it has been abused by the other parties to the docket. As one of the litigants in the process Homer Electric does not want its rights to information restricted. In fact contrary to the complaint of Chugach, from Homer Electric's perspective the commission has in some instances been too restrictive in limiting the discovery process.

Finally, Chugach complains that the commission considers the same issue in multiple proceedings. It is clear to Homer Electric that Chugach can only be referring to a "rate lock" transaction in which Chugach lost over \$ 5.7 million. Chugach is asking all of Chugach's rate payers to pay for these losses in their rates. Homer Electric is investigating the prudence of this transaction and the appropriateness of including its cost in rates. Chugach suggests that the Commission has considered this issue twice before. In fact, the Commission has never made a decision about the prudence of this transaction.

Daniel M. Dieckgraeff
Vice President, Finance and Rates
ENSTAR Natural Gas Company
RCA Reauthorization Testimony
June 2002

❖ Introduction

➤ Self

- Name, Title

➤ ENSTAR Natural Gas Company

- Provides natural gas for heat to about half of Alaska's population
 - Over 109,000 homes and businesses
- Service from Kenai/Soldotna to Houston in Mat Valley to Girdwood & Whittier

❖ Thank you for the opportunity to testify.

❖ 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.

❖ We reviewed the reauthorization bill that passed the House, HB 333.

- 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.

- Would like to see the RCA reauthorized for at least 2 years, prefer 4 or more.
 - Frequent sunset reviews are disruptive
 - Takes time and resources away from the RCA's real business
 - Poses more uncertainty
 - On Utility operations
 - On Financial Markets
 - ◆ Markets want stable Regulatory environment
 - ◆ Uncertainty has negative impact
 - ◆ The current situation is an "issue"
 - Discussions with Analysts
 - Discussions with Lenders
 - Topic of Investor message boards
 - Changes can be proposed and made without "sunsetting" the RCA
- ❖ Many important issues for RCA to deal with:
 - Cook Inlet Gas supply and its effect on gas and electric companies
 - Electric competition, wheeling and inter-utility issues
 - Safe, reliable and economic utility service in remote areas
 - TAPS

- ❖ Would not like to see the Commission abolished and remade as it was in 1999
 - Education process would have to start all over again
 - Wasted time, lost expertise
 - What happens in the mean time?
 - Cases pile up even more
 - New issues continue to pop-up that must be dealt with
 - Any type of "time-out" for new filings would be a real problem for utilities and consumers

- ❖ Summary
 - ENSTAR Natural Gas Company strongly supports the reauthorization of the Regulatory Commission of Alaska.
 - Thank you for the opportunity to testify.

EXECUTIVE SUMMARY

In 1998, the National Regulatory Research Institute (NRRI), under contract, prepared a review of the Alaska Public Utilities Commission (APUC). That report identified a number of areas in need of attention. They included Commissioner-staff and Commissioner-to-Commissioner relations, timeliness, the quality and speed of Commission orders, and management information systems.

In April of 2000, the NRRI began under contract a similar review of the Regulatory Commission of Alaska (RCA), the successor agency to the APUC. Eighteen RCA stakeholders (Commissioners, staff, and external stakeholders) were interviewed. Their names are listed in Appendix 1; their comments are included in Appendix 2.

Overall, it appears that each of the areas identified in the first review as being in need of attention has experienced substantial improvement. Of particular note are the perceptions of Commissioner competence and hard work, the high regard for the Chair, improved morale, the reduction of the backlog in cases, improved information flows, the potential for the newly established Public Advocacy Section to provide effective advocacy and clarify staff roles, the additional authority of the Chair, the potential for the new management information system to even further improve communications, the establishment of an MIS unit, a better balance between due-process concerns and Commission effectiveness, and better external relations.

Given the success so far of the RCA, areas for concern are limited. They include the potential for the high workloads to undermine morale over time, the continued evolution of the PAS and the role of advisory staff, the staffing and role of the Consumer Affairs Section, staff training, the current heavy reliance on the Chairman, and the overall pace of change at the RCA.

BINDERS CONTAIN THE FOLLOWING INFORMATION

RCA TESTIMONY AND EXHIBITS

To

Senate Judiciary Committee Hearings

June 12— 13, 2002

(Revised June 20, 2002)

1. Testimony of G. Nanette Thompson, Chair, RCA
2. Comparative Charts - Agency Performance
3. Comments in Support of Reauthorization of RCA (packet)
4. Alaska Legislative Audit #08-20013-02
5. 1998 NRRI Evaluation of APUC
6. 2000 NRRI Report on RCA
7. Memorandum from Landry, Dept. of Law, re APUC Sunset (6/21/94)
8. AS 44.66.010
9. AS 42.05.711
10. UNE Rate Comparison Matrix
11. 5/20/02 Letter to Senator Taylor from Chair Thompson
12. FY2001 Annual Report (2 Volumes)
13. U-00-115(18)— GHU/CUC
14. R-00-4(2) IXC applications
15. R-02-4 Notice of Inquiry - Small Water & Sewer System Certifications
16. R-00-5(2) Joint Use Regulations
17. U-98-151(8) Crimsonview
18. U-99-141(5) et al. GCI/PTI/TUA/TUNI Cost Model
19. U-97-82(1 1) Order on Rural Exemption
20. U-96-89(8) Anchorage Arbitration Order
21. Reimbursement check for Thompson trip costs (2000)
22. Letter from Thompson regarding emails/correspondence to and from utilities on effect of sunset (6/17/02)
23. U-94-002 (T-HREA) and U-96-1 14 (FMUS) Cost allocation orders; related emails
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HB

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SECTION 1

Testimony before Senate Judiciary Committee

June 13, 2002

G. Nanette Thompson, Chair RCA

Thank you for the opportunity to testify before this committee on the issue of reauthorization of the Regulatory Commission of Alaska. I am Nan Thompson, the Chair of that agency and I am appearing here today with the other Commissioners; Patricia DeMarco, Will Abbott, Bernie Smith and Jim Strandberg. We are all available to answer questions, and they may have comments to offer individually also. You have heard anecdotal information from several utilities. We urge you to carefully consider the agency's record.

The agency has done a great job of working its way out of the mess we inherited from the APUC in 1999. Many of you were in the legislature and participated actively in the effort in 1999 to abolish the APUC, and create a new agency, empowered with new tools and the directive to do its job better. In response to complaints from industry in the late 90's, the National Regulatory Research Institute, an organization that supports the work of state regulatory commissions nationwide, was hired to visit the APUC, analyze its operations and recent improvements. A year after the recommendations were completed, the agency had taken no action to implement them and the legislature stepped in. The position of executive director was eliminated; A public advocacy section was created. The commission was empowered to hire whatever kind of support it needed to resolve cases more effectively. A management information system was funded. The Chair was given administrative authority over the agency's operations. All of these changes were in response to specific problems identified with the agency's operations.

It was not a sunset year for the APUC. The legislature has power in any year to review the operations of any state agency and change its enabling statute as necessary.

We invited NRRI back in February 2000 to see if the problems they identified in 1998 were addressed by the legislature's changes to the enabling

statute, and the resulting commission. The answer was yes. I have copies of their report available for members of the committee. They found that "[E]ach of the areas identified in the first review as being in need of attention has experienced substantial improvements." An impartial body, with expertise in the operations of utility regulatory agencies and experience with the problems the APUC had found that the agency was back on track.

NRRI identified several areas of potential future concerns, and we have followed up on their recommendations. We invited them back to facilitate the development of a new mission statement for the agency. They are invited back again this summer to provide leadership and management training to the staff section heads. We would be happy to invite them back again to analyze and recommendations on some of the issues raised during these hearings, like bringing back an executive director, and looking for more ways to reduce the agency's caseload.

You have heard anecdotal stories about particular cases that have been portrayed as examples of the RCA operating poorly. We can and will address the specific cases referenced in yesterday's testimony. I would also like to share with the committee how the agency handles its workload.

In 1999 when we walked in the door there were more than 500 open dockets. Many had languished without action for years. We set about the task I called "triage." Each commissioner got an equal share of that caseload with the directive to analyze the case and figure out what needed to be done to move it forward. This was a daunting task. Each of us had to work our way through sometime a file, sometimes a file cabinet full of agency record on the case to understand it. Commissioner Abbott referred to this process as being forced to take a drink of water from a fire hose.

There was no uniform, agency-wide method for tracking filings with the agency. Shortly after we began, I uncovered a few hundred more cases, and instituted a system to keep track of all of the agency's work that would allow everyone within the agency easy access to the list of open cases and who within the agency was responsible for each filing.

The agency caseload is now less than 400. From over 700 cases, we have worked our way down to less than 400. It has been a substantial challenge to keep abreast of and adequately process current filings (which average about 450 a month), while slowly working our way through the old dockets. This change in the agency's caseload represents a strong commitment to accomplish the directive of cleaning up the backlog that the legislature gave us in 1999. Evidence of that accomplishment is found by looking at the number of substantive orders the agency has issued each year. That number has more than doubled. I have a chart that graphically demonstrates this accomplishment. All of those orders are available to the public on our website, another change instituted by the RCA. If you have not had the opportunity to visit our website, I encourage you to do so. It is a useful tool to inform the public and allow them access to our process and information filed with us.

One of our important responsibilities is to review tariff changes for economically regulated utilities. Any change to the rates or terms of service must be approved by the RCA. Last year we received 576 such filings. Eighty-five percent of those were resolved within 45 days. Within that 45 day period, the public was notified of the change, staff analyzed the proposed filing and discussed questions with the utility, comments were reviewed, the proposal was reviewed and voted on by the five commissioners and an order was issued. The remaining filings were suspended for further investigation. Filings can be suspended if they raise significant issues that cannot be adequately analyzed in 45 days, for example a large utility's request for a rate increase, or if the comments filed suggest the need for a hearing or further proceeding to build an adequate record for decision.

Another important responsibility is handling consumer complaints. We receive an average of more than 600 a year. Our role is to investigate by contacting the utility, looking at the relevant law and tariff provisions and working to resolve the complaint. The legislative auditor looked at our process and the volume of filings and found that "the agency is quite responsive to consumer

complaints." Of those more than 600 complaints, most are resolved within 15 days. I have a chart that illustrates our track record.

The next chart I want to show you divides the number of complaints by industry. More than 80% of the consumer complaints we get are from telecommunications consumers. Soon after Congress decided there should be competition in that industry in 1996, the agency saw a dramatic increase in complaints. This illustrates how the agency's role changes in competitive markets. We have regulations that expedite the process for approving changes in the rates and terms of service offered in competitive markets. We spend less time monitoring their prices when consumers have real choices and more time addressing the consequences for consumers of competitive markets.

The RCA is a referee. We do not make the laws, we apply them. It is our job to implement the directives reflected in the work of this legislature and Congress that we get in the form of laws. We make sure that those laws are fairly applied. In that process there are winners and losers. Utilities and consumers are not always happy with the results. Our job is to make good decisions based on the information presented to the agency that are consistent with the law. Most of the companies we regulate would agree with what Ms. Caitlin from ATT Alascom said yesterday. They do not always like the result, but they need a referee to make a decision and they believe we have been doing a good job as a referee. Some of those companies testified in the House proceedings, many are sitting in the audience of these hearings, and others have written letters of support.

I have a group of those letters to give you. Some of the letters are from folks who could not come to testify, including Bill Nugent, the President of NARUC, Dave Wirick of the NRRI and Kathleen Abernathy, a current FCC commissioner. Others are from industry, large utilities like Enstar and Waste Management, Inc., and smaller ones like TelAlaska and Colville, Inc. The most extraordinary letter in the packet from my perspective is the one signed by 18 attorneys and consultants that regularly appear in front of us. It still amazes me that this group of people, who spend their lives disagreeing with each other in our

hearing room all agreed on one thing and signed one letter urging the agency's reauthorization.

The epic battles in the electric and phone industries were waged before there was an RCA, and will continue long after us. The public needs us to make sure that their interests are protected while these businesses wrestle with their competitors and would-be competitors. Small utilities need us to make sure their interests are heard in the face of the larger players in the field. We are the agency with the expertise to understand what the utilities are fighting about and why, and make sure it is a fair fight. Any effort to eliminate the agency because you have lost a round of the fight is like killing the referee because he ruled against you. I don't think any of us would like to watch the bloody battle that would ensue with a referee.

If any utility does not like one of our decisions, they have a remedy in the current process. They can ask for reconsideration, and all five commissioners will read the record and make a decision based on what the previous panel saw, and any additional information filed. Our decisions on reconsideration are due within 30 days.

If the utility still thinks that we misapplied the law, they can appeal to the courts. The courts have reviewed ten of the RCA's decisions. In nine out of ten cases that our decisions have been reviewed our decision was affirmed. That means that in nine out of ten cases we correctly applied the law. Mr. Furchott-Roth stated yesterday that you judge our effectiveness by the standard of administrative liberty. He explained that administrative liberty was consistently and fairly applying the law. We meet that test.

Our process has improved and will continue to do so. The way we operate, as an agency is fundamentally different than how the APUC operated. The filings are transmitted and shared electronically. The bottlenecks in issuing orders have been addressed by changes in the process designed to improve the quantity and quality of our orders. With the elimination of the executive director position, section heads have more responsibility and opportunity to develop professionally. We have emphasized training and encouraged supervisors to

address and identify specific needs. Consolidation of the administrative functions in the chair has enabled the other commissioners to focus on the substantive work of the agency, and allowed clearer direction for staff.

We have used the tools given us by the legislature effectively. We adopted regulations to put a dispute resolution process with strict deadlines into place to resolve disputes between telecommunications carriers. We have actively encouraged utilities to work with each other to resolve disputes and avoid the expense and delay of litigation. Chugach Electric is to be commended for resolving a longstanding dispute with its wholesale customers by agreeing to the recommendation of an impartial expert they jointly hired. GVEA, whose rates had not been reviewed for 18 years, faced a monumental task in preparing its filings. They successfully settled their case with the PAS shortly before the hearing was to begin. We encourage parties to actively work to resolve disputes themselves.

The agency process will always be a work in progress. As the markets we regulate, we need to change in response. We have actively sought input from industry in the bench and bar conferences noted by Mr. Yould yesterday. We will continue that effort, and can assign more time to that process if the result of this process is agreement that the commission needs to spend more time on process and less on doing cases. The balance we have struck is based on the legislative priority to clean up the backlog. Our efforts there have been largely successful. If the committee wants specific issues addressed, we can invite NRRRI to return. Review of the agency by representatives of companies with filings pending before the commission for decision would be awkward and inappropriate. We are different than the private sector because we do not have the same control over our workload. We do what the legislature through statute, and the utilities, through their filings, direct. In order to be most useful, an impartial expert that is familiar with our mission and has knowledge of how comparable agencies operate nationwide should do a review.

Our process is designed to produce fair, reasoned decisions.

Because the committee has heard testimony that our process takes too long in some cases, I would like to explain what that process is to give you a context from which you can evaluate those concerns. When we adjudicate disputed cases, we act as a court. Parties have due process rights designed to insure that our decisions are fair. Interested parties have the opportunity to participate by attending hearings and filing comments. We make our decisions based on facts that are in the record that all parties have access to. We do not discuss open dockets with anyone other than staff and each other in any setting that all parties are not a part of.

We make all of our decisions as a group. The commissioners meet weekly to discuss cases that are ripe for decision. The docket managers are responsible for putting the cases on the calendar, and presenting the case for discussion. We openly debate the results. Staff is present if necessary to answer questions and the attorney general is present to answer questions about whether the proposed result is consistent with the laws we operate under. This is a good process that allows us to each bring our individual backgrounds to bear to resolve the difficult issues we face.

After the discussion, the panel members vote, and a drafting assignment is made. Commissioners draft orders or staff and all edited by the paralegals and attorney. They are circulated, and each panel member decides if they agree or not. Sometimes commissioners change their minds when they see the draft. Any commissioner that does not agree with the individual result is free to write a dissenting opinion. This process works to effectively to render group decisions.

The RCA expire on June 30, 2003 if not renewed. That's what the statute says. It goes onto say that "Upon termination the commission shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs."

The Department of Law interprets the law for state agencies. In a June 21, 1994 opinion that I have provided you with a copy of, the AG opines that we have the responsibility to prepare to close our doors at the end of the year. We

must prioritize our caseload, and determine how to best allocate our resources during the final year. As we lose staff who seek more stable employment, we will need to readjust our priorities. I wrote a letter to Senator Taylor last month explaining the agency's approach that I have also provided you with copies of. We will do the best job we can with the resources we have. Even if the legislature and governor come back in January to reauthorize the agency, damage will have been done. We will be unable to stay on top of our current caseload and transition our responsibilities to other agencies.

In conclusion, I would like this committee to consider the vital role that the RCA plays in creating a stable business environment and protecting the interests of utility consumers. The legislature does not need to terminate the agency in order to reform it. As is did in 1999 when the agency was not under sunset review, we as an administrative agency are subject to whatever legislative changes are effected.

The RCA is 100% funded by the Regulatory Cost Charge. When our programs are transferred to other state agencies during and after the wind down year, they will need general fund support.

The RCA plays a vital role in making universal service funding available to telecommunications carriers that serve high cost areas. Without the RCA, these companies face uncertainty as the FCC defines a new process to handle their applications. Delay of this vital source of revenue could be very harmful to these companies.

Our ability to move forward on regulatory dockets would be impaired. A plan to conclude the agency's business by the end of the year is not likely to include time spent working to adopt regulations there will be no agency to enforce.

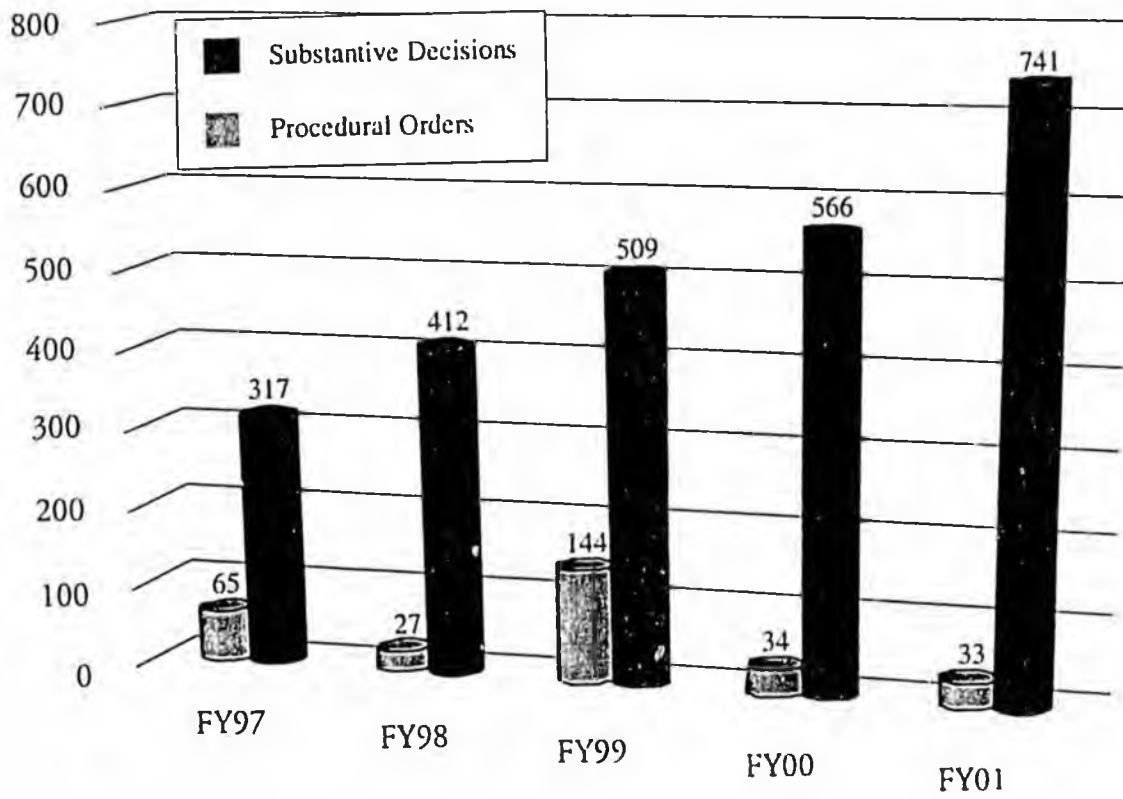
As a referee we will be disabled, and consumers and companies will be forced to resort to the courts where solutions come more slowly and at a greater price.

The RCA has accomplished the legislature's prime objective in 1999, to clear up the backlog and get the agency functioning more efficiently. The

caseload has been dramatically reduced during the last three years, while coping with a steady stream of new filings. We will continue to work with industry representatives on our process, recognizing that the agency must continue to change as the industries that we regulate change.

SECTION 2

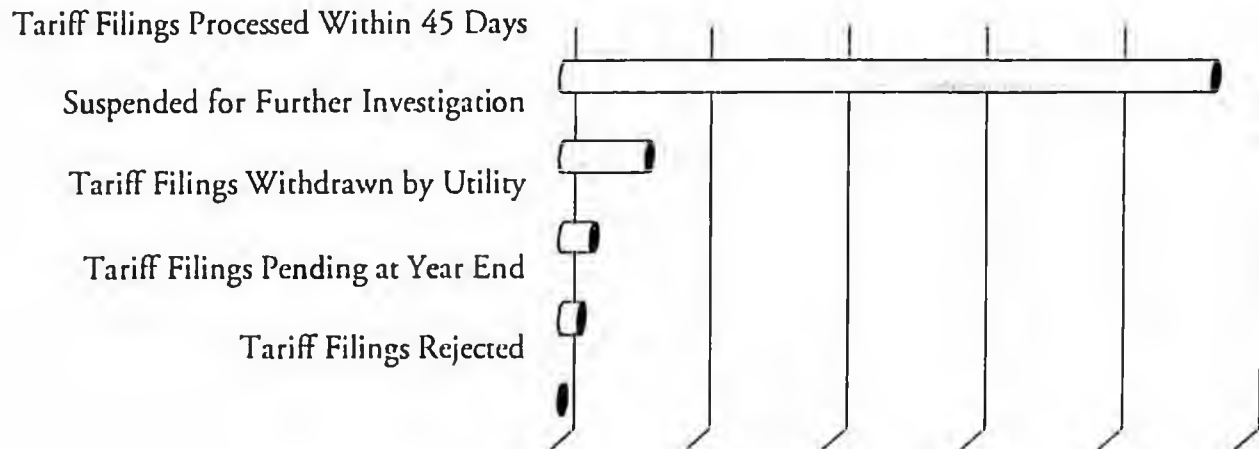
RCA DECISIONS



The RCA focuses on decision-making.
More substantive orders are issued than procedural orders.

Source: Regulatory Commission of Alaska

PACE OF DECISIONS ON RCA UTILITY REQUESTS TO CHANGE RATES OR TERMS OF SERVICE



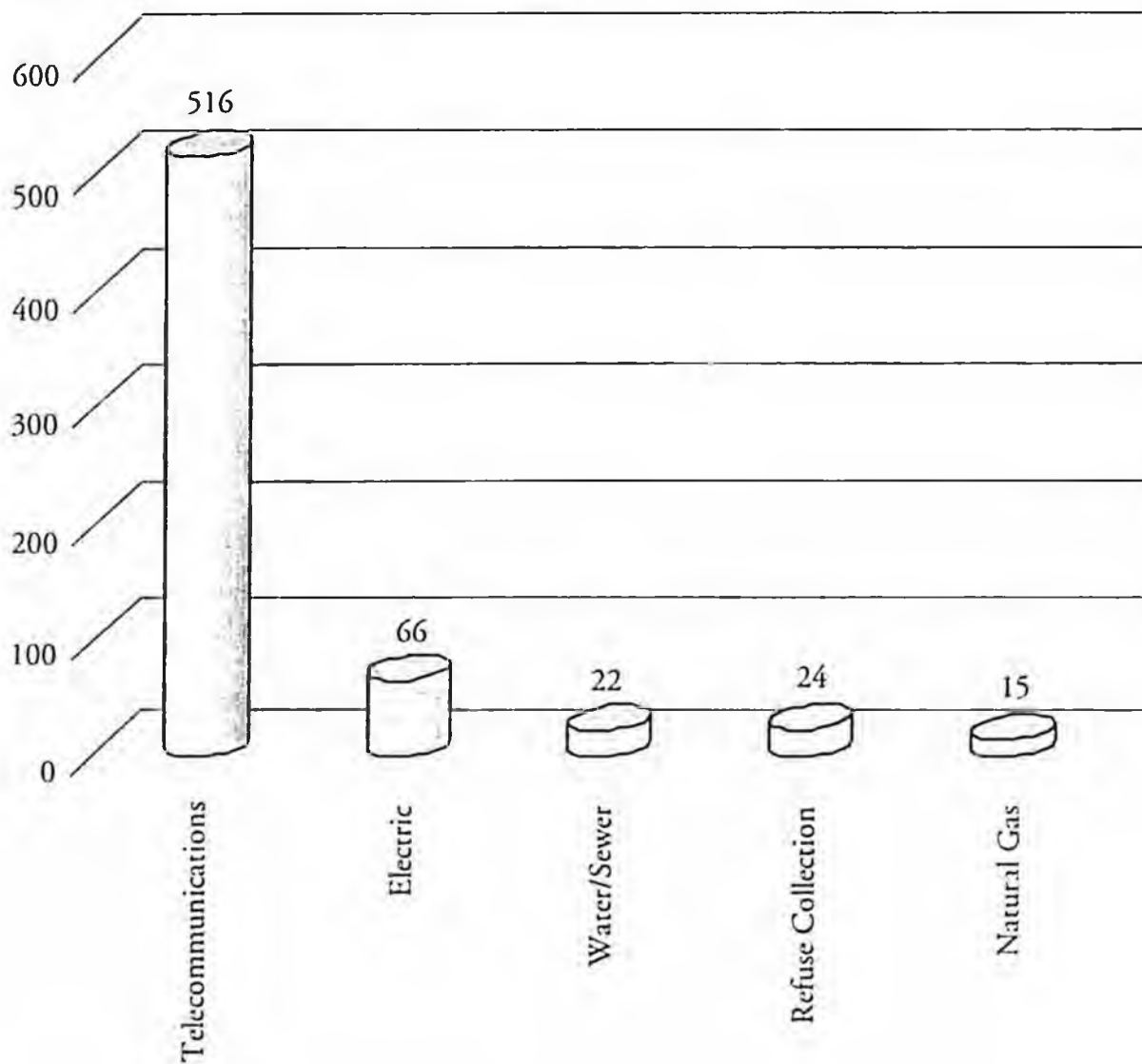
During FY01 there were 576 tariff filings submitted to the Commission. Of these, 475 were processed routinely (generally within 45 days of receipt). Of the remaining filings, 63 were suspended for further investigation, 1 was rejected, 23 were withdrawn, and 14 were pending at year end.

Source: Regulatory Commission of Alaska

CONSUMER COMPLAINTS TO RCA

The Regulatory Commission of Alaska handled 643 complaints between July 1, 2001 and May 28, 2002

Types of Utilities Involved in Consumer Complaints Filed with RCA

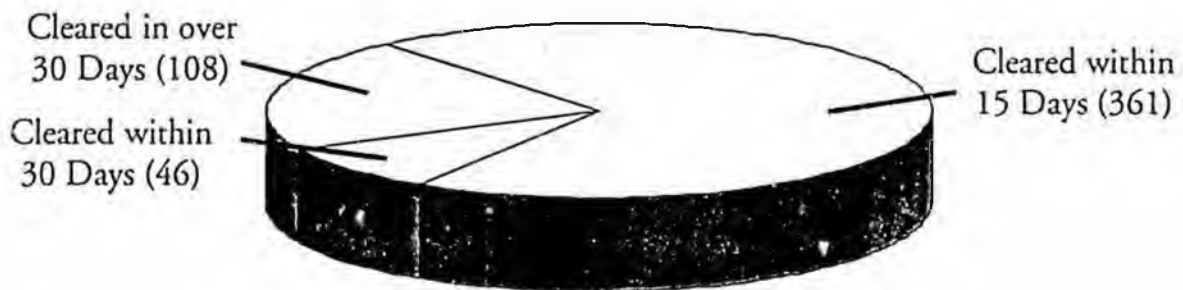


Source: Regulatory Commission of Alaska

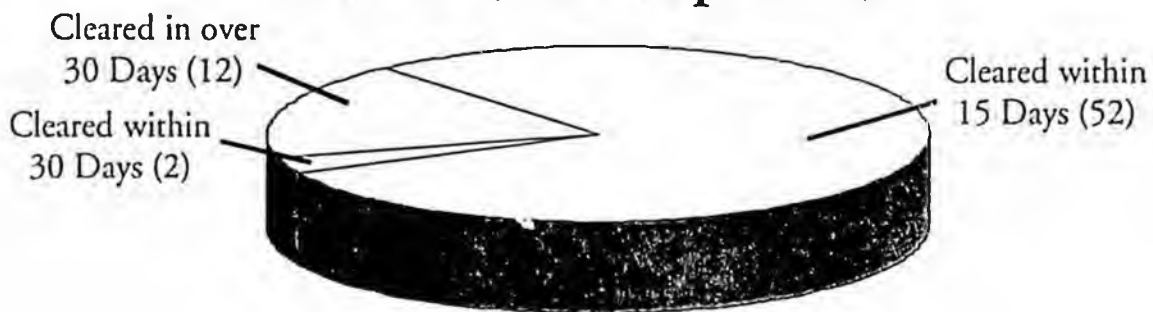
CONSUMER COMPLAINTS TO RCA

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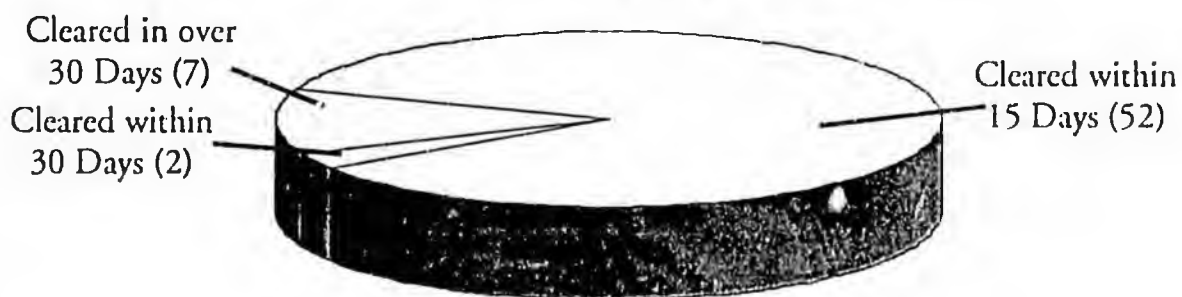
Telecommunications (516 complaints)



Electric (66 complaints)



Other Utilities (61 complaints)



Source: Regulatory Commission of Alaska

SECTION 3

SECTION 3

Comments in support of reauthorization of the RCA

Packet Contents

Date	From
6/10/2002	William M. Nugent, President/Nat. Assoc. of Reg. Commissioners
6/10/2002	David W. Wirick/National Regulatory Research Institute
6/6/2002	Jack Rhyner, CEO/TelAlaska
6/6/2002	Jim Rowe/Alaska Telephone Association
6/5/2002	Kathleen Q. Abernathy, Commissioner/FCC
5/23/2002	Kirk Duncan, Division Mgr/Waste Management of Alaska
5/17/2002	Henry P. Lang, P.E./Lang Consulting
5/17/2002	Don C. Schroer/Former APUC Chairman
5/14/2002	J. Jeffrey Mayhook, Esq.
5/10/2002	Attorneys & Consultants Who Practice Before the RCA (14)
5/10/2002	Mark Helmericks, President/Colville, Inc.
5/6/2002	Michael J. Felix, President/CEO - AT&T Alascom
5/3/2002	Anthony M. Izzo, President/ENSTAR Natural Gas
5/2/2002	Dana L. Tindall, Sr. Vice President/GCI1
5/1/2002	Jim Rowe/Alaska Telephone Association
2/27/2002	Eric Yould, Executive Director/ARECA



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 907 594-0549

Hon. Brian Porter, President
Alaska House of Representatives
716 West 4th 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 bring 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

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

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Fax: 202.898.2213
Webpage: www.naruc.org

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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.

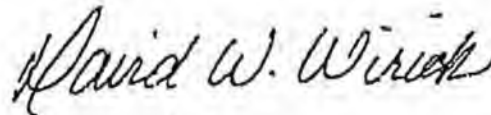
Over the past several years, I have worked onsite with more than 30 state regulatory commissions around the nation. As might be expected, they function at differing levels of effectiveness and efficiency. I regard the RCA to be one of the most professional and hard-working.

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,



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 Thyner, CEO
TelAla. 1

~~Alaska Telephone Association~~

Steve Hamlen
President

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

James Rowe
Executive Director
jrowe@alaskatol.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 empaneling 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

policy matters for rural Alaskans. We will have access to the State Chair when that person is from Florida or Illinois or Missouri, but we have it now.

Thank you for permitting me to share some of these thoughts with you. I look forward to seeing you next week.

Best Regards,

A handwritten signature in cursive script that reads "Jim Rowe". The signature is written in black ink and extends across the width of the page.

Jim Rowe

cc: Members Alaska State Senate



OFFICE OF
THE COMMISSIONER

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 5, 2002

Representative Scott Ogan
State Capitol, Room 3
Juneau, Alaska 99801-1182

Dear Representative Ogan:

I understand that the Alaska Legislature is conducting proceedings concerning the reauthorization of the Regulatory Commission of Alaska. I have been asked to share my perspective as a Commissioner of the Federal Communications Commission and as Chair of the Federal-State Joint Board on Universal Service on my experiences working with Chairman Nan Thompson. Without commenting on how the legislature ultimately should structure the state regulatory commission, I am pleased to comment on Chairman Thompson's contributions to federal-state processes. In short, having worked closely with Chairman Thompson over the past year, I have observed first-hand her commitment to the people of Alaska, and to Americans generally. She ably represents their interests on critical matters relating to universal service and the deployment of advanced telecommunications and information services.

The Federal-State Joint Board on Universal Service (Joint Board), which was established pursuant to section 254(a) of the Communications Act of 1934, as amended, advises the FCC in most universal service proceedings that affect state interests. The FCC often formally refers a matter to the Joint Board for its recommendation, and in other cases the state members of the Joint Board file comments or informally advise the FCC. The National Association of Regulatory Utility Commissioners (NARUC) appointed Chairman Thompson to the Joint Board, and the state members of the Joint Board elected her State Chair.

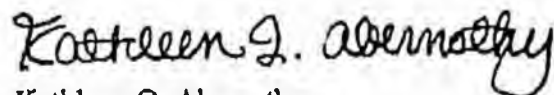
Chairman Thompson has proven an extremely effective leader and valuable colleague. Largely as a result of her organizational skills and hard work, the Joint Board is operating more efficiently than ever before. Even more importantly, from a substantive standpoint, Chairman Thompson has been a leading voice in debates over the administration of the federal universal service support mechanisms. For example, the Joint Board is presently considering whether to modify the list of services supported by the federal mechanisms, how to improve the administration of the federal low-income assistance programs (Lifeline and LinkUp), and how to distribute high-cost support to

non-rural carriers. In each of these proceedings, Chairman Thompson has effectively articulated the interests of Alaska consumers.

In addition to her work on the Joint Board, Chairman Thompson has been active in collaborative federal-state efforts to promote the deployment of broadband services. Former FCC Chairman William Kennard, in conjunction with NARUC, appointed her as Chair of the Joint Conference on Advanced Services, which provides a forum for federal and state commissioners to consider a wide range of crucial policy issues. Congress directed the FCC to take steps to encourage the deployment of advanced services, and we cannot accomplish that pivotal task without working closely with our state colleagues — particularly leaders like Chairman Thompson.

In sum, Chairman Thompson is a dedicated public servant and has been a highly effective partner in federal-state policymaking efforts. I hope to have the opportunity to continue working with her in the telecommunications arena.

Sincerely,



Kathleen Q. Abernathy
Commissioner, FCC

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 99518

[Fwd: RCA Sunset]

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

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sender at rlindquist@wm.com

<<Robert.Lindquist.vcf>>

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

From: Duncan, Kirk-Alaska
Sent: Monday, May 20, 2002 4:24 PM
To: 'Senator Rick Halfo-d@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 Roswood Street
Anchorage, Alaska 99518
tel: (907) 273-2727
kduncan@wm.com

Robert Lindquist < Rlindquist@wm.com > Director of Regulatory Compliance Waste Management of Alaska
--

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2117 S. 46 Drive
 Anchorage, Alaska 99517

Telephone: (907) 574-7446
 e-mail: hplang@lang.com

Post-Net Fax Note	7871	Date	5/17/02
From	Henry P. Lang	To	2
Subject	MEMORANDUM FOR RCH	Ca	
Page 1	2 of 2	Page 2	
Page 2	0160	Page 1	

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 ML&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 ML&P consumer, I have a copy of the Consumer Newsletter, Jan/Feb, 2001 wherein 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 Anchorage in Anchorage, Aug. 6, 1998. And to your Department of Community Planning & Development, April, 4, 2000. (see inc!)

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

Sincerely,

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

Inc1

MEMO 5/17/02

Called Rep. Ethan Berkowitz & Sen Loren Leman today - in special session to continue support of RCH 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 letter to Sakata 4/2/02.

We need to keep the RCH viable to prevent outside interests encroaching in this area. Considered with RCH: LEA, ML&P & MEA. would provide economy of scale etc.

2117 S. 46 Drive
 Anchorage, Alaska 99517

Telephone: (907) 574-7446
 e-mail: hplang@lang.com

Project: KAPP @ EAFB - LOAD FLOOR EXPANSION
 Job # _____

INTERNAL GENERAL COMMUNICATIONS

Telephone Conference Memo Other _____

FROM: Person Henry Lang Firm _____

TO: Person Albert Sakata Firm Sakata Engineering

SUBJECT: Review of Project dated 1/29/02 - Sakata Engr. Services

Background: ADN Jan 19, 02 Restoring the Flow
 The Engr. Arm. P.P. was built by CEA in the 1950's. Randy Hobbs... one of the current owners of the plant, said his company is working with Nations Energy of Chicago to acquire produce power at the plant.

We discussed my review comments regarding questions that may be asked by officers in his presentation. In general, the report reads well. It will require reference of "short circuit" on page 6.
 With RCH out to ML&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 emergency & planned outages?
 How will Ft. Rich. & EAFB handle catastrophic 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 Hobbs etc.

Copy To: This was a "probono" review - a professional courtesy. Bob & Wishes Henry

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 189th Street
Kidgefield, 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.