

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672

1233 SCOMM 47: HOUSE SPEC. COMMITTEE ON TELECOMMUNICATIONS 1985-86

APPENDIX B

General Alaska Statutes on Telecommunications

- AS 11.46.484 to 11.46.740--on the criminal use of a computer
AS 29.48.060 to 29.48.010--on municipal government: public
utility hearing and rates not regulated
under AS 42.05.010-42.05.721
AS 42.05.010 to 42.05.721--on the Alaska Public Utilities Commission
AS 42.20.010 to 42.20.340--on civil and criminal offenses re
eavesdropping, wiretapping, misuse of
party lines
AS 44.21.150 to 44.21.170--on central control of data processing;
Dept. of Administration
AS 44.21.241 to 44.21.255--on the Alaska Council on Science and
Technology
AS 44.21.256 to 44.21.290--on the Alaska Public Broadcasting
Commission
AS 44.21.300 to 44.21.330--on the Division of Telecommunications
Services and Systems

APPENDIX B

TITLE 11

Revisor's notes. — Minor word amendment added paragraph (4) to subsections (a) and (b) in 1984. section (a) and added subsection (c).

Effect of amendments. — The 1984

Sec. 11.46.484. Criminal mischief in the third degree. (a) A person commits the crime of criminal mischief in the third degree if, having no right to do so or any reasonable ground to believe the person has such a right:

(1) with intent to damage property of another, the person damages property of another in an amount of \$50 or more but less than \$500;

(2) the person drives, tows away, or takes the propelled vehicle of another;

(3) having custody of a propelled vehicle under a written agreement with the owner of the vehicle that includes an agreement to return the vehicle to the owner at a specified time, the person knowingly retains or withholds possession of the vehicle without the consent of the owner for so long a period beyond the time specified as to render the retention or possession of the vehicle an unreasonable deviation from the agreement;

(4) the person tampers with a fire protection device in a building that is a public place;

(5) the person knowingly accesses a computer, computer system, computer program, computer network, or any part of a computer system or network; or

(6) the person uses a device to descramble an electronic signal that has been scrambled to prevent unauthorized receipt or viewing of the signal unless the device is used only to descramble signals received directly from a satellite or unless the person owned the device before September 18, 1984.

(b) Except as provided in (c) of this section, criminal mischief in the third degree is a class A misdemeanor.

(c) A person convicted under (a)(2) of this section who has been previously convicted under that paragraph or under former AS 28.35.010 is guilty of a class C felony. (§ 4 ch 166 SLA 1978; am § 1 ch 18 SLA 1979; am §§ 7, 8 ch 143 SLA 1982; am § 2 ch 79 SLA 1984; am § 2 ch 114 SLA 1984)

Revisor's notes. — Paragraph (6) of subsection (a) of this section was enacted as paragraph (a)(5). Renumbered in 1984. Also, minor word changes were made in subsection (a) in 1984.

Effect of amendments. — The first

1984 amendment, in subsection (a), added paragraph (5) and made related technical changes in paragraphs (3) and (4).

The second 1984 amendment, in subsection (a), deleted "or" at the end of paragraph (3) and added paragraph (6).

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§ 11.46.740

Article 4. Forgery and Related Offenses.

Sec. 11.46.505. Forgery in the second degree.

NOTES TO DECISIONS

Applied in *Hemphill v. State*, Ct. App.
Op. No. 315 (File Nos. 7280, 7426, 7597,
7599, 7730), P.2d (1983); *Griffith v.*
State, Ct. App. Op. No. 331 (File No. A-47),
P.2d (1984).

Cited in *Heathcock v. State*, Ct. App.
Op. No. 293 (File No. 6803), 670 P.2d 1155
(1983); *Winfree v. State*, Ct. App. Op. No.
378 (File No. A-156), P.2d (1984).

Sec. 11.46.510. Forgery in the third degree.

NOTES TO DECISIONS

Quoted in *Hemphill v. State*, Ct. App.
Op. No. 315 (File Nos. 7280, 7426, 7597,
7599, 7730), P.2d (1983).

Sec. 11.46.580. Definitions.

NOTES TO DECISIONS

Quoted in *Hemphill v. State*, Ct. App.
Op. No. 315 (File Nos. 7280, 7426, 7597,
7599, 7730), P.2d (1983).

Article 5. Business and Commercial Offenses.

Section

740. Criminal use of computer

Sec. 11.46.740. Criminal use of computer. (a) A person commits the offense of criminal use of a computer if, having no right to do so or any reasonable ground to believe the person has such a right, the person knowingly accesses or causes to be accessed a computer, computer system, computer program, computer network, or any part of a computer system or network, and as a result of that access

(1) obtains information concerning a person; or

(2) introduces false information into a computer, computer system, or computer network with the intent to damage or enhance the data record of a person.

(b) Criminal use of a computer is a class C felony. (§ 3 ch 79 SLA 1984)

Article 6. General Provisions.**Section**

985. Deceiving a machine

990. Definitions

Sec. 11.46.985. Deceiving a machine. In a prosecution under this chapter for an offense that requires "deception" as an element, it is not a defense that the defendant deceived or attempted to deceive a machine. For purposes of this section, "machine" includes a vending machine, computer, turnstile, or automated teller machine. (§ 4 ch 166 SLA 1978)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

Sec. 11.46.990. Definitions. In this chapter, unless the context requires otherwise,

(1) "access" means to instruct, communicate with, store data in, retrieve data from, or otherwise obtain the ability to use the resources of a computer, computer system, computer network, or any part of a computer system or network;

(2) "appropriate" or "appropriate property of another to oneself or a third person" means to

(A) exercise control over property of another, or to aid a third person to exercise control over property of another, permanently or for so extended a period or under such circumstances as to acquire the major portion of the economic value or benefit of the property; or

(B) dispose of the property of another for the benefit of oneself or a third person;

(3) "computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic, optical or magnetic impulses, and includes all input, output, processing, storage, computer software, and communication facilities that are connected or related to a computer;

(4) "computer network" means an interconnection, including by microwave or other means of electronic or optical communication, of two or more computer systems, or between computers and remote terminals;

(5) "computer program" means an ordered set of instructions or statements, and related information that, when automatically executed in actual or modified form in a computer system, causes it to perform specified functions;

(6) "computer system" means a set of related computer equipment, devices and software;

(7) "data" includes a representation of information, knowledge, facts, concepts, or instructions, that is being prepared or has been

TITLE 29

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ding, boroughs g, housing or flood control, shall, subject er or election n the borough rough, within re being exercise to continue shall exercise 44 ch 53 SLA 976; am §§ 4, 59 SLA 1982)

(A) and (B) in substituted "AS 5070" in paragraph.

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ed with public ted. — As a city for which power, it was ordinance concerning businesses or public interest to regulate tion. City of

Anchorage v. Brady's Floor Covering, 13 Alaska 741, 105 F. Supp. 717 (D. Alaska 1952).

Ordinances regulating massage parlors and physical culture studios were within the statutory powers of the Municipality of Anchorage. *Hilbers v. Municipality of Anchorage*, Sup. Ct. Op. No. 2084 (File No. 4296), 611 P.2d 31 (1980).

Council has unlimited discretion in licensing vehicles for hire. — A former, similar provision did not set forth any rules or regulations under which a person was entitled to a license from the city council for the use for hire of a motor vehicle. It simply left it to the unbridled discretion of the town council to refuse or grant an application for such a license. *Town of Fairbanks v. Mabae*, 11 Alaska 476 (1948).

And in approving changes of business locations. — A former, similar provision failed to lay down any regulations as to when a person would be entitled to have his application for change of business location approved by the town council. The granting or refusal of such a change was left to the unrestricted discretion of the city council. *Town of Fairbanks v. Mabae*, 11 Alaska 476 (1948).

Power to license does not include power to prohibit by excessive fee. — Under a power given to license and regulate under a former, similar provision, an

ordinance could not practically prohibit the business by requiring an excessive license fee. *Town of Valdez v. Bell*, 6 Alaska 109 (1918).

Additional liquor license may menace health and safety. — With 12 liquor establishments in the vicinity of the place chosen by an applicant for the exercise of his license, it could easily have been that additional liquor stores in that vicinity would not have been for the good of the people of the city and would have been a menace to their health and safety under the terms of a former, similar provision, so that council was authorized in not passing a resolution approving his application. *In re Kaye*, 11 Alaska 556 (1948).

Landing and take-offs of airplanes may be prohibited as endangering public safety. — Under a former, similar provision, a town had a right to prohibit the use of its property for landing and take-offs of airplanes inasmuch as that was greatly endangering the public safety. *Seltenreich v. Town of Fairbanks*, 13 Alaska 582, 103 F. Supp. 319 (D. Alaska 1952), *aff'd*, 14 Alaska 568, 211 F.2d 83 (9th Cir.), *cert. denied*, 15 Alaska 272, 348 U.S. 887, 75 S. Ct. 206, 99 L. Ed. 697 (1954).

Applied in *Cremer v. Anchorage*, Sup. Ct. Op. No. 1579 (File No. 3597), 575 P.2d 306 (1978).

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 423 et seq. 62 C.J.S., Municipal Corporations §§ 132, 218, 307, 590.

Conflict between statutes and local regulations as to automobiles, 21 ALR 1186; 64 ALR 993; 147 ALR 522.

Public regulation of dry cleaning and dyeing establishments, 49 ALR 110; 128 ALR 678.

Municipal regulation of sale of poisons, drugs or medicines, 54 ALR 735.

Validity of ordinance prohibiting or regulating solicitation of patronage for hotels, roominghouses, etc., 121 ALR 275.

Use beyond municipal limits of municipal equipment for extinguishment of fires, 122 ALR 1158.

Power to require closing of place of amusement or public assembly because of fire hazard, 140 ALR 1048.

Validity of municipal regulation of aircraft flight paths or altitudes, 36 ALR3d 1314.

Validity and construction of municipal ordinances regulating community antenna television service (CATV), 41 ALR3d 384.

Applicability of zoning regulations to waste disposal facilities of state or local governmental entities, 59 ALR3d 1244.

Sec. 29.48.037. Extraterritorial jurisdiction. (a) A municipality may provide parks, roads (including ice roads), trails, playgrounds, emergency medical services, cemeteries and airports outside its boundaries, subject to AS 29.33.010, and may regulate their use and oper-

ation. A regulation adopted under this section must state that it applies outside the municipality.

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities. (§ 2 ch 118 SLA 1972; am § 2 ch 100 SLA 1975; am § 5 ch 78 SLA 1978)

NOTES TO DECISIONS

Section inapplicable to streets connecting different portions of city. A former, similar provision, merely provided for the building of roads and trails outside of town limits, and had no reference to the building of streets connecting two different portions of the town or city. *Town of Ketchikan v. Zimmerman*, 4 Alaska 336 (1911).

Power granted does not deprive city

of other powers. — There was no reason that the grant to the council of power to extend roads and trails from its limits to certain points without its limits under a former, similar provision in any manner deprived the council of any of the implied or necessary powers which it would have enjoyed, in the absence of any such express grant in the charter. *Town of Ketchikan v. Zimmerman*, 4 Alaska 336 (1911).

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 227, 228, 436.

62 C.J.S., Municipal Corporations, § 141.

Sec. 29.48.040. Municipally-owned utilities. A municipality owning or operating utilities may extend service to adjacent areas outside its municipal limits. For that purpose the municipality may acquire, maintain and operate utility facilities together with necessary real property interests in real property outside its limits. This section applies to home rule and general law municipalities. (§ 2 ch 119 SLA 1972)

NOTES TO DECISIONS

A city was authorized to sell and distribute electrical energy to adjacent districts, areas, or localities located within a reasonable distance from the limits of the city under a former, similar provision. *Chugach Elec. Ass'n v. City of Anchorage*, Sup. Ct. Op. No. 407 (File Nos. 705, 706), 426 P.2d 1001 (1967).

But city is not permitted to extend system beyond settled area. — It was never intended by the use of the term "adjacent" in a former, similar provision to

permit a municipality to leapfrog a settled area, particularly where such area was, from all appearances, a part of the metropolitan area, and extend its distribution system into the territory beyond. *Chugach Elec. Ass'n v. City of Anchorage*, 13 Alaska 747, 106 F. Supp. 6 (D. Alaska 1952), aff'd, 15 Alaska 70, 214 F.2d 110 (9th Cir. 1954).

Although city may extend system to noncontiguous area beyond unsettled area. — Under a former, similar provision

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a municipality was authorized to extend its distribution system into any noncontiguous area within a reasonable distance of its corporate limits, provided that the intervening territory was unsettled and uninhabited or virtually so. Chugach Elec. Ass'n v. City of Anchorage, 13 Alaska 747, 106 F. Supp. 6 (D. Alaska 1952), aff'd, 15 Alaska 70, 214 F.2d 110 (9th Cir. 1954).

Purchasing land beyond limits to divert stream from reaching city. — Since AS 29.10.117 (now AS 29.48.030) gives municipalities the express right to provide for the location and construction of sewers, aqueducts, and watercourses and widen, straighten, strengthen or change the channels of streams and watercourses,

such a grant of power would be idle if the city could not purchase ground outside of the incorporated limits and divert a stream beyond its limits and prevent it from reaching the incorporated limits, if such a course should be deemed advisable, rather than to confine its activities to the city limits proper. Town of Seward v. Margules, 9 Alaska 354 (1938).

If authority had not been expressly given by a former, similar provision for a city to purchase land outside of the incorporated limits and to divert a stream beyond its limits and prevent it from reaching the incorporated limits, such authority was necessarily implied. Town of Seward v. Margules, 9 Alaska 354 (1938).

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 560 et seq. 63 C.J.S., Municipal Corporations, §§ 1050 to 1052.

Municipality's power to sell, lease, or

mortgage public utility plant or interest therein, 60 ALR2d 595.

Power of municipality to sell, lease, or mortgage public utility plant or interest therein, 61 ALR2d 595.

Sec. 29.48.050. Franchises and permits. (a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges, for the construction, operation and maintenance of bus transportation systems and public utilities not regulated under AS 42.05 and may permit them the use of streets and other public places under regulations prescribed by ordinance.

(b) A franchise is not valid until it has been submitted to the qualified voters of the city or borough area outside cities in which it applies, and at least 55 per cent of the votes cast are in favor of the franchise. At least 30 days notice of a franchise referendum election shall be given in the same manner as is provided for notice of regular municipal elections, and the notice shall specify the purpose of the election. The ordinance granting a franchise shall provide for its submission for ratification to the qualified voters of the city or borough area outside cities at either a regular or special election, and the result of the election shall be canvassed publicly by the council or assembly and spread upon the records of the minutes and the result declared and certified in the same manner as in a regular election.

(c) Public utilities regulated under AS 42.05 have the right to use the streets and other public places, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the assembly or council requires. A dispute as to whether fees, terms, conditions, or exceptions are reasonable shall be decided by the Alaska Public Utilities Commission. (§ 2 ch 118 SLA 1972)

NOTES TO DECISIONS

Power to provide for utilities authorizes binding grant of franchise. — Power granted to a municipality to provide for water supply and lights under a former, similar provision undoubtedly carried with it the power to grant a franchise to an electric light company for a limited period of time to use the municipal streets for poles and wires and the transmission of electricity, and the franchise, if accepted, became binding upon both the city and the company, not to be revoked or repealed, unless the power to repeal had been clearly and unmistakably reserved. *Alaska Elec. Light & Power Co. v. City of Juneau*, 294 F. 864 (9th Cir.), cert. denied, 266 U.S. 601, 45 S. Ct. 90, 69 L. Ed. 482 (1924).

Meaning of "franchise". — While the grant of a right to use a public wharf, being a privilege conferred by public authority, might be a "franchise" within the broad and general meaning of that word, it was not a "franchise" within the meaning of a former, similar provision. As there used, the word was limited to include only privileges granted to a private person to construct and maintain public services. *Femmer v. City of Juneau*, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

This section draws a distinction between franchises and permits to use. *Femmer v. City of Juneau*, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938), decided under former, similar law.

Permits need not be given by separate ordinances. — A former, similar

provision required only that permission to use might be given under, i.e., in accordance with, "rules and regulations" established by ordinance, not that each separate permit had to be the subject of an ordinance. *Femmer v. City of Juneau*, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

But franchisees must be approved by electorate. — Both in the case of the grant of a franchise to construct and maintain public utilities and in the case of a sale, lease, exchange or similar disposal of public property, approval of the electorate was necessary to validate the transaction under a former, similar provision. *Femmer v. City of Juneau*, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

A certificate of public convenience and necessity did not grant a monopoly, in relation to a city's electrical utility system, to furnish electrical energy throughout the service areas which had been allotted. *Chugach Elec. Ass'n v. City of Anchorage*, Sup. Ct. Op. No. 407 (File Nos. 705, 706), 426 P.2d 1001 (1967).

A certificated utility is not insulated from competition by municipally owned and operated utilities under the Alaska Public Service Commission Act (AS 42.05). *Chugach Elec. Ass'n v. City of Anchorage*, Sup. Ct. Op. No. 407 (File Nos. 705, 706), 426 P.2d 1001 (1967).

Applied in B-C Cable Co. v. City of Juneau, Sup. Ct. Op. No. 2112 (File No. 4587), 613 P.2d 616 (1980).

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 140 et seq. 64 C.J.S., Municipal Corporations, § 1726.

Motive of council passing ordinance as

to franchise as affecting validity thereof, 32 ALR 1525.

Forfeiture of street railway franchise for breach of condition, 34 ALR 1420.

Municipality's liability in damages for refusal to grant franchise, 37 ALR2d 694.

Sec. 29.48.060. Public utilities rates. The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a municipally owned utility not regulated under AS 42.05 and may regulate and provide what is a reasonable deposit for meters and security for service to be given, provided that interest is paid on the deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return on invested capital. (§ 2 ch 118 SLA 1972; am § 1 ch 136 SLA 1980)

Cross reference certain unregulated utility by municipality, 42.05.711 (1).

Effect of amendment subsec.

Applicability. — vision was intended franchises thereafter franchises then in Light & Power Co. F. 864 (9th Cir.), 601, 45 S. Ct. 90. Town of Cordova Alaska 196 (1937).

The fact that an the commission's other entity was n as a factor in the of Fairbanks v. Comm'n & Wire Sup. Ct. Op. No. 20 P.2d 493 (1980).

City may not co fix rates of utility contract away its time to time charged by private in furnishing public was prohibited by sion and by AS 21 (now 29.48.070 and City of Juneau, 9 Alaska 315 (9th Cir. 1938).

But may contr: own services. — sion and AS 29.10. 29.48.070 and 29 upon the power contractually the user of a municipa. *Femmer v. City of Juneau*, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

Rates may not

Collateral refer: 2d, Municipal Corp. Other Political Subdiv. 62 C.J.S., Municipal Corporations, § 292; 63 C.J.S., § 979.

Discrimination and that outside

Cross references. — For exemption of certain unregulated utilities from regulation by municipalities, see AS 42.05.711 (1).

Effect of amendments. — The 1980 amendment substituted "municipally

owned utility" for "public service association, corporation, or individual" following "inhabitants by a" near the middle of the first sentence, and substituted "is" for "be" preceding "paid on the deposit" near the end of the first sentence.

NOTES TO DECISIONS

Applicability. — A former, similar provision was intended to refer, not only to franchisees thereafter to be granted, but to franchisees then in existence. *Alaska Elec. Light & Power Co. v. City of Juneau*, 294 F. 864 (9th Cir.), cert. denied, 266 U.S. 601, 45 S. Ct. 90, 69 L. Ed. 462 (1924); *Town of Cordova v. Alaska Pub. Util.*, 9 Alaska 196 (1937).

The fact that an entity was subject to the commission's jurisdiction while another entity was not may not be regarded as a factor in the first entity's favor. *City of Fairbanks v. Alaska Pub. Util. Comm'n & Wire Communications, Inc.*, Sup. Ct. Op. No. 2079 (File No. 3977), 611 P.2d 493 (1980).

City may not contract away power to fix rates of utilities. — A city could not contract away its power to fix, and from time to time change, the rates to be charged by private organizations engaged in furnishing public services. Such action was prohibited by a former, similar provision and by AS 29.10.147 and 29.10.150 (now 29.48.070 and 29.48.080). *Femmer v. City of Juneau*, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

But may contract as to rates for its own services. — A former, similar provision and AS 29.10.147 and 29.10.150 (now 29.48.070 and 29.48.080) had no effect upon the power of a city to fix contractually the rates to be charged a user of a municipally owned public utility. *Femmer v. City of Juneau*, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

Rates may not be irrevocably fixed.

— There was not necessarily included in the power of a municipality to provide lights for a city under a former, similar provision, the power to enter into a binding contract whereby the rates to be charged by a public utility corporation would be irrevocably fixed. *Alaska Elec. Light & Power Co. v. City of Juneau*, 294 F. 864 (9th Cir.), cert. denied, 266 U.S. 601, 45 S. Ct. 90, 69 L. Ed. 462 (1924).

All the operator of a public utility was entitled to was a reasonable return on his net capital investment under a former, similar provision, represented by property actually used and useful in the public service, and then only provided that his operation was efficient and economical. *Pichotta v. City of Skagway*, 12 Alaska 42, 78 F. Supp. 999 (D. Alaska 1948).

Meaning of "invested capital." — "Invested capital," as used in a former, similar provision, meant the initial investment, regardless of subsequent changes in ownership, plus capital additions and minus accrued depreciation. *Pichotta v. City of Skagway*, 12 Alaska 42, 78 F. Supp. 999 (D. Alaska 1948).

The term "invested capital" as used in a former, similar provision should not have been construed to mean fair value, nor was the utility entitled to the benefit of any appreciation in value, nor should the term have been construed to mean that which was paid for a utility by the last purchaser. *Pichotta v. City of Skagway*, 12 Alaska 42, 78 F. Supp. 999 (D. Alaska 1948).

Collateral references. — 56 Am. Jur. 2d, *Municipal Corporations, Counties, and Other Political Subdivisions*, § 567 et seq. 62 C.J.S., *Municipal Corporations*, § 292; 63 C.J.S., *Municipal Corporations*, § 979.

Discrimination between property within and that outside municipality or other

governmental district as to public service or utility rates, 4 ALR2d 595.

Variations of utility rates based on flat and meter rates, 40 ALR2d 1331.

What land is contiguous or adjacent to municipality so as to be subject to annexation, 49 ALR3d 589.

Sec. 29.48.070. Hearing for regulation of utilities rates. If the assembly or council considers it advisable to regulate, change, or fix the rates to be charged by a public service corporation, association or individual not regulated under AS 42.05, it shall order a hearing to be held before the governing body at a time and place specified. Notice of the hearing shall be given by at least one publication in a newspaper of general circulation distributed within the municipality or, if no newspaper of general circulation is distributed within the municipality, notice shall be given by posting a notice in three public places within the city or borough area outside cities receiving the utilities services and by serving written notice upon the corporations, associations and individuals whose rates are to be regulated, fixed, or changed in the same manner that summonses are served. The notices shall be published or posted and served at least 15 days before the hearing. (§ 2 ch 118 SLA 1972)

Collateral references. — 64 Am. Jur. 2d, Public Utilities, §§ 79 to 87, 101 to 109.

73B C.J.S., Public Utilities, § 15 et seq. Regulation of municipal utility rates, 76 ALR 852; 127 ALR 94.

Sec. 29.48.080. Right to participate and compel testimony. At a hearing held under AS 29.48.070, all public service corporations, associations, or individuals affected by or interested in the matters to be heard may be present and may be represented by counsel. The municipality and all interested parties may produce witnesses and examine them and introduce evidence to prove or disprove the facts in issue or matters to be established or inquired into at the hearing. All parties may compel the attendance of witnesses, and subpoenas requiring attendance shall be issued by the municipal clerk under the clerk's hand and the seal of the municipality. Subpoenas duces tecum requiring the production of books and papers shall be issued in like manner upon request. If a person fails to obey a subpoena, the party at whose request the subpoena issued may petition the superior court for an order compelling the attendance of the disobedient witness or the production of the books or papers referred to in a subpoena duces tecum. The superior court shall order the witness to appear and testify or compel the production of the books or papers. A violation of the order of the court is a contempt of court. If a witness appears and refuses to testify concerning a matter material to the facts inquired about at the hearing and to establish or determine which the hearing was had, an application may be made to the superior court to compel the witness to testify and answer questions put to the witness concerning the matters inquired about, and the court shall make an order compelling the witness to testify. Violation of the order is contempt of court. (§ 2 ch 118 SLA 1972)

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Sec. 29.48.090. Further proceedings. A hearing under AS 29.48.070 shall begin at the time stated in the notice but may be continued from time to time. At least a quorum of the assembly or council shall be present at the hearing. At the conclusion of the hearing the parties interested may make such arguments before the assembly or council, either in person or by attorney, as they consider proper, touching the matters at issue, and thereafter the assembly or council shall proceed to regulate and fix the rates by ordinance. The date upon which the rates fixed or regulated take effect shall be stated in the ordinance and shall be at least 10 days after passage and approval of the ordinance. (§ 2 ch 118 SLA 1972)

NOTES TO DECISIONS

Courts may review rate orders. — There was no statutory provision for appeals from rate orders, but it appears to be settled that, where a constitutional right was involved, the court could determine the issue upon its own record and the evidence adduced before it, even though it had not been presented to the regulatory body. *Pichotta v. City of Skagway*, 12 Alaska 42, 78 F. Supp. 999 (D. Alaska 1948), decided under former, similar law.

Rules governing review by court. — In its consideration of the mass of evidence produced in appeals from rate orders, the court was aided by well-settled rules governing litigation of this kind, namely: (1) That the orders of a regulatory body are

presumptively valid, reasonable and correct; (2) that the burden of proof on the issue of confiscation is on the one raising it, and that nothing less than clear and convincing proof will justify judicial interference; (3) that the court cannot substitute its judgment for that of the authority whose action is under review upon a question as to which there is room for a difference of intelligent opinion. *Pichotta v. City of Skagway*, 12 Alaska 42, 78 F. Supp. 999 (D. Alaska 1948), decided under former, similar law.

There was a strong presumption in favor of the rates found by the council. *Graff v. Town of Seward*, 20 F.2d 816 (9th Cir. 1927), decided under former, similar law.

Sec. 29.48.100. Application. (a) In the case of conflict between the provisions of AS 29.48.050 — 29.48.070 and the provisions of AS 42.05 as to the regulation of rates of a utility, the provisions of AS 42.05 shall prevail.

(b) AS 29.48.050 — 29.48.100 apply to home rule and general law municipalities. (§ 2 ch 118 SLA 1972)

Sec. 29.48.108. Creation of historical district commissions. The governing body of a general law or home rule municipality may establish a historical district commission or designate the planning and zoning commission or itself to serve as the historical district commission. (§ 2 ch 139 SLA 1977)

Sec. 29.48.110. Establishment of historical districts. (a) In addition to existing municipal authority providing for the preservation, protection, and maintenance of historic sites, the local historical district commission established under AS 29.48.108, in consultation with the Historic Sites Advisory Committee within the Department of Natural Resources, may establish historical districts within the boundaries of the municipality.

TITLE 42

Alaska Statutes

Title 42. Public Utilities and Carriers.

Chapter

- 05. Alaska Public Utilities Commission Act (§§ 42.05.010 — 42.05.721)
- 06. Pipeline Act (§§ 42.06.140 — 42.06.640)
- 07. Alaska Transportation Commission Act (§§ 42.07.011 — 42.07.191)
- 10. Alaska Motor Freight Carrier Act (§§ 42.10.010 — 42.10.430)
- 20. Telegraph and Telephone Systems and Cable Lines (§§ 42.20.010 — 42.20.340)
- 30. Miscellaneous Regulations Governing Public Utilities and Carriers (§§ 42.30.010 — 42.30.190)

Revisor's notes. — The provisions of this title were redrafted in 1983 to remove personal pronouns pursuant to § 4, ch. 58, SLA 1982. Other minor word changes were made in this title in 1981 and 1983.

Editor's notes. — Section 18, ch. 110, SLA 1981 provides: "TRANSITION. (a) All orders, determinations, regulations, contracts, certificates, decisions, and privileges that have been issued, made, adopted, granted, or allowed to become effective by the Alaska Pipeline Commission or by a court of competent jurisdiction, in the performance of functions or in the conduct of proceedings that are transferred by this Act, continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Alaska Public Utilities Commission or other authorized officials, a court of competent jurisdiction, or by operation of law.

"(b) The provisions of this Act do not affect a tariff proceeding or an application for a certificate that is pending before the Alaska Pipeline Commission on the effective date of this Act (July 1, 1981), but these proceedings and the processing of applications continue under the Alaska Public Utilities Commission. Orders shall be issued in these proceedings, and appeals may be taken from them, as if this Act had not been enacted; and orders

issued in these proceedings continue in effect until modified, terminated, superseded, or revoked by an authorized official, or by a court of competent jurisdiction or by operation of law. Nothing in this subsection prohibits the discontinuance or modification of these proceedings under the same terms and conditions and to the same extent that these proceedings could have been discontinued or modified if this Act had not been enacted.

"(c) The Alaska Public Utilities Commission, with the advice of the Alaska Pipeline Commission, shall provide for the orderly transfer of proceedings from the Alaska Pipeline Commission to the Alaska Public Utilities Commission.

"(d) Except as provided in this subsection, the personnel employed in connection with, and the personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available with, the functions and programs transferred by this Act are transferred from the Alaska Pipeline Commission to the Alaska Public Utilities Commission for appropriate allocation in accordance with law. The positions of commissioner and of executive director of the Alaska Pipeline Commission are abolished."

Chapter 05. Alaska Public Utilities Commission Act.

Article

1. Establishment of Public Utilities Commission (§§ 42.05.010 — 42.05.131)
2. Powers and Duties of the Commission (§§ 42.05.141 — 42.05.211)
3. Certificate of Public Convenience and Necessity (§§ 42.05.221 — 42.05.281)
4. Services and Facilities (§§ 42.05.291 — 42.05.351)
5. Rates and Rate Schedules (§§ 42.05.361 — 42.05.441)
6. Accounts, Records and Reports (§§ 42.05.451 — 42.05.501)
7. Financial and Management Regulation (§§ 42.05.511 — 42.05.531)
8. Judicial Review, Penalties and Enforcement (§§ 42.05.541 — 42.05.621)
9. Miscellaneous Provisions (§§ 42.05.631 — 42.05.691)
10. General Provisions (§§ 42.05.711 — 42.05.721)

Article 1. Establishment of Public Utilities Commission.

Section	Section
10. Alaska Public Utilities Commission created	81. Oath of office
20. Composition of Alaska Public Utilities Commission	91. Compensation
30. Term of office; vacancy	101. Principal office; seal
35. Removal of commissioners	111. Legal counsel
40. Qualifications of members	121. Employment of commission personnel
50. Actual experience equivalent to a degree	123. Communications carriers section
71. Quorum	131. Restrictions on members and employees

Collateral references. — 64 Am. Jur. 2d, Public Utilities, §§ 230, 231. 73 C.J.S., Public Utilities, §§ 31 — 37.

Sec. 42.05.010. Alaska Public Utilities Commission created. There is created within the Department of Commerce and Economic Development the Alaska Public Utilities Commission. (§ 2 ch 199 SLA 1959; am § 1 ch 156 SLA 1960; am § 1 ch 113 SLA 1970; am § 83 ch 218 SLA 1976)

Cross references. — For termination of commission under "Sunset" law, see AS 44.66.010(a)(4).

NOTES TO DECISIONS

Legislative history of chapter. — See *Horner Elec. Ass'n v. City of Kenai*, Sup. Ct. Op. No. 390 (File No. 675), 423 P.2d 285 (1967).

Cited in *Greater Anchorage Area Borough v. City of Anchorage*, Sup. Ct. Op. No. 856 (File No. 1569), 504 P.2d 1027 (1972).

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PUBLIC UTILITIES AND CARRIERS

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(b) The commission may employ temporary legal counsel from time to time in proceedings before the commission in which the attorney general is representing the public interest or a party before the commission. (§ 6 ch 113 SLA 1970)

Sec. 42.05.120. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.121. Employment of commission personnel. (a) The commission may employ an executive director who shall have had at least five years of experience in public utility management or regulation, law, accounting, engineering, or an allied field. The executive director is responsible for directing the administrative functions of the commission and carrying out the policies as set by the commission. The commission may employ engineers, hearing officers, administrative law judges to the extent provided by AS 42.06.140(b), experts, clerks, accountants, and other agents and assistants it considers necessary. Employees and agents of the commission who are not partially exempt under AS 39.25.120, other than legal counsel, are in the classified service under AS 39.25.100.

(b) In addition to its staff of regular employees, the commission may contract for and engage the services of consultants and experts the commission considers necessary. (§ 6 ch 113 SLA 1970; am § 2 ch 103 SLA 1978; am § 2 ch 136 SLA 1980; am § 5 ch 110 SLA 1981)

Revisor's notes. — Section 6, ch. 110, SLA 1981 amended this section by adding a subsection (c), which was renumbered as AS 23.06.140(b) in 1981.

Effect of amendments. — The 1980 amendment in subsection (a), substituted the present second sentence for the former, which read: "The executive director may be one of the commission members," deleted "if not a member of the commission" near the middle of the fourth sentence, and deleted the former sixth sentence, which read: "The combined salary of an executive director who is a member of the commission may not exceed that of a superior court judge."

The 1981 amendment added "engineering" following "accounting" in the first sentence and added "administrative law judges to the extent provided by AS 42.05.121(c)" [now AS 42.06.140(b)] following "hearing officers" in the third sentence of subsection (a). The amendment, also in subsection (a), deleted the former fourth sentence which read "The executive director and his deputy are in the partially exempt service under AS 39.25.120" and substituted "Employees" for "all other employees" and added "who are not partially exempt under AS 39.25.120" in the present fourth sentence.

Sec. 42.05.123. Communications carriers section. (a) There is established within the commission a communications carriers section which shall develop, recommend and administer policies and programs with respect to the regulation of rates, services, accounting and facilities of communications common carriers within the state involving the use of wire, cable, radio and space satellites.

(b) The section shall advise and make recommendations to the commission and represent the commission in matters pertaining to com-

munication common carrier regulation and licensing and shall participate, as a party, in adjudicatory hearings in which significant common carrier issues are involved.

(c) It is the responsibility of the communications carrier section in its participation in rate or tariff adjudication proceedings to advocate and provide support for the lowest practicable rate under the circumstances. (§ 1 ch 224 SLA 1976)

Collateral references. — Community antenna television systems (CATV) as subject to jurisdiction of state public utility or service commission. 61 ALR3d 1150.

Who is a "common carrier" or "carrier" within the meaning of § 3(h) of the Com-

munications Act of 1934 (47 USCS § 153(h)), 46 ALR Fed 626.

Federal legal problems arising from subscription television or "pay TV" broadcast over the air, 61 ALR Fed 809.

Sec. 42.05.130. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.131. Restrictions on members and employees. (a) A member of the commission or an employee of the commission may not have an official connection with, or hold stock or securities in, or have a pecuniary interest in a public utility within the state. Membership in a cooperative association is not a "pecuniary interest" within the meaning of this section; however, a member or employee of the commission may not be an officer, board member or employee of a cooperative association. A member or employee may not act upon a matter in which a relationship of the member or employee with any person creates a conflict of interest.

(b) A member or employee of the commission may not, after leaving the position as a member or employee of the commission, act as agent for or on behalf of a public utility in any matter before the commission that was before the commission during the employee's employment or the member's term of office. A violation of this subsection is a class A misdemeanor. (§ 6 ch 113 SLA 1970; am § 3 ch 136 SLA 1980)

Effect of amendments. — The 1980 amendment added subsection (b).

Sec. 42.05.140. [Repealed, § 5 ch 113 SLA 1970.]

Article 2. Powers and Duties of the Commission.

Section	Section
141. General powers and duties of the commission	161. Application of Administrative Procedure Act
151. Administrative authority of commission: regulations and hearing procedures	171. Formal hearings
	181. Final orders of the commission
	191. Format of orders

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§ 42.05.141

PUBLIC UTILITIES AND CARRIERS

§ 42.05.141

Section

201. Publication of reports, orders, deci-
sions and regulations

211. Annual report

Collateral references. — 64 Am. Jur.
2d. Public Utilities, §§ 231 — 235, 264 —
275.

73 C.J.S., Public Utilities, §§ 38 — 62.

Sec. 42.05.141. General powers and duties of the commission.
The Alaska Public Utilities Commission may

(1) regulate every public utility engaged or proposing to engage in such a business inside the state, except to the extent exempted by AS 42.05.711, and the powers of the commission shall be liberally construed to accomplish its stated purposes;

(2) investigate, upon complaint or upon its own motion, the rates, classifications, rules, regulations, practices, services and facilities of a public utility and hold hearings on them;

(3) make or require just, fair and reasonable rates, classifications, regulations, practices, services and facilities for a public utility;

(4) prescribe the system of accounts and regulate the service and safety of operations of a public utility;

(5) require a public utility to file reports and other information and data;

(6) appear personally or by counsel and represent the interests and welfare of the state in all matters and proceedings involving a public utility pending before an officer, department, board, commission or court of the state or of another state or the United States and to intervene in, protest, resist, or advocate the granting, denial or modification of any petition, application, complaint or other proceeding;

(7) examine witnesses and offer evidence in any proceeding affecting the state and initiate or participate in judicial proceedings to the extent necessary to protect and promote the interests of the state.

(b) The commission shall perform the duties assigned to it under AS 44.83.162.

(c) In the establishment of electric service rates under this chapter the commission shall promote the conservation of resources used in the generation of electric energy. (§ 6 ch 113 SLA 1970; am § 1 ch 33 SLA 1971; am § 43 ch 83 SLA 1980)

Effect of amendments. — The 1980 amendment added subsections (b) and (c).

Editor's notes. — Section 51, ch. 83, SLA 1980, which provided for the repeal of subsections (b) and (c) effective July 1,

1985, was repealed by § 13, ch. 113, SLA 1981.

Opinions of attorney general. — Where public utility company entered into contract to sell natural gas to federal mili-

tary installations pursuant to federal statute governing such contract negotiations, Alaska Public Utility Commission was precluded by supremacy clause of U.S. Constitution (Art. VI, cl. 2) for asserting its jurisdiction over the sale. August 4, 1976, Op. Att'y Gen.

The Alaska Public Utility Commission can require that a public utility file copies of its military supply contracts with the Commission pursuant to AS 42.05.361(a). August 4, 1976, Op. Att'y Gen.

NOTES TO DECISIONS

The general powers and duties of the Public Utilities Commission are set forth in this section. *Greater Anchorage Area Borough v. City of Anchorage*, Sup. Ct. Op. No. 856 (File No. 1569), 504 P.2d 1027 (1972), overruled on other grounds, 595 P.2d 629 (Alaska 1979).

The essence of the administrative power conferred upon the Public Utilities Commission is regulatory; the commission is empowered to set rates, promulgate regulations, collect information, process complaints against utilities and the like. *Greater Anchorage Area Borough v. City of Anchorage*, Sup. Ct. Op. No. 856 (File No. 1569), 504 P.2d 1027 (1972), overruled on other grounds, 595 P.2d 629 (Alaska 1979).

The statutory framework does not grant unlimited adjudicatory authority to the Public Utilities Commission. *Greater Anchorage Area Borough v. City of Anchorage*, Sup. Ct. Op. No. 856 (File No. 1569), 504 P.2d 1027 (1972), overruled on other grounds, 595 P.2d 629 (Alaska 1979).

This chapter simply does not contemplate the establishment of an administrative body with the authority to adjudicate disputes over the authority of boroughs to control construction along their rights of way. *Greater Anchorage Area Borough v. City of Anchorage*, Sup. Ct. Op. No. 856 (File No. 1569), 504 P.2d 1027 (1972), overruled on other grounds, 595 P.2d 629 (Alaska 1979).

The Public Utilities Commission is not empowered to decide disputes between municipalities over the control of construction activities within rights of way belonging to one of the disputants. *Greater Anchorage Area Borough v. City of Anchorage*, Sup. Ct. Op. No. 856 (File No. 1569), 504 P.2d 1027 (1972), overruled on other grounds, 595 P.2d 629 (Alaska 1979).

There is no "right" to have the commission act. *Jager v. State*, Sup. Ct. Op.

No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

The matter of rate discrimination and investigation is such that the commission must be free to weigh the charges and data presented and the costs to the public and the utility, against which a complaint has been brought, to determine whether further proceedings are in the public interest. *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

The Public Utilities Commission is not compelled to act by the mere filing of a complaint. *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Nor can the commission arbitrarily deny relief to a citizen who can demonstrate a sufficient probability that his complaint is valid. *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

At the least the Public Utilities Commission must offer some justification for its dismissal of a complaint of discrimination in the rate structure based on a prior determination of allocation methods, previous adjudication of permissible discrimination, or other such factors. *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Confiscation. — A court may evaluate the showing of confiscation. That is, although the process of determining whether a rate is confiscatory involves fact/law determinations which require the special competence of the commission, the ultimate issue in confiscation questions is whether due process will be violated by the continued operation of the rate. *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Standard of review of rate-making decisions. — Since generally rate-making decisions relate to complex subject matter which requires the particularized knowledge and experience of the rate-making

body, the normally had a real United States, Inc. 3772), 597

The following before the and overruled public Utilities rates. For serious an existing confiscatory gated to the commission and that are likely unreasonable Public Utilities permanent utility m without the operate or will face utility is the interior public can be utility must be substantial"

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commission may petition a court of this state to enforce its subpoenas, subpoenas duces tecum or other process. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

Cited in *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975); *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).
Collateral references. — 73 C.J.S., Public Utilities, §§ 54, 55.

Sec. 42.05.160. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.161. Application of Administrative Procedure Act. (a) The administrative adjudication procedures of the Administrative Procedure Act (AS 44.62) do not apply to adjudicatory proceedings of the commission except that final administrative determinations by the commission are subject to judicial review under that Act as provided in AS 42.05.551(a).

(b) The Administrative Procedure Act applies to regulations adopted by the commission. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

Standard of review of rate-making decisions. — See *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Sec. 42.05.170. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.171. Formal hearings. A formal hearing which the commission has power to hold may be held by or before three or more commissioners, a hearing officer, or an administrative law judge designated for the purpose by the commission. The testimony and evidence in a formal hearing may be taken by the commissioners, by the hearing officer, or by the administrative law judge to whom the hearing has been assigned. A commissioner who has not heard or read the testimony, including the argument, may not participate in making a decision of the commission. In determining the place of a hearing the commission shall give preference to holding the hearing at a place most convenient for those interested in the subject of the hearing. (§ 6 ch 113 SLA 1970; am § 45 ch 94 SLA 1980; am § 7 ch 110 SLA 1981)

Effect of amendments. — The 1980 amendment substituted "three" for "two" near the middle of the first sentence. The 1981 amendment added "a hearing officer, or an administrative law judge" following "three or more commissioners" in the first sentence, added "by the hearing officer, or by the administrative law judge"

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following "by the commissioners" in the second sentence and added "or read" preceding "the testimony" in the third sentence.

Sec. 42.05.180. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.181. Final orders of the commission. A final order of the commission compelling affirmative action, denying a right or privilege, or granting a right or privilege over protest of the public utility or any party of record may not be entered without giving the interested party reasonable notice and an opportunity to be heard. (§ 6 ch 113 SLA 1970)

Sec. 42.05.190. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.191. Format of orders. Every formal order of the commission shall be based upon the facts of record. Every order entered pursuant to a hearing shall state the commission's findings, the basis of its findings and conclusions, together with its decision. These orders shall be entered of record and a copy of them shall be served on all parties of record in the proceeding. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

The standard of review of agency findings of fact is that they will be set aside if they are not supported by substantial evidence on the whole record. Inherent in this standard is a requirement, in part statutory, that the facts found be based on evidence in the record. *City of Fairbanks v. Alaska Pub. Utils. Comm'n & Wire Communications, Inc.*, Sup. Ct. Op. No. 2079 (File No. 3977), 611 P.2d 493 (1980).

The requirement that the facts found be based on evidence in the record serves three purposes: First, it helps to ensure that the agency does not make decisions that have no adequate basis in fact; second, it gives opposing parties the opportunity to challenge the agency's reasoning process and the correctness of the decision; and third, it affords reviewing courts the opportunity to evaluate the decision. *City of Fairbanks v. Alaska Pub. Utils. Comm'n & Wire Communications, Inc.*, Sup. Ct. Op. No. 2079 (File No. 3977), 611 P.2d 493 (1980).

Commission's handling of financial information unconstitutional. — Where both the city of Fairbanks and a corporation sought a certificate of public convenience and necessity to provide telephone service; at the hearing to decide the

matter the Alaska public utilities commission staff requested two years' annual balance sheets and income statements from the corporation; the corporation agreed to supply them to the staff, but requested that they not be divulged to Fairbanks or become part of the record, claiming that they were proprietary and that revealing them could place the corporation at a competitive disadvantage in its telecommunications contracting business; Fairbanks objected and suggested as an alternative that the income statements and balance sheets could be revealed to certain representatives of Fairbanks under an order of confidentiality; the commission ruled that the information was proprietary and should be kept confidential and did not allow any representative of Fairbanks to see it; a commission staff member reviewed the income statements and balance sheets and based on that review testified that the corporation could meet its financial commitments and was financially fit; and the information upon which this determination was based was never placed in the record, the commission's handling of the information relating to the corporation's financial fitness violated procedural due process.

City of Fairbanks v. Alaska Pub. Utils. Sup. Ct. Op. No. 2079 (File No. 3977), 611
Comm'n & Wire Communications, Inc., P.2d 493 (1980).

Sec. 42.05.200. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.201. Publication of reports, orders, decisions and regulations. All reports, orders, decisions and regulations of the commission shall be in writing. The commission shall apprise all affected utilities and interested parties of these reports, orders, decisions, and regulations as they are issued and adopted, and, when appropriate to do so, shall publish them in a manner that will reasonably inform the public or the affected consumers of any public utility service. The commission may set charges for costs of printing or reproducing and furnishing copies of its reports, orders, decisions and regulations. The publication requirement, as it pertains to regulations, does not supersede the requirements of the Administrative Procedure Act (AS 44.62). (§ 6 ch 113 SLA 1970)

Sec. 42.05.210. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.211. Annual report. The commission shall publish an annual report reviewing its work and submit it to the legislature by February 15 of each year. The report shall contain information and data which bear a significant relationship to the development and regulation of public utility services in the state and include an outline of the commission's program for the development and regulation of public utility services in the forthcoming year. (§ 6 ch 113 SLA 1970)

Sec. 42.05.220. [Repealed, § 5 ch 113 SLA 1970.]

Article 3. Certificate of Public Convenience and Necessity.

Section	Section
221. Certificates required	271. Modification, suspension or revocation of certificates
231. Application	281. Transfer of certificate
241. Conditions of issuance	
251. Use of streets in cities and boroughs	
261. Discontinuance, suspension or abandonment of certificated service	

Collateral references. — 73 C.J.S.,
Public Utilities, § 42.

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Sec. 42.05.221. Certificates required. (a) A public utility may not operate and receive compensation for providing a commodity or service after January 1, 1971 without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require or will require the service. Where a public utility provides more than one type of utility service, a separate certificate of convenience and necessity is required for each type. A certificate shall describe the nature and extent of the authority granted in it, including, as appropriate for the services involved, a description of the authorized area and scope of operations of the public utility.

(b) All certificates of convenience and necessity issued to a public utility before July 1, 1970 remain in effect but they are subject to modification where there are areas of conflict with public utilities that have not previously been required to have a certificate or where there is a substantial change in circumstances.

(c) A certificate shall be issued to a public utility which was not required to have one before July 1, 1970, and which is required to have one after that date, if it appears to the commission that the utility was actually operating in good faith on that date. Such a certificate is subject to modification where there are areas of conflict with other public utilities or where there has been a substantial change in circumstances.

(d) In an area where the commission determines that two or more public utilities are competing to furnish identical utility service and that this competition is not in the public interest, the commission shall take appropriate action to eliminate the competition and any undesirable duplication of facilities. This appropriate action may include, but is not limited to, ordering the competing utilities to enter into a contract that, among other things, would:

- (1) delineate the service area boundaries of each in those areas of competition;
- (2) eliminate existing duplication and paralleling to the fullest reasonable extent;
- (3) preclude future duplication and paralleling;
- (4) provide for the exchange of customers and facilities for the purposes of providing better public service and of eliminating duplication and paralleling; and
- (5) provide such other mutually equitable arrangements as would be in the public interest.

(e) The commission may employ professional consultants to assist it in administering the provisions of this section and may apportion the expenses relating to this administration among the competing utilities involved.

(f) [Repealed, § 12 ch 136 SLA 1980.] (§ 6 ch 113 SLA 1970; am § 1 ch 76 SLA 1973; am § 12 ch 136 SLA 1980)

Effect of amendments. — The 1980 amendment repealed subsection (f).

NOTES TO DECISIONS

A certificate of public convenience and necessity is a property right and as such entitled to protection. *Homer Elec. Ass'n v. City of Kenai*, Sup. Ct. Op. No. 390 (File No. 675), 423 P.2d 285 (1967).

Certificate does not grant monopoly. — A certificate of public convenience and necessity to a public utility by the Alaska Public Service Commission is not an exclusive, or monopoly, grant to furnish electrical energy within the corporate limits of a city. *Chugach Elec. Ass'n v. City of Anchorage*, Sup. Ct. Op. No. 407 (File Nos. 705, 706), 426 P.2d 1001 (1967).

A public utility's certificate did not grant to it the exclusive right to furnish electrical energy within the corporate limits of a city. *Homer Elec. Ass'n v. City of Kenai*, Sup. Ct. Op. No. 390 (File No. 675), 423 P.2d 285 (1967).

Municipality may compete with certificated utility. — The delineation of a service area contained in a certificate of public convenience and necessity does not provide the basis for precluding a municipality from competing, within its own corporate limits, with a certificated utility. *Chugach Elec. Ass'n v. City of Anchorage*, Sup. Ct. Op. No. 407 (File Nos. 705, 706), 426 P.2d 1001 (1967).

The legislature did not intend, by virtue of its passage of the 1963 amendments to this chapter, that a certificate of public convenience and necessity was to be a monopoly grant in relation to competition from a municipally owned and operated utility. *Homer Elec. Ass'n v. City of Kenai*, Sup. Ct. Op. No. 390 (File No. 675), 423 P.2d 285 (1967).

The Public Service Commissioner's issuance, to a public utility, of a certificate of public convenience and necessity providing for a service area which encompassed within its territory a city did not preclude such city from furnishing electrical energy within its own city limits, in competition with such public utility's electrical distribution system. *Homer Elec. Ass'n v. City of Kenai*, Sup. Ct. Op. No. 390 (File No. 675), 423 P.2d 285 (1967).

Legislative intent. — In enacting subsection (b) of this section the legislature

indicated its intention that any right afforded certificated utilities under former AS 42.05.196 was not saved. *Alaska Pub. Utils. Comm'n v. Chugach Elec. Ass'n*, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687 (1978), overruled on other grounds, Sup. Ct. Op. No. (File No. 3636), 595 P.2d 626 (1979).

Subsection (b) of this section was supplemented by AS 42.05.271, which provides for the modification, suspension or revocation of certificates for several listed reasons, including the requirements of public convenience and necessity. *Alaska Pub. Utils. Comm'n v. Chugach Elec. Ass'n*, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687 (1978), overruled on other grounds, Sup. Ct. Op. No. (File No. 3636), 595 P.2d 626 (1979).

Subsection (d) of this section relates to questions of duplication of electrical services or facilities and the interpretation of a utility's certificate of public convenience and necessity. *Greater Anchorage Area Borough v. City of Anchorage*, Sup. Ct. Op. No. 856 (File No. 1569), 504 P.2d 1027 (1972), overruled on other grounds, 595 P.2d 629 (Alaska 1979).

Operation of garbage disposal sites does not constitute a utility service; it is only the passing over of control of solid waste to the disposal site operator which is regulated as a utility function. *McClellan v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

Dumpsters are not equivalent of final landfill sites. — Interpretation that dumpsters serving as intermediate dump sites qualify as the functional equivalent of final landfill sites is not reasonable in that it would allow the Borough to place dumpsters in such a pervasive fashion as to completely vitiate the requirement of AS 29.48.033(b) and former subsection (f) of this section that certificate holders be compensated for their interests. *McClellan v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

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PUBLIC UTILITIES AND CARRIERS

§ 42.05.261

Sec. 42.05.230. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.231. Application. Application for a certificate shall be in writing and shall be in the form and contain the information required by the commission by regulation. (§ 6 ch 113 SLA 1970)

Sec. 42.05.240. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.241. Conditions of issuance. A certificate may not be issued unless the commission finds that the applicant is fit, willing and able to provide the utility services applied for and that the services are required for the convenience and necessity of the public. The commission may issue a certificate granting an application in whole or in part and attach to the grant of it the terms and conditions it considers necessary to protect and promote the public interest including the condition that the applicant may or shall serve an area or provide a necessary service not contemplated by the applicant. The commission may, for good cause, deny an application with or without prejudice. (§ 6 ch 113 SLA 1970)

Sec. 42.05.250. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.251. Use of streets in cities and boroughs. Public utilities have the right to a permit to use public streets, alleys and other public ways of a city or borough, whether home rule or otherwise, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the city or borough requires. A dispute as to whether fees, terms, conditions or exceptions are reasonable shall be decided by the commission. The commission may require a utility to add the amount of any permit fee paid as a pro rata surcharge to its bills for service rendered at locations within the boundaries of any city or borough which requires payment of a permit fee. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

Municipal franchises granted to a cable television company were not superseded by the Alaska Public Utilities Commission Act, AS 42.05, since provisions of a municipal franchise not in

actual conflict with commission regulatory activity remain in force. B-C Cable Co. v. City of Juneau, Sup. Ct. Op. No. 2112 (File No. 4587), 613 P.2d 616 (1980).

Sec. 42.05.260. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.261. Discontinuance, suspension or abandonment of certificated service. (a) Except as otherwise provided in this section, a public utility may not discontinue or abandon a service for

which a certificate has been issued by the commission unless upon the application of the public utility and if, after notice and opportunity for hearing, the commission finds that the continued service is not required by public convenience and necessity. Any interested person may file with the commission a protest or memorandum of opposition to or in support of discontinuance or abandonment. The commission may authorize temporary suspension of a service or of part of a service.

(b) Upon complaint or upon its own motion, the commission may reinvestigate a previously authorized discontinuance, abandonment or suspension of a service of an operating public utility. If, after providing notice and an opportunity for a hearing, the commission finds that the public convenience and necessity require the service to be resumed, it may order the public utility to again provide the service. (§ 6 ch 113 SLA 1970)

Sec. 42.05.270. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.271. Modification, suspension or revocation of certificates. Upon complaint or upon its own motion the commission, after notice and opportunity for hearing and for good cause shown, may amend, modify, suspend, or revoke a certificate, in whole or in part. Good cause for amendment, modification, suspension or revocation of a certificate includes

- (1) the requirements of public convenience and necessity;
- (2) misrepresentation of a material fact in obtaining the certificate;
- (3) unauthorized discontinuance or abandonment of all or part of a public utility's service;
- (4) wilful failure to comply with the provisions of this chapter or the regulations or orders of the commission; or
- (5) wilful failure to comply with a term, condition, or limitation of the certificate. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

AS 42.05.221(b) was supplemented by this section, which provides for the modification, suspension or revocation of certificates for several listed reasons, including the requirements of public convenience and necessity. *Alaska Pub. Utils. Comm'n v. Chugach Elec. Ass'n*, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687 (1978), overruled on other grounds, Sup. Ct. Op. No. (File No. 3636), 595 P.2d 626 (1979).

The term "wilful" itself is not a "word of art" or a "technical term." It has many different meanings, depending upon the context in which it is used. *North State*

Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).

The word "wilful" often denotes an act which is voluntary, knowingly or permissively done, as distinguished from one which is accidental or otherwise beyond the control of the person to be charged. *North State Tel. Co. v. Alaska Pub. Util. Comm'n*, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).

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tory requirements, the violation is wilful. North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).

The concept of wilfulness, i.e., failure to meet responsibility and exercise control, is in accordance with case law. North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).

"Wilful failure" may be such behavior through acts of commission or omission which justified belief that there was an intent entering into and characterizing the failure complained of. North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).

A failure to perform an act for a long period of time, which is required by law to be performed, generally constitutes a wilful failure to perform. North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).

The general notion that a wilful act

implies a bad purpose is derived from criminal statutes. It has no such meaning when used in a statute to denounce an act not in itself wrong. North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).

Commission's definition of "wilful" did not shift burden of justification. — The commission's definition of "wilful" as "requiring only a showing that the failure to comply was with knowledge of the consequences of such failure" in finding that there was a "wilful failure" to meet the condition in the certificate, i.e., "good cause," did not shift the burden of justification to the telephone company; rather, the commission was merely delineating the nature of what would be reasonable justification, so as to render a failure to meet the condition nonwilful and, thus, the nature of the case that had to be made out by the evidence. North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).

Sec. 42.05.280. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.281. Transfer of certificate. A certificate may not be sold or leased, rented, transferred or inherited without the prior approval of the commission. (§ 6 ch 113 SLA 1970)

Sec. 42.05.290. [Repealed, § 5 ch 113 SLA 1970.]

Article 4. Services and Facilities.

Section

- 291. Standards of service and facilities
- 301. Discrimination in service
- 311. Joint use and interconnection of facilities
- 321. Failure to agree upon joint use or interconnection

Section

- 331. Standards for measurement
- 341. Testing of meter standards
- 351. Testing of appliances

Collateral references. — 64 Am. Jur. 2d, Public Utilities, §§ 236 — 239.
73 C.J.S., Public Utilities, § 44.

Sec. 42.05.291. Standards of service and facilities. (a) Each public utility shall furnish and maintain adequate, efficient and safe service and facilities. This service shall be reasonably continuous and without unreasonable interruption or delay.

(b) Subject to the provisions of this chapter and the regulations or orders of the commission, a public utility may establish reasonable rules and regulations governing the conditions under which it will render service.

(c) The commission may, upon its own motion or upon complaint after providing reasonable notice and opportunity for hearing, adopt as to service and facilities, including the crossing of facilities, just and reasonable standards, classifications, regulations, and practices to be furnished, imposed, observed, and followed by public utilities; adopt adequate and reasonable standards for the measurement of quantity, quality, pressure, initial voltage, or other conditions pertaining to the supply of the service of public utilities; adopt reasonable regulations for the examination and testing of the service, and for the measurement of it; adopt or approve reasonable regulations, specifications, and standards to secure the accuracy of meters and appliances for measurement; and provide for the examination and testing of appliances used for the measurement of a service of a public utility. In doing so, the commission shall conform to the standard practices of the industry.

(d) If the commission, upon its own motion or upon complaint, after providing reasonable notice and opportunity for hearing, finds that the service or facilities of a public utility are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of this chapter, the commission shall prescribe, by regulation or order, the reasonable, safe, adequate, sufficient service or facilities to be observed, furnished, enforced, or employed, including all repairs, changes, alterations, extensions, substitutions, or improvements in facilities that are reasonably necessary and proper for the safety, accommodation, and convenience of the public. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

Jurisdiction over complaints. — When a disgruntled phone subscriber seeks to recover damages for inadequate telephone service which is common to the public, the complaint may properly be referred to the public utilities commission for exercise of primary jurisdiction. When, however, a phone customer alleges that he has suffered from acts or omissions of the

utility which result in inadequate service which is different from that provided to the public as a whole, the complaint should be handled as a traditional common-law action, and the superior court should determine the issues in accordance with settled principles of tort liability. *Jeffries v. Glacier State Tel. Co.*, Sup. Ct. Op. No. 1985 (File No. 4298), 604 P.2d 4 (1979).

Collateral references. — Federal control as affecting power of public service commission, 4 ALR 1703, 1718, 1719; 8 ALR 969, 981; 10 ALR 966; 11 ALR 1450; 14 ALR 234; 19 ALR 678; 52 ALR 296.

Right of public utility company to discontinue its entire service, 11 ALR 252.

Sec. 42.05.300. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.301. Discrimination in service. A public utility may not, as to service, make or grant an unreasonable preference or advantage to any person or subject any person to an unreasonable prejudice or disadvantage. A public utility may not establish or maintain or provide an unreasonable difference as to service, either as between localities or as between classes of service, but nothing in this section prohibits the establishment of reasonable classifications of service or requires unreasonable investment in facilities. (§ 6 ch 113 SLA 1970)

Collateral references. — Discrimination in provision of municipal services or facilities as civil rights violation, 51 ALR3d 950.

Civil rights: racial or religious discrimination in furnishing of public utilities, services or facilities, 53 ALR3d 1027.

Use priorities: validity of imposition, by state regulation, of natural gas use priorities, 84 ALR3d 541.

Sec. 42.05.310. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.311. Joint use and interconnection of facilities. (a) A public utility having sewers, conduits, utilidors, poles, pole lines, pipes, pipelines, mains or other distribution or transmission facilities shall, for a reasonable compensation, permit another public utility to use them when the public convenience and necessity require this use and the use will not result in substantial injury to the owner, or in substantial detriment to the service to the customers of the owners. The cost of modifications or additions necessary to a joint use shall be at the expense of the public utility requesting the use of the facilities.

(b) A telecommunications utility shall permit connection to be made and service to be furnished between a system operated by it and the system or toll facilities operated by another public utility or with the communications facility or system of a nonutility, or between its toll facilities and the toll facilities of another public utility, when public convenience and necessity require the connection and the connection will not result in substantial injury to the owner or other users of the facilities of either public utility or in substantial detriment to the service of either public utility.

(c) The tariff of a public utility shall include rules setting out the terms and conditions under which it will construct, or permit its customers or subscribers to construct, and install lines, cables, radio

links, or pipes from its existing facilities to the premises of applicants for service. (§ 6 ch 113 SLA 1970)

Cross references. — For applicability of this section to otherwise exempt utilities, see AS 42.05.321(b).

Sec. 42.05.320. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.321. Failure to agree upon joint use or interconnection. (a) In case of failure to agree upon the joint use or interconnection of facilities or the conditions or compensation for joint use or interconnections, the public utility, including any municipality, or an interested person may apply to the commission for an order requiring the interconnection. If, after investigation and opportunity for hearing, the commission finds that public convenience and necessity require the joint use or connection, and that the use or connection will not result in substantial injury to the owner utility or its customers, or in substantial detriment to the services furnished by the owner utility, or in the creation of safety hazards, it shall

- (1) order that the use be permitted;
- (2) prescribe reasonable conditions and compensation for the joint use;
- (3) order the interconnection to be made;
- (4) determine the time and manner of the interconnection;
- (5) determine the apportionment of costs and responsibility for operation and maintenance of the interconnection.

(b) This section and AS 42.05.311 apply to all utilities whether or not they are exempt from other regulation under AS 42.05.711. (§ 6 ch 113 SLA 1970; am § 4 ch 136 SLA 1980)

Effect of amendments. — The 1980 amendment added subsection (b).

Sec. 42.05.330. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.331. Standards for measurement. The commission shall establish by regulation adequate, fair and realistic standards for the measurement of quality, pressure, voltage or other conditions of utility services and shall prescribe reasonable regulations for examination and testing of the service and the accuracy of the devices used to measure it. (§ 6 ch 113 SLA 1970)

Sec. 42.05.340. [Repealed, § 5 ch 113 SLA 1970.]

that a subscriber or member of the cooperative is entitled to vote in the election without regard to whether the subscriber's or member's account with the utility or cooperative is current and that the ballot must be postmarked or returned to the commission within 30 days after it was mailed or otherwise delivered to the subscriber or member. The notice shall also announce the schedule for one or more public meetings which shall provide an opportunity for the subscribers or members to discuss this election. The public meeting or meetings shall be held not more than 30 days before the ballots are mailed or distributed to those eligible to vote. A cooperative may satisfy this requirement by including a discussion of this election on the agenda of an annual meeting if the annual meeting is scheduled to be held not more than 30 days before the election.

(d) A ballot with return postage paid shall be mailed or delivered to each subscriber or member of the utility or cooperative with the subscriber's or member's bill for service and shall contain only the following language:

"Shall (name of utility or cooperative) be exempt from regulation by the Alaska Public Utilities Commission?

[] YES [] NO"

(e) The results of an election under this section shall be certified by the commission within 60 days after the ballots are mailed or delivered to the subscribers or members.

(f) During the 60 days immediately preceding an election under this section a list of subscribers or members of the utility or cooperative shall be made available at cost to any subscriber or member of the utility or cooperative who requests one. The list shall be in the same form that is available to the utility or cooperative.

(g) The board of directors of a utility or cooperative may call an election under this section on its own initiative and shall call an election upon receipt of a valid petition from its subscribers or members. A petition shall be considered valid if it is signed by not less than the number of subscribers or members equal to ten percent of the first 5,000 subscribers or members and three percent of the subscribers or members in excess of 5,000. An election under this section may only be held once every two years.

(h) A utility or cooperative which is already exempt from regulation under this section may elect to terminate its exemption in the same manner. (§ 10 ch 136 SLA 1980)

Sec. 42.05.720. Definitions. In this chapter

(1) "affiliated interest" includes:

(A) a person owning or holding directly or indirectly five per cent or more of the voting securities of a public utility engaged in intrastate business in this state;

(B) a person, other than those specified in (A) of this paragraph, in a chain of successive ownership of five per cent or more of voting

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securities, the chain beginning with the holder of the voting securities of such public utility;

(C) a corporation five per cent or more of whose voting securities are owned by a person owning five per cent or more of the voting securities of the public utility or by a person in such a chain of successive ownership of five per cent or more of voting securities;

(D) a corporation five per cent or more of whose voting securities are owned or held by a public utility;

(E) a person with whom the public utility has a management or service contract;

(F) a person who is an officer or director of such a public utility or of a corporation in a chain of successive ownership of five per cent or more of voting securities;

(G) a corporation which has one or more officers or directors in common with a public utility;

(H) a person or corporation who or which the commission determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and actions of a utility in conjunction with one or more other corporations or persons with whom they are related by ownership or blood, or by action in concert, that together they are affiliated with the utility within the meaning of this section even though none of them alone is so affiliated; or

(I) a person or corporation who or which the commission determines as a matter of fact after investigation and hearing actually is exercising substantial influence over the policies and actions of a utility even though such influence is not based upon stockholdings, stockholders, officers or directors to the extent specified in this section;

(2) "commission" means the Alaska Public Utilities Commission;

(3) "public" or "general public" means

(A) any group of 10 or more customers that purchase the service or commodity furnished by a public utility as defined in (2) of this section; and

(B) any utility purchasing the product or service or paying for the transmission of electric energy, natural or manufactured gas, or petroleum products which are re-sold to a group included in (A) of this paragraph or which are used to produce the service or commodity sold to the public by the utility;

(4) "public utility" or "utility" includes every corporation (whether public, cooperative, or otherwise), company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages or controls any plant, pipeline or system for

(A) furnishing, by generation, transmission or distribution, electrical service to the public for compensation;

(B) furnishing telecommunications service to the public for compensation;

(C) furnishing water, steam or sewer service to the public for compensation;

(D) furnishing by transmission or distribution of natural or manufactured gas to the Alaska public for compensation;

(E) furnishing for distribution or by distribution petroleum or petroleum products to the Alaska public for compensation when the consumer has no alternative in the choice of supplier of a comparable product and service at an equal or lesser price;

(F) furnishing collection and disposal service of garbage, refuse, trash or other waste material;

(5) "rate" includes each rate, toll, fare, rental, charge, or other form of compensation demanded, observed, charged or collected by a public utility for its services;

(6) "service" means (unless the context indicates otherwise) every commodity, product, use, facility, convenience or other form of service which is offered for and provided by a public utility for the convenience and necessity of the public;

(7) "tariff" means a rate, charge, toll, rule or regulation of a utility relating to services furnished by the utility to the general public for compensation and every map, page, adoption notice, instrument or other document filed with the commission setting out the terms and conditions under which utility services are offered to the public and instruments of concurrence and all other documents and data setting out the terms of a utility's business relations with another utility insofar as they affect the general public either directly or indirectly;

(8) "telecommunications" means the transmission and reception of messages, impressions, pictures and signals by means of electricity, electromagnetic waves and any other kind of energy, force variations or impulses whether conveyed by cable, wire, radiated through space, or transmitted through other media within a specified area or between designated points. (§ 6 ch 113 SLA 1970; am § 2 ch 36 SLA 1971; am § 2 ch 76 SLA 1973)

Revisor's notes. — Formerly AS 42.05.701. Renumbered in 1983 and reorganized to alphabetize the defined terms.

Cross references. — For legislative purpose of paragraph (4)(E) of this section, see § 1, ch. 36, SLA 1971 in the Temporary and Special Acts.

NOTES TO DECISIONS

Applied in *McClellan v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977); *Alaska Pub. Utils. Comm'n v. Chugach Elec. Ass'n*, Sup. Ct. Op. No. 1636 (File Nos. 2909, 2993), 580 P.2d 687

(1978), overruled on other grounds. Sup. Ct. Op. No. (File No. 3636), 595 P.2d 626 (1979); *B-C Cable Co. v. City of Juneau*, Sup. Ct. Op. No. 2112 (File No. 4587), 613 P.2d 616 (1980).

Chapter 15. Bus Transportation.

[Repealed, § 29 ch 115 SLA 1980]

Chapter 20. Telegraph and Telephone Systems and Cable Lines.

Article

1. Ownership (§ 42.20.010)
2. Offenses (§§ 42.20.020 — 42.20.110)
3. Emergency Calls on Party Lines (§§ 42.20.120 — 42.20.150)
4. Eavesdropping and Wiretapping (§§ 42.20.300 — 42.20.340)

Article 1. Ownership.

Section

10. Establishment by foreigners prohibited

Sec. 42.20.010. Establishment by foreigners prohibited. Telegraph or cable lines owned or operated or controlled by persons not citizens of the United States, or by any foreign corporation or government may not be established in or permitted to enter Alaska. (§ 49-5-1 ACLA 1949)

Collateral references. — 74 Am. Jur. 2d, Telecommunications, §§ 1 — 3.

Article 2. Offenses.

Section

20. Refusal to transmit or falsification of official communication
30. Civil liability for taking utility service and for damages to or interference with a utility line
32. Presumption from use of nonmetered utility service
35. Jurisdiction
38. Definitions
40. Removal of instrument or meter or disconnecting of wire
50. Altering message

Section

60. Sending or delivering false or forged message; punishment
70. Punishment and civil liability for use by employee of information derived from message
80. Delaying or refusing to send or deliver message
90. Punishment and civil liability for opening or obtaining message addressed to another
110. Bribing operator or employee to disclose private message

Collateral references. — 86 C.J.S., Tel. & Tel., Radio & Television, § 115 et seq.

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Chapter 20. Alaska Council on Science and Technology.

[Renumbered as AS 44.19.181 — 44.19.188. Repealed, E.O. No. 46 (1980). For current provisions, see AS 44.21.241 — 44.21.255.]

Chapter 21. Department of Administration.

Article

1. Department Functions (§§ 44.21.010 — 44.21.050)
2. Pioneers' Homes (§§ 44.21.100 — 44.21.130)
3. Automatic Data Processing (§§ 44.21.150 — 44.21.170)
4. Older Alaskans Commission (§§ 44.21.200 — 44.21.240)
5. Alaska Council on Science and Technology (§§ 44.21.241 — 44.21.255)
6. Alaska Public Broadcasting Commission (§§ 44.21.256 — 44.21.290)
7. Telecommunications (§§ 44.21.300 — 44.21.330)
8. Office of Public Advocacy (§§ 44.21.400 — 44.21.440)

Article 1. Department Functions.

Section

10. Commissioner of administration
20. Duties of department
25. Contracts to operate vending facilities in state buildings
30. Contracting with United States

Section

40. Records or accounts of claims and warrants
50. Penalty for allowance of false, unjust or illegal claims

Sec. 44.21.010. Commissioner of administration. The principal executive officer of the Department of Administration is the commissioner of administration. (§ 8 ch 64 SLA 1959)

Collateral references. — 1 and 2 Am. 73 C.J.S. Public Administrative Law, Jur. 2d, Administrative Law, § 1 et seq. § 1 et seq.

Sec. 44.21.020. Duties of department. The Department of Administration shall

- (1) [Repealed, § 4 ch 97 SLA 1976.]
- (2) make surveys and studies to improve administrative procedures, methods, and organization;
- (3) keep general accounts;
- (4) approve vouchers and disburse funds for all purposes;
- (5) operate centralized purchasing and supply services, and necessary storerooms and warehouses;
- (6) allot space in state buildings to the various departments according to need and available space;
- (7) supervise telephone, mailing, messenger, duplicating, and similar services adaptable to centralized management;
- (8) administer the public employees' retirement system and teachers' retirement system;

Article 3. Automatic Data Processing.**Section**

150. Declaration of purpose

160. Powers and duties of Department of
Administration

170. Definitions

Sec. 44.21.150. Declaration of purpose. It is the purpose of AS 44.21.150 — 44.21.170 to designate the Department of Administration as the department responsible for the operation and management of automatic data processing resources and activities of the executive, legislative and judicial branches of state government, and to provide for periodic review of state automatic data processing procedures and mechanisms. It is further the purpose of these sections to encourage cooperation between the state government and local governments in the use of automatic data processing systems. (§ 2 ch 170 SLA 1972)

Sec. 44.21.160. Powers and duties of Department of Administration. (a) The department shall provide automatic data processing services responsive to the needs of state government and procure, operate and staff all automatic data processing equipment facilities used by state government.

(b) To carry out (a) of this section the department may

(1) maintain a central staff of systems analysts, computer programmers and other staff members sufficient to provide systems analysis and computer programming support required by the executive, legislative and judicial branches of state government;

(2) develop and maintain both short-range and long-range data processing plans for state government and provide managerial leadership in the use of automatic data processing;

(3) review all budget requests for automatic data processing services and recommend to the governor approval, modification, or disapproval;

(4) recommend implementation priorities of requested data processing systems;

(5) determine and satisfy the data processing equipment and supply requirements of all branches, departments and agencies of state government;

(6) provide all facilities, equipment and staff required to convert data to a form suitable for processing on automatic data processing equipment;

(7) develop and publish systems analysis, computer programming and computer operations standards;

(8) review all state automatic data processing systems to encourage effectiveness, measure performance, and assure adherence to the standards developed under AS 44.21.150 — 44.21.170;

(9) develop and conduct an automatic data processing training program designed to serve the technical and managerial needs of state government.

Article 3 -

(c) The department may cooperate with political subdivisions of the state in the development and operation of data processing systems and may allow for the use of state facilities by political subdivisions.

(d) The department may develop and implement a plan for the integration of automatic data processing facilities of the University of Alaska with the state facilities. However, the integration plan authorized by this subsection may not be put into operation until approved by the President of the University of Alaska and the department.

(e) Nothing in this section precludes the department from authorizing recruitment and employment of data processing personnel by other departments of the executive branch when the commissioner determines that the needs of the other departments will be best served by the authorization. Nothing in this section precludes the department from obtaining necessary contractual assistance for automatic data processing activities. Nothing in this section precludes the legislature or judicial system from recruiting and employing data processing personnel or from obtaining necessary contractual assistance for automatic data processing activities.

(f) The division of data processing shall coordinate with the division of telecommunications in providing for the effective transfer of information by telecommunications through the establishment of compatible systems and common standards. (§ 2 ch 170 SLA 1972; am E.O. No. 50, § 8 (1981))

Effect of amendments. — The 1981 amendment added subsection (f).

Editor's notes. — Section 3, ch. 170, SLA 1972, provides: "This Act applies to all automatic data processing facilities acquired either partially or wholly with

state money before or after July 7, 1972. This Act also applies to automatic data processing facilities used by the state but financed with federal money, to the extent permissible under applicable federal policies."

Sec. 44.21.170. Definitions. In AS 44.21.150 — 44.21.170

(1) "automatic data processing" means

(A) those methods of processing data by using electrical accounting machinery (EAM) or electronic data processing equipment (EDP), including the activities and devices required to prepare data for automatic data processing;

(B) data communications devices and those systems used with automatic data processing equipment in the transmission and reception of data; and

(C) activities related to the design and development of automatic data processing systems;

(2) "commissioner" means the commissioner of administration;

(3) "department" means the Department of Administration. (§ 2 ch 170 SLA 1972)

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§ 44.21.241

STATE GOVERNMENT

§ 44.21.242

Article 5. Alaska Council on Science and Technology.

Section

241. Council established
242. Purpose, powers, and duties
253. Records, reports

Section

254. Definitions
255. Short title

Editor's notes. — According to AS 44.66.010(a)(6), the Alaska Council on Science and Technology expired on June 30, 1983; however, under AS 44.66.010(b), the

council continued in existence until June 30, 1984, for the purpose of concluding its affairs.

Sec. 44.21.241. Council established. (a) There is established in the Department of Administration the Alaska Council on Science and Technology. The council consists of seven members who are appointed by the governor upon the recommendations of the state's scientific, engineering, and related communities and organizations. Members have overlapping three-year terms, except that, of the first members, two have terms of one year, two have terms of two years, and three have terms of three years. Two members shall be selected from different executive departments of state government having significant research activities, two members shall be selected from the Alaska academic community, two members must have significant activities or direct interests in research and shall be selected from the general public, and one member shall be selected from the staff of the legislature. The council shall elect one of its members as chairman. A chairman may be elected for successive terms as chairman and serves until a successor is designated. Four members constitute a quorum.

(b) Council members receive no compensation but are entitled to the travel and per diem provided by law for members of boards or commissions. (E.O. No. 48, § 4 (1981))

Revisor's notes. — Enacted as AS 44.21.200. Renumbered in 1981.

Sec. 44.21.242. Purpose, powers, and duties. (a) The purpose of the council is to review and recommend the scientific and technological research needs of state government, to issue research grants and contracts, to oversee the issued grants and contracts, to promote high standards of research for the priorities proposed by the council, and to address stated legislative or administrative requests for research.

(b) The council may

(1) apprise itself of local, state, federal, and private research programs, activities, and needs;

(2) convene committees, task forces, conferences, public hearings, and other meetings necessary to carry out the council's purposes;

(3) award research grants and contracts on a fair and competitive basis and administer those grants and contracts;

(4) enter into agreements creating one or more systems of information exchange with any appropriate research funding sources;

(5) at the request of any state agency, enter into and administer, but not perform, the research under research grants and contracts funded by that state agency;

(6) investigate the need for and when necessary establish advisory committees for reviewing its program;

(7) request and receive from any agency of the state government the assistance and data needed to carry out the requirements of this section;

(8) hire an executive director and staff that may be necessary to implement AS 44.21.241 — 44.21.255.

(c) The council shall

(1) develop methods of surveying research needs of the state, based on the present and future information needs of policy makers, state agencies, and the public at large;

(2) annually review the research needs and propose priorities for funding;

(3) annually submit to the governor and the legislature the findings of the council, including a listing, description, ranking, and justification of research needs, and a commentary on significant research activities of the preceding year funded by the state and including the relationship of that research to the state's needs and priorities;

(4) promote and enhance standards for research activities for which the council has administrative oversight;

(5) establish review procedures for research proposals;

(6) at the request of either the governor or the legislature, advise in a timely fashion or inquiries concerning scientific investigation or comment;

(7) evaluate and forward to appropriate agencies and persons products of research activities funded by the council; the council shall prepare comments to accompany research reports summarizing the applications, importance, or further research needs demonstrated by the findings of council-supported research;

(8) coordinate its data and information needs with other research organizations in order to avoid unnecessary duplication;

(9) not conduct any research itself other than that necessary to further the purpose of the council as provided in (a) of this section;

(10) supply to any person or agency requesting assistance the available information on past or present research activities for which the council has information, except that the council shall not release information which may endanger the acceptance of any research proposal which is at the time competing with other proposals for funding. (E.O. No. 48, § 4 (1981))

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§ 44.21.253

STATE GOVERNMENT

§ 44.21.256

Revisor's notes. — Formerly AS
44.21.210. Renumbered in 1981.

Sec. 44.21.253. Records, reports. (a) The council shall have its financial records audited by an independent certified public accountant. The internal auditor and legislative auditor shall jointly prescribe the form and content of the financial records of the council and shall be afforded access to these records at any time.

(b) Before January 15 of each year, the council shall submit to the governor and the legislature a comprehensive report describing operations and expenditures and the status of grants and contracts for the last preceding fiscal year.

(c) The provisions of AS 09.25.110 — 09.25.120 apply to the council. (E.O. No. 48, § 4 (1981))

Revisor's notes. — Formerly AS
44.21.220. Renumbered in 1981.

Sec. 44.21.254. Definitions. In AS 44.21.241 — 44.21.255, "council" means the Alaska Council on Science and Technology established in AS 44.21.241. (E.O. No. 48, § 4 (1981))

Revisor's notes. — Formerly AS
44.21.230. Renumbered in 1981.

Sec. 44.21.255. Short title. AS 44.21.241 — 44.21.255 may be cited as the Science and Technology Act. (E.O. No. 48, § 4 (1981))

Revisor's notes. — Formerly AS
44.21.240. Renumbered in 1981.

Article 6. Alaska Public Broadcasting Commission.

Section	Section
256. Creation of Alaska Public Broadcasting Commission	264. Purpose of the commission
258. Membership and term of office	266. Duties of the commission
260. Compensation and expenses	268. Powers of the commission
262. Chairman	270. Commercial broadcasting
	290. Definitions

Sec. 44.21.256. Creation of Alaska Public Broadcasting Commission. There is created within the Department of Administration the Alaska Public Broadcasting Commission. (§ 1 ch 153 SLA 1970; am § 1 ch 87 SLA 1976; am E.O. No. 50, § 2 (1981))

Revisor's notes. — Formerly AS
14.58.010. Renumbered in 1981.

Cross references. — For findings and purpose of the order enacting this article, see E.O. No. 50 (1981).

Effect of amendments. — The 1981 amendment substituted "Department of Administration" for "Department of Education."

Legislative history reports. — For report on ch. 87, SLA 1976 (CSSB 691 am H), see 1976 House Journal, p. 1217.

Sec. 44.21.258. Membership and term of office. (a) The commission consists of nine members appointed by the governor, without regard to political affiliation, subject to confirmation by a majority of the members of the legislature in joint session. In making appointments to the commission, the governor shall give due consideration to representation from such fields as higher education, elementary and secondary education, communications, commercial broadcasting, public health, public works, labor, commerce and the professions. Members may be removed only for cause.

(b) The members of the commission shall serve staggered terms of five years, with the initial terms determined by lot. (§ 1 ch 153 SLA 1970; am § 2 ch 87 SLA 1976)

Revisor's notes. — Formerly AS 14.58.020. Renumbered in 1981. report on ch. 87, SLA 1976 (CSSB 691 am H), see 1976 House Journal, p. 1217.

Legislative history reports. — For

Sec. 44.21.260. Compensation and expenses. Members of the commission receive no salary, but are entitled to per diem and travel expenses authorized by law for other commissions. (§ 1 ch 153 SLA 1970)

Revisor's notes. — Formerly AS 14.58.030. Renumbered in 1981.

Sec. 44.21.262. Chairman. At the first meeting, the commission shall elect a chairman from among its members to serve for one year. A chairman may be elected and serve for more than one consecutive term. (§ 1 ch 153 SLA 1970)

Revisor's notes. — Formerly AS 14.58.040. Renumbered in 1981.

Sec. 44.21.264. Purpose of the commission. The commission is created to encourage and supervise the development of an integrated public broadcasting system for the state and for the coordination of all public broadcasting stations. The primary purpose of the commission is the encouragement and support of noncommercial public broadcasting in the state through the provision of operating and capital grants in support of the delivery of noncommercial programs intended for a general audience by locally controlled nonprofit broadcast stations or telecommunications entities. The commission may support stations and entities which also engage in the delivery of instructional, for-credit programs, and the commission may provide funds for those

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purposes, but the primary purpose of commission funds is the support of activities that result in the delivery of general audience, noncommercial material. (§ 1 ch 153 SLA 1970; am § 2 ch 87 SLA 1976; am E.O. No. 50, § 3 (1981))

Revisor's notes. — Formerly AS 14.58.060. Renumbered in 1981.

Effect of amendments. — The 1981 amendment added the second and third sentences.

Legislative history reports. — For report on ch. 87, SLA 1976 (CSSB 691 am H), see 1976 House Journal, p. 1217.

Sec. 44.21.266. Duties of the commission. The commission shall

(1) [Repealed, E.O. No. 50, § 4 (1981).]

(2) [Repealed, E.O. No. 50, § 4 (1981).]

(3) [Repealed, E.O. No. 50, § 4 (1981).]

(4) apply for federal and private funds for public broadcasting purposes and receive all federal, state or private funds, property or assistance that may be appropriated, granted or otherwise made available to the commission for public broadcasting purposes, and use and disburse funds and property for purposes consistent with the terms of AS 44.21.010 — 44.21.330, subject to reasonable limitations imposed by the grantor;

(5) provide consultative services in all aspects of public broadcasting to all public or private agencies in the state which request them;

(6) serve as a library and clearinghouse for public broadcasting information;

(7) [Repealed, E.O. No. 50, § 4 (1981).]

(8) [Repealed, § 7, ch 87, SLA 1976.]

(9) through grants to qualified entities, develop an integrated public broadcasting network for the state;

(10) [Repealed, E.O. No. 50, § 4 (1981).]

(11) through grants to qualified entities, develop and distribute public broadcasting programming in the state;

(12) prepare and submit to the governor and the legislature, in consultation with the telecommunications divisions in the Department of Administration, a long term plan for the development of public broadcasting stations and systems in the state, and annually update the plan;

(13) perform all other functions necessary to ensure the orderly and coordinated development of public broadcasting in the state. (§ 1 ch 153 SLA 1970; am §§ 4, 7 ch 87 SLA 1976; am E.O. No. 50, § 4 (1981))

Revisor's notes. — Formerly AS 14.58.060. Renumbered in 1981.

Effect of amendments. — The 1981 amendment repealed paragraph (1) which read "control and supervise the use of broadcasting channels reserved by the Federal Communications Commission for educational broadcasting purposes."

repealed paragraph (2) which read "initiate or receive for review and approval all applications for educational broadcasting licenses submitted to the Federal Communications Commission for or on behalf of an elementary school system, community college, institution of higher learning, private educational institution, nonprofit

community or municipal organization in the state," and repealed paragraph (3) which read "initiate or receive for review and approval all applications for federal, state or private funds if the applications involve any form of educational broadcasting." In paragraph (4), the amendment added "apply for federal and private funds for public broadcasting purposes and" preceding "receive all," substituted "public" for "educational" preceding "broadcasting" and deleted "at all levels of education" preceding "and use and disburse." In paragraph (5), the amendment substituted "public" for "educational" preceding "broadcasting." In paragraph (6), the amendment added "public broadcasting" preceding "information" and deleted "on broadcasting for educational and public purposes" following "informa-

tion." The amendment repealed paragraph (7) which read "have the final authority over the broadcasting policy programming" and repealed paragraph (10) which read "develop and distribute public broadcast programming for educational institutions and public agencies in the state." In paragraphs (9) and (11), the amendment added "through grants to qualified entities" preceding "develop" and deleted "for public affairs" following "broadcasting programming" in paragraph (11). The amendment redesignated former paragraph (12) as present paragraph (13) and added present paragraph (12).

Legislative history reports. — For report on ch. 87, SLA 1976 (CSSB 691 am H), see 1976 House Journal, p. 1217.

Sec. 44.21.268. Powers of the commission. (a) The commission may

(1) employ all consultative, technical and clerical personnel necessary for the implementation of AS 44.21.010 — 44.21.330, within the limits of available funds;

(2) employ a director, who shall be directly responsible to the commission in financial and administrative matters;

(3) provide grants to locally controlled non-profit telecommunications entities which lease, purchase, construct, own, operate and manage and are the licensees of public broadcasting stations, production centers, and other related equipment and facilities for the production and transmission of open circuit, closed circuit, 2,500 megahertz, and other transmission means necessary to provide fully effective public broadcasting in the state;

(4) appoint unpaid advisory committees to assist in development of programs for public television broadcasts;

(5) provide assistance to licensed commercial broadcasting stations for the broadcast of public affairs programming.

(b) In performing its duties and exercising its authority under AS 44.21.010 — 44.21.330, the commission may not exercise control over the specific content or airing of any program material. (§ 1 ch 153 SLA 1970; am § 5 ch 87 SLA 1976; am E.O. No. 50, § 5 (1981))

Revisor's notes. — Formerly AS 14.58.070. Renumbered in 1981.

Effect of amendments. — The 1981 amendment designated the existing section as subsection (a) and added subsection (b). In subsection (a)(3), the amendment substituted "provide grants to locally controlled non-profit telecommunication entities which" for "where no other com-

petent contracting agency exists" near the beginning of the paragraph, substituted "licensees" for "licensee" following "manage and are the," substituted "public" for "educational" preceding "broadcasting stations," deleted "all" preceding "other related equipment" and substituted "public" for "educational" preceding "broadcasting in the state" near the end of the

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paragraph. The amendment deleted
"instructional and" preceding "public tele-
vision" in subsection (a)(4) and deleted
"and utilization of satellite communica-
tions for the broadcasting of special public

affairs programming" following "public
affairs programming" in subsection (a)(5).
Legislative history reports. — For
report on ch. 87, SLA 1976 (CSSB 691 am
H), see 1976 House Journal, p. 1217.

Sec. 44.21.270. Commercial broadcasting. Nothing in AS
44.21.256 — 44.21.290 may be construed to restrict or control commer-
cial broadcast stations or companies operating or licensed in the state.
(§ 1 ch 153 SLA 1970)

Revisor's notes. — Formerly AS
14.58.080. Renumbered in 1981.

Sec. 44.21.290. Definitions. In AS 44.21.256 — 44.21.290, unless
the context otherwise requires

(1) "commission" means the Alaska Public Broadcasting Commis-
sion;

(2) "public broadcasting" includes, but is not limited to, television
and radio transmission by 2,500 megahertz, closed circuit or micro-
wave video and audio programming, slow-scan television pro-
gramming, programming via satellite, teletype or facsimile
transmission, and distribution methods, when the transmission, pro-
gramming and distribution are intended to serve a noncommercial
public purpose. (§ 1 ch 153 SLA 1970; am § 6 ch 87 SLA 1976; am E.O.
No. 50, § 6 (1981))

Revisor's notes. — Formerly AS
14.58.090. Renumbered in 1981.

Effect of amendments. — The 1981
amendment deleted "educational"
preceding "public" and deleted "or instruc-

tional" preceding "purpose" in paragraph
(2).

Legislative history reports. — For
report on ch. 87, SLA 1976 (CSSB 691 am
H), see 1976 House Journal, p. 1217.

Article 7. Telecommunications.

Section	Section
300. Telecommunications divisions	320. Division of telecommunications sys- tems
305. Deputy commissioner	330. Definitions
310. Powers and duties of the telecommunications divisions	
315. Division of telecommunications ser- vices	

Sec. 44.21.300. Telecommunications divisions. There is estab-
lished in the department

- (1) a division of telecommunications services; and
- (2) a division of telecommunications systems. (E.O. No. 50, § 9
(1981))

Revisor's notes. — Formerly AS
44.21.200. Renumbered in 1981.

Sec. 44.21.305. Deputy commissioner. (a) The telecommunications divisions shall be administered by a deputy commissioner of the department appointed by the commissioner.

(b) The deputy commissioner shall

(1) provide executive direction for the activities of the telecommunications divisions; and

(2) assure that division activities in no way constitute an influence on the content or airing of programming, and report to the governor, the commissioner, and the Alaska Public Broadcasting Commission any request or attempt by an employee of the state to influence the content or airing of program material. (E.O. No. 50, § 9 (1981))

Revisor's notes. — Formerly AS
44.21.210. Renumbered in 1981.

Sec. 44.21.310. Powers and duties of the telecommunications divisions. (a) The telecommunications divisions, as directed by the deputy commissioner, shall

(1) advise the governor on matters of policy and comprehensive state planning for telecommunications services;

(2) make an annual report to the governor and to the legislature on the activities of the telecommunications divisions;

(3) coordinate, manage, and supervise state programs in telecommunications, including the management of those telecommunication services for the state obtained from common carriers and from the communications industry;

(4) when requested, provide technical and consulting assistance to the executive, judicial, and legislative branches of state government, to the University of Alaska, and to private noncommercial entities which request that assistance in facility procurement and leasing and in identifying long-range goals and objectives for the state and its political subdivisions in all aspects of telecommunications, including public, educational, and instructional telecommunications;

(5) prepare and maintain a state comprehensive telecommunications development plan to further state telecommunications development and to meet state telecommunications needs and prepare and maintain a comprehensive inventory of all state communications facilities;

(6) whenever feasible, procure services from private enterprise or certified and franchised utilities and contract for the construction, management, operation and maintenance of telecommunications systems, and develop a procurement policy under AS 37.05.010 — 37.05.410; the procurement policy must seek to achieve the maximum benefit to the public, and methods of procurement, including lease,

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purchase, rental, or combinations of lease, purchase, and rental, must be selected on the basis of factors such as the ratio of long-range costs versus benefits, life cycle costing, and the costs to the communications industry to the extent that these costs may affect local and long distance basic telephone rates;

(7) provide information and assistance to state agencies to promote governmental coordination and unity in the preparation of agency plans and programs involving the use of telecommunications;

(8) apply for and accept federal and private money, property, or assistance, that may be appropriated, granted, or otherwise made available to the telecommunications divisions and use and disburse money and property for purposes consistent with AS 44.21.300 — 44.21.330 and AS 44.21.256 — 44.21.290, subject to reasonable limitations imposed by the grantor;

(9) participate with other governmental units in planning, and assist local governments and governmental conferences and councils in the state in planning and coordinating their activities relating to telecommunications;

(10) provide for the orderly transition to new telecommunications services and systems by state agencies;

(11) serve as a clearinghouse for information, data, and other materials which may be necessary or helpful to federal, state, or local governmental agencies in the development of telecommunication systems;

(12) coordinate their services and activities with those of other state departments and agencies to the fullest extent possible to avoid unnecessary duplication; and

(13) provide that all activities of the telecommunications divisions are responsive to state statutes and regulations, and to the regulations and rulings of the Federal Communications Commission.

(b) The telecommunications divisions, as directed by the deputy commissioner, may

(1) coordinate their functions with local, regional, state, and federal officials, private groups and individuals, and with officials of other countries, provinces, and states;

(2) enter into contracts and subcontracts on behalf of the state to carry out the provisions of AS 44.21.300 — AS 44.21.330;

(3) act for the state in the initiation, investigation, and evaluation of, or participation in, programs related to the purposes of the telecommunications divisions which involve more than one government or governmental unit;

(4) on behalf of the state, apply for, accept, and expend gifts or grants made to the state if the gifts or grants are for the purposes of furthering the objectives of the telecommunications divisions; and

(5) hold public hearings to obtain information for the purpose of carrying out the provisions of AS 44.21.300 — 44.21.330.

(c) The telecommunications divisions may not attempt to influence or affect the content or airing of program material. (E.O. No. 50, § 9 (1981))

Revisor's notes. — Formerly AS 44.21.220. Renumbered in 1981.

References to AS 44.21.200 — 44.21.250 were changed to AS 44.21.300 — 44.21.330 in subsections (a)(8), (b)(2) and (b)(5) by the revisor of statutes under AS 01.05.031 to conform to the renumbering of the article.

Additionally, a reference to AS 14.58 was changed to AS 44.21.256 — 44.21.290 by the revisor of statutes pursuant to AS 01.05.031 to reflect the renumbering and transfer of that chapter.

Sec. 44.21.315. Division of telecommunications services. (a) The division of telecommunications services shall be administered by a director appointed by the commissioner.

(b) The division of the telecommunications services shall provide

(1) technical consultation to educational and public telecommunications users;

(2) coordination and support to telecommunications services for instruction, including technical assistance and assistance in preparation of applications for grants related to program development as may be requested by

(A) public school districts and the Department of Education;

(B) the University of Alaska; and

(C) other state agencies as approved by the deputy commissioner;

(3) coordination and support for health and safety-related functions, including the administrative and client services provided by state, federal, and private agencies;

(4) coordination and support to telecommunications services for public participation in state-financed services, including the public hearing process, as may be statutorily required or otherwise appropriate;

(5) assistance, through design, development, and promotion, to local school districts or other local and regional education agencies for the regionalization of instructional telecommunications services;

(6) establishment of operational policies for public telecommunications services other than public broadcasting; and

(7) assistance to the Alaska Public Broadcasting Commission and any commission-designated subcommittees, as necessary to perform assigned division functions; the division shall cooperate with the commission and subcommittees in order to develop policies which are responsive to the user groups which are represented on the commission.

(c) Subject to available funding, the division of telecommunications services may make grants to educational and public telecommunication users except grants for public broadcasting purposes.

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(d) The division of telecommunications services shall study, plan, and develop integrated instructional telecommunications services for all residents of the state, and shall annually report on current fiscal year instructional telecommunications activities and, after public hearings, submit to the governor and the legislature an annually updated long-term development plan prepared in consultation with the Department of Education, the University of Alaska, local school districts, and other local and regional education areas.

(e) The division of telecommunications services shall, after public hearings, submit to the governor an annually updated long-term development plan for teleconferencing facilities and services, including facilities and services used both by state agencies and groups other than state agencies.

(f) The division of telecommunications services may not own, operate, or be the licensee of a public noncommercial broadcast station or production center.

(g) Nothing in this section implies division responsibility for programming content. Program design, production, and use are the responsibility of the program-sponsoring agency or other entity, not the division. (E.O. No. 50, § 9 (1981))

Revisor's notes. — Formerly AS
44.21.230. Renumbered in 1981.

Sec. 44.21.320. Division of telecommunications systems. (a) The division of telecommunications systems shall be administered by a director appointed by the commissioner.

(b) Except as provided in (e) of this section, the division of telecommunications systems may, consistent with the provisions of AS 44.21.310(a)(6)

(1) plan, design, construct, manage, and operate all telecommunications systems owned or leased by state agencies;

(2) manage centrex and other telephone-related services of state agencies;

(3) be responsible generally for telecommunications systems and design for state agencies; and

(4) coordinate with state agencies in performing their data and word processing tasks.

(c) Within the limits of available financing, the division of telecommunication systems shall administer and operate the satellite television project, by

(1) coordinating with the satellite television user groups and entities; and

(2) providing liaison, management support, and technical assistance for the satellite television project.

(d) Decisions and policies relating to programming under the satellite television project, including scheduling and allocation

policies, may not be made by the divisions of telecommunications or the department, but may only be made by a network that is representative of participating rural television users, by commercial broadcast users or by other affected participating user groups and entities under procedures provided by statute or, if no statute applies, then by agreement of the affected user networks or groups. The department shall assist users in preparing agreements that may be required under this subsection.

(e) The divisions of telecommunications and the department may not engage in any activity which interferes with a contract or program right relating to commercial television programming, including but not limited to any right protected by copyright.

(f) Nothing in AS 44.21.300 — 44.21.330 prohibits a state agency from developing telecommunications systems within its own agency if the commissioner gives written authorization for the agency to engage in its own design, development, management, or operation. The commissioner may authorize independent development only upon a showing of necessity. A description of all authorization under this subsection must be included in the annual report required under AS 44.21.310(a)(2).

(g) A state agency authorized to develop an internal telecommunications system shall, whenever feasible, coordinate its design development, management, and operation with the division of telecommunications systems. (E.O. No. 50, § 9 (1981))

Revisor's notes. — Formerly AS 44.21.240. Renumbered in 1981.

Sec. 44.21.330. Definitions. In AS 44.21.300 — 44.21.330

- (1) "commissioner" means the commissioner of administration;
- (2) "department" means the Department of Administration;
- (3) "deputy commissioner" means the deputy commissioner in the department who administers the telecommunications divisions;
- (4) "public broadcasting" means the delivery of radio or television noncommercial programming intended for the general public by any method of telecommunications;
- (5) "public telecommunications" means telecommunications which serve public broadcasting, general educational, instructional, medical, safety, emergency, or public participation functions;
- (6) "state agencies" means all departments, divisions, and offices in the executive branch of state government; it does not mean an agency of the legislative or judicial branch of government or the University of Alaska;
- (7) "telecommunications" means the transmission and reception of messages, impressions, pictures, and signals by means of electromagnetic transmission with or without benefit of a closed transmission medium including all instrumentalities, facilities,

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apparatus, and services, whether conveyed by cable or wire, radiated through space, or transmitted through other media within a specified area or between designated points;

(8) "telecommunications systems" means those systems in which the principal service and functions are telecommunications. (E.O. No. 50, § 9 (1981))

Revisor's notes. — Formerly AS
44.21.250. Renumbered in 1981.

Article 8. Office of Public Advocacy.

Section

400. Public advocacy office established
410. Powers and duties of public advocacy
office
420. Employment of office personnel

Section

430. Attorneys engaged by public
advocacy office
440. Conflicts of interests

Sec. 44.21.400. Public advocacy office established. There is created in the Department of Administration the office of public advocacy. (§ 1 ch 55 SLA 1984)

Sec. 44.21.410. Powers and duties of public advocacy office.
(a) The office of public advocacy shall

(1) perform the duties of the public guardian under AS 13.26.360 — 13.26.410;

(2) provide visitors and experts in guardianship proceedings under AS 13.26.131;

(3) provide guardian ad litem services to children in child protection actions under AS 47.17.030(e) and to wards and respondents in guardianship proceedings who will suffer financial hardship or become dependent upon a government agency or a private person or agency if the services are not provided at state expense under AS 13.26.112;

(4) provide legal representation in guardianship proceedings to respondents who are financially unable to employ attorneys under AS 13.26.106(b), to indigent parties in cases involving child custody in which the opposing party is represented by counsel provided by a public agency, and to indigent parents or guardians of a minor respondent in a commitment proceeding concerning the minor under AS 47.30.775;

(5) provide legal representation and guardian ad litem services under AS 25.24.310; in cases arising under the Uniform Interstate Compact on Juveniles (AS 47.15); in cases involving petitions to adopt a minor under AS 25.23.100(j); in cases involving petitions to remove the disabilities of a minor under AS 09.55.590; in children's proceedings under AS 47.10.050(a); and in cases involving indigent persons who are entitled to representation under AS 18.85.100 and who cannot be represented by the public defender agency because of a conflict of interests.

APPENDIX C

TO: REP. "RED" BOUCHER, HOUSE COMMITTEE ON
TELECOMMUNICATIONS
FROM: DOUG BARRY AND BEV MICHAELS
DATE: 12/17/85

SUMMARY: The work of the Committee could focus productively on five major issue areas. 1) The importance of placing telecommunications on the public and legislative agendas, while moving towards the development of a state master plan for telecommunications. This could be accomplished in part by calling attention to possible hefty price increases for basic services such as the telephone, and by analyzing the effects of such increases on utilization and equality of access; 2) Committee goals could be further advanced by finding common cause with the Senate Telecommunications Committee; 3) The State's role as telecommunications customer and industry regulator needs to be re examined; 4) The terms "universal service" and "lifeline" need to be redefined. A new definition that provides for greater equality of access to different kinds of information technology may include an enhanced role for the community library; 5) Users and potential users require training in the utilization and applications of information technologies; 6) The legislature should play a leadership role in order to insure that telecommunications resources are used in ways that are cost effective and produce the greatest good for the greatest number of people; 7) The legislature should appropriate funds now for the collection and analysis of data which will assist in making sound public policy.

Since we are late in responding, and because most of our concerns pertaining to the report have already been adequately addressed by others, we shall limit our comments to what we hope will be of help as the Committee members get down to work.

You have before you a staggering number of issues, not only the ones raised in the report, but those additional items suggested by conference participants. What follows is a list of fairly representative areas of concern from which an agenda for at least this legislative session could emerge:

1. Consciousness Raising. The public and the Legislature need to develop a greater appreciation for the importance of telecommunications, not only in the conduct of everyday life but in terms of future economic and social development. Normally, you might have to shake people by the collar in order to focus their attention on I-Nets or blanking intervals, but the prospect of huge telephone rate increases may concentrate minds wonderfully and allow a whack to be taken at the bundle of other issues raised in this forum.

In other words, the problems and potential opportunities posed by deregulation of the telephone industry provide a touchstone upon which to raise general awareness and to build a coherent State telecommunications plan. The inability to place telecommunications on the public agenda makes it more likely that what ultimately prevails is the meat ax or narrow special interest substitute for wise policy formulation.

2. The Senate Telecommunications Committee. Searching for solutions to the considerable problems posed by substantial telephone rate increases would be an area of common cause for the House and Senate Special Committees on Telecommunications. To its credit, the Senate side has already looked into some technological options for improving the delivery and end results of long distance educational services. These options, if implemented, also would be substantially affected by higher rates for voice and data transmission.

Focusing on the impacts of higher costs of communication or on specific technological solutions to other kinds of problems should not occur at the expense of comprehensive planning. Sadly, the recent experience throughout the world is for governments to decide on a "solution" before the problem is adequately defined. The system for diagnosing needs and planning solutions needs to be made more reliable. Close working relations this session between the House and Senate Committees would be an important step in this direction.

3. The State as a Telecommunications Customer. In this climate of deregulation the State, as perhaps the largest purchaser of telecommunications services, must be a smart consumer in addition to performing its duty of looking after the interests of individual consumers. The Committee could help insure that the State is up to the task by looking into the issues raised by the following questions: Are we all being adequately represented by the State's regulatory agencies? Does the Department of Law, or the Governor's Office, or the Department of Administration possess the necessary resources to fully comprehend let alone act prudently in the complex environment of telecommunications law and economics (not just in the realm of telephones but in cable and broadcast television, I-nets, teletex, etc.)? Do we presently have an organizational structure that can effectively plan for and respond to changes in this environment in ways that are in the best interests of the public? Is the process now in place capable of acting in ways that are both fiscally and socially responsible? Would it be appropriate for the Committee to act not just as a gatherer of facts but as an advocate for the consumer, whether the consumer is the State or an ordinary citizen who

depends on affordably priced access to information?

What are the real costs and benefits of increased competition in the telecommunications playing field, including development by the public sector of alternative channels of voice and data communication?

4. Definition of Universal Service. The terms universal service and "lifeline" need to be thought of not just as affordable access to a telephone but as access to other sources of information as well. Survival in the "Information Age" may require a right to communicate and to have equal or reasonable access to certain kinds of essential information.

Might libraries, for example, become a kind of community communications center where access to audio conferencing equipment, television production facilities, video and audio cassettes, computers with software and access to data banks, and training in the use of these resources, could be provided to all who sought them? If the age of electronics does indeed shift more information to electronic distribution, then it follows that libraries will have to overcome their long affiliation with a particular format--the printed page--and shift more of their acquisition budget to new formats, such as electronic data bases. Expenditures--on data based subscriptions, phone line hookups and computer time on the one hand and video display terminals and perhaps video disc players and programs on the other hand--may be required to continue providing the same types of information to patrons as they are now doing. From the users' viewpoint, the library will remain a constant: a repository of information. From the managers' and suppliers perspective, maintaining that service will require adjustments and re-evaluation on how best to serve the user. From the legislative perspective, assuring that libraries are properly funded regardless of their location, and that funds are spent in a responsible manner, becomes a prime concern.

5. Training. As alluded to above, and mentioned frequently by respondents to this forum, training in the use of all communications technologies can no longer be an after thought nor the first thing to be cut when funds get tight. The successful application of new technologies often requires changes both in the ways users think and in how they do things. For example, as more instructional technologies become available in the classroom--and pressure mounts to use them--the role of teachers will likely change from that of the primary repository of information to a kind of information manager. Without adequate training provided by a reliable long term funding base this and other important changes will not occur in step with perceived needs in Alaska or with what is happening elsewhere.

At a time when interest in finding the optimal applications for information technologies appears to be on the increase around the state, we need to provide users and potential users with the best possible support. While the Committee can not itself provide this specialized training, its members can make applications a primary theme during this and future legislative sessions.

It should be noted that little of this new technology is changing the CONTENT of the communication itself. Much of what we are discussing here is machines or processes for distributing information. But it is still the information itself and how it is used that should remain both the starting and ending concern of the information revolution.

6. Accountability. The primary goal of a state telecommunications master plan could be to insure that communications resources are fully used, shared, and coordinated in ways that are cost effective and produce the greatest good for the greatest number of people. It may be appropriate for the Committee to involve itself in some form of budget oversight in matters where capital and operating requests pertain to any aspect of telecommunications. This "watchdog" role may involve simply asking the right questions at finance committee hearings. Has agency X consulted with agency Y before investing in this or that hardware or software? Has agency Q bothered to assess training or other constituent needs? If it has and the requested funds are cut by the finance committees or the Governor's office, do all parties understand the consequences of their actions? In the extreme case, the Committee could perhaps suggest that all State agencies be strongly urged or required by law to file each year a "telecommunications impact statement," explaining how they propose to serve their constituents, what they will do to seek cooperation with other agencies, what they have done to contain costs, and, if a state master plan exists, what will be done to insure compliance?

This should not be perceived as another burdensome reporting exercise or as a threat to agency autonomy, but as an attempt to see and interpret the big picture, to open new channels of communication among state agencies and the people they serve. Even though a master plan or, at the very least, a bundle of programs resembling a comprehensive, coherent policy process eventually emerge and are administered by an agency within the administrative branch, the legislature should in any case develop the means to help insure maximum accountability.

7. Research. There is much that we need to know about the affects of the process of sending and receiving information. The use of the telephone, for example, is much more complex

than most of us think. Do the patterns and nature of use differ greatly between rural and urban Alaska? Does the use of the telephone by rural Alaskans provide information that may have economic or social impact on rural communities? How should we conduct an assessment of telecommunications uses along with present and future needs?

A very good research question was asked by one of the respondents: What kind of information do people WANT? The problem with the question is that some people may not know. Another key question is what do people DO. By observing what they do and how they do it we may be able to suggest ways to help them acquire access to information that will result in better decisions.

One important goal of the Committee for this legislative session may be, at the very least, to commission a research design from a research institute IN state. A research task force could be organized to assist in the design and to begin to collect the necessary baseline data. As one of the respondents correctly pointed out, gathering and analyzing the data and performing program evaluations will be a difficult and long term process. It should begin now.

We thank you for the opportunity to comment.

COMMENTS FROM LARRY PEARSON UAA JOURNALISM

November 24, 1985

**To: Rep. H.A. "Red" Boucher,
House Special Committee on Telecommunications**

**From: Larry Pearson, Assistant Professor,
Department of Journalism and Public Communication,
University of Alaska, Anchorage**

Although I have expressed some of my views about Alaskan telecommunications policy issues to you and to individual members of the teleconference, I would like to take this opportunity to put these views on the record.

Two forms of telecommunication have long been recognized in Alaska as deserving of governmental assistance. These are communication by telephone and by television to remote sites. These services are recognized as communication lifelines, and state policy, as I understand it, has been to assure that these lifelines are not withdrawn.

The fate of these lifelines in an era of change for the telephone and television industries clearly is a central concern of state telecommunications policy. But this is only the most obvious of the fundamental issues facing the committee.

Just what is it that these lifelines are doing? What should they be doing? Should other lifelines be thrown out? We all have ideas about the importance and value of telephones and television in the cities and the villages. But where's our evidence?

As the Telecommunications Draft Report shows, we are far from knowing the answers. We are only beginning to ask the questions. There is a real danger that the answers we eventually accept will be no more than rationalizations for the activities we have long been engaged in. The Telecommunications Committee is in a position to see that we do better than that, that we deal with telecommunication policy issues in a way that assures the interests of all Alaskan citizens will be well served.

And how can we do that? We must, first, find out what those interests are. This is a particularly difficult task when we remember that most of the people who are the potential users of telecommunications know little about

communication technology and its capabilities. They can tell us how they use the telephone and what they watch on television, but few of them are likely to know that it is possible to order airline tickets over videotex (an interactive telecommunication system whose chief components are a central computer and -- for the user -- a telephone, a television set and a keypad). They can tell us what television programs they like most and what ones they like least, but they may be able to tell us nothing about kinds of programming that they never have been exposed to.

So how can we ask them questions if we know in advance that they don't know the answers?

The strong temptation is to take a paternalistic approach, to say: "We are the experts and we know what's good for you." It is an approach that has made some entrepreneurs rich -- and has impoverished others. And those are the risks the state government faces if it chooses to base its decisions on the advice of those who have the greatest knowledge of telecommunication technologies.

But the risk of failure can be reduced for government just as it often is for private industry if a way of identifying the interests of the ultimate users can be found. And I think that is another important task the Special Committee on Telecommunications faces.

It is necessary to talk to a cross-section of Alaskan citizens -- probably in a field survey -- to identify their interests and needs. Such a survey should not focus on telecommunication. It should focus on communication in all its forms. This includes physical movement from one place to another to exchange information, communication by mail, and communication involving the established media. It should also look at how state agencies communicate with individuals and with other organizations.

If we can first find out what kinds of communication are important to people, we can then decide whether telecommunication offers ways of improving communication. We may thus identify opportunities for private industry. And we may identify areas in which only state subsidies will make improved communication possible. In those areas we will have to weigh the economic costs against the social benefits.

Some possibilities:

- *Use of telecommunication to increase citizen involvement in policy formation (as we are doing in this teleconference).

- *Use of expert computer systems (such as medical diagnostic systems)

in problem solving.

- *Use of teletext to provide TV captioning for the hearing-impaired, textual information -- such as aircraft weather reports -- via television for other users. Even computer software may be transmitted in this way, piggybacking on the television signal.
- *Use of videotex for electronic banking, ordering goods and services, getting state and national news (in more depth than radio or television; more quickly than newspapers).

I would hope that many other possibilities would be identified and considered. It might be helpful to think not only of what enhanced telecommunication systems would allow us to say to the villages, but of what such systems would allow the villages to say to us.

The members of the UAA Journalism and Public Communication Department also believe that it should be made easier for those interested in telecommunications -- especially telecommunications policy and content issues -- to find relevant materials. If these materials are gathered and organized, we can reduce the danger that the answers to our questions, once they are found, will be forgotten. Our department has begun to collect materials about telecommunication research and policy in Alaska. We would welcome contributions to this collection from other participants in the teleconference.

Thank you.

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COMMENTS FROM NANCY STERES RURAL EDUCATION UNALASKA

November 12, 1985

I received and read the Interim Report on Telecommunications which you sent me and am responding per your request.

Several issues are raised in the Report. I will first address the issues related to rural education and telecommunications. I checked with people at the Unalaska School, kindergarten through 12th grade, and asked if they use Learn Alaska TV and/or Audio conferencing. The Alaska History teacher told me he taped two series off Learn Alaska for use in his classes. He also often tapes live broadcasts of, for example, the Berger Hearings and the AFN Convention for use in the classroom. Audio conferencing is used by both teachers and students in the school.

I also tape series sometimes from Learn Alaska for use in Rural Education courses. In my contact with the general public, some people watch Learn Alaska and I'm not aware of anyone here taking University Course by viewing Learn Alaska. I offer University courses locally here and possibly more remote communities use Learn Alaska to enroll in University courses. I use the audio conferencing for statewide courses, and meetings. I also use the Legislative audio conferencing and others do in this community.

I would like to see better coordination of Learn Alaska and Rural Ed Centers for programming. I receive information from the Learning Channel in New York and I know there are more and better series out there; I would like to see some new programs and less repetition of programs.

The questions raised regarding subsidizing inter and intrastate telephone service is an interesting one. Of course, personally, I feel our telephone rates are already very expensive. I am not in favor of increasing the cost of telephone service. Remember the discussion we had at Margery Walker's home regarding local drop phone lines? I would like to be able to offer the computer/phone modem for students to access their instructors. This is an important priority in education. Educational institutions are behind private industry in the use of telecommunications and I feel that we need to focus some money and time on developing this. On page 30 item 1, the question of combining technologies for more efficient delivery and exchange of information is a good idea.

The question raised on page 24 of the report, "Does this imply the state has an obligation to provide entertainment television just as it does educational

service?" I think so. It isn't just being able to tune in to Dallas; the national news and statewide news are important. Maybe expanding cable is an answer; we have cable here in Unalaska, it is expensive, approximately \$29.00 including FM stations, and it does not provide the three major networks. I've lived here for three years. I am from San Francisco. I remember my first winter here; sometimes just being able to watch 60 Minutes live from California gave me a feeling of contact with the outside. Regarding sharing commercial and educational TV, we already have to share the commercial programming, sports events often win out over other programming. We are fortunate in Unalaska. We have a local TV station, Unalaska Community TV, Inc. which rebroadcasts a lot of the PBS programs. I know many communities do not receive PBS and I'd like to see it available to them.

I hope this assists you in your work in the committee. I appreciate your asking for my input and look forward to the opportunity in the future.

Nancy A. Steres
University of Alaska Rural Education Center
Unalaska

COMMENTS FROM JOEL ROTHBERG ACAP ATTORNEY

The following comments were submitted by the Alaska Consumer Advocacy Program on November 18, 1985. They were submitted by ACAP's attorney, Joel Rothberg.

ACAP appreciates the opportunity to submit written comments to the Committee on the subject of lifeline rates, a topic that was mentioned in your interim draft report. Lifeline rates as they have been considered and to a limited degree realized in the other states are reduced rates for low-income, handicapped, elderly, and other socially disadvantaged citizens, which assist these individuals in maintaining telephone service. It is important to note that the concept of lifeline rates is a subsidiary of the goal of universal telephone service, the availability of telephone service at reasonable rates to any resident of the state who desires it. Lifeline rates can best be viewed as a subsidy designed to ensure availability of service to residents whose need for service is particularly great and who may not be able to afford service at rates which are reasonable for other residents. Lifeline rates may thus be seen as furthering the goal of universal service.

Whether one is speaking of universal availability or more specifically of lifeline rates, the same basic public need for telephone service underlies both concepts. Urban Alaskans require telephone service at a minimum to maintain access to police and fire protection and emergency medical treatment. Rural Alaskans, who must cope to a substantially greater degree with the effects of severe climate, great distance, and the absence of roads, depend upon the telephone not only for the services already mentioned

but also often for a variety of other purposes, including obtaining food and other supplies, consulting with doctors, nurses and other health care professionals, contacting social workers, public assistance agents, and other local, state, and federal officials, and obtaining legal assistance.

Lifeline rates and the degree of subsidization required should be considered in conjunction with other issues before the Committee affecting the future availability and cost of local, intrastate, and interstate telephone service in Alaska. These concerns include the structure of telephone company competition within the state, the shifting of costs from long-distance companies to ratepayers, possibly through subscriber line charges, and the problem of bypass of the telephone system by some ratepayers. Resolution of these questions will require decisions about the extent to which the cost of service will be distributed among urban and rural Alaskans, telephone companies and the state. Essential to obtaining

answers to these questions is detailed information about telephone usage and costs in Alaska disclosing, among other information, distribution of telephone traffic among local, intrastate, and interstate calls, purposes of calls, and resulting difference, if any, in telephone costs for urban and rural residents. This information should be applied to determine how much of the goal of universal service can be achieved through restructuring of the existing system by increased competition and how much will have to be achieved by other means, including the introduction of lifeline rates.

ACAP remains available to provide additional information and assistance on lifeline rates and other aspects of telecommunication policy, should the Committee desire this.

Joel A. Rothberg

**COMMENTS FROM VINOD BATRA PRES. UNICOM & UNITED
UTILITIES SERVING RURAL ALASKA**

Nov. 18

The following comments were received by the House Special Committee on Telecommunications from Vinod Batra, President of Unicom, Inc. which has as an affiliate United Utilities, a large rural local telephone company. The letter is dated August 29, 1985.

The letter reads as follows:

Reading through your draft report of House Special Committee on Telecommunications, I shall like to offer the following comments for consideration by this committee:

1. Does the State government want to be in the Telecommunications business or does it want to become a catalyst for the development of telecommunications?

I believe the State should be a catalyst and allow private enterprise and market forces to dictate growth of such services.

In this connection, all existing programs; e.g. ITV, Rural Net, etc., should be turned over to private industry for a nominal charge. If subsidy is needed to provide a certain level and grade of service, it should be on a bid basis. The State could obtain the best service at the lowest cost and keep existing telecommunications companies healthier.

2. Should the State encourage and fund Public Television and Public Radio services for all Alaskans?

I believe that all Alaskans should have the availability of a minimum level of service required for their health, welfare and education. Beyond that, if an individual wishes to reside in the wilderness of the Brooks Range, that is a choice that the individual made and society should have no obligation to incur exorbitant amounts to tend to the person's comforts.

3. Should committees be established vs networking of professionals?

Very few committees ever reach an economic decision. The professionals (hired by the State or the industry) should be tasked with preparing

the grand master plan and industry should be asked to implement. Once again, any subsidy required for implementation should be on a bid basis so all entrants have equal opportunity.

Private telephone industry is an example of this arrangement. Through low-cost loans from REA, rural America has been able to achieve a very high penetration of quality telephone service. Lifeline services are not needed for rural America, but for the poor of urban America.

4. Establishment of lifeline rates and telephone buyers protection plan?

Taking an analogy from the electric industry, does the state intend to implement a buyer protection plan for light bulbs? A telephone is a device to receive and transmit signals. The marketplace will dictate who survives and continues to provide good equipment. It will be foolhardy for the State to become a guardian of the telephone industry or of buyers of such products.

Lifeline rates should be sought only if the consumer feels that he/she is unable to afford the minimum level of service required; i.e. cost of basic service + 5 toll calls/month less than \$3 each (approximately \$30 per month). Support for this should come through existing social programs and not from industry. A program similar to electric cost assistance should be considered.

5. Should the State play an advocacy role before regulatory bodies and Congress?

The State should play an active role and fund research and development efforts in promoting affordable telecommunications services for Alaska. With a vast area of the State undeveloped and not accessible, telecommunications will play an important role in opening up this access.

6. Reconfirmation of importance of telecommunications and related technologies?

Whether the State reconfirms or not is not important. The information age is here. The State can facilitate and encourage use of such tools and reduce the cost of administering; e.g. reduced cost of teachers by using canned media or teleconferencing or live video. An uplink of a school play from Anchorage to all rural communities has more value than sending drama teachers all over the state.

Telecommunications, computers are tools and effective use of these tools is more important than philosophical discussions on where the technology is taking us.

Vinod Batra
President

**COMMENTS FROM TED MCINTIRE DIRECTOR DIVISION OF
TELECOMMUNICATIONS SERVICES STATE OF ALASKA**

November 14, 1985

TO: Telecommunications Computer Conference

FROM: Ted McIntire
Director
Division of Telecommunications Services
Department of Administration

I have been following the contributions of various participants to this conference with a great deal of interest. After reviewing them a couple of days ago, I decided that I would like to make a few comments on points brought up by Gordon Parker, Executive Director of the ATA, in his excellent contribution to this conference.

The points made by Gordon, and upon which I would like to comment, are that the draft report was written largely from the standpoint of the State (government) as a customer, that the State as a large user of telecommunications could impact local rate payers by actions it might take, such as bypass, in procuring telecommunications services, and that the policy of the State is that telecommunications facilities should be under private ownership.

I believe these observations are reasonable and do not question them. I would, however, like to comment on them from the standpoint of a government telecommunications administrator.

The observation that the draft report emphasized the State as a customer rather than a protector of public and commercial interests stems from the fact that virtually all administrative government personnel perceive telecommunications service as a necessary tool for performing their jobs and are concerned solely with its efficacy and cost. E.O. 50, in fact, while providing some procurement policy guidelines, charges the Department of Administration principally with operational responsibilities. Thus, input to the report from administrative personnel would emphasize the user aspect of State government concerns.

The State's overall mandate to serve the public interest and to manage its own operations efficiently and effectively, in the case of telecommunications at least, can result in policy dilemmas. Such dilemmas are not unique to Alaska. An example of this is the following excerpt from an article in the

October, 1985 issue of "Communications Age", written by a consultant to the Commission on California State Government Organization and Economy:

Today, the State (California) seeks to ground its telecommunications decisionmaking in policies appropriate to the new environment. Unlike that of private sector users, the State's policy process is complicated by dual objectives. On the one hand, the State owes the taxpayers the greatest possible efficiencies in telecom expenditures; on the other hand, it owes the public it serves policies which will not - because of bypass - inflate residential rates.

Unfortunately there is no indication that the consultant or the Commission had any solution except to observe that the State's dual roles can and do lead to contradictory practices.

While Alaska policy requires that State telecommunications procurement policies include consideration of costs to the communications industry and effects on basic telephone rates, such analyses are extremely complicated and the results depend entirely on the methodologies and assumptions of the analyst. A layman who has observed the filings, comments and protests by competing carriers on rate making matters before the FCC or the APUC, could understandably be convinced that in the economics of telecommunications, anything can be "proved". As an over-simple illustration: If the State were to reduce its telecommunications costs by \$2 million annually through some form of bypass, one analyst might prove that this loss of telecom revenue would have to come out of the pockets of rate payers, while another would "prove" that the savings accruing to the State would provide public benefits that off-set increased telephone costs resulting in no net impact.

The analysis of impact of State telecommunications activities on the industry and on rate payers, while never simple, has become even more difficult due to the large number of unknowns such as the outcomes of proceedings on intrastate competition, rate integration and special Alaska separations, before the APUC and the FCC.

Some of the intent of E.O. 50 has already become subverted (the best word I could come up with) through deregulation. In the "FINDINGS AND PURPOSE" section of E.O. 50, the Governor stated: "I find that...private ownership and control of telecommunications facilities should be facilitated and enhanced..." At the time E.O. 50 was written, most state telephone systems, instruments, key systems, and PBX's were telephone company property furnished under tariff. However, since the deregulation of customer premises equipment, the State has had no alternative but to buy or lease equipment on the open

market. Since the Division of Telecommunications Services started administering telephone procurement procedures for various State agencies in 1983, the State has purchased nearly 2-million dollars worth of telephone equipment. The total amount of State-owned telephone equipment will increase as tariffed systems wear out or otherwise need to be replaced. The fact that the State will eventually own all its own premises equipment and in-house wiring does not mean that the State will have become its own telephone company, but it will have become more involved in its own telephone systems and services than had been envisioned at the time E.O. 50 was developed.

While the State owns its own terminal facilities it still depends on the public switched telephone network for its interfacility telephone communications. This is not solely a result of policy; it also happens to be the only practical networking method available at the present time given the fact that there is only one intrastate carrier, the lack of consolidation of State offices, and the proliferation of integrated voice/data PBX's designed to communicate digitally, and the possible development of competitive services could result in pressure for the State to look at alternatives to regular MTS for its inter facility communications. The fact is that in a competitive environment the State by its own regulations might be required to consider competitive alternatives.

The observations and comments I have made here are to point out that the State does not have, and cannot have cast-in-concrete telecommunications policies that lay down the rules for all players in the foreseeable future. (The foreseeable future, as far as telecommunications is concerned, I believe is about three weeks.)

I think that we can all agree that the State's overall telecommunications policies should be toward protecting the public interests, providing the maximum practical involvement of private enterprise in State telecommunications systems, and ensuring that State government procures the telecommunications facilities and services, necessary to carry out its functions, in a fair, efficient and cost effective manner.

I don't believe these goals are mutually exclusive, but that it will take the efforts and cooperation of industry, State administrators and regulators to achieve them.

ADDITIONAL COMMENTS FROM DEAN RURAL EDUCATION NETWORK:

November 4, 1985

RURAL EDUCATION IS A NON-CAMPUS UNIT OF THE UNIVERSITY SYSTEM CHARGED WITH PROVIDING UNIVERSITY-LEVEL EDUCATION TO RURAL RESIDENTS IN THE LEAST POPULATED AREAS OF THE STATE: ALEUTIAN CHAIN, BRISTOL BAY, INTERIOR VILLAGES, AND NORTH SLOPE. RURAL ED. ALSO ADMINISTERS CORRESPONDENCE STUDIES STATEWIDE. IN ORDER TO SERVE OUR CONSTITUENCY, WE HAVE DEVELOPED DISTANCE DELIVERY ASSOCIATE OF ARTS DEGREE PROGRAM USING TELECONFERENCE MEDIUM FOR PRIMARY INTERACTION AND SUPPORTED BY LOCAL FACILITATORS AND A STRONG MATERIALS DEVELOPMENT COMPONENT. A CORE FACULTY AND ADMINISTRATION FOCUSES ENTIRELY ON DISTANCE DELIVERY. THE TELECOMMUNICATION TECHNOLOGIES PERMIT, FOR THE FIRST TIME, THE CONSISTENT AND COHERENT AVAILABILITY OF HIGHER EDUCATION IN THE VILLAGES. INTEREST AND ENROLLMENTS HAVE SURPASSED ALL EXPECTATIONS, MORE THAN DOUBLING (187-400+) FROM SPRING TO FALL 85. STUDENTS RESIDE IN 63 VILLAGES. PROSPECTS ARE FOR CONTINUED GROWTH... BUT, THE TELEPHONE CHARGES ARE OVERWHELMING. WE ARE FACED WITH HAVING TO CURTAIL SERVICE AT THE VERY POINT OF TAKE-OFF IN A DEMONSTRABLY SUCCESSFUL DISTANCE DELIVERY PROGRAM. FACULTY, ADMINISTRATION, REGIONAL SUPPORT SERVICES CAN SUPPORT GROWTH, BUT THE TELEPHONE BILL CANNOT. IS THERE A WAY TO SURMOUNT/CIRCUMVENT THESE CHARGES DURING AN ADJUSTMENT PERIOD? SOON, WE SHALL BE ABLE TO INCORPORATE VIDEO, TELETEXT, COMPUTER TECHNOLOGIES INTO THE INSTRUCTIONAL DELIVERY. THESE ... INTEGRATED TECHNOLOGIES SHOULD REDUCE ON-LINE COSTS OF INTERACTION WITHIN A COUPLE OF YEARS. IN THE MEANTIME, WE WANT TO ENCOURAGE AND REFINE DISTANT DELIVERY INSTRUCTION AND LEARNING. ESPECIALLY WHERE IT COUNTS THE MOST, FOR RURAL ALASKANS WHO HAVE NO OTHER ACCESS. WE SHALL APPRECIATE ANY SUGGESTIONS WHICH WILL HELP US TO MAINTAIN, AND EXTEND, SERVICES TO THE 95 VILLAGES IN OUR REGIONAL NETWORK WHICH THE TELEPHONE BILL NOW THREATENS. WE WERE VERY INTERESTED IN THE REPORT AND SHALL BE RESPONDING FROM SEVERAL PERSPECTIVES AS USERS OF THE SYSTEM.

THANK YOU.

MARGERY WALKER, DEAN, RURAL EDUCATION

COMMENTS FROM PROF. JOE JOYNER, ACC. POLITICAL SCIENCE:

November 1, 1985

**To: Representative H.A. Boucher
House Special Committee on Telecommunications**

**From: Joe Joyner
Teacher, Political Science, Anchorage Community College**

**Subject: Interim Report: House Special Committee on Telecommunications -
August 1985**

First, let me extend congratulations to you and to your committee for the foresight and determination you have shown in bringing about a refreshingly open dialogue on the vital subject of telecommunications in Alaska.

Second, the interim report, compiled so well by Katherine Anders, has brought a much needed focus upon the background, as well as upon the yet unresolved policy issues which must be collectively addressed.

Third, I would like to thank the Committee for inviting me into this important discussion. My perspective is more that of a user than operator or technician; however I do have some experience in the applications of television, videotext, audioconferencing, and computers to the informational process, especially with regard to education.

As a Political Scientist and educator, I have learned, and do teach my students that one source of national strength is the cohesiveness of the society which the state serves, and that this is no less true of sub-national states such as ours. A vital prerequisite to a society's cohesiveness is an adequate communications grid; that is, the mechanisms and processes, public and private, which permit the storage, retrieval and exchange of information and the acquisition of knowledge. Numerous studies on the subject conclude that the social, economic and political fabric of a society depends in large measure upon the degree to which information can be disseminated and shared. This is especially true in developing societies where there are limitations on the physical movements of people, goods and services.

The fragmented nature of our information delivery systems in Alaska seems to attest to the recognition by few people in compartmented functions

of our State of the need to assist in this aspect of our State's development according to their respective interests. It has been particularly true in the case of education and legislative affairs, and perhaps to less visible extents in other areas of public service. While these singular efforts are laudable, they have occurred over time in the absence of a comprehensive policy or a clearly articulated set of values or desired outcomes.

The observation in the interim report that when the money was there, there was a willingness to support the acquisition of hardware; however followed by what was apparently inadequate support of user related operating costs, is telling, and provides an excellent illustration of a dilemma which has been waiting to happen.

Alaska today is among the forerunners IN THE WORLD in the possession and use of near state-of-the-art communications technology, and yet lacks a consensus or clear understanding of its most effective use or the extent or purposes to which it can best be used.

Worse, because of uncertain policy commitments as to use, we have failed to give equal attention to the questions of human development in the utilization of these resources. For example, despite early and continuing appeals, the University of Alaska has, and continues to be inadequately funded for the development of faculty and facilitator skills necessary to perfect distance learning. I would suspect similar situations occur in other areas where the exchange of information and the acquisition of knowledge is of critical importance.

And what of the public we serve? It has become more and more apparent that by the turn of the century, American communities across the nation will be wired with communications grids that will link most homes, corporations, and schools with libraries, information data bases, banking institutions, and computer centers. Informational and educational television coupled with audio-communications and data links will bring people and ideas closer together in real and near-real time than we think possible even today. Will Alaska's publics be ready for that kind of world? What are the implications for education, commerce and democratic policy-making? What are the implications for a detached society which must communicate and compete in the mainstream of its own nation and in the world at large?

I firmly believe that the continued investment in telecommunications, both software and hardware, is a critical key to the further development of our state. Even more critical, in my view, is the need to develop -NOW- a consensus as to what telecommunication policy will serve Alaskans in

the 21st century.

The differing perspective of the participants on the Committee's network is most useful, and the group appears to represent an excellent cross-section of knowledgeable and concerned citizens. I would hope and expect that the sum total of the input will provide your committee with ample evidence of an urgent need for continued focus, perhaps through the creation of a policy recommending body to which the legislative and executive branches of our government as well as the general public can relate.

Thank you once again for giving me the opportunity to provide my input.

**COMMENTS FROM MARGERY BENNING LEARN ALASKA
DEVELOPMENT:**

October 31, 1985

**TO: Rep. H.A. "Red" Boucher, Chairman
House Special Committee on Telecommunications**

**FROM: Marjorie Benning
Learn Alaska Development**

SUBJECT: Response to Draft Interim Report

The following comments on the Draft Interim Report reflect a personal perspective both as a user and as staff support to K-12, higher education, and public users of instructional telecommunications in Alaska over the past six years. They are not a reflection of Learn Alaska Network positions.

COMMENTS:

The overall document appears to be a well researched and comprehensive statement addressing historical perspectives as well as issues for future direction.

First, a few general comments. Telecommunications services are essential to a state like Alaska. We in Alaska have achieved more in a shorter period of time in both the development and utilization of telecommunications than most other parts of the world. In this situation however, we may become enticed into a one dimensional technological consciousness: the search for the technological "saviour".

We assume that telecommunications technologies will solve all of our problems, we assume that there is that ONE technology that will be THE answer, and we assume that whatever technology we do NOT currently have is better than what we DO have. All of these assumptions lead us to emphasize the telecommunications systems that have developed or are envisioned rather than the problems, issues, and circumstances which they are to address. Let me be clear that these technologies and telecommunications systems are vital. But they are vital for a purpose. Telecommunications systems must serve that purpose and be evaluated within that context.

With declining revenues, the state must determine both its legitimate role and its priorities for telecommunications services for its citizens. This is a considerable challenge, the basic elements of which are well outlined in the draft report.

1. Telephone Service. As a practitioner of distance education, I have been highly dependent on the existence of essential phone services to reach students across the state. Therefore, I feel universal service at affordable rates should be a high state priority at least until universal service is a fact. A close second priority is the encouragement of effective competition for both inter and intra state services.

2. State Subsidized Television Service. Currently the state of Alaska is funding in whole or in large part entertainment, public broadcasting and instructional television. Declining revenues require prioritizing these services into those that are the most appropriate for state involvement and are of the most benefit to its citizens. Recognizing major political obstacles to such a prioritization, I suggest that, of the three areas, the only mandated area for state participation is in instruction. The state has an obligation to provide for the education of its citizens through the secondary level. It may choose to provide publicly supported post secondary educational opportunities as it has done through the University of Alaska.

Alaska is a state that naturally lends itself to the utilization of instructional technology. This is evidenced by the high utilization rates of Learn Alaska technologies and the Department of Education's IST computer programs. These systems are not perfect, they need further development (the LAN television system is still not complete) and improved access to programming and services by all user constituencies. However, they have provided Alaskans with a higher percentage of Alaskan based instructional programming and software than will be found elsewhere. Further evaluation is needed at appropriate time frames. It is noted that most such systems have an 8 to 10 year development phase. The Learn Alaska Network system is in its 5th technological year while the utilization infrastructure within its principal constituencies of K-12 and higher education is in approximately its 4th year of development.

RATNET's entertainment programming has become a regular part of rural Alaska's television experience. It is not a question of if entertainment television will continue in rural Alaska but how. Again, with declining revenues, providing entertainment television becomes a lower priority. As with the development of telephone service, it is time to transfer responsibility for entertainment television to the private sector in a manner that

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makes the service viable to rural residents as well as to commercial interests.

Public television has also received substantial state support and has been seeking to distribute programming statewide on a channel separate from RATNET. Currently public television has access to rural Alaskan audiences through RATNET. Learn Alaska also invited all public television stations to submit requests to air programming they might have consistent with Learn Alaska's mission. No requests have been received for the Spring '86 semester.

The proposal by public television stations to have responsibility for programming Learn Alaska from 7-10PM would effectively eliminate instructional programming for post secondary students. Evening is "prime time" for adult learners. As a long time supporter of public television, I enjoy much of their general programming. However, as a faculty member who, before Learn Alaska existed, attempted to get instructional programming for my class on each of the state's PBS stations, I know that instructional programming simply does not have priority given both PBS' mission and constraints. Again, additional distribution of public television seems of lesser priority in the face of declining revenues.

3. **State supported teleconferencing.** In a state with the characteristics of Alaska, teleconferencing is an efficient, effective, and essential telecommunications service. Alaska has lead the world in its utilization of both instructional and legislative teleconferencing. It is a service that should receive high state priority. It is also where centralized technical facilities may well provide cost savings. However, experience has shown that decentralized user facilities would be essential to meeting the divergent needs of educators, legislators and agency personnel.

4. **Converging Technologies.** The questions in this section are excellent. It could be expanded to examine specific examples of converging technologies across the state. In instructional telecommunications, we have clearly learned that a combination of technologies such as computers, television, and teleconferencing is more successful than a single technology. It allows the instructor to more nearly tailor the instruction to student learning styles--a particularly important consideration in Alaska. It fosters adapting the technology to the instructional process rather than the other way around. It is the future.

Your draft report incorporates many of the underlying telecommunications issues facing Alaskans. It is encouraging that you have solicited comment

from a wide variety of Alaskans with experience in telecommunications. I would encourage you to develop and support a "working group" of a cross section of these individuals to continue this process.

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