It is expected that the Internal Revenue Service would rule favorably on the continuity of life characteristic because of provision 10.50.180 which states that a limited liability company shall be dissolved upon the death, retirement, resignation, expulsion, bankruptcy, dissolution of a member or occurrence of any other event which terminates the continued membership of a member in the limited liability company, unless the business of the limited liability company is continued by the consent of all the remaining members thereof. Thus, without consent of all the remaining members, the limited liability company would be dissolved upon one of the stated events.

Free transferability of interests is treated in Section 10.50.170. This section provides that a member may always transfer his interest in the limited liability company, but unless unanimous approval is obtained from the other members, the member transferring an interest, can transfer merely the profit and loss interest and not a right to share in the management of the limited liability company.

As to the characteristic of centralization of management, the provisions of the proposed legislation enable the members of the limited liability company to choose whether the limited liability company will be governed by themselves as members or by a manager or management elected by them. If the

members choose to retain management, the limited liability company would also lack the corporate characteristic of centralization of management.

Thus, it can be seen that at least two and possibly three of the corporate characteristics may be lacking in the classification of the limited liability company as a partnership or as an association for the purposes of the Internal Revenue Code.

In conclusion, a limited liability company offers the investor a business entity which combines the attractive elements of both a partnership and a corporation. It combines the limited liability offered to shareholders of a corporation with the tax treatment of a partnership.

The possibilities of increased revenue to the state have been set forth and it appears that increased revenues in excess of one million dollars may be obtained with very little increased expense incurred.

CORPORATION V. PARTNERSHIP V. LIMITED LIABILITY COMPANY

A. NON-TAX CONSIDERATIONS

	CORPORATION	PARTNERSHIP	LIMITED LIABILITY COMPANY
LIFE	Perpetual in most cases.	Agreed term, or life of any partner.	Agreed. Not to exceed 30 years.
ENTITY	Separate legal person.	Not a separate entity from individual partner.	Separate legal entity.
LIABILITY	No individual liability.	General partner individually liable for all obligations. Limited partner usually liable to the amount of capital contributed.	No individual liability.
TRANSFER OF INTEREST	In absence of restrictions interest may be sold to strangers.	New partnership agreement usually required.	May be transferred; however, if all other members do not approve of the proposed transfer by unanimous written consent, the transferee has no right to participate in the management and affairs of the company or to become a member, but is entitled only to receive his share of the profit or return of contributions.
CAPITAL	Capital may be enlisted by sale of stock.	New capital secured only by loans, increase in membership or new contributions by existing partners.	Capital is contributed in money or property at inception or during the course of operation as set out in the Articles of Organization.
BUSINESS ACTION	Action authorized by specified percentage of directors and/or stockholders.	Unanimity of partners usually required.	Action authorized by majority in interest of the members.

	CORPORATION	PARTNERSHIP	LIMITED LIABILITY COMPANY
CREDIT CONSIDERATIONS	The corporation possesses credit ability apart from stock membership. Certificates of stock may be used as collateral.	Credit is coincidental with membership and partners assume joint and several responsibility. Interests in partnerships are not ordinarily accepted as basis for loan or credit.	Credit will be extended to the company on the strength of its contributed or to-be-contributed capital.
MANAGEMENT	Shareholders may invest without participation in management.	All general partners involved in management responsibility	Management of the company is in the members unless management by a manager or managers to be elected by the members is provided in the Articles of Organization.
FLEXIBILITY	A corporation operates within its corporate franchise granted by the state or states in which it is authorized to do business.	A partnership is a contractural relationship which may be altered by unanimous agreement of the partners.	Flexibility is perhaps the Limited Liability Company's strongest point The Articles of Organization will contain a minimum of restrictions and the working rules of the company may be drafted in the form of an operating agreement.
B. TAX FACTORS			
TAX BURDEN	As a separate legal personality a corporation is subject to taxation, in addition to the taxation of the income received as dividends by its members. Electing "Small Business Corporation". (1) Each shareholder's proportionate share of the corporation's undistributed taxable income is included in the gross income of the shareholder. The corporation pays no tax thereon. This substantially parallels the taxation of a partner's income from the partnership.	Each partner is taxed on his proportionate share of income whether distributed or not.	Private revenue ruling will be requested of the Internal Revenue Service requesting that the company be classified as a partnership for federal tax purposes.As drafted the Limited Liability Company will lack at least two and perhaps three of the characteristics of a corporation; the third centralization of management, will be lacking if management is reserved to the members.

	CORPORATION	PARTNERSHIP	LIMITED LIABILITY COMPANY
TAX CONCERN	In close corporations, gross corporate income is reduced by reasonable salaries paid to officer-stockholders. Accumulation of profits may be made up to at least $150,000 or to such larger extent as not to constitute avoidance of surtax by the stockholders and an unreasonable accumulation in terms of the requirements of business. Corporation taxes, plus individual taxes on the compensation for services or dividends, represent the tax burden of the corporate investment, as against the individual tax paid by partners. Electing "Small Business Corporation." Undistributed taxable income of an electing corporation is taxable proportionately to each shareholder. Subsequent distributions out of this income to the shareholders are tax free. This substantially parallels the taxation of a partner's income from the partnership.	All earnings and profits are taxable to the individual partner, unaffected by accumulations of earnings However, once so taxed, thereafter any distributions of these earnings are tax exempt to the individual partner.	All earnings and taxes are taxable to the members whether distributed or not. It is contemplated that the distribution rules and basis rules now applicable to the partnership interest will also be applicable to a limited liability company.
PENSION TRUST	Corporate contributions to a pension trust, within the amount allowed by law are deductible by the corporation. Stockholder-employees may be covered to same extent as other	Members of a partnership are not employees and are not proper beneficiaries under an exempt Pension Trust. However, under the Self-Employed Individuals Tax Retirement Act of 1962,	Unknown but it is suggested that the rules now applicable to a Subchapter S corporation which impose the limits of the Keogh Plan will also be applicable.

	CORPORATION	PARTNERSHIP	LIMITED LIABILITY COMPANY
	employees, so long as there is no discrimination in favor of such stockholders. Electing "Small Business Corporation". An electing corporation's contributions to a pension trust, within the amount allowed by law, are deductible by the corporation from its taxable income.	partners who own more than 10% of the capital or profit interest in the partnership may, deduct the full amount of their contribution to a pension plan up to $7,500.	
SOCIAL SECURITY TAX	Compensation paid to stockholding officers and employees is subject to Social Security Taxes. Electing "Small Business Corporation". Compensation paid to stockholding Officers and employees is subject to Social Security Taxes.	Partners do not pay Social Security Taxes upon their salaries from the partnership. However, they are required to pay the tax on self-employment income.	Compensation for services paid to employee, whether member or not, subject to social security tax. Distribution of profits to members would not be.
ASSIGNABILITY OF INTEREST OR INCOME	An unqualified transfer of stock ordinarily requiring no other person's consent, will entitle transferee to dividends or distributions Electing "Small Business Corporation". Transferee is entitled to dividends and distributions, but the stock must be transferred to an individual or estate and the transferee must consent to the continuation of the "tax option" status.	Any assignment of interest requires consent of the other partners and may create a new partnership.	A member's interest in a Limited Liability Company may be transferred (see page 1). Income from date of transfer taxed to transferee. May be capital gain to transferor on transfer of his interest.

	CORPORATION	PARTNERSHIP	LIMITED LIABILITY COMPANY
COMMUNITY PROPERTY STATES	Dividends from investments made from community property become community property. Electing "Small Business Corporation". Dividends from investments made from community property become community property.	Whether income is community or separate income depends upon the law of the state of domicile.	Same as partnership, with the results depending on the community property laws in the several states. Alaska does not have community property.
DUAL MEMBERSHIPS	Because it would be extending its credit, liability and the powers of the Board of Directors beyond legal scope, a corporation cannot be a direct member of a partnership in some states. Can in Alaska. Electing "Small Business Corporation". Stock may not be held by either a partnership or another corporation.	A partnership may own some or all of the stock of a corporation and so function in two capacities.	A Limited Liability Company enjoys flexibility in this area and may be owned by other entities or individuals and participate in other entities and business enterprises.

(1) An electing "small business corporation" is a domestic corporation which does not have more than 10 shareholders and which otherwise comes within the requirements of Subchapter "S" of the Internal Revenue Code, and whose shareholders elect to include in their personal income the current taxable income of the corporation.

SB 376

"An Act relating to the disclosure of ownership interests."

COMMITTEE REPORT

5/13/75

HOUSE

Mr. Speaker: Date _____

The Committee on COMMERCE has had CSSB 376 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Section by Section Analysis
of the
Commerce Committee Substitute for Senate Bill No. 376

Section 1 - requires anyone transferring real property to a nonresident alien, or anyone transferring property for the benefit of a nonresident alien, to put a statement containing the name and address of the nonresident alien in the deed.

Section 8 - requires the clerk of the court where deeds are recorded to file with the commissioner of commerce a copy of each deed that contains such a statement.

Section 2 - requires corporations doing business in Alaska to disclose the ownership interest of nonresident aliens prior to any corporate reorganization.

Section 3 - requires the articles of incorporation to contain a statement of the name and address of each nonresident alien affiliate.

Section 4 - requires the application for a certificate of authority to do business to contain a statement of the name and address of each nonresident alien owner and the extent of the ownership interest.

Section 5 - requires the corporation to file the same information in its annual report.

Section 6 - definitions.

Section 7 - allows the body of federal law to apply to the new definitions of this Act so there will be precedent if it is attacked in a legal proceeding.

SB 436

OFFICE OF THE MAYOR
BOX 400
ANCHORAGE ALASKA 99510

GEORGE M. SULLIVAN
MAYOR

February 19, 1976

Representative Bob Bradley
Chairman
House Commerce Committee
Pouch V
Juneau, Alaska 99801

Dear Representative Bradley:

The House Commerce Committee now has before it Senate Bill 436 which provides that the Commissioner of Commerce and Economic Development may make grants to municipalities for creation or operation of municipally owned or operated tourist centers.

As Mayor of the Municipality of Anchorage, I strongly support the passage of this bill and feel it would contribute substantially to the growth and economic development of our area.

The support of your Committee would be sincerely appreciated by the Municipality of Anchorage.

Sincerely,

George M. Sullivan
Mayor

GMS:lc

"An Act relating to franchising agreements involving gasoline refiners, distributors and dealers; and providing for an effective date."

COMMITTEE REPORT

2/10/76 HOUSE JUDICIARY

Mr. Speaker: Date 4/13/76

The Committee on COMMERCE has had SB 438 Am under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

(X) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

STATEMENT OF J. R. SANDERS

ON BEHALF OF

STANDARD OIL COMPANY OF CALIFORNIA

ON SENATE BILL 438

"ALASKA GASOLINE PRODUCTS FRANCHISE ACT"

BEFORE THE HOUSE OF THE STATE OF ALASKA

Mr. Chairman and Members of the Committee:

My name is John Sanders. I am Division Manager for Standard Oil Company of California in its Alaska Division. I am responsible for the sale of its products throughout the State of Alaska. I appreciate the opportunity to present my Company's views on this legislation after which I will try to answer any questions you may have.

As I understand it, the intent of this proposed legislation is to guarantee service station dealers fair and equitable treatment by their petroleum suppliers. I don't think it would do that. In fact, in my opinion, it would merely provide a shield for ineffective dealers and would be to the detriment of consumers and good dealers alike. At the onset, we believe that additional legislation to protect the service station dealer is unnecessary. Furthermore, we believe the importance of an efficient and successful independent dealer organization cannot be overemphasized. It is through such independent dealers that the vast majority of service station sales are made. In the State of Alaska, Standard Oil Company of California supplies products to 42 conventional dealer stations plus about 112 car washes, garages, new car dealerships, and other miscellaneous accounts, all of which are operated by independent businessmen. With respect to dealer stations, (those being the 42 conventional stations) we presently provide, at our expense, all the marketing research,

site location, land acquisition, facility construction, fixed equipment, tankage and signs. We then lease the completed facility and the site to a dealer with the dealer being responsible only for such things as operating tools, movable equipment, and inventory. There is no "franchise fee" for the dealer to pay Standard. This arrangement affords the dealer entry into the service station business at a comparatively modest initial investment, in most instances between $15-25,000. On the other hand, in recent years, our average investment for a new service station has been approximately $500,000 including real property and facilities.

Our enormous investment and our complete marketing reliance upon the service station dealer demonstrate a very fundamental point about us and Chevron dealers: We need each other and we must assure the dealer a reasonable opportunity for success if we are both to succeed.

Our forms of dealer supply contract and dealer lease are available to the committee if it wishes to see them. We think that these agreements testify to our good faith in providing to Chevron Dealers on commercially fair terms a very valuable place of business in which the dealer has a reasonable opportunity to make a good living. These agreements are for a five year term and, after a brief initial trial period, they can be terminated by us during the term only for good cause. Our

relationship with dealers is both fair and reasonable and is founded upon the mutual interest of both parties. From the very onset we have been aware of the antitrust laws that govern our relationship with Chevron Dealers. Accordingly, Chevron Dealers are entirely free to price their products and services and to purchase also from other suppliers as they may decide. In other words, we recognize and respect the dealer as an independent businessman. If we were to change our policy and seek improperly to control a dealer's pricing or purchasing discretion we would surely be subject to the formiable sanctions of the antitrust laws, including treble damages. We therefore believe that the commercial interest of suppliers and the dealers who sell their products are mutual interests. These interests, together with the severe sanctions of the existing antitrust laws, are we believe entirely adequate to protect service station dealers and hence no further legislation is necessary. But, even if additional legislation were needed, Senate Bill 438 would be ill advised for the following principal reasons:

1. Section 45.50.810(a)(6)

This section would prohibit us from requiring Chevron Dealers to buy any quantity of our products unless we proved that such purchase obligations are "reasonably necessary for lawful purposes justified on business grounds and do not substantially affect competition".

This provision is unnecessary since the antitrust laws provide ample protection to dealers by forbidding any agreements which would require them to buy all or substantially all of their inventory requirements from a particular supplier. Accordingly a Chevron Dealer is merely required by contract to buy from us only such quantities of our products as may be necessary to satisfy customer demand for our products at his station. He may also handle any competitive products that he desires. Indeed, we find that most of our dealers do in fact choose to handle substantial quantities of competitive petroleum products and tires, batteries and accessories.

In addition, this section is wholly impractical because of the uncertainty of the language measuring the legality of the purchasing obligation. When are such obligations "reasonably necessary for lawful purposes justified on business grounds?" And when do they not "substantially affect competition?" The bill gives no guidance on this. Even entirely reasonable and otherwise lawful purchase obligations may affect competition as any aggregation of sales or purchases would, without in any way lessening or impairing competition. Suppliers cannot be expected to make the very substantial investments required for modern service stations if they do not have reasonable assurance that their products will be at least offered for sale at such stations.

Also, depending upon a court's interpretation of the wording in this section, it may be in conflict with current State and

Federal Trademark Laws. If this section were to allow gasoline purchased by the dealer from another supplier to be sold through pumps marked with Standard's brands, then it appears obvious to us that it is in violation of applicable trademark laws.

This would obviously provide a great disservice to consumers who think they are buying Standard's products when, in fact, they may be sold someone else's product of lesser quality and performance characteristics. I think the Department of Weights and Measures would take a dim view of that situation.

3. Section 45.50.810 (d)

This section provides that no refiner or distributor may charge different prices to dealers unless they are based upon the quantity purchased or transportation costs. Such a provision is plainly anticompetitive.

The Federal Robinson-Patman Act does not forbid all price differences between customers, but only those that threaten substantial anticompetitive effects. Moreover, in order to avoid the anticompetitive effects of rigid price uniformity, the Federal statute provides that a lower price given to one customer, but not to others, is lawful if granted "in good faith to meet an equally low price of a competitor" (15 USC § 13(a)(b)). The purpose of this provision in the Federal statute was to give a supplier sufficient flexibility to respond to differing competitive conditions, when and where they occur. For example, a gasoline price war may break out in one city

within the State but not elsewhere. To assist its dealers to remain competitive in the area of the price war, Standard under present law would be able to lower its price to them without lowering it Statewide. If such a price reduction had to be extended Statewide, it probably would not be made at all. This feature of the bill would provide a strong upward pressure on pricing to the detriment of competition and the motoring public.

Thus, this provision is anticompetitive since it unduly limits the very price competition that is the principal goal of both the Alaskan and Federal antitrust legislation.

Consider also the not uncommon situation in Alaska where a service station dealer himself has made the investment in the station. That investment will normally induce suppliers to offer an investment allowance on gasoline to reflect the fact that the dealer and not the supplier in this instance is furnishing the station. In these circumstances, a competing supplier, such as Standard, should be able to respond to this competitive situation by offering a comparable allowance to obtain or retain this dealer's business. But here too, if the same price must be offered to all dealers throughout the State, regardless of the commercial circumstances, it is probable that such an allowance for the dealer's investment would not be offered. Again, the result of this section of the bill would clearly be to reduce competition and encourage price rigidity. It

would be anomalous for Alaska, having recently passed general antitrust legislation, now to pass a law which would encourage uniform pricing and discourage price competition.

3. Section 45.50.810 (a)(8)

This section would forbid us to "unreasonably disapprove the transfer or assignment of a franchise by a dealer to a qualified transferee or assignee."

This section constitutes a totally unreasonable and arbitrary interference with our property rights. Having made a $500,000 investment, and in light of a dealer's relatively small investment, it is only proper and just that we have the right to select a candidate whom we feel best qualified to operate a first class service station.

The consumer stands to lose the most from such a provision. If the dealer is permitted to assign his lease, there is the inevitable question of personal motivation in making the assignment. At Standard our motivation is simply to select dealers who are best qualified to manage the station and who are committed to providing the service to which we believe the motoring public is entitled.

4. Section 45.50.820

This section would require a supplier, upon termination or non-renewal of the franchise, to repurchase certain tangible assets from the dealer and, in certain circumstances, to compensate the dealer for "goodwill". We at Standard are opposed

to the payment of any sum of money for alleged dealer goodwill.

There is nothing in the nature of goodwill that is transferable from a dealer to his supplier or to a successor dealer where the station is owned by the supplying company. If a dealer's business is successful because the station is well located, and has excellent facilities, that portion of the success properly remains with the supplier. In this connection, all dealers, new or old, receive the benefit of large sums of money we have spent on advertising to promote public acceptance of our brands of products at our retail outlets. They also receive the benefit of the large number of credit cards we have solicited and the millions of dollars in accounts receivable we carry for the dealers. These things are in addition to the service station facility itself, which we furnish to the dealer and which currently costs us on an average about $500,000 per unit. None of these sources of "goodwill" attributable to the station can be transferred by the dealer to us or to his successor.

Likewise, that portion of the dealer's success attributable to his personal skills, personality or the relationship he established with his customers belongs to him and is taken with him when he leaves and cannot be effectively transferred to us or to a succeeding dealer.

Thus it is a misnomer to say that the departing dealer has any "goodwill" that is transferable either to the supplier or to the new dealer.

5. Section 45.50.810 (a)(3)

This section would prohibit us from requiring a dealer to operate his station for more than 12 consecutive hours per day or more than six days per week.

It is safe to say that this provision would effectively eliminate gasoline availability on Sundays and between the hours of 10:00 p.m. and 6:00 a.m. This would be detrimental to the consumer and to the economy of the State of Alaska. Gasoline would be unavailable for emergency vehicles for such agencies as the police department; local travelers would be inconvenienced and tourism would be discouraged. Additionally, this provision completely disregards operating hour requirements imposed by many lessors in their ground leases to us; and while it does seem to recognize that longer hours may be required by the state or the federal government it does not recognize that as a condition to zoning permits, we may be required by municipal or borough authorities to provide for longer hours in certain locations.

6. Section 45.50.810 (a)(5)

This section provides that it would be a violation of law for us to sell, rent or offer to sell to a dealer any product or service for more than a "fair and reasonable" price.

This section would in effect subject the pricing of our service station products to a kind of public utility control with the courts serving as the regulatory agency. Apart from governmental price control during periods of acute economic distress,

at which rare times control could be vested in an administrative agency such as the Federal Energy Administration, it is neither desirable nor necessary to supplant ordinary market forces as proper regulators of prices and rents. Competition establishes fair market prices which balance all the effects of supply, demand and necessary return on capital. On the other hand, when prices are fixed at levels different from those established by the fair market this balance is inevitably upset and economic dislocations result, all to the public's disadvantage.

7. Section 45.50.810 (a)(10)

Under this section it would be a violation for a supplier to fail to deal with a dealer in "good faith". That phrase is so vague and generalized that it would be impossible to administer or comply with. No standards are stated as to how good faith is to be measured. We expect that every difference of opinion or commercial judgment would become a controversy over good faith. Such a provision would inescapably provoke endless dispute and litigation.

8. Section 45.50.810 (b)

This section would require that a refiner or distributor give 90 days notice prior to terminating or failing to renew a franchise except where such termination of failure to renew is due to the voluntary abandonment of the station by the dealer; or where the dealer is convicted of an indictable offense

directly related to the business. This requirement is not needed for the protection of the franchise and is commercially unfair and impracticable. Notice of intention to terminate for breach of contract should generally afford the dealer an adequate opportunity to cure the breach and avoid termination, as our Chevron dealer contracts provide.

But the 90 days prior notice is unrealistically long in many situations other than those two recognized in the bill. Consider for instance the case of a dealer engaged in fraudulent and deceptive sales practices against the motoring public. In this example, there is normally ample evidence of repeated illegal practices such as the deliberate damaging of tires and/or fan belts. Prompt termination was necessary in another situation, we recently found, as a result of a fire caused by the dealer's improper use of a welding torch in violation of city ordinances and contrary to our instructions against the practice. Obviously to permit such situations to continue for a minimum of 90 days would be to the detriment of consumers and good dealers alike.

In addition to that kind of illegal conduct by the dealer, there are numerous other situations in which 90 days prior notice would be wholly unrealistic. For example: (a) The Dealer's death or mental or physical incapacity to operate the station and (b) refusal by the deal r to pay debts owed to his supplier or the dealer's bankruptcy or insolvency.

Any of these cases would prevent us from regaining possession of our investment for 90 days and would to that extent arbitrarily deprive us of our property and would require enormous efforts by a new dealer to rebuild the business that has been needlessly impaired by prolonged neglect or idleness.

9. Section 45.50.810 (c)

This section deals with the causes for termination and provides that no refiner or distributor may terminate, cancel, or fail to renew a dealer lease without good cause which is defined as including: "The failure of a franchisee to comply with the lawful material provisions of a franchise between distributor or refiner and the franchisee/dealer..."

What provisions in dealer agreements would meet these criteria is a speculative matter at best; and different courts or juries may be expected to have conflicting views of the same contractual provisions. Thus, a particular term or condition in the lease or supply contract may or may not be enforceable based upon the interpretation of a judge or jury without experience in such commerce. Moreover, this bill would give a judge or jury no instructive guidance for making the required determinations. We understand that some service station dealers are supplied petroleum products pursuant only to oral agreements; others, like our Chevron dealers, are supplied under quite detailed written agreements designed to clarify the continuing business relationship for the benefit of both parties. However, in addition to the fundamental obligations to sell, to buy and

to pay for products, there are other commercially important provisions such as those relating to the maintenance of a very expensive station. Are these to be deemed non-material by a judge or jury unfamiliar with service station business practices?

And, while the bill provides for some specific situations to be construed as good cause for termination, cancellation or non-renewal, it fails to recognize many others, such as:

--- a dealer's death or mental or physical incapacity to operate the station;

--- refusal by the dealer to pay debts owed to his supplier;

--- adulteration, commingling, mislabeling or misbranding gasoline;

--- trademark violation;

--- repeated consumer complaints concerning the dealers; and

--- the supplier's decision to materially alter the facilities to meet changing consumer needs.

Furthermore, it is unclear whether the requirement to give the franchisee a reasonable opportunity to cure a default is applicable only where the breach is curable, such as the failure to pay for goods delivered. Surely, for example, where a dealer is convicted for fraudulent or deceptive sales practices, or becomes bankrupt or abandons the station, the default is essentially non-curable.

Moreover, subpart (4) would, in effect, require that the terms of our agreements be essentially the same as those offered other dealers in similar retail outlets.

Surely, there is no sound basis for requiring every franchise agreement to be the same as that offered to every franchise dealer. The term "similar" retail outlets does not cure this deficiency since the word "similar" is undefined and like other terms in the bill would be subject to varying and conflicting interpretations.

Rental terms vary from dealer to dealer quite properly; there are differing types and sizes of service stations and differing locations. Also, when we lease station sites from property owners, they require differing ground rents. In addition, there are differences in the costs incurred in supplying products to various dealers.

In closing, I would restate that in recent years our average investment for a new service station has been approximately $500,000. This figure is probably typical of the recent expenditures made by similar suppliers in this industry. While we cannot speak for others, we seriously doubt that we could continue making these kinds of investments not knowing what our contracts would mean, and, in addition, be subject to the

other restrictive conditions set forth in this bill. It is difficult to foresee who would make such investments or who would maintain the current level of availability for these services which the public has come to expect.

Nowhere else can a dealer obtain a half million dollar income producing business investment with such minimal risk. Nowhere else does the consumer enjoy the level of assurance of product quality, service skills, competitive pricing, and image achievable through our system as it presently operates. Legislation which removes the incentives for the investments required to construct service stations today will prove to be counter productive working against the common goals of both the consumer and the dealer.

I hope the views I have expressed will be helpful to you. I respectfully urge you to consider them and to reject this bill. If you have any questions, I would be pleased to respond.

POSITION PAPER

PROVISIONS TO BE CONSIDERED IN ANY DEALER DAY IN COURT LEGISLATION

Although there is no demonstrated need for dealer day in court legislation, any such legislation which is considered should be designed to accomplish the following:

1) Provide for disclosure by the supplier of essential facts regarding its relationship with prospective dealers to the extent that such disclosure is necessary to prevent fraud in the inception of the contract and to furnish the dealer with a reasonable basis for any investment decision he is required to make.

2) Protect the dealer from arbitrary or unreasonable cancellation by his supplier (refiner or jobber) while maintaining in the supplier a reasonable right to terminate marketing agreements upon written notice (as provided in the agreement) for reasons such as death, bankruptcy or insolvency of the dealer, abandonment of the station, criminal misconduct or consumer fraud or failure to pay amounts due.

3) Provide suppliers reasonable rights of nonrenewal with

adequate notice for such situations are:

a) Sale of the property by the supplier or the relinquishment of his leasehold interest if it is owned by a third party.

b) A decision to rebuild or materially alter or add to the facilities to meet changing consumer needs.

c) Use of the premises for purposes other than the sale of motor fuels.

d) Repeated consumer complaints concerning the dealer.

e) Inability to agree on reasonable terms and conditions of the renewal agreement.

4) Provide that the supplier, in event of termination, will repurchase from the dealer at current wholesale prices, branded merchandise originally purchased from the supplier; provided however, that such goods are in merchantable condition, that the dealer's title to them is free and clear and that the proceeds of any such repurchase will be applied first to any indebtedness of the dealer to the supplier.

5) Apply to only those marketing agreements entered into after effective date of the legislation.

January 13 1975

POSITION PAPER

STATE GASOLINE DEALER DAY IN COURT LEGISLATION

INTRODUCTION

Gasoline "dealer day in court" legislation is the application of franchise type laws to automotive gasoline marketing. Historically, gasoline suppliers (refiners and jobbers) have not regarded their contractual relationships with dealers as franchises because of the dissimilarity with the typical franchise arrangement. Franchise fees are not required, and highly specified duties and responsibilities of the dealer are not detailed in the sales contract. Gasoline dealer day in court legislation is of extreme concern to the petroleum industry because it impairs the ability of gasoline suppliers to manage their marketing investments by unreasonably restricting rights of termination or nonrenewal of contracts with dealers.

NEGATIVE EFFECTS OF DEALER DAY IN COURT LEGISLATION

Anti-Consumer Effects

The usual dealer day in court legislation tends to perpetuate all existing branded sales contracts between suppliers (refiners and jobbers) and reseller customers (dealers and jobbers so long as minimum standards are met, regardless of the agreed time period

in the contract. This results in a disservice to the motoring public which is entitled to higher, not lower standards of operation. Further, legislation of this type would not adequately protect consumers against the limited number of unscrupulous service station operators who provide shoddy service, maintain poor standards of cleanliness, oversell, mistreat or defraud consumers.

Anti-Dealer Effects

One of the strongest assets that a successful dealer has is in the integrity of the brand and the reputation of the supplier whose products he sells. Dealer day in court legislation actually works against the interests of effective and efficient dealers who may see the value of their business diminished by the perpetuation of unsatisfactory dealers selling under the same brand.

Anti-Competitive Effects

Dealer day in court legislation is anti-competitive because it suppresses competition for available service station sites and because it tends to exclude new entries into the service station business which historically has provided an opportunity for the entrepreneur with limited capital resources. This exclusion is especially unfortunate when considered in the light of the country's efforts to increase the number of minority small businessmen. In an effort to protect a small number of ineffective dealers from competition, legislation of this type will deny business opportunities to many able and

deserving potential entrepreneurs.

Anti-Supplier Effects

Dealer day in court legislation is unfair to suppliers as it diminishes the value of their capital investments in service stations and erodes the value of their trademarks. By giving all dealers regardless of individual merit, virtual perpetual tenure, this type of legislation unreasonably abridges contractual rights and may well violate the constitutional rights of suppliers as property owners.

DEALER DAY IN COURT LEGISLATION UNNECESSARY

There is a lack of basic need for dealer day in court legislation in view of the well developed body of federal and state laws already in effect which regulates and prevents abuse in the usual gasoline dealer-supplier agreements.

For example, the antitrust laws make it illegal for a petroleum supplier, either by contract or coercion or threats of termination to require a dealer to purchase the supplier's brand of TBA in order to keep his dealership. These same laws require clear dealer freedom in all product pricing and in the selection and purchasing of allied products. A cancellation or nonrenewal of a dealer agreement because of the dealer's noncompliance with the supplier's desires in these areas is prohibited.

In the area of fraud, misrepresentations and deceptive practices, the FTC, under Section 5 of the Federal Trade Commission Act,

vigorously prosecutes fradulent and deceptive practices in commerce. State laws also operate in this area.

The supplier-dealer relationship is contractual. Its formation and interpretation are governed by general contract law, of which the cornerstones are voluntary agreement and fair dealing between the parties. Additionally, there are the judicial remedies of recission and damages provided for common law fraud, deceit or misrepresentation.

January [illegible], 1975

PROPOSED AMENDMENTS TO [redacted] SENATE BILL [redacted]

(Language in Brackets Indicates Deletions
and
Language With Underscoring Indicates Additions)

A BILL FOR AN ACT

Relating to retail service stations /; and declaring an emergency/.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to /12/ 11 of this Act are added to and made a part of ORS chapter 646.

DEFINITIONS

SECTION 2. As used in sections 2 to /13/ 11 of this 1975 Act, unless the context otherwise requires:

(1) "Dealer" means /a/ any person engaged primarily in the retail sale of gasoline /through a retail outlet owned or leased by the person and operated by the person/ purchased from a supplier under the terms of a contractual agreement.

(2) "/Distributor/ Supplier" means any person /or corporation other than a refiner/ engaged in the sale, /assignment/ consignment or distribution of gasoline to /four or more/ a dealer /operated retail outlets/ under the terms of a contractual agreement.

(3) "/Franchise/ Contractual agreement" means an oral or written contract or agreement or series of agreements, either express or implied, /in which the dealer is required directly or indirectly to purchase 50 percent or more of his supply of gasoline from a distributor or refiner/ between a dealer and a supplier under which such dealer is granted authority to use a trademark, trade name, service mark or other identifying symbol or name owned or controlled by the supplier in connection with the sale of gasoline of such supplier, and /in/ under which the dealer

is granted authority to occupy premises owned, leased or in any way controlled /, directly or indirectly,/ by the /refiner or distributor/ supplier for the purpose of allowing such dealer to operate a retail outlet. Any other agreement or contract between a dealer and a supplier which is ancillary to the grant of authority to use a trademark, trade name, service mark, or other identifying symbol or name of a supplier in connection with the sale of gasoline of such supplier or to real estate premises covered by such other agreement or contract shall not be included within the definition of "contractual agreement".

(4) "/Franchisee-dealer" means a dealer who is a party to a franchise/ Retail sale of gasoline" means the sale of gasoline for consumption and not for resale at a retail outlet in this state serving the general motoring public.

(5) "Gasoline" means /all products commonly or commercially known or sold as gasoline/ automotive gasoline used as motor fuel in motor vehicles.

(6) /"Refiner" means a company, corporation or individual who owns or controls through a substantially owned subsidiary, partnership, or joint venture, a refinery used for the production of gasoline, diesel or other motor vehicle fuels./ "Retail outlet" means a gasoline service at which a dealer is primarily engaged in the retail sale of gasoline, for purposes other than resale, to the general motoring public.

(7) "Engaged primarily in the retail sale of gasoline" means that fifty percent of the annual gross revenue of the dealer is derived from the retail sale of gasoline.

(8) "Good faith" means the duty of a dealer and a supplier to act at all times in a fair and equitable manner toward the other in the

performance of or compliance with, or in the demanding performance of or compliance with, the terms or provisions of the contractual agreement so as to guarantee each party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party; provided that recommendation, suggestion, endorsement, exposition, persuasion, counseling, urging, or argument shall not constitute a lack of good faith; and provided further that the imposition of standards of quality and service reasonably related to the contractual agreement and the public good will behind the supplier's trademarks shall not constitute a lack of good faith.

DISCLOSURES

SECTION 3. Prior to entry into a /franchise/ contractual agreement, a /refiner or distributor/ supplier shall disclose to the dealer /facts which would reasonably be considered material to the dealer's decision to enter into the franchise. Such facts shall include, but are not limited to/ , which disclosure may be within the terms and conditions of a written contractual agreement, or separately, the following information:

(1) /Ownership/ The owner of the real property /of/ on which the retail outlet is located.

(2) If the real property is not owned by /a refiner or distributor/ the supplier, the nature of the relationship between the real property owner and the /refiner or distributor/ supplier and, if applicable, the /length/ term of the underlying lease of real property.

(3) /Last known/ The name and addresses of the dealer or dealers operating the retail outlet for the /last/ immediately preceding /five/

three years or such shorter period during which such dealer or dealers were engaged primarily in the retail sale of gasoline at the retail outlet, to the extent known to and contained in the existing records of the supplier.

(4) The gasoline gallonage history of the /station/ retail outlet for the /last/ immediately preceding /five/ three years or such shorter period during which a dealer or dealers engaged primarily in the retail sale of gasoline at such retail outlet, to the extent known to and contained in the existing records of the supplier.

/(5) Any sales goals or quotas the refiners or distributors intend to apply to the station./

(/6/5) /Nearest/ The address of the nearest /gasoline/ retail outlet owned, leased, controlled or operated by /refiner or distributor/ the supplier within a two (2) mile radius of the premises at the time the contractual agreement is entered into, and any finally approved plans /distributor or refiner/ the supplier has to open new retail outlets /within the trade area of the/ closer than said nearest retail outlet during the term of the contractual agreement.

(/7/6) Any finally approved plans the /refiner or distributor/ supplier has for /the future of/ the /subject/ retail outlet during the term of the contractual agreement which will significantly and detrimentally alter the improvements or equipment, or the land upon which the retail outlet is located.

PROHIBITED PRACTICES

SECTION 4. No person shall, directly or indirectly, or through his officers, agents, employees or otherwise:

(1) Require the /franchisee/ dealer at the time of entering into the franchise agreement to assent to release, assignment, novation,

waiver or estoppel which would relieve any person from liability imposed by this 1975 Act.

(2) Require a /~~the franchisee-~~/ dealer to agree to waive his right to a jury trial or any right of counterclaim he may have.

/~~(3)~~ Require the franchisee-dealer to keep his retail outlet open for business more than 16 consecutive hours per day or more than six days a week, except this subsection shall not be construed to prevent any retail outlet from being open when required to be open to conform to any state or federal law or regulation./

(/~~4~~/ 3) Restrict or inhibit, directly or indirectly, the right of free association for any lawful purpose of a /~~the franchisee-~~/ dealer.

/~~(5)~~ Sell, rent or offer to sell to a franchisee-leader any product or service for more than a fair and reasonable price./

(/~~6~~/ 4) Require a /~~franchisee-~~/ dealer to purchase or otherwise lease goods or services of a /~~refiner or distributor or from an approved~~ source of supply unless, and to the extent that, the refiner or distributor satisfies the burden of proving that such restricted purchasing agreements are reasonably necessary for lawful purposes justified on business grounds and do not substantially affect competition. However, this subsection does not apply to the initial inventory of the franchise. In determining whether a requirement to purchase is lawful, the court shall be guided by the decisions of the courts of the United States in interpreting and applying the antitrust laws and the Federal Trade Commission Act of the United States/ supplier where such requirement when imposed would be a violation of any law, rule or regulation of this state or of the United States.

(/~~7~~/ 5) Impose unreasonable standards of performance on a /~~the~~ franchisee-~~/~~ dealer, provided that standards reasonably established in

good faith may be imposed by a supplier and shall be, when imposed, adhered to by a dealer.

/(8) Unreasonably disapprove the transfer or assignment of a franchise by a franchisee-dealer to a qualified transferee or assignee./

(/9/ 6 Require a /franchisee-/ dealer to participate financially in the distribution of or to use any premium, coupon, give-away or rebate in the operation of /the/ his business; /except/ provided that a /distributor/ supplier may require a /the franchisee-/ dealer to distribute premiums, coupons or give-aways to customers which are provided without expense to the /franchisee-/ dealer /at the expense of the refiner or distributor/ or where the promotion is self-liquidating; provided, further, that nothing in this section shall prohibit a dealer from voluntarily participating in the distribution of or using any premium, coupon, give-away or rebate in the operation of his business and the dealer may be required to complete any promotion voluntarily undertaken by him.

(/10/ 7) Fail to deal with a /the franchisee-/ dealer or a supplier in good/ fait

NOTICES

SECTION 5. No /refiner or distributor/ supplier shall /, directly or indirectly, through any officer, agent or employee/ terminate /, cancel or fail to renew/ a /franchise/ contractual agreement prior to the expiration date of such agreement without first giving written notice /setting forth all of the reasons for such termination or cancellation or intent not to renew/ to the /franchisee-/ dealer in accordance with the terms of the contractual agreement, or to the dealer at his last known address by certified mail posted at least /90/ 45 days in advance of such termination /, cancellation or failure to renew, except:

(1) Where the alleged grounds are voluntary abandonment by the franchisee-dealer of the franchise relationship, in which event the aforementioned notice may be given five days in advance of such

termination, cancellation or failure to renew; or

(2) Where the alleged grounds are the conviction of the franchisee-dealer in a court of competent jurisdiction of an indictable offense directly related to the business conducted pursuant to the franchise in which event, the termination, cancellation or failure to renew shall be effective immediately upon the delivery of written notice thereof.7 ; provided, however, that if in the light of the circumstances it would not be reasonable to give notice 45 days in advance of such termination, the supplier shall give notice as provided in this section at the earliest date that is reasonably practicable; provided, further, that such termination may occur as specified in the contractual agreement and without regard to the notice provisions of this section where such agreement provides for a shorter notice period in situations included in those set forth in subsection (3) of section 6 of this Act.

TERMINATION, REMEDIES AND DEFENSES

SECTION 6. /No refiner or distributor shall terminate, cancel or fail to renew a franchise without good cause. Good cause includes without limitation:

(1) The failure of a franchisee-dealer to comply with the lawful material provisions of a franchise between distributor or refiner and the franchisee-dealer and to cure such default after being given written notice thereof and a reasonable opportunity to cure such default;

(2) Adjudication of the franchisee-dealer as bankrupt or insolvent or an asignment by the franchisee-dealer for the benefit of creditors or a similar disposition of assets of franchise business or voluntary abandonment by the franchisee-dealer of the franchise business or conviction of or entry of plea of guilty or no contest by the franchisee-dealer to a charge of violating any law relating to any franchise business;

(3) The good faith business decision of franchisor that he no longer resuires a retail outlet at that location for the marketing of gasoline; or

(4) The franchisee-dealer's failure to sign the new agreement of at the time of renewal of the franchise, the distributor or refiner and the franchisee-dealer cannot agree upon new terms and the terms offered by the refiner or distributor do not violate any other sections of this 1975 Act or other laws of the State of Oregon or of the United States and the terms are essentially the same as those offered to other franchisee-dealers in similar retail outlets and do not discrimante against the subject franchise-dealer./

(1) No supplier shall terminate a contractual agreement prior to the expiration date thereof unless the dealer whose contractual agreement is terminated failed to perform or comply with, or failed to act in good faith in performing or complying with, any of the terms or provisions of the contractual agreement, except that a supplier shall be permitted to provide in the contractual agreement for the termination of such agreement without cause during a reasonable trial period, not to exceed one (1) year, where the dealer involved his not been a dealer of the supplier for that period of time at the premises described in the contractual agreement.

(2) If a supplier who has entered into a contractual agreement with a dealer engages in conduct prohibited under subsection (1) of this section, or prohibited by or in violation of any other section of this Act, the dealer may bring an action in any court of competent jurisdiction in this state against such supplier for actual damages sustained or for injunctive relief as may be necessary to prevent or restore rights lost because of the conduct of such supplier. In any

action brought under the provisions of this subsection, the prevailing party shall recover from the losing party all costs incurred, including reasonable attorney and expert witness fees, according to the discretion of the court.

(3) In any suit brought under subsection (2) of this section, there shall be defenses available to the supplier to include the following situations:

(a) Failure of the dealer to perform or comply with, or his failure to act in good faith in the performance or compliance with, any of the terms and provisions of the contractual agreement;

(b) Criminal misconduct, unfair trade practice, or fraud of the dealer in connection with the operation of the business conducted pursuant to the terms and provisions of the contractual agreement; or the conviction of the dealer of any felony;

(c) Bankruptcy or insolvency, death or incapacity of the dealer; provided that such incapacity, whether mental or physical, shall be to such extent that the dealer is unable to perform under the terms and provisions of the contractual agreement as was originally intended when such agreement was entered into by him with the supplier;

(d) Loss by the supplier of the right to use a trademark, trade name, service mark, or other identifying symbol or name covered by the contractual agreement; or loss by the supplier of the right to grant possession of, or the destruction of, all or a substantial part of the premises covered by the contractual agreement; or expropriation, appropriation, condemnation, or other taking, or restriction of the use of the premises covered by a contractual agreement, in whole or in part, pursuant to the power of eminent domain or the regulatory police power of this state; or any similar cause which is beyond the reasonable control of the supplier;

(e) Abandonment by the dealer, or failure by the dealer to operate, the retail outlet located on the premises covered by the contractual agreement;

(f) Failure of the dealer to make any payment due the supplier as provided in the contractual agreement, or otherwise;

(g) Adulteration, commingling, mislabeling or misbranding of gasoline by the dealer; or trademark violations of the dealer, or those under his control against the trademark of the supplier;

(h) Failure of the dealer to comply with federal, state or local laws, ordinances or regulations relevant to the operation of the business conducted pursuant to the contractual agreement;

(i) Execution of a mutual agreement by the dealer and supplier to terminate the contractual agreement;

(j) The occurrence of any circumstance which is specified in the contractual agreement which circumstance is relevant to the operation of the contractual relationship and where termination before the expiration date specified in the contractual agreement is reasonable in light of such circumstance.

REPURCHASE OF GOODS

SECTION 7. In the event /that/ the supplier /refiner or distributor for good cause/ terminates /, cancels or fails to renew a franchise under this 1975 Act, he shall compensate the franchisee-dealer for the fail market value of the franchise including goodwill. Valuation other than goodwill includes the fair market value of a franchisee-dealer's inventory supplies, equipment and furnishings purchased from the refiner or distributor exclusive of personalized materials which have no value to the refiner or distributor and inventory supplies, equipment and furnishings not reasonably required in the conduct of the franchise

business. Such compensation shall be made within 60 days from the date of termination unless it is necessary that a lawsuit be filed under section 10 of this 1975 Act or the franchisee-dealer fails to comply with the provisions of ORS 76.1070. The refiner or distributor may offset against accounts owed by the franchisee-dealer under this section any amount owed by the franchisee-dealer to the refiner or distributor./ a contractual agreement, such supplier shall make or cause to be made a good faith offer to repurchase from the dealer, his heirs, successors or assigns, at the current wholesale prices, any and all merchantable products and merchandise which are undamaged and unadulterated from their original form, purchased by the dealer from such supplier; provided, that such supplier shall have the right to apply the proceeds against any existing indebtedness owed to him by the dealer; and, further provided that such repurchase obligation is conditioned upon there being no other claims or liens by or on behalf of other parties, including creditors and governmental agencies, against such products and merchandise.

/SECTION 8. The Attorney General may bring a suit in the name of the state against any person to restrain or prevent the doing of any act herein prohibited or declared to be unlawful, and the prevailing party may in the discretion of the court recover the costs of such suit including reasonable attorney fees./

/SECTION 9. The provisions of ORS 646.140 to 646.180 with respect to a violation or threatened violation of ORS 646.010 to 646.180 apply equally to a violation or threatened violation of sections 2 to 7 of this 1975 Act./

/SECTION 10. If under section 7 of this 1975 Act, a distributor or refiner has good cause and the distributor or refiner and the

franchisee-dealer cannot agree on the fair market value of the franchise, then either party may initiate an action in the circuit court of the county where the franchise retail outlet exists and the matter shall be tried in the same manner as the manner set forth in ORS chapter 35 for general condemnation actions. Reasonable attorney fees and appraiser's fees shall be awarded to the franchisee-dealer if the amount awarded to the franchisee-dealer by the jury or the court is 10 percent higher than the final offer, if any, made by the refiner or distributor prior to the filing of the lawsuit./

/SECTION 11. Every person who violates the terms of any injunction issued pursuant to this 1975 Act shall forfeit and pay a civil penalty of not more than $25,000 per violation./

ARBITRATION

SECTION 8. No action may be brought under section 6(2) of this Act if the contractual agreement provides for the binding arbitration of disputes arising under such agreement, including disputes arising from the termination of such agreement, in accordance with the rules of the American Arbitration Association, or as the parties may have agreed upon in the terms and provisions of the contractual agreement.

LIMITATIONS

SECTION 9. No action may be brought under section 6(2) of this Act unless commenced within two years after the cause of action shall have occurred.

SEPARABILITY

SECTION /12/ 10. If any provision of this 1975 Act or its applicability to any persons or circumstances is held invalid, the remainder of the Act or the application of the provisions thereof to other persons or circumstances is not affected.

EFFECTIVE DATE

SECTION /13/ 11. /To the extent that such application does not impair the obligations of contracts, sections 1, 2 and 4 to 11 of this Act apply to franchises existing on the effective date of this Act./ This Act will take effect January 1, 1976, and shall apply to all contractual agreements entered into or renewed after its effective date.

/SECTION 14. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1975./

BISS AND HOLMES
ATTORNEYS AT LAW
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

BURTON C BISS
ROGER F HOLMES

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425 G STREET
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SR BOX 511
WASILLA, ALASKA 99687
TELEPHONE (907) 376-5318

March 29, 1976

Representative Bob Bradley
House of Representatives
Juneau, AK 99801

Dear Representative Bradley:

George Gregson is a substantial property owner in the Anchorage area and has called my attention to Senate Bill No. 438 which apparently is now under consideration by the Commerce Committee in the House. Mr. Gregson owns two service station sites in Anchorage and feels that the long-term effect of the new balance this legislation proposes to strike between the dealer on the one hand and the refiners and distributors on the other will be detrimental to his interest as a site owner. Personally, I long ago lost faith in the efficacy of this type of legislation to cure real or imagined evils. Having recently been engaged in attempting to represent a small trailer court operator who was swept into the consumer protection investigation net, I am even more sensitive to the abuses that can flow from the power this type of legislation places in the hands of a "dedicated" consumer protector.

I have discussed this proposed legislation in depth with Charlie Brown of Charlie Brown's Chevron and he is vehemently opposed to the legislation. He feels, as I do, that the burden placed on refiners and distributors by those dealers who feel they need the type of advantage here created, will ultimately be passed right back on those competent dealers that have run a successful business for years without this restructuring.

It is my understanding the matter is now before the House Commerce Committee, but in any event I wanted to record this expression with you.

Very truly yours,

Burton C. Biss

BCB:esp

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99801

M E M O R A N D U M

April 15, 1976

SUBJECT: Commerce Committee Substitute for Senate Bill 438 am

TO: Representative Bradley, Chairman,
House Commerce Committee

FROM: David T. Walker, Legislative Counsel

Attached is a committee substitute drafted in accordance with the committee's request. I would like to remind you of an amendment which should be made to the bill to avoid a conflict with controlling federal law (15 U.S.C. 513).

I have attached a copy of a memo to Representative Rudd, dated March 29, which explains the necessity for the amendment and supplies the needed language.

cc: Rep. Rudd
Rep. Gardiner

M E M O R A N D U M

March 29, 1976

SUBJECT: Senate Bill 438 am

TO: Representative Lisa Rudd

FROM: David T. Walker, Staff Attorney

I drafted § 45.50.810(d) of SB 438 at the request of Senate Commerce Committee. It was my intention to parallel the applicable federal law - in fact I represented to the committee that the language did that.

I have attached a copy of an amendment which should be made to the language of the bill. The added language would make it clear that the state law followed the controlling federal anti-trust provisions and would avoid needless litigation.

DTW:bh

Attachment

Amendment suggested to SB 435 am

PAGE 5 LINE 3

After "dealers" insert the following:

"where the effect of the discrimination may be substantially to lessen competition"

PAGE 5 LINE 4

After "costs." insert the following:

"Nothing under this section shall prevent a refiner or distributor from offering a lower price or furnishing a service or facility to a dealer when the offer is made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by that competitor."

SB 613

"An Act relating to regional Native housing authorities."

COMMITTEE REPORT

HOUSE

2/12/86 FINANCE

Mr. Speaker: Date 2-13-86

The Committee on FINANCE has had SB 613 am

under consideration. A Majority of the members of the Committee

(X) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

JOE P. JOSEPHSON
Attorney at Law
1526 F Street
Anchorage, Alaska 99501

(907) 272-8531

Robert Goldberg, of counsel
George Kaufmann, of counsel
(D.C. bar only)

January 26, 1976

S.B. 613

File for members

The Honorable Jalmar Kerttula
Majority Leader
Alaska State Senate
Juneau, Alaska

Dear Jay:

As you may know, I represent Chugach Natives, Inc. and the village corporations which are situated primarily in your district.

Under A.S. 18.55.996 various native associations are given powers and duties comparable to duties of ASHA for the purpose of promoting more adequate native housing.

A.S. 18.55.996 refers to "Chugach Native Association". Chugach Native Association is, and has been for many years, a virtually defunct paper organization which carries on no activities. The more appropriate sponsor for housing within the Chugach region is North Pacific Rim, Inc. the regional corporation's non-profit arm. Making a change in the statute to delete the reference to Chugach Native Association and to insert "North Pacific Rim, Inc." in lieu thereof would further the objectives of the act and would put the situation in your area in closer parallel to what exists in other areas of the state.

I have talked to the leaders of each village corporation as well as to the leadership of the region and all concur. If you could sponsor this change I know that your constituents in Tatitlek, Cordova, Chenega, and Valdez would be appreciative. Incidentally, if you can undertake this, it would probably be a good idea to add the terms, "Eyak", and "Chenega" to the list of communities in A.S. 18.55.996(9). After the native claims act was passed, Eyak and Chenega won recognition as native villages although they had not been listed within the claims act itself.

I enclose a copy of the present statute for your reference. Please don't hesitate to call on me if you have any questions.

Sincerely,

Joe P. Josephson

Enclosure

NORTH PACIFIC RIM NATIVE CORPORATION

912 EAST 15TH AVENUE
ANCHORAGE, ALASKA 99501

PHONE 278-0018 OR 274-8961

February 12, 1976

Senator Kerttula:

I would like to summarize the important factors which have led to the submission of SB 613.

1. There is a growing housing problem in the Chugach region.
2. Both Chugach Natives, Inc. and NPRNC want to have a housing authority functioning in the region and at present we have none.
3. Chugach Native Association is defunct and no longer serving people in the region.
4. We were established a little less than two years ago to develop comprehensive human services throughout the region. Currently we operate with an annual budget (FY 76) of $435,000 supporting community development, education, health, and manpower programs. We are under contract with a variety of state and federal agencies to provide these programs.
5. We cannot begin to effectively respond to local housing needs unless SB 613 is passed.

Your efforts on behalf of the people in the region are greatly appreciated.

Sincerely,
Ford E. Powell-Ring

2-12-76

SB 682 .A1M

"An Act relating to winery licenses."

COMMITTEE REPORT

HOUSE

3/12/78

Mr. Speaker: Date _____

The Committee on COMMERCE has had SB 682 am under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Box 2000/Anchorage, Alaska 99510/272-7517

Brown Jug

Friendly Spirits Since 19[illegible]

March 17, 1976

The Honorable Bob Bradley
Alaska State House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99811

RE: Senate Bill #682
Winery License Law

Dear Mr. Bradley:

Enclosed is information on the only winery operating in Alaska at the present time.

The winery license law should be enacted to provide for the proper operation of this type of business in conformity with the business practices in California and other areas of the world.

A wine producer must have the opportunity to develop a market demand for his product and this can only be accomplished by direct contact with the consumer through wine tastings and direct sales of the wines produced at the winery. After the wine producer has proven that there is a public demand for the product, then the market will be expanded by the Wholesalers and Retailers.

Enactment of this winery provision will encourage the development and production of wines from other Alaskan fruits and berries as well as the possibilities of growing wine grapes in a greenhouse environment.

Sincerely,

Mike O'Neill
Director

JOYS OF WINE

Being

A Storehouse of All Needed Information, Instruction, & Wine Intelligence

UNDERSTANDING A WINE LABEL · STOCKING A CELLAR
THE ORDERING, STORING, & SERVING OF WINE

Maps of the Great Wine Regions · Vintage Charts
Expert Selections of Outstanding Wines

A Collection of Photographs, Paintings, Lithographs, Sculptures, & Artifacts;
Together With Illustrated Presentations of
THE WINE MUSEUMS OF SAN FRANCISCO
& CHÂTEAU MOUTON ROTHSCHILD

GOOD COUNSEL ON WINE & FOOD *by James Beard*
WITH APPROPRIATE MENUS AND RECIPES

AN APPRECIATION OF CALIFORNIA WINES
by Robert Lawrence Balzer

A TREASURY OF VINTAGE VERSE & STORIES
All Prefaced by
Some Reflections on Wine and Civilization
THE WHOLE PRESENTED BY

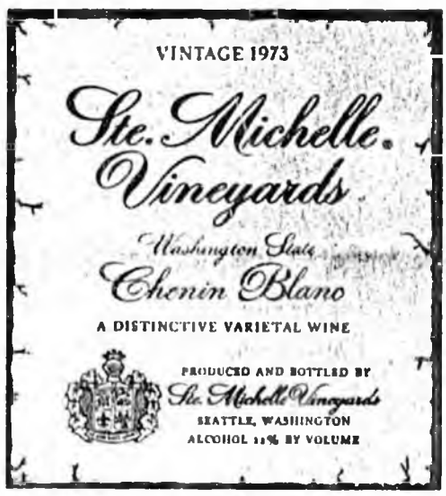
Clifton Fadiman
AND
Sam Aaron

Though the scuppernong will
in the humid coastal climate of
owlands along the Atlantic, the
ca, hybrids, and vinifera will not.
cooler and drier Piedmont, bunch
s and many other tree fruits (most
ly peaches) do extremely well.
table wine is made in the South-
Hobbyist vintners in North and
Carolina, Georgia, and Tennes-
count for most of the very small
ction. Wine is not a particularly
on drink in many parts of the
Numerous counties in several
are still legally dry, but the future
ine has been improving over the
few years. Old laws have been
ed or new ones enacted. Experi-
l hybrids resistant to disease may
more of the hot, humid land to
ed for vineyards, especially in
a. Georgia will still have its peach
but some of its rich hill country
rove ideal for grapevines produc-
ssic wines

THE ORTHWEST

have long grown in Washington
egon, but winemaking is a rela-
new pursuit in these states.
gs of wine grapes have been
expanded in the past few years,
t enthusiastic Northwesterners
their states will soon be making
s good as California's and in
ies greater than any other state
lifornia produces.

ne Yakima Valley in southeast-
ashington is that state's main
growing region. Before irrigation
water from the Columbia River
ed, the gently sloping valley
e surrounding area seemed a
sert, with so little rain that few
crops could grow. The entire
s now literally a fruitful place.
ds are concentrated in the lower
around Sunnyside, Benton City,



Guided by André Tchelistcheff, Washington State vinters have produced good varietals from vinifera grapes

and Prosser (where the Seneca Foods-Boordy Vineyards winery that makes the Washington State version of Philip Wagner's popular Maryland wine is located). Hybrids cover most of the acreage, but some Chardonnay, Cabernet, and Pinot Noir grow there too. In fact, true vinifera grapes have for many years thrived in parts of Washington and Oregon. They did not make much of a name for themselves because no one was using them for wine. Some claim that parts of the Yakima Valley should produce as good a varietal wine as can be made in the United States.

Wine is being made in Seattle from grapes grown in the Yakima Valley and in a few other sections of the state. The Ste. Michelle label wines have gained some fame, but for my taste they are odd and unbalanced. The Cabernet Sauvignon seems thin and lacking in good sound vinous character. The Johannisberg Riesling is watery and without varietal flavor. The wines will probably improve as viniculture becomes better understood and more good grapes become available to the vintners.

Washington seems to have more than its share of eager people who make wine as a hobby. One group of professors from the University of Washington in Seattle had such success with

For centuries the Slavs made whey wine from Cottage Cheese fermented with honey. While these wines were delicious and wholesome after a proper fermentation period, they ware unstable and could not be bottled for storage.

Legend was that those who consumed these wines were immune to Black Death (Bubonic Plague) of 1383 and 1665. However, Engels make no medicinal claims for this product based upon what was handed down from Grandmother Mary Bouska, of Prague, Czechoslavakia.

Fr. Emmet R. Engel and his brother George R. Engel, of Palmer, Alaska through years of testing discovered that the basic character of the ancient whey wines could not only be duplicated through the use of ingredients not available to the ancient Slavs, but resulted in a stable product hitherto unknown.

Milk, unlike fruits or grains, contains no fusel oil or tannic acid.

Although grapes grow in Alaska, the state's first winery makes its product by fermenting milk

their homemade vintages that they banded together as the Associated Vintners. Their wines are as popular in the Seattle area as many of the "boutique"

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER | POUCH S — JUNEAU 99811

March 25, 1976

The Honorable Bob Bradley
Chairman
House Commerce Committee
Alaska State Legislature
State Capitol Building
Juneau, Alaska

Re: Senate Bill No. 682 am

Senate Bill No. 682 am, an Act relating to winery licenses, was introduced in the House on March 12, 1976 and was referred to the House Commerce Committee.

The House Commerce Committee on March 22, 1976 referred the bill to the Rules Committee without recommendation.

For your information and members of the House Commerce Committee, I am enclosing a copy of a memorandum from Linda E. Brown, Director, Alcoholic Beverage Control Board, Department of Revenue, Anchorage, Alaska advising of no fiscal impact, as concerns the proposed legislation with respect the Alcoholic Beverage Control Board.

Very truly yours,

R. D. Stevenson
Special Assistant

cc: The Honorable William Parker
Chairman
House Rules Committee

The Honorable Jalmar Kerttula
Chairman
Senate Commerce Committee

Linda E. Brown
Director
Alcoholic Beverage Control Board
Department of Revenue
Anchorage, Alaska

02-001B

STATE
of ALASKA

MEMORANDUM

TO: R. D. Stevenson
Special Assistant
Department of Revenue
Juneau

DATE : March 19, 1976

FROM: Linda E. Brown
Director
ABC Board
Anchorage

SUBJECT: SB 682 am

There is presently only one establishment in the state producing wine. We have received no inquiries in regards to winery licensing and therefore do not anticipate much activity in the next several years. To have impact on the BRU, at least five wineries would have to be in operation in the state. We do not anticipate such activity.

LEB:vk

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S – JUNEAU 99811

March 25, 1976

Honorable Susan Sullivan
Chairman
House Health, Education &
Social Services Committee
Alaska State Legislature
State Capitol Building
Juneau, Alaska

Re: House Bill No. 682

Dear Ms. Sullivan:

House Bill No. 682, an Act relating to returnable containers, was introduced in the House on March 10, 1976 and was referred to the House Health, Education & Social Services and Commerce Committees.

For the consideration of the House Health, Education & Social Services Committee, I am enclosing a Fiscal Note and accompany schedule prepared by Linda E. Brown, Director, Alcoholic Beverage Control Board, Department of Revenue, Anchorage, Alaska concerning administrative costs of House Bill No. 682.

If you or any members of the House Health, Education & Social Services Committee have any questions on the material submitted, please telephone the writer at 465-2397 and I will contact Ms. Brown in Anchorage for further information.

Very truly yours,

R. D. Stevenson
Special Assistant

Enclosure

cc: The Honorable Bob Bradley
Chairman
House Commerce Committee

Linda E. Brown
Director
Alcoholic Beverage Control Board
Department of Revenue
Anchorage, Alaska

THE LEGISLATURE OF THE STATE OF ALASKA

FISCAL NOTE

Second Session - Ninth Legislature

I. REQUEST

Bill No. HB 862

Title: An Act Relating to Returnable Containers

Requested by: _____ Date: March 22, 1976

Return Date Requested: _____

Agency: Department of Revenue Program: ABC Board

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Alcoholic Beverage Control Board

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES	-0-	90.8	104.4	121.4	138.0	158.7
200	TRAVEL	-0-	30.0	34.5	39.7	45.6	52.4
300	CONTRACTUAL	-0-	35.0	40.2	46.2	53.1	61.0
400	COMMODITIES	-0-	1.2	1.4	2.1	2.4	2.8
500	EQUIPMENT	-0-	1.0	1.2	1.4	1.6	1.8
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	-0-	158.0	181.7	210.8	240.7	276.7

B. FUNDING: (Thousands of dollars)

GENERAL FUND	-0-	158.0	181.7	210.8	240.7	276.7
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0 /	5 /	5 /	5 /	5 /	5 /
MAN MONTHS (P./T.)	0 /	60 /	60 /	60 /	60 /	60 /

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

SEE ATTACHMENT

IV. ATTACHMENTS

V. DATE: 3/22/76 PREPARED BY: Lynda E Brown

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

III Analysis:

A. Assumption is five new positions will be needed as follows:

Investigator I	(Anchorage)	13A	19.1
Investigator I	(Fairbanks)	13A	22.0
Investigator II	(Juneau)	15A	22.0

to inspect and regulate redemption centers, dealers, and distributors.

Clerk Typist III	(Anchorage)	8A	13.9
Clerk Typist III	(Anchorage)	8A	13.9

to process applications and additional paperwork.

Base salary plus 21% in benefits, plus 15% inflation per year.

Assumption is additional Board time and travel of one day per month for hearings on applications and regulatory functions.

B. Program Summary

In addition to above position expenditures, increased office space, equipment and commodities will be needed.

Additional day for Board time and travel @ $1100 per meeting x 12 = 13.2

Seventeen annual trips per investigator @ $150.00 travel expense each, including 70 days at average of $42 per day per diem = 16.5

CS SJR 5

"Relating to RCA Alaska Communications, Inc., proposed satellite system."

2-6-75

COMMITTEE REPORT

HOUSE

Mr. Speaker: Date _____

The Committee on COMMERCE has had CSSJR 5 .

under consideration. A Majority of the members of the Committee .

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

JAY S. HAMMOND, Governor

POUCH A
JUNEAU 99801

STATE OF ALASKA
OFFICE OF THE GOVERNOR

February 14, 1975

Walter R. Hinchman, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street N.W.
Washington, D.C. 20554

Dear Mr. Hinchman:

In response to the Commission's request that the State comment on the RCA Alaska Communications plan of September, 1974, we submit the attached document.

The position of the State of Alaska is that since the RCA satellite is designed for service to the country as a whole, the merits of the issue now before the Commission should be judged accordingly. The satellite proposed by RCA offers Alaska no better service for voice communications than existing systems and, further, will not meet the comprehensive long-range needs of the State. In view of the Commission's "Open Skies" policy for domestic satellite communications, it seems inappropiate for the State to object to the launch of the satellite. However, the State cannot endorse the RCA plan, as it is not based on a system designed for Alaska's unique needs.

The State's vast distances, rugged terrain, and harsh weather conditions create a situation far different from that of the Lower 48. Our population is small, with twenty percent living in isolated areas connected to the rest of the State and the world only by airplane. With an area one-fifth the size of the entire continental United States and less than 5,000 miles of road, communications in many cases takes the place of transportation for business, education, health service, and personal exchanges. A large portion of Alaska presently has only the sparsest of communications - some have none - lacking in many cases is even the most basic 24-hour voice capability for medical and other emergencies.

I urge the Commission to take into account the importance of the communications issue in Alaska, as evidenced by the active involvement of the State Legislature in the definition and planning of the system. Attached is a joint resolution and a legislative proposal dealing with the subject.

We realize that much remains to be done. Alaska is in the precedent-setting situation of being able to plan its future communications system rather than having to accept the traditional incremental development. Toward that end my Office of Telecommunications together with members of the Legislature will conduct an intensive six-to-nine month planning effort to fully define the State's long-range communications plans, and to determine alternatives for their implementation.

The record of your assistance and cooperation with the State is well known and I would like to express the appreciation of all Alaskans for your concern. We look forward to working with the Commission to resolve the problems and to meet the special communications needs for Alaska.

Sincerely,

Jay S. Hammond, Governor

State of Alaska Comments
February, 1975

RCA Alaska Communications Plan

In September, 1974, RCA Alascom/Globcom submitted its plan for Alaska Communications, 1974-1980, to the Federal Communications Commission. This plan was reviewed by the previous Administration's Office of Telecommunications and comments were issued in October, 1974. These comments showed that the plan submitted by the RCA companies does not adequately meet the State's need for communications services. The comments further state that economic information presented by RCA was not sufficient to allow analysis of financial aspects of the plan nor to determine the allocation of costs between Alascom and Globcom. A copy of the summary comments issued by the State is attached.

This Administration agrees with the objections expressed in the October comments, confirms their validity, and fully endorses the concepts and recommendations expressed in them.

RCA's Response to the State's Comments

At a meeting in Anchorage on January 13, 1975, RCA presented to the State several documents describing proposed modifications to the plan of September, 1974. These modifications would slightly increase the gain of several transponders and modify the pointing of one antenna to give better coverage of Alaska. The proposed ground system was revised to a modest extent by de-emphasizing the cluster concept and by reducing the size of some earth station antennas.

The increased gain still falls short of the State's recommendation by a factor of 10, and the tilted antenna cannot make up for the other deficiencies of the satellite design. The modified satellite still gives no advantage over existing satellite systems. The ground system modifications were an important first step, the State believes, but need to be carried further to eliminate all "cluster" construction and focus exclusively on a network of small, low-cost ground stations.

Areas of Understanding

Futher discussions between the State and RCA in Alaska and in Washington, D.C., have helped clarify some of the issues. Progress made by small working groups demonstrates positive cooperation between RCA and the State on most technical, economic, and management issues. Significant differences persisted only in the area of satellite system design.

Substantial agreement has been reached on the matter of service requirements. RCA has offered to provide the requested economic data concerning accounting procedures.

The State and RCA agree generally on the use of small earth stations for voice communications. Further, RCA has acknowledged the State's position regarding high-power transponders for television and other advanced communications services by offering to put them on future generation spacecraft.

Continuing Concerns

The most serious unresolved problem results from RCA's system concept which is based on a satellite designed to provide services to the Lower 48 states rather than to meet Alaska's needs. The satellite planned for the joint Alascom/Globcom system is far better suited for Globcom's customers than for Alascom's. Acceptance of the RCA plan would preclude the State from obtaining a system optimized for it by forcing the use of facilities not able to provide necessary services on a cost-effective basis.

Because of ill-defined arrangements between the two RCA companies, plus the fact that development and construction of the spacecraft have been underway at RCA Astro-Electronics for more than a year (under waivers from the Commission rather than a Construction Permit) it is our view that Alascom finds itself committed to selling the services of a satellite of marginal utility to its customers. This conclusion is supported by the fact that the RCA plan, still more than a year from operational status, offers no advantage to Alaska over satellites now in orbit.

Service Requirements

To further present the State's needs so that a definitive implementation plan can be developed, a two-phase concept has evolved:

Phase I Voice communications for all permanent communities with a population fo 25 or more. This service is urgently needed, primarily for emergency medical use, and shall be initiated on a top priority basis using the most suitable satellite available.

Phase II Television and other comprehensive communications services for all of Alaska. This service cannot be provided with present spacecraft. Therefore, the Administration and the Legislature will undertake a six-to-nine month planning effort to determine Alaska's requirements and the best means for meeting them. The significance to the State of the decisions to be made in our long-range planning is very great in terms of future benefits and flexibility of service.

Phase I Status

Phase I calls for small earth stations of fairly simple design and lowest reasonable cost supplied by one of the following:

1. Alascom, utilizing its own earth stations,
2. Alascom, leasing State-owned earth sations,
3. other communications carrier participation,
4. the State of Alaska, using its own facilities.

Due to the urgent need for this service the State is exploring, without prejudice to RCA Alascom, the means for establishing a ground system of approximately 100 earth stations. Initial operation would be on an existing domestic satellite and continued on the most cost-effective spacecraft available. Initial steps to begin the process of State procurement have been taken by the State Legislature through the introduction of enabling legislation. (See Attachment) SB 199

Phase II Plans

Because of Alaska's need for an extensive network of small, low-cost earth stations, high-power transponders are necessary to provide these comprehensive communications services, and to do so on a cost-effective basis.

RCA agrees to the need for high-power transponders but contends that construction of the first two spacecraft is too far along to incorporate such changes. RCA has offered to place a limited number of such transponders on later satellites if the State makes a substantial long-term financial commitment.

It has become apparent from the discussions of the past several months that far more extensive study and planning must be done before the State makes any major, long-term commitments. The State Legislature and the Governor's Office of Telecommunications are developing the framework under which this planning will be done.

Conclusions and Recommendations

The State concludes that the current RCA satellite plan offers no advantage to Alaska over existing satellite systems. Even the State's Phase I requirements can be met by existing satellites. There is clearly no advantage for the State to wait for the launch of an RCA satellite which can only provide similar services.

Since the Commission has an "Open Skies" policy with respect to domestic satellite communications, and because the RCA system is largely designed to provide service outside the State, it is inappropriate for Alaska to object to the launch of the RCA spacecraft.