

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 86/2

2627 SLC SB 184 (FILE 3)

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ORGANIZATION AND FUNCTION

The Alaska Transportation Commission was established by AS 42.07.011 in 1969 consisting of three members appointed by the Governor and confirmed by the legislature in joint session. The Commissioners are appointed for staggered six year terms with one member designated by the Governor as Chairman for a two year period.

The Commission is authorized by AS 42.07.121 to administer the Air Commerce Act of 1960, the Motor Freight Carrier Act, the Bus Transportation Act, and the Ferry Transportation Act. Under these Acts, ATC is primarily responsible for assuring that all transportation activity under its jurisdiction provides safe, adequate service at reasonable rates and that sound economic conditions prevail. In addition, the Commission may adopt their own regulations within the framework of the existing statutes to accomplish these purposes.

At the present time, the Commission has a staff of 27, consisting of an Executive Director, two hearing officers, a tariff section, and an enforcement section.

The Commission must frequently exercise its quasi-judicial function by conducting formal hearings on:

- Contested applications for new or extended authority.
- Complaint and accusation matters.
- Rate matters. .

In addition they may also conduct hearings required by the Administrative Procedures Act (AS 44.62) for the adoption or amendment of rules.

The tariff section reviews rate changes by ATC regulated carriers. Significant changes are brought to the Commission's attention and may be suspended and investigated. In addition, they maintain a library of tariffs filed nationwide and related publications to aid in analysis of Alaskan tariffs.

The enforcement section investigates consumer and carrier complaints, participates in public hearings and other activities necessary to maintain satisfactory compliance by the regulated carriers, and conducts carrier surveys. If a violation of the statutes or regulations has occurred, civil penalties may be assessed.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Commission practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these decisions, the legislative oversight committees should take into consideration the findings and recommendations presented in this report, so that the potential impact of policy changes can be evaluated.

Report Conclusions

In our opinion, the Alaska Transportation Commission should continue to regulate the transportation industry pending a comprehensive transportation study. The economic consequences of regulation or deregulation need to be determined in order to fully evaluate the public need for this agency.

However, in the interim, certain changes need to be implemented in order for the Alaska Transportation Commission to effectively accomplish its statutory purposes which are: (1) to provide shippers and receivers with a stabilized rate structure; (2) to foster sound economic conditions among the carriers which will guarantee transportation in the public interest; and (3) to promote adequate, economic services and reasonable charges.

The Commission has been hampered by the following problems in meeting these purposes. The statutes and regulations which affect the Commission are overdue for revision in many areas. Their inadequacy and obsolescence has resulted in several successful appeals of the Commission's decisions. The Commission staff is burdened with additional work due to obsolete legislation such as the Ferry Act as well as dump truck and recreational air carrier regulatory sections. Necessary statutory and regulation revisions must proceed if the ATC is to resolve other problems (see Recommendation Nos. 1, 2 and 3).

Improvement is needed in the manner in which ATC approaches its economic regulation mandate and its enforcement responsibilities. Obtaining data on carrier operations is a prerequisite to determining if a public need exists for the carriers and the rates which should be charged. Moreover, once available, the data must then be audited and analyzed in order to make useful comparisons. After carriers are authorized to operate, ATC must enforce the provisions of the various transportation acts with regard to their transport activities. Consistently suspending civil penalties

levied against carriers is not a useful deterrent in that connection. (See Recommendation Nos. 4 and 5).

Applications for authority to operate have not been processed in a timely fashion which is a disservice to the public. Moreover, communicating operating authority to carriers by telegram, before findings of fact and conclusions of law have been drafted, is contrary to statute and has been successfully appealed to the Superior Court. (See Recommendation Nos. 6 and 10).

The ATC Commissioners have not complied with the statutory requirement for providing notice and opening their meetings to the public. Further, the meetings have not been held weekly as is required. In addition, we have recommended both the Commissioners and the staff decline any future free offers of transportation from regulated carriers. (See Recommendation Nos. 9 and 12).

There has been a serious disregard of the prohibitions against ex parte communication by both the Commissioners and the staff. This is evidenced by phone calls to Commissioners from attorneys representing parties to a case before the Commission and orders written by staff members on cases to which they were a party. Also, it appears the Governor, through the Commissioner of Administration, has attempted to influence the judgement of the Commission. These practices must be corrected in order to avoid repercussions from the Alaska Bar Association or the Appeals Court. (See Recommendation Nos. 7 and 8).

Improvements in the efficiency of order writing and decision making would result from compiling a complete and accurate index of all prior orders and court decisions by subject, including name of case, ATC docket number, and court case number. Improvements in attorney and tariff analyst services should result from a transfer to ATC of the assistant attorney general and tariff analyst currently assigned to the Department of Law. This would be appropriate since much of their work is ATC related. (See Recommendation Nos. 13 and 14).

The primary goals of the Commission are to regulate air and motor commerce to ensure economically sound carriers and a stabilized rate structure. In general, the ATC does not have the necessary information on carriers profit, volume of traffic, trends in population, or traffic growth to make informed decisions on applications for authority or rate changes. Before ATC can develop a statewide plan for allocation of routes and rate structure, they must first complete a statewide study of all factors which concern effective and efficient movement of goods and passengers. ATC is mandated by statute to complete a statewide air commerce study and such a study, including all modes of transportation has been

started by the Department of Transportation in Southeast Alaska. The results of this study, as well as a similar study of other areas in the state should enhance ATC's ability to accomplish their primary goals.

In conclusion, the Alaska Transportation Commission should analyze and evaluate the methods of the Commission and take the necessary actions needed to perform and fulfill their responsibilities to the public.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The statutory requirements for the ATC to regulate bulk-type commodities and recreational air carriers should be eliminated.

AS 42.10.070 and .080 authorize the Commission to regulate common and contract motor freight carriers. AS 02.05.04 states that no person may engage in air commerce unless a certificate has been issued by the Commission. We believe, however, bulk-type commodity and recreational air carriers should not be regulated. Bulk-type commodity carriers (dump trucks) applications for authority are routinely issued, as we found in a 100% test of the applications for authority processed during fiscal years 1977 and 1978. The Commission granted authority to all of the applicants. The Commissioners agree that dump truck operators should be deregulated.

In another review, we determined that time was spent processing unnecessary paperwork for both dump truck operators and recreational air carriers (air guides and lodge pilots). Of the total applications for voluntary suspension of operations processed during fiscal year 1978, 25% were filed by dump truck operators and 30% were filed by recreational air carriers. Since these are seasonal operators, inactivity of business during winter months was the justification given for these suspensions. Besides processing these applications each fall, an order to resume operations is issued by the ATC each spring.

Air guides' professional skills and standards are regulated by the Guides Licensing and Control Board of the State of Alaska. In addition, both air guides' and pilots' flying qualifications and aircraft safety are regulated by the Federal Aviation Administration (FAA). The FAA's determination as to the type of safety regulations a recreational air carrier will be governed by is based solely on the carrier's type of operations, not whether ATC has or has not issued a certificate of authority to operate. Moreover, lodge pilots who service a recreational lodge and air guides are not servicing a public necessity.

Recommendation No. 2

The statutes and regulations governing the ATC should be revised.

We determined through interviews, questionnaires, and review of the ATC records that the statutes and regulations governing the ATC are conflicting, vague, obsolete and

inadequate to carry out the statutory purposes of the transportation acts. The examples received from the Commissioners, staff, and attorneys who practice before the ATC are numerous. The following are examples of the problems caused by the present statutes and regulations:

1. Cease and desist authority is needed to stop illegal carriers. These carriers' operations are oftentimes completed before the ATC can take any action.
2. A definition of a scheduled air carrier and clarification of the definition of an air taxi operator should be provided. Presently, a decision of the ATC has been appealed to the Supreme Court due to the inadequacies or absence of these definitions.
3. Procedural regulations for hearings conducted by the ATC should be adopted. The ATC is currently in the process of writing these regulations which should be implemented as soon as possible to reduce the time and expense of hearings.
4. A clarification of "incidental transportation to some other primary business" is needed. This is another example of inadequate statutes resulting in a decision of the ATC being appealed to the Supreme Court.
5. A statutory amendment is needed to give the Commissioners the authority to delegate their duty to preside over hearings to a hearing examiner. Due to the absence of this authority a decision of the ATC was successfully appealed to the Superior Court. The ATC has subsequently appealed the Superior Court decision to the Supreme Court.
6. Registration fees (air only), weight fees (motor freight and passenger) and application fees for all types of carriers have not been increased for at least nine years. Further, the fees in the Statutes for motor freight and air commerce do not agree with the amounts in the regulations. Also, the \$150 civil penalty fee for motor carriers which may be assessed by the ATC for violations of the Statutes or regulations has not been increased since 1970. Inflation has invariably caused the amount of the above fees to be obsolete.

The adoption of statutes and regulations has taken excessive time in many instances. The uniform accounting regulations were drafted in 1965 but not adopted until 1972. Over two years ago, the Bus Transportation Act and regulations had been rewritten to remove the conflicts between them. However, they have not been adopted to date. In addition, 12 other sets of regulations were developed by the ATC staff over two years ago and forwarded to the Attorney General's office for review and approval. These regulations have not yet been adopted. In 1972 an attorney was engaged under a contract by the Legislative Affairs agency to rewrite the transportation acts. These revisions have not yet been enacted and are currently being reviewed by the Department of Law.

In order to ensure effective administration and enforcement of the transportation acts by the ATC, the statutes and regulations should be expeditiously revised.

Recommendation No. 3

The Commission should seek the repeal of the Alaska Ferry Transportation Act.

Presently, only one ferry operation between the Ketchikan International Airport and the City of Ketchikan falls under the jurisdiction of the ATC through this act. All state operated ferries are exempted from regulation by the ATC.

AS 45.25, the Alaska Ferry Transportation Act states that the Commission may issue a certificate of public convenience and necessity to a ferry operator engaged in the transportation of passengers or vehicles between points within the state.

Complaints from the public concerning this ferry operator may be investigated by and relief sought through a number of other existing agencies, such as the Ombudsman, Consumer Protection section of the Department of Law, Legislators, and the Better Business Bureau. Therefore, we do not find any public need for this Act.

Recommendation No. 4

ATC should regulate the economics of the transportation industry as required by the Alaska Statutes.

AS 02.05.010, AS 42.10.010 and AS 42.15.011 state in part, that the purpose of these chapters is to provide shippers and receivers with a stabilized rate structure, to foster sound economic conditions among the carriers which will guarantee transportation in the public interest, and to promote economical service and reasonable charges. In order that these statutory requirements be met, Alaska Transportation Commission should implement the following:

A. Carriers should be required to submit all pertinent financial data necessary for economic regulation.

ATC only receives financial data pertaining to the costs of operations from 20 scheduled air carriers. Only 20 out of 228 regulated air carriers are scheduled air carriers. The quarterly financial report form for air taxi operators does not include a request for costs of operations.

AS 02.05.170 states that the Commission may require reports from any air carrier covering any operations or business. The Commission may also require monthly, periodical and special reports from an air carrier and may prescribe the manner and form in which these reports shall be made.

Without knowledge as to the air taxi operators costs of operations, the Commission cannot determine if the rates are just, reasonable, and non-discriminatory. As a result the public may be paying excessive charges while air taxi operators make unreasonably high profits. Conversely, the public interest could also suffer from unstable service due to carriers not being allowed to apply rates which would return a reasonable profit. This financial instability could result in a poor quality of service or even a decrease in the number of carriers serving the public.

B. ATC should audit the carrier's accounting records to ensure they are prepared in accordance with regulatory accounting requirements and to determine the reasonableness of the financial data.

The Commission does not perform in-depth reviews of carrier accounting records. Presently, the procedures for field surveys of carriers do not include auditing the financial records. Also, out of approximately 600 regulated carriers, only 58 were surveyed during fiscal year 1978. In addition, the field surveys were conducted by personnel without accounting or auditing expertise.

Alaska Statutes 02.05.170(b), 42.10.120(a) and 42.15.041 authorize the Commission access to all accounts, books and records of the carriers for inspection and examination. AS 02.05.170(b) also states that the Commission may employ special agents or auditors to perform the examinations.

Many of the financial reports or data submitted by the carriers have not been previously audited by an independent certified public accountant. Therefore, there is no assurance that the data is uniformly prepared, consistently reported, or that it is sufficiently accurate to be used as a criteria for the decision-making process of the Commission.

We made a survey of several other states which are economic regulators of their transportation industry. All of them indicated that limited financial/compliance audits of carriers were performed on a regular basis by personnel with accounting expertise. One state required Certified Public Accountants for the Rate Analyst positions.

The following procedures should be implemented by the Commission:

1. Increase the number of field surveys performed each year.
2. Field surveys should include a limited financial/compliance audit of the carrier's accounting records.
3. Interim audits should be performed, as necessary, to verify the financial data submitted by the carriers to justify rate changes.
4. Personnel with accounting expertise and auditing experience, similar to the Utility Financial Analyst positions in the Alaska Public Utilities Commission, should perform the audits. This can be done through attrition in the Tariff Specialist positions.

As an alternative, in order to decrease the necessary number of audits performed by the Commission staff, carriers who earn above a certain amount of dollars in gross operating revenue could be required by the ATC to submit financial data audited by an independent certified public accountant. This would require ATC to audit only the smaller carriers.

Adequate uniform audit procedures should reduce the time and expense of hearings before the Commission. This would be due to the decreased need for cross-examination to establish the credibility of the financial data introduced at hearings.

C. ATC should establish written basic policies and procedures for analysis of rate changes.

The ATC may require carriers to submit financial data to support and justify requests for rate changes. This financial information can be a very useful tool for the ATC in considering the merits of such requests. It is usually necessary, however, to first analyze the data and develop statistics which can be compared to industry standards in Alaska to effectively measure the justification for the rate change. We found that, in general, this is not being done.

In a review of the rate investigations of ATC, we determined that approximately 317 tariff changes were filed with the Commission during the fiscal year 1978. Of these, only 20 were suspended, pending investigation by the Commission. An examination of these 20 cases resulted in the following:

1. Of the seven cases for which hearings were held:
 - One had a final order which mentions an analysis prepared by the staff, but no work papers of the analysis could be found.
 - Another case had a final order with percentage of revenue and operating ratio calculations.
 - In a third case, a Tariff Specialist had a file containing copies of the carrier's revenue and payroll records. A schedule had been prepared of the different types and amount of revenue, however, there was no indication that some type of analysis of these figures had been done.
 - In the remaining four cases no work papers or indications of a staff analysis could be found.
2. Documents for the remaining 13 cases, for which hearings were not held, could not be found which would indicate that some type of analysis had been done by the staff.
3. Six tariff changes (less than 1% of the total tariff changes filed during the fiscal year 1978) were cancelled by ATC.

The decision whether or not to investigate and analyze the financial justification for rate changes is left to the discretion of each Tariff Specialist. Less than 1% of the tariff changes filed during fiscal year 1978 showed any indication that some type of analysis had been prepared.

We reviewed the operating ratios, (total costs expressed as a percent of revenue), for 97 out of 198 common motor carriers, which were prepared from data on the 1977 Annual Financial Reports submitted to the ATC. We found the ratios ranged as follows:

75% to 105% for Class I (carriers with gross operating revenue of \$1,000,000 or more).

73% to 101% for Class II (carriers with gross operating revenue of \$300,000 to \$1,000,000).

31% to 97% for Class III (carriers with gross operating revenue of \$300,000 or less).

The Federal motor carrier regulatory agency, the Interstate Commerce Commission, has determined an operating ratio of approximately 94% to be reasonable.

The wide variations in operating ratio of the Alaska intrastate common motor carriers could be in part a result of (1) some of the carriers' unsophisticated accounting procedures which may result in distorted and inaccurate financial data and (2) the Commission has not adequately regulated the economics of the transportation industry in order to stabilize the rate structure; to foster sound economic conditions among the carriers; or to promote economical service and reasonable charges. The Commission, as noted in part (A) of this recommendation does not obtain sufficient information from 96% of the air carriers to determine the reasonableness of their profits.

Alaska Statutes 02.05.140, 42.10.280, 42.10.285, 42.15.141, 42.15.161 and 42.15.201 require air, motor freight, and motor passenger (bus) regulated carriers, except contract carriers, to file with the ATC tariffs and any subsequent changes thereto, which may be subject to suspension and investigation by the Commission.

Two Commissioners defined a good regulatory policy as one which would allow a carrier a fair rate of return on investment. Neither could define a fair rate of return on investment. One explained that ATC really did not have sufficient information or the skilled personnel to determine the carrier's rate of return and the other did not have any specific percentage in mind but was mainly interested in whether the carrier had safe and sound equipment.

The Commission's current policies and procedures are not sufficient to ensure that the statutory purposes, to foster sound economic conditions among the carriers and to provide the public with stabilized and reasonable rates, are accomplished. We have suggested three general procedures which should assist the Commission in achieving these statutory purposes. In addition, a member of the Commission with economic or financial expertise, such as is required for the Alaska Public Utilities Commission, would be helpful in establishing these necessary policies and procedures and in continuous monitoring of their effectiveness. (See Recommendation No. 11).

Recommendation No. 5

Improvement is needed in the enforcement of the ATC statutes and regulations.

ATC is responsible for enforcing the provisions of the following acts:

1. Alaska Transportation Commission Act.
2. Alaska Motor Freight Carrier Act.
3. Bus Transportation Act.
4. Alaska Air Commerce Act of 1960.
5. Alaska Ferry Transportation Act.

A civil penalty of \$150 was established in 1970 for the motor freight carriers and was later enacted into the Bus Transportation Act in 1972. Also, the Air Commerce Act in 1972 provided for a \$150 civil penalty for each offense noted by the ATC.

We reviewed the enforcement activities of the Commission and noted the following deficiencies:

A. ATC does not process enforcement actions in a timely manner.

We analyzed complaint, investigation, and accusatory cases for the period of 1½ years ending June 14, 1978. We found the average delay between the initiation of an investigation and the issuance of a final order, for cases involving public hearings, was 12 months (100% test). The average delay in cases not involving a public hearing was seven months, (30% test). In addition 31% of the cases in our test involving violations of statutes pending before the Commission as of June 14, 1978, were older than six months.

None of these average delays include investigative activity prior to the formal issuance of an accusation since, in most cases, the files did not show investigation commencement dates.

Standard operating procedures for ATC enforcement activities are currently being developed. To ensure their effectiveness, they should include provisions to record the date on which investigation commences and continuous monitoring of open files in order that processing is expedient.

B. The Commission frequently suspends all or part of the civil penalties assessed for violations.

Approximately 80 cases during fiscal year 1978 resulted in fines being assessed by the Commission. In 46 cases all or a part of the fines were suspended. The amount suspended equalled 74% of the total fines assessed.

We believe, in the first place, fines limited to \$150 for carriers are not a sufficient deterrent to prohibit the worst abuses of the transportation Acts. In addition, frequent suspension of fines diminishes an already weak deterrent. ATC should discontinue the practice of routinely suspending these civil penalties.

C. ATC enforcement staff duplicates the motor vehicle safety inspections done by the Department of Public Safety.

Currently, ATC enforcement agents perform safety inspections of motor carriers at scale houses, along public highways and at the carrier's place of business. Field surveys at the carrier's place of business include a review of the driver's and maintenance logs. The Alaska State Troopers also make safety inspections at the scale houses. They have the authority to stop carriers on the highway for inspections also.

This results in a duplication of scale house inspections, and correspondingly, an insufficient number of field surveys performed by the Commission. Only 40 field surveys were made in FY 1978 by the ATC out of 385 regulated motor carriers.

We recommend ATC discontinue safety inspections at scale houses and on public highways. This should allow for a significant increase in the percentage of carriers surveyed by the ATC at their place of business. These surveys are particularly useful because they serve to educate the carriers on safety matters and should result in improved preventative maintenance. In addition, enforcement agents will respond to specific complaints by the general public, and by carriers themselves, in a more timely fashion.

Recommendation No. 6

Applications should be processed by the ATC in a more timely manner and temporary operating authority should be granted in accordance with Alaska Statutes.

We reviewed the applications for permanent authority (original, transfers and extensions) and temporary authority processed by the ATC for a period of 1½ years ending June 14, 1978. We found the average delay between the application date and the issuance of a final order for permanent authority applications, which included public hearings, was 12 months, (48% test). A seven month delay was found for applications without public hearings, (45% test). In a 100% examination of applications without a final order issued at June 14, 1978, 34% had been pending for six months or more.

In our review of 100% of the temporary authority applications two deficiencies were noted, untimely processing and granting temporary authority in violation of the Alaska Statutes. We found the average delay for applications involving public hearings was 13 months. Applications without a public hearing averaged nine months. Of the applications still pending at June 14, 1978, 11% were six months old to one year old and 57% were more than a year old.

According to the Alaska Statutes (AS 42.10.210, 42.15.111 and 02.05.060) the Commission may only issue a temporary permit to a carrier if it finds an emergency exists. We tested the temporary authority applications to determine if they had been granted due to an existing emergency. We determined that of the 22 applications that were granted, 12 were granted without the ATC finding an emergency public need existed. Further, we could not find any indication in the files that an emergency public need existed as justification for the application in 66% of the cases that were pending at June 14, 1978.

A decision by the ATC to grant temporary authority to a carrier was appealed to the Superior Court. The Court declared the order by the ATC void and of no effect. One reason given was that no supporting documents evidenced that an emergency existed. ATC's decision had been based solely on the application and proposed shipper's contracts. The Court further enjoined the Commission from granting temporary authority to the carrier until it had held a public hearing and received evidence that an emergency existed.

One possible cause for the untimely processing of the above applications is that the ATC does not have a written standard operating procedures manual. Our flowchart of the document flow emphasized the complexity of their present procedures. The ATC should review these procedures in order to eliminate unnecessary and time consuming processes and to streamline the flow of documents within the Commission.

Recommendation No. 7

The Commissioners and hearing examiners should write the formal written decisions (orders) on applications before the ATC.

It is a common practice of the ATC to require the staff to draft orders. A staff member generally is given the legal file and a tape recording of the hearing, if one was held, to prepare a final order. Frequently, the staff is given no instructions as to what evidence or laws support the Commissioners' decision. This practice often requires the staff to take excessive time in reviewing the legal file or tape recording to determine the evidence which supports the decision.

Not only does this practice utilize time which is needed by the staff to adequately perform their regular duties in connection with the economic regulation of carriers, (See Recommendation No. 4) and statutory enforcement (See Recommendation No. 5), but also, at times, violates the ATC's ethical regulations. This occurs when the staff drafts orders for applications for which a hearing was held and they actively participated. We found that this violation had occurred in 86% of the rate investigation hearings in which the staff had participated.

The ethical conduct regulations (3AAC60.010(a) & (h) prohibit parties in a pending matter before the ATC from communicating privately, directly or indirectly, with the Commissioners or hearing examiners about such matters or arguing the merits of those cases without their adversaries present or without notice to them. The Commission should avoid any situations that could be construed as violations of these rules of ethical conduct.

In order to effectively implement our recommendation, it would be appropriate to require one member of the Commission to be an attorney, since the deficiency most often discussed with us by the Commissioners was a lack of legal assistance (See Recommendation No. 11). In addition, a paralegal position would aid the Commissioners in both order writing and legal research.

Recommendation No. 8

The ethical conduct regulations should be complied with in matters before the ATC.

The ethical conduct regulations (3AAC60.010) apply to all persons appearing in proceedings before the Commission. Subsection (d) of these regulations specifically label unethical the practice of enlisting the aid of a public official in order to sway the Commissioner's judgement. Further, subsection (h) states that it is grossly improper for such persons to communicate privately, directly or indirectly, with the Commissioners or hearing examiners about pending matters or to argue the merits of these matters in the absence of their adversaries or without notice to them. If any person does not conform to the ethical standards, the Commission may refuse that person the right to appear before the ATC.

We noted two types of violations of the above regulations during our audit. In a pending case before the ATC an attorney for a protestant explicitly told the Commissioners what final decision should be made by them. Further, he requested the Commissioners to return his call to discuss the subject of the decision. In another case pending before the ATC, we found letters from the Commissioner of Administration to the Chairman of ATC which stated that the Governor had met with the applicant.

It also stated that the Governor had expressed his support for the applicant.

These types of communications with parties or their attorneys of a pending matter should be avoided by the ATC and the Executive branch. It is particularly improper for the Governor's preference to be communicated to the Commissioners in cases pending before the ATC because the Commissioners are appointed by the Governor. In addition, since one Commissioner's term expires in four months, such communications could give the appearance of influencing the Commission far beyond that of a simple expression of preference by a member of the general public.

Recommendation No. 9

Neither Commissioners nor ATC staff should accept free transportation from any regulated air or motor carrier.

During August, 1978, an ATC Commissioner and a staff member received free air transportation, from two regulated air carriers, between Fairbanks and Galena. We understand the sole purpose of the trip was to conduct ATC business, and therefore no personal gain resulted. However, due to the nature of the responsibilities vested with the Commissioners and their staff in regulating Alaska's transportation industry, they should decline offers of free transportation by regulated carriers for any purpose.

The conduct of the Commissioners and staff must be such that neither the public nor any regulated carrier can misconstrue any action of theirs as creating a conflict of interest. Moreover, they must at all times avoid even giving the appearance of a conflict of interest.

Recommendation No. 10

ATC should issue orders in accordance with the Alaska Statutes.

We noted several cases in which the ATC granted operating authority to an applicant by telegram prior to the preparation of a written order supported by findings of fact and conclusions of law.

According to 3AAC60.350 a decision issued by the Commission must be written and must contain required findings of fact and conclusions of law.

The Superior Court, after a telegram order was appealed, declared the order void and of no effect. Further, it stated the ATC was prohibited from granting authority unless it was granted by a written order containing the required findings of fact and conclusions of law.

The Commission continues to issue orders by telegram in the above manner. We recommend that the Commission discontinue this practice in view of the Superior Court's decision. Procedures should be followed which will minimize the possibility of the Commission's decisions being appealed, since appeals result in wasted time and unnecessary expenses.

Recommendation No. 11

The statutory qualifications for Commissioners of the ATC should require specific areas of expertise.

The statutory qualifications of Commissioners in terms of experience and education are outlined at AS 42.07.041. They are worded such that a candidate for the Commission may possess any of a variety of backgrounds however none of the specific areas of expertise included such as law or accounting, are mandatory. As noted in several of our prior recommendations there is a need for the Commissioners to have almost continuous economic and legal assistance in accomplishing their statutory goals. In order to help minimize the need for additional staffing to adequately regulate the transportation industry it should be required that the Commissioners each have expertise in a different field. One Commission member in each of the areas of transportation, law and economics would aid the ATC in performing its duties in a more efficient and effective manner.

The Alaska Public Utilities Commission (APUC) members are required by statute to have expertise in law, engineering and finance, accounting or business administration. According to the Attorney General's office the requirement for legal expertise in the APUC has partially satisfied their needs for legal advice and assistance. We believe the same would result if the ATC was required by statute to have Commission members with specific fields of expertise.

Recommendation No. 12

The ATC should give notice; hold open to the public; and maintain complete minutes of the Commission's weekly meetings.

During fiscal year 1978 the ATC held 24 weekly meetings or less than 50% of the 52 weekly meetings required by statute. In addition, the ATC publishes no notice to the public of these weekly meetings. Minutes of these meetings consisted of a one or two word comment on each item on the agenda, which does not adequately describe the actions taken at the meetings.

AS 44.62.310 requires all meetings of the Commission to be open to the public except when holding a meeting solely to make a decision in an adjudicatory proceeding. Also, reasonable public notice shall be given for all meetings. 3AAC60.470 requires the Commission to meet on Monday of every week at 2:00 p.m. at the Commission office unless notice is otherwise given.

An appeal of a Commission decision before the Superior Court was due to the absence of adequate minutes of the Commission's weekly meetings. In its decision the Court stated the present Commission should be conducting regular meetings with recorded minutes so that any action occurring before the Commission would not be lost by the passage of time and dimming memories.

Recommendation No. 13

An index system should be developed for the final orders issued by the ATC and decisions on appeals from the courts.

Presently, there are three lists of decisions of the ATC which have been appealed; one prepared manually by the ATC; another by the ATC computer; and a third by the Department of Law. These lists are not uniformly cross referenced to the file docket number or the court case numbers. Moreover, each list does not contain the same cases nor do they include all cases. The decisions of the ATC are filed numerically which is not designed for quick reference to decisions made in similar type cases by the Commissioners and staff.

An index system which provides cross referencing by the subject, including the name of case, the ATC docket file number and the court case number, if any, would serve as a useful management tool. The Commission could review the decisions in a subject area to help determine the needs for statutory or regulatory changes and written internal policies within the Commission's discretionary powers. Further, it may reduce application processing and hearing time by allowing an applicant's attorney to review prior decisions and cases which are similar to his client's case.

Recommendation No. 14

The assistant attorney general and tariff analyst positions at Department of Law, which are assigned to ATC matters, should be placed organizationally and physically within the ATC.

Pursuant to AS 02.05.030(c), the ATC is authorized to represent the State in interstate transportation cases before the Interstate Commerce Commission, (ICC), and the Civil Aeronautics Board, (CAB).

The ATC is responsible for representing the State where the CAB or the ICC have authorized an air carrier or motor carrier rate change or operating authority change which is not in the State's best interest. Two positions within the Department of Law, an attorney and a tariff analyst, are assigned to assist the ATC with these matters which require their technical expertise.

In addition to these matters, the attorney position:

1. Represents the ATC before the courts in appeals,
2. Represents the ATC staff before the Commission,
3. Drafts ATC regulations, and
4. Assists in enforcement work.

These legal services are provided ATC through a reimbursable services agreement with the Department of Law.

The tariff analyst position, which is funded by the Department of Law, was initially acquired to assist with federal maritime rate cases. We understand however, the backlog of maritime cases has been cleared and the analyst has been assigned primarily to rate matters before the ICC and CAB.

We believe both these positions should be organizationally within ATC and should be physically located at ATC offices in Anchorage.

There has been disagreement between ATC and the Department of Law over assignment of the services of these positions for several years. This has led to ineffectiveness and inefficiencies at the ATC. Any arrangement where an employee performs most of his work for one agency and yet reports to, and is physically located at, another agency will result in conflicts in management policy and work priorities between the two agencies.

Since a majority of the attorney's duties are ATC matters, and the analyst's duties are ICC and CAB matters, also an ATC responsibility, they belong with ATC, not Department of Law. If the Department of Law has need of an analyst's expertise on maritime cases, ATC could provide such services to the Department of Law. It should not be the other way around because ATC has the primary responsibility for both intrastate and interstate regulatory matters.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis indicates both positive and negative attainments of the Commission and how its activities relate to the public need factors as defined by AS 44.66.050. This analysis is not intended to be comprehensive in nature. It has been limited by the scope of our review.

I. The extent to which the board, commission or program has operated in the public interest.

After Alaska became a State, statutes were enacted to regulate the transportation industry. Prior to enactment no study was made to determine the transportation needs or the type and extent to which it should have been regulated.

Therefore, to state whether regulation of the transportation industry is in the public interest or not, we must first have knowledge of the economic consequences which result from regulation or deregulation. Since this was beyond the scope of our audit we did not attempt to make this determination. However, we have recommended some carriers be deregulated as no public need for regulation could be determined. In addition, we have recommended to the Commission that a future study be made to determine the extent of the need for transportation regulation. (See Report Conclusion).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

Administration and enforcement of the transportation acts has been impeded by existing statutes and current practices and procedures of the Commission (See Recommendation Nos. 2, 4 and 5).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

The Commission submitted two Senate Bills to the 1978 Legislature. These bills would have amended and clarified the existing statutes which would have aided the Commission in accomplishing their statutory purposes and relaxed the regulatory burdens of the air and motor carriers.

- IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

The Commission publishes a bi-weekly journal which contains a description of each new application, the Commission's orders, enforcement actions and tariff changes. The journal is distributed to subscribers, news media, and other interested groups. A protest period of 30-days is allowed after each application has been published. Further, public hearings are held for the Commission to hear testimony and to receive evidence from any protesting party or any party who would like to attest to the public need for the services of the applicant.

- V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

A review of the regulatory changes written by the Commission shows that the Commission had properly published and held public hearings as required by law.

However, the Commission has not given proper notice; held open to the public; maintained complete minutes; or held on a regular basis, the Commission's weekly meetings as required by statute. (See Recommendation No. 12).

- VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

The Commission processes complaints and accusatory cases in an untimely manner (See Recommendation No. 5).

The Ombudsman Office has received ten complaints concerning the Commission since 1975. Five cases have been closed. Of the five open cases, which were filed in 1976 and 1977, three are pending court action and two are still under investigation.

- VII. The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.

The Commission, prior to granting authority to a regulated carrier, must determine whether the carrier is financially able and that it has proper and safe equipment in order to provide transportation services.

The regulated carriers are required to show proof of insurance prior to commencing operations to ensure that the public safety is protected. However, the ATC does not have all the pertinent financial data nor the procedures or staff for a proper audit and analysis to determine the financial condition of the regulated carriers. Therefore, the Commission's ability to adequately determine whether carriers are qualified to serve the public is impeded. (See Recommendation No. 4).

- VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

In a review of the FY 78 personnel records of the Commission, we found that it had complied with the State personnel practices and the affirmative action requirements. Further, the Commission has never received a complaint alleging discrimination on the basis of race, religious affiliation, or sex, from any applicant for authority.

- IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

ALASKA TRANSPORTATION COMMISSION
REVENUES COMPARED WITH EXPENDITURES
 Fiscal Year 1978

UNAUDITED¹

Revenue Collected (See Schedule 1)	\$ 135,848.80
Expenditures	<u>1,234,136.58</u>
Excess of Expenditures Over Revenues	<u>\$(1,098,287.78)</u>

SCHEDULE 1
COLLECTED REVENUES

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
Civil Penalties	Up to \$150 for each offense	When assessed by Commission
Misdemeanor	Up to \$500 for each offense	When assessed by Commission
Publication Fee	\$40	Upon any application
<u>Motor Freight Carriers</u>		
Application Fee	\$50	Upon application for permanent, temporary, extension or transfer of a permit.

Note 1

The records were not audited by us and accordingly we do not express an opinion on the Commission Revenues Compared with Expenditures.

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
Initial Registration of Authority	\$25	Annual
Continued Registration of Authority	\$10	Annual, after initial registration
<u>Motor Carrier-Bus</u>		
Application Fee	\$50	Upon application for certificate, transfer, lease, modification, consolidation, merger or contract to operate the property of one or more carriers
<u>Air</u>		
Application Fee, GTOW of 12,500 or less	\$100	Upon application for permanent, temporary, transfer, amendment or lease
Application Fee, GTOW of 12,501 or more	\$200	See above
<u>Aircraft Registration Fees By Gross Take-Off Weight (GTOW)</u>		
GTOW of 4000 or less	\$25	Annually
GTOW of 4001 but less than 7900	\$50	Annually
GTOW of 7900 but less than 12,500	\$100	Annually
GTOW of 12,500 but less than 27,000	\$150	Annually
GTOW of 27,000 but less than 50,000	\$300	Annually
GTOW of 50,000 but less than 75,000	\$400	Annually
GTOW of 75,000 or over	\$600	Annually

APPENDIX B

PROGRAM ACTIVITY OF THE
ALASKA TRANSPORTATION COMMISSION
Fiscal Year 1978

UNAUDITED¹

<u>Activity</u>	<u>Number</u>
New Dockets	527
Orders Issued	783
Hearings Held	125
Citations Issued	72
	<u>Amount</u>
Civil Penalties Assessed ¹	<u>\$134,915</u>

Note 1

The records were not audited by us and accordingly we do not express an opinion on the Commission Revenues .

APPENDIX C

QUESTIONNAIRE SENT TO REGULATED MOTOR CARRIERS

1. Do you believe the Commission's procedures for processing applications, hearings and issuing final orders are adequate and completed on a timely basis? Inadequate? Please explain.

Number of Motor
Carrier Responses
(See Notes 1 and 2)

Adequate and timely.	9
Inadequate, not timely.	4
Procedures adequate, not timely.	2
Procedures inadequate, timely.	1
No opinion.	2

Additional Comments

Carrier application misplaced by ATC.	1
Have to pay to find out about competitor's applications. Don't feel that was the intent of the statute.	1
Whole process too costly, inflationary, slow-moving to benefit the public.	1
Anyone sitting on Commission should have experience in PUC and ICC matters so they can make good judgments instead of mediocre ones as in the past.	1
Commission does not do a lot of checking on applications, not knowledgeable of bus transportation in Alaska.	1

2. Are there any statutes or regulations that you believe to be obsolete, vague, conflicting, unduly restrictive, and/or inadequate to allow the Commission to effectively and efficiently regulate transportation in Alaska? Please list and explain.

Number of Motor
Carrier Responses
(See Notes 1 and 2)

Not knowledgeable enough to comment	2
No response	3
No	6
Yes	1
Some statutes and regulations vague and conflicting.	1
Need authority to stop illegal carriers.	1
15 days should be enough for tariff filing.	1
Believe should be able to tow any items they can properly handle.	1
Need more control over cabs who offer sightseeing without authority.	1
Make airlines realize air freight to small communities is essential.	1

Additional Comments

Update laws to be able to arrest illegal carriers.	2
Bill #362 would improve inadequacies, if passed.	1
Commission should have more and definite authority.	1
Enforcement of illegal carriers without authority is insufficient and a waste of tax dollars.	1
Small operators who do not do much volume dollarwise, and are fairly diverse for income, yet are expected to separate out the trucking business for reports- sales invoices, etc.	1

3. Do you feel public needs, i.e. lower costs, safer and more efficient transportation, etc., would be better met if the Commission were to relax or strengthen regulation of transportation in any specific area?

Commission doing a good job of regulation, regulation should remain as it is.	5
Strengthen regulations.	4
Relax regulations.	7
Undecided.	1
No response.	1

3. Questi . 3 (continued)

Number of Motor
Carrier Responses
(See Notes 1 and 2)

Additional Comments

Commission should have more people to travel to outlying areas.	1
Should enforce regulations more stringently.	1
Carriers should be able to expand their scope to include other zones, do away with the zone system.	2
Too costly and hopeless to get authority.	1
Allow contract or private carriers to be used by permit holders during peak demand.	1
Towing should be deregulated.	1
The only way to get lower costs, safer and more efficient transportation is to protect the people who have the investment, instead of letting everybody "just go at it".	1

4, a. Does the Commission enforce the statutes and regulations i.e. stop unauthorized carriers, safety, etc., adequately? Inadequately? Please explain.

Adequately	5
Inadequately	11
No response.	1
Don't know.	1

Additional Comments

Commission does not have any enforcement.	2
Need stronger penalties against unauthorized carriers.	1
Need regulations with more investigative and enforcement powers.	2
Need more enforcement man-power.	2
Enforcement more than adequate, sometimes nit picking.	1
Commission does not enforce statutes and regulations in any way.	1

4, a. Additional Comments (continued)

Number of Motor
Carrier Responses
(See Notes 1 and 2)

ATC spends too much time harrassing carriers trying to run legally, and very seldom stopping unauthorized carriers they receive complaints about.	3
Unauthorized carriers have a financial advantage.	1
Easier to grant permits than to enforce regs.	1

4, b. In your opinion, is there a duplication of safety enforcement between the Commission and any other state agency? Please explain.

No response.	2
Unaware, don't know.	5
Yes	6
No	4
Cannot have excess of safety enforcement.	1

Additional Comments

Enforcement handled by police, troopers.	5
ATC needs to spend enforcement time getting both authorized and illegal carriers to comply with statutes.	1
Not unusual for driver and cargo to be checked more than once on trip.	1
Conflict of authority between ATC, State Labor Commission and ICC.	1

5. Any additional comments.

No additional comments.	9
Try to update present laws.	1
Failure to have automatic distribution of information pertaining to permit application to affected carriers-subscription charge seems unjust for small companies.	1
Enforcement needs to stop illegal hauling.	1
Make granting of permits more difficult for companies that have a bad record of paying their bills.	1

5. Any additional comments (continued)

Number of Motor
Carrier Responses
(See Notes 1 and 2)

Trucks that operate beyond Anchorage and other cities do not give service and rates consistent with air freight forwarders.	1
Trucking industry in Alaska needs a great deal of help-problem rests with both the State and the industry.	1
Lot of government agencies are parasites of the transportation industry.	1
Expansion of ATC authority would be poor. Better to have no laws than poor ones.	1
Carrier cannot take in income necessary to upgrade equipment if others are allowed to operate illegally or too many authorities are granted in one area.	1
All in all, ATC does a good job.	1

Note 1

Number of regulated motor carriers included in sample	60
Number of motor carriers which responded	<u>18</u>
Response rate	<u>30%</u>

Note 2

Each regulated motor carrier may have responded to each question with several answers. Therefore, total responses for each question may exceed the number of motor carriers which responded.

APPENDIX D

QUESTIONNAIRE SENT TO REGULATED AIR CARRIERS

1. Do you believe the Commission's procedures for processing applications, hearings and issuing final orders are adequate and completed on a timely basis? Inadequate? Please explain.

Number of Air
Carrier Responses
(See Notes 1 and 2)

Adequate	5
Inadequate	8
Adequate in some, inadequate in others.	1
No response.	1

Additional Comments

Commission slow.	8
Need to take applications in order received.	1
Limit time for hearings.	1
Too much paperwork.	1
Commission lost carrier documents filed with them.	1
Delays deprive applicant or complainant of due process.	1
Orders vague, devoid of findings.	1
Orders not adequate if not enforced.	1
Hearing Officer, or Commissioner should write order not employee who did not attend hearing.	1
Time figure will vary depending on who is filing for the authority and how much political pull he has.	1
Commission contributes to growth of monopolies.	1
Entire state licensing procedure should be abolished because it duplicates FAA.	1

2. Are there any statutes or regulations that you believe to be obsolete, vague, conflicting, unduly restrictive, and/or inadequate to allow the Commission to effectively and efficiently regulate transportation in Alaska? Please list and explain.

Number of Air
Carrier Responses
(See Notes 1 and

No	3
Yes	8
Existing regulations and procedures applied to enforce them are violative of due process.	1
No need for regulations.	1
No response.	1

Additional Comments

Regulation that requires prior approval of scheduled routes appear vague and unenforcable.	1
Procedure for protesting applications should be streamlined.	1
Form for quarterly reports too complicated for small carriers.	1
Commission should investigate the public need before they publish for protests.	1
Unfair operating advantage given by ATC to all "Grandfather" Operators.	1
Hearing process is one of the greatest obstacles applicants face.	1
Unduly restrictive on 45-day notice of rate increase.	1
No check to see if carrier is following regulations except if there is a complaint.	1
Should be more stringent regulations pertaining to guides flying for hire without a permit.	1
Particular statutes used by ATC in interpretation and justification of Alaska Travel Air case should be changed.	1
Entire Alaska Air Commerce Act of 1960 is not only unduly restrictive and inadequate, but also vague and conflicts with FAA and CAB regulations.	2

3. Do you feel public needs, i.e. lower costs, safer and more efficient transportation, etc., would be better met if the Commission were to relax or strengthen regulation of transportation in any specific area?

Number of Air
Carrier Responses
(See Notes 1 and 2)

No	2
Strengthen	3
Relax	7
If regulations were any more relaxed, there would no longer be a need for the Commission.	1
No comment.	1

Additional Comments

Permit free competition as long as high standards are met.	2
Strengthen or drop the whole thing.	1
Liberalize or drop regulation.	3
Relax all efforts to be heavy-handed in imposing unrealistic restrictions on offenders.	1
Increase insurance coverage to protect public.	1
Public needs, per se, have not even been considered in some regulatory hearings.	1
Commission says that for authority to provide public service, only the public need is taken into consideration, when in fact all decisions are based on the protection of the industry, instead of the public.	1
Strengthen regs. for subcontractors of Wien and Alaska Mail Routes - IFR, Pilot Training.	1
Allow a reasonable time for a new certificate holder to become established before issuing other new certificates in that area.	1

4. Does the Commission enforce the statutes and regulations, i.e. stop unauthorized carriers, safety, etc., adequately? Inadequately? Please explain.

Adequately	1
Inadequately	11
As adequate as possible.	2

4. Question No. 4 (continued)

Number of Air
Carrier Responses
(See Notes 1 and 2)

Additional Comments

Too many unauthorized air taxis.	6
Part 91 operators operate unsafely.	1
No enforcement against non-licensed carriers, much less efficient enforcement.	1
Six months after a complaint is filed is too long before an investigation.	1
A quick overnight visit or phone call is not adequate investigation for even a trivial complaint.	1
Insufficient number of field agents with too little travel money.	1
Let the Federal Government regulate safety.	1
Restrict pilots without sufficient Alaska flying time.	1
All the ATC does is move paper.	1
Have we combined the power of the PUC in Denver with the figurehead posture of the Texas Aeronautical Commission to produce the level of enforcement applied by ATC?	1

5. Any additional comments.

No additional comments.	5
Commission tries to do a good job, but responsibility outweighs authority.	1
Great over-supply of operators.	3
Commission available to only a select, political group.	1
Commission is a waste of the taxpayer's money.	1
Should have a minimum number of Alaska flying hours for pilots.	1
No continuity in tariffs with other carriers with like equipment.	1
Discontinue ATC, let free enterprise prevail.	3

5. Any additional comments (continued)

Number of Air
Carrier Responses
(See Notes 1 and 2)

ATC should oversee but not limit or impede private (contract) carriage or freight carriage.	1
Who do I see about protecting my operating authority given to me by the ATC?	1

Note 1

Number of regulated air carriers included in sample.	45
Number of air carriers which responded.	<u>15</u>
Response rate	<u>33%</u>

Note 2

Each carrier may have responded to each question with several answers. Therefore, total responses for each question may exceed the number of air carriers which responded.

APPENDIX E

QUESTIONNAIRE SENT TO SHIPPERS UTILIZING ATC REGULATED CARRIERS

1. Do you believe the Alaska Transportation Commission's (ATC'S) regulation of Alaska carriers has resulted in the following:

	<u>Yes</u>	<u>No</u>	<u>No Opinion</u>
a. lower freight costs for the consumer?	15%	70%	15%
b. stabilized transportation services?	50%	30%	20%
c. safe transportation of goods?	60%	5%	35%

2. Are you acquainted with ATC'S Journal which is published bi-weekly to give public notice of pending applications for authority, proposed rate changes and enforcement actions against Alaska carriers?

40% 60% 0%

3. Do you believe ATC'S procedures for investigating consumer complaints due to overcharges, unsafe operations, etc., are adequate?

30% 5% 65%

If no, please explain why not.

4. Should ATC'S regulatory activities be:

5% increased?

40% decreased?

55% kept the same?

Please explain.

4. Question No. 4 (continued).

No. of Responses

ATC appears to grant carriers anything asked for.	1
Competition should be encouraged.	5
Deregulation not in the shipping public's best interest.	1
ATC doing adequate job.	2
No major traffic problems in Alaska.	1
ATC should be more involved in activities and needs of shippers and carriers.	1

5. Can you suggest any other changes to the ATC which would be in the best interest of the public?

No comments.	13
Some shippers should be made part of Commission-ATC is biased.	1
Commission stand unclear on private carriage and freight forwarder.	1
Haul road should have been better coordinated.	1
Rates should follow "supply and demand".	1
Certification procedures unrealistic in free enterprise system.	1
Establish 3 year (instead of 6) statute of limitations.	1
Too many carriers.	1
Need checking on carrier financial back-up.	1
Greater promotion of docket and rate matters to shippers.	1
When ATC can control underlying causes of rate changes more services at reasonable cost can be provided.	1
Union wage and benefit demands hurt carriers.	1

Note 1

Number of shippers included in sample	63
Number of shippers which responded	<u>20</u>
Response rate	<u>32%</u>

Note 2

Each shipper may have responded to each question with several answers. Therefore, total responses for each question may exceed the number of shippers which responded.

APPENDIX F

QUESTIONNAIRE SENT TO ATTORNEYS WHO PRACTICE
BEFORE THE ALASKA TRANSPORTATION COMMISSION

1. Are there any statutes or regulations that you believe to be obsolete, vague, conflicting, unduly restrictive, and/or inadequate to allow the Commission to effectively and efficiently regulate transportation in Alaska? Please list and explain.

Number of Attorney
Responses
(See Note 1 and 2)

No	3
Not knowledgeable enough.	1
Statutes requiring air taxi operators to obtain a certificate of convenience are obsolete, monopolistic, and cause a lower quality of service - AS 2.05.055.	2
Encourages an air taxi operator to operate in a manner more specifically reserved to scheduled carriers - AS 2.05.050(d) (3).	1
Regularity of operations - AS 2.05.	2
Nobody really understands what this statute means when it refers to issuing an order for a temporary exemption under the Administrative Procedures Act (AS 44.62) - AS 2.05.060.	1
Allows a private party to bring a suit for injunctive relief against illegal operations in the Court, but the Motor Carrier Act does not allow such action - AS 2.05.210.	1
Lodge owners should be free from requirements of obtaining authority to carry their guests hunting, fishing, sight-seeing.	1
Hasn't been "regular" route application approved by Commission since Statehood - AS 42.10.420.	1
Too restrictive and presumably would prevent an owner-operator from leasing his truck to a private carrier - AS 42.10.420(2)(B).	2
Commission has never adequately defined the operations of a broker or forwarder - AS 42.10.420(2)(c).	1
Interpretation of "contract carrier" - AS 42.10.420(3).	1

1. Question No. 1 (continued)

Number of Attorney
Responses
(See Note 1 and 2)

Existing exemptions too restrictive - AS 42.10.420.	1
"Incidental" has never been defined in Commission regulations as it has been by the ICC - AS 42.10.420(7)(A).	1
"Property" definition too restrictive. Many commodities of such low value should not be regulated. Deregulate dump trucks - AS 42.10.420 (11).	2
"Construction Contractor" not defined - AS 42.10.421 (12).	1
Commission's regulation over contract bus carriers has never been adequately figured out - AS 42.15.021.	1
In transferring an interest in a certificate, there has been some confusion as to whether a 50% transfer of interest requires application for approval of the transfer or just notification of the Board.	1
Confusion in trying to determine what interim management agreements are acceptable to ATC pending approval of transfer.	1
All of the statutes involved should be redrafted in a concise, simplified fashion, with a lucid and simple index.	1

Do you believe the Commission's procedures for processing
applications, hearings, and issuing final orders are adequate?
adequate? Please explain.

Proposed orders time consuming and unnecessary.	2
Commission should make better use of proposed decisions, findings of fact and conclusions of law prepared by applicants and protestants.	1
Commission too lenient in granting reopened hearings for applicants whose cases have been inadequately and improperly prepared in the first instance.	1
Should have at least one Commissioner present at each hearing.	1
Hearings conducted too informally.	1
Too great a lapse of time between date of application and hearing.	1
Evidentiary rules are interpreted and applied too loosely.	1

2. Question No. 2 (continued)

Number of Attorney
Responses
(See Notes 1 and 2)

Should be some precise rules on confidentiality of testimony.	1
Administrative regulations do not sufficiently provide for pre-hearing discovery.	1
Increase travel budget to allow for more hearings in carriers area.	1
Procedures for processing unprotested applications should be expedited.	1
Procedures should be more explicitly defined.	1
Continued applications for the same authority.	1
Delays sometimes occur.	3
Commission does an adequate job.	4

3. Any additional comments.

No additional comments.	5
Commission has done a commendable job in enforcing the rule against ex parte.	1
Commissioners should take an added responsibility of drafting orders.	1
Commission should not have more than investigative right as to fitness of applicant, public need and necessity should be determined in the market place.	1
Surprised at attitude of existing established operators hiding behind the political skirts of the Commission in fear of competition.	1
Commission heavily influenced by big air taxi outfits.	1

Note 1

Number of Attorneys included in sample.	35
Number of Attorneys who responded.	<u>10</u>
Response rate	<u>29%</u>

Note 2

Each Attorney may have responded to each question with several answers. Therefore, total responses for each question may exceed the number of Attorneys who responded.



RECEIVED

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

JAN 11 AM.

LEGISLATIVE
AUDIT

January 9, 1979

Mr. Gerald Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

We have reviewed your preliminary reports as shown below:

1. Board of Examiners in Optometry
2. Board of Dispensing Opticians
3. Board of Psychologist and Psychological Associate Examiners
4. Board of Chiropractic Examiners
5. Alaska State Medical Board
6. Board of Veterinary Examiners
7. State Physical Therapy Board
8. Board of Pharmacy
9. Board of Nursing
10. Board of Nursing Home Administrators
11. Board of Dental Examiners
12. Alaska Transportation Commission

We view these reviews of agency programs and activities which are specifically subject to termination in a manner different from those made of State departments or agencies. Usually we in the Executive Branch endeavor to respond directly to each finding and recommendation. However, in regard to the Boards and Commissions, the Executive Branch agency during a public hearing shall demonstrate a public need for its continued existence or the discontinuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest.

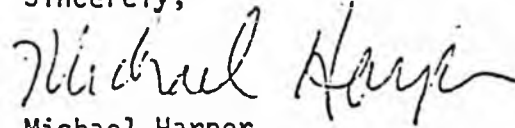
The Executive Branch of Alaska Government has made an extensive study of the above Boards and the Alaska Transportation Commission. We are continuing to study those entities, their origin, their present and future potential, and other related subjects in conjunction with Alaska statutes 24 and 44 (Sunset Legislation). As prescribed in AS 44.66.050 one or more legislative hearings are to be held to receive testimony from the public, the Commissioner of the department having administrative responsibility for each, and the members of the Boards or Commission involved. During those hearings we will present our findings and recommendations affecting each of the foregoing Boards and the Alaska Transportation Commission.

Mr. Gerald Wilkerson
Page 2

January 9, 1979

Accordingly, we are presenting this in addition to the responses from the Department of Commerce, Department of Law, and the individual Board or Commission members and others on an interim basis.

Sincerely,

A handwritten signature in cursive script that reads "Michael Harper". The signature is written in dark ink and is positioned above the typed name and title.

Michael Harper
Administrative Assistant
to the Governor

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

ALASKA TRANSPORTATION COMMISSION

JAY S. HAMMOND, GOVERNOR

MacKAY BUILDING
338 DENALI ST.
ANCHORAGE 98501

January 3, 1979

RECEIVED

JAN 11 AM.

LEGISLATIVE
AUDIT

Mr. Gerald L. Wilkerson
Legislative Auditor
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

This letter is in response to the preliminary performance review of the Alaska Transportation Commission prepared by the Division of Legislative Audit in accordance with Title 24 and 44 of the Alaska Statutes. The response represents as nearly as possible a consensus opinion of the present commission members who have independent thoughts in regard to the findings and recommendations contained in the preliminary report. The response to the recommendations will be made in the order in which they appear in the preliminary report.

RECOMMENDATION NO. 1:

The statutory requirements for the ATC to regulate bulk type commodities and recreational air carriers should be eliminated.

The Commission agrees that the regulation of that class of carriers transporting commodities in bulk in dump type equipment commonly referred to as dump truck operators should not be regulated in the manner presently provided for in AS 42.10. The restriction of entry provision presently contained in the Act could be substituted for the issuance of an annual permit to those wishing to engage in this type of transportation subject to having their vehicle inspected for compliance with current safety regulations and the tendering of proof that sufficient liability and property damage insurance is in effect for all vehicles while they are in use on the public highways.

The Alaska Air Commerce Act of 1960, AS 02.05, does not clearly provide for the transportation of persons or property which might be incidental to another private or primary business as do similar provisions in the Motor Freight Carrier Act, AS 42.10, and the Alaska Bus Act, AS 42.15. Accordingly the Commission has since its inception issued certificates to such carriers who have been providing in whole or in part transportation in connection with another primary business

such as guides or lodge owners. Carriers thus certificated are required to maintain adequate insurance for the protection of the public, file a tariff, register aircraft, and hold a certificate from the FAA which indicates that they are providing public transportation in conformance with specified safety regulations. Here again, the Commission believes that the entry requirements for this type of carrier could be replaced with public interest standards which would include the requirement that the carrier maintain adequate insurance for the protection of the public and require that the operation be conducted pursuant to safety standards established by the FAA for this type of operation.

RECOMMENDATION NO. 2:

The statutes and regulations governing the ATC should be revised.

The Commission is in full agreement with Recommendation No. 2 and makes no further comment to No. 2, except to say that various amendments to the regulatory acts have been introduced in almost every session of the legislature since 1970.

RECOMMENDATION NO. 3:

The Commission should seek the repeal of the Alaska Ferry Transportation Act.

The Alaska Ferry Transportation Act, AS 42.25, is serving a very limited public purpose as it is presently enacted. The Commission has no objection to the repeal of this act, but in so doing, the Legislature should give serious consideration to improving the service presently provided by vessel operators along the major riverways and coastal areas. Authorizing the ATC, together with other appropriate state agencies to conduct an investigation into the needs and services available to communities located along these waterways would be appropriate.

RECOMMENDATION NO. 4:

ATC should regulate the economics of the transportation industry as required by the Alaska Statutes.

A. Carriers should be required to submit all pertinent financial data necessary for economic regulation.

B. ATC should audit the carrier's accounting records to ensure they are prepared in accordance with regulatory accounting requirements and to determine the reasonableness of the financial data submitted to the Commission.

C. ATC should establish written basic policies and procedures for analysis of rate changes.

The Commission agrees that implementing these recommendations would enhance the agency's ability to carry out the declaration of policy

set forth in each of the transportation acts. We would point out, however, that there does not appear to be any practical way given the Commission's present budgetary and personnel limitations to implement these recommendations. The recommendations would greatly improve the quality of regulation and speed up the process of investigations, the development of adequate standards and methodology will be dependent upon the agency's ability to acquire technical personnel and sufficient funding.

RECOMMENDATION NO. 5:

Improvement is needed in the enforcement of ATC statutes and regulations.

A. ATC does not process enforcement actions in a timely manner.

B. The Commission frequently suspends all or part of the civil penalties assessed for violations.

C. ATC enforcement staff duplicates the motor vehicle safety inspections done by the Department of Public Safety.

In regard to Sub-Paragraph A, the Commission will only point out that lawyers are involved in the ATC's enforcement matters and lawyers sometimes view procedural delays as being in their clients best interests. The Commission's actions must be considered in accordance with due process provisions of the law and in many cases, due process means delay. Further, the decisions by the Commission are subject to review by the Superior Court and we have been careful not to burden the court with appeals taken from hastily prepared accusations and orders easily overturned or remanded for lack of sufficient findings of fact or conclusions of law.

In regard to Sub-Paragraph B, the Commission's policy of suspending a portion of a civil penalty is founded on the belief that the majority of the violations are a result not of intentional managerial misbehavior but rather a failure of many of the small carriers to perceive their responsibilities as members of the regulated industry. If compliance with the laws and regulations relating to transportation can be achieved through the practice of suspending civil penalties, then it appears to the Commission that this policy is in the public interest and should be used where factual situations warrant.

Regarding Sub-Paragraph C, in our opinion, the ATC enforcement staff complements rather than duplicates motor vehicle safety inspections which are performed by the Department of Public Safety. The Alaska State Troopers' vehicle safety inspections performed at the scale houses are ineffective because the scale houses are closed a large part of the time. We are not convinced that the inspection of vehicles at the carriers' place of business where he can show you just what he wants you to see is going to be a substantial deterrent to the operation of unsafe vehicles on the public highways. Additionally, there are elements of motor vehicle safety other than mechanical, for

instance, the transportation of hazardous materials where a violation of this sort almost always occurs while the commodity is being transported and not at the carrier's terminal. We agree that there is a need for more frequent and thorough safety inspections and that some, but not all, of this can be done at a carrier's place of business. We believe that there is a substantial amount of traffic moving at the present time by unauthorized carriers and in our opinion, the scale house is an invaluable tool for the ATC in both motor vehicle safety and economic regulation.

RECOMMENDATION NO. 6:

Applications should be processed by the ATC in a more timely manner and temporary operating authorities should be granted in accordance with Alaska Statutes.

The Commission's response to this recommendation is basically the same as in Recommendation No. 5A above. In addition, we note that even though there is still a substantial regulatory lag between the filing and the granting or denying of a given application, this delay has been reduced dramatically over what it was in prior years.

For the most part, the Commission grants a temporary authority subject to the recommendation of the staff who often have first-hand knowledge of a given situation or on a prima facie showing by a carrier or shipper that there is a need for the particular service. For the most part, these temporary authorities are limited to a period of ninety (90) days, although some have extended for longer periods. Many temporary authorities are ultimately turned into permanent authority subsequent to the filing of an application, notice and opportunity for hearing and a determination by the Commission that the additional authority is required by the public convenience and necessity. A substantial number of temporary authorities are granted by the Commission each year and a great portion of these temporary authorities are in the nature of a transfer of control from one business entity to another. Our recollection is that there has been only one (1) reversal by the Superior Court of the many decisions to grant temporary authority and in our opinion, this is not a bad record at all.

RECOMMENDATION NO. 7:

The Commissioners and Hearing Officers should write the formal written decisions (orders) on applications before the ATC.

The Commission agrees with this recommendation with the understanding that it would not preclude the Commissioner acting as a hearing officer in preparing a final order from availing himself of the assistance of Commission employees with expertise in technical areas, such assistance to include the actual drafting of the order under the supervision and with the assistance of the commissioner who presided over the hearing. We agree that this recommendation would be more effectively implemented by requiring one member of the Commission to be an

attorney. At one point in time, the Commission was comprised of two attorneys and one layman and Commission records will demonstrate that the need for legal assistance was no less than it is at the present time. Commission records might also demonstrate that the agency's productivity was considerably less during that period as compared to a similar period of time when the Commission was comprised entirely of laymen.

RECOMMENDATION NO. 8:

The ethical conduct regulation should be complied with in matters before the ATC.

The Commission agrees with this recommendation.

RECOMMENDATION NO. 9:

Neither commissioners nor ATC staff should accept free transportation from any regulated or motor carrier.

The Commission agrees with this recommendation.

RECOMMENDATION NO. 10:

ATC should issue orders in accordance with Alaska Statutes.

The Commission believes that it is issuing its orders in substantial compliance with Alaska Statutes. The granting of temporary authority by telegram is sometimes accomplished prior to the issuance of a formal written order containing findings of facts and conclusions of law in order to satisfy apparent public interest requirements. The comments made to Recommendation No. 6 are somewhat appropriate to this recommendation.

RECOMMENDATION NO. 11:

The statutory qualifications for Commissioners of the ATC should require specific areas of expertise.

The comments to Recommendation No. 7 apply in part as our response to this recommendation. In addition, we question the feasibility of the Legislature requiring one of more Commissioners to have financial or economic expertise. Expertise of this type would be of value to any Commissioner, but we are not convinced that reducing the pool of potential candidates from which the Governor can select persons to serve as ATC Commissioners is advisable. AS 42.07 requires that the Commission have access to experts in the field of law and economics and finance in order to develop a good transportation policy. Therefore, it is not necessary that individual Commissioners have this specific expertise. Experience in the field of transportation, regardless of mode, is a far greater advantage. The Governor should have the prerogative to appoint a person with the best over-all qualifications to fill Commission vacancies without the artificially imposed requirement to appoint individuals with expertise in specific fields.

RECOMMENDATION NO. 12:

The ATC should give notice; hold open to the public; and maintain complete minutes of the Commission weekly meetings.

At the present time, all of the Commission's meetings are held for the purpose of making decisions in an adjudicatory proceeding, and therefore, are not required to be open to the public. Although the procedural regulations presently require the Commission to meet on Monday of every week at 2:00 p.m., the Commission has replaced these (public) meetings with an open door policy which allows public access to the staff and the individual Commissioners at any time during the working day and throughout the working week. We find that this works very well and does not limit the public's access to the Commission to a particular time or day of the week. This open door policy does unfortunately, create the undesirable presumption that parties are conducting ex-parte communications with the Commissioners, however, generally speaking, this is not true and parties with matters pending before the Commission for a decision are admonished not to discuss the merits of these particular cases.

RECOMMENDATION NO. 13:

An index system should be developed for the final orders issued by the ATC and decision on appeals from the courts.

We concur in this recommendation.


RECOMMENDATION NO. 14:

The Assistant Attorney General and tariff analyst positions at the Department of Law, which are assigned to the ATC matters, should be placed organizationally and physically within the ATC.

We concur with this recommendation.

Yours very truly,

ALASKA TRANSPORTATION COMMISSION


Jake Johnson
Chairman

JJ/cjh

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

January 11, 1979

RECEIVED

JAN 11 AM.

LEGISLATIVE
AUDIT

Gerald Wilkerson
Legislative Auditor
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The Performance Review of the Alaska Transportation Commission, conducted by the Division of Legislative Audit and issued October 24, 1978, concludes that the ATC is authorized by statute to represent the state before the Civil Aeronautics Board and the Interstate Commerce Commission. The Review recommends that in order to accomplish this task the attorney assigned to ATC matters and the Transportation Analyst employed by the Department of Law should be transferred from the Attorney General's Office to the ATC.

I feel strongly that the proposed transfer should not take place because the ATC's statutory authority to represent the state before federal regulatory agencies is unclear and anachronistic, and, generally, because of the difficulties inherent with state regulatory bodies when they depart from their quasi-judicial intrastate functions and attempt to act as advocates in interstate proceedings before federal regulatory commissions.

The auditor's recommendation that the Department of Law's Transportation Attorney and Transportation Analyst be reassigned seems to come from a misconception that intrastate and interstate matters are the opposite sides of the same regulatory coin. In fact, they are entirely separate currencies and an examination of statute and practice among Alaska's three regulatory commissions reveals the impracticality of combining both functions in the same agency.

The Alaska Public Utilities Commission has the clearest mandate to represent the state in federal matters and it stems from AS 42.05.141(6) which provides that the APUC may "appear personally or by counsel and represent the

interests of the state in all matters and proceedings involving a public utility pending before an officer, department, board, commission, or court of the state or the United States and to intervene in, protect, resist, or advocate the granting, denial, or modification of any petition, application, complaint, or other proceeding . . . "

In practice, however, the APUC defers to the Governor's Office of Telecommunications in formulating interstate communications policy and to the Attorney General's Office in advocating the state's interest before the FCC. The reason for this deference is that a well-functioning state regulatory agency cannot act as an independent, quasi-judicial body in intrastate proceedings involving a company and then transform itself into an advocate before a federal commission concerned with regulating the same company. There would be, for example, an obvious conflict if the APUC, concerned as it is with RCA Alascom intrastate tariffs, were to appear before the Federal Communications Commission as an advocate in proceedings involving interstate rates and ownership of satellites and earth stations to which RCA was a party. In these matters policy emanates from the Governor and concerned state agencies and is presented by the Attorney General.

The anachronism of state regulatory bodies acting both as independent, quasi-judicial agencies and also as policy makers and advocates was recognized by the legislature when it amended the powers and duties of the Alaska Pipeline Commission in 1976. Initially, the power of the APC to appear before federal regulatory bodies (ICC oil pipelines, FPC gas pipelines) paralleled that granted to the APUC. However, it was soon apparent that the APC could not fulfill both intrastate and interstate functions and the legislature changed AS 42.06.140(10) to read "[the APC] shall provide all reasonable assistance to the Department of Law in intervening in, offering evidence in, and participating in proceedings involving a pipeline carrier and affecting the interests of the state, before an officer, department, board, commission, or court of another state or the United States."

Thus, with regard to the APC, the legislature recognized the conflict in function between intrastate and interstate matters and codified the ad hoc practice which exists at the APUC.

The authority of the ATC to represent the state interest in interstate proceedings before federal agencies is the vaguest of the three Alaska commissions. Under title 42 the ATC has no specific power to appear before the Inter-

state Commerce Commission, the Federal Maritime Commission, or Civil Aeronautics Board. The Alaska Air Commerce Act of 1960, however, provides that the ATC, under AS 02.05.050(c), "may apply by petition to [the CAB] when the interstate rates, fares, charges or classifications of air carriers affecting the commerce of this state are, in the opinion of the commission, excessive or discriminatory . . . or when interstate services are inadequate, unsatisfactory or discriminatory . . ."

Thus legislative authority for ATC participation in federal proceedings extends only to one of the three federal transportation regulation commissions and even before the CAB, the ATC is, by statute, to be advised and represented by the Attorney General. Further, the Attorney General has separate authority in transportation matters through AS 44.23.060 which provides for the discovery of information and data from regulated carriers "[i]n a hearing or proceeding in which the Attorney General appears before a board, court, commission, committee, or officer of the United States involving traffic and commerce or rates of transportation between points in interstate or intrastate transportation . . ." The implication here is that it is the Attorney General who represents the state interest before federal commissions and not the ATC.

Aside from statutory considerations, however, there is a question of practicality involved and the same reasons which compelled the delegation of interstate matters from the APUC and the APC to the Governor and the Attorney General apply equally to the ATC: i.e. the ATC should not act as judge in intrastate proceedings and then appear as an advocate before federal agencies in matters which involve the same regulated carriers.

A second practical problem which arises when interstate and intrastate authority is combined in a single agency is that of communications between the ATC and elected officials. Recommendation number 8 of the Performance Review criticizes contacts between the Governor and the commission asserting "[i]t is particularly improper for the Governor's preference to be communicated to the Commissioners in cases pending before the ATC because the Commissioners are appointed by the Governor. In addition, since one Commissioner's term expires in four months, such communications could give the appearance of influencing the Commission far beyond that of a simple expression of preference by a member of the general public."

While this admonition extends only to cases docketed before the ATC, it is obvious that there will always

be instances where individual carriers have similar matters docketed before both the ATC and a federal commission. It thus becomes impossible for the Governor to formulate and communicate interstate policy to the ATC without influencing intrastate decisions made by the ATC.

An example of how interstate transportation proceedings can be handled without ethical conflict is the recent Southeast Alaska Service Investigation. There, in a case involving restoration of competitive air service between Southeast Alaska and Seattle, policy was developed by the Governor's Office in conjunction with the Departments of Commerce and Economic Development, Transportation, and Community and Regional Affairs, and the ATC, and was coordinated by the Department of Law's Tariff Analyst. As the case progressed it was apparent that the ATC and the Governor held different views and, had the proceeding been handled by the ATC, the state's position would probably not have reflected the administration's views. In fact, in two earlier CAB proceedings the filings were prepared by a Hawaii Consultant under contract to the ATC and were circulated to the Governor's Office too late for comment.

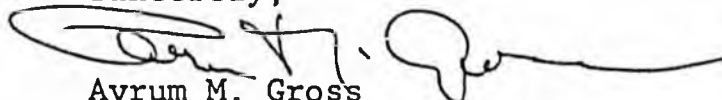
The importance of close cooperation between administration policy-makers and advocates of Alaska's interstate transportation interests is particularly crucial at the present time because of deregulation of federal transportation agencies. Traditional rate and route cases, which have their counterpart among ATC proceedings, are giving way to anti-trust, subsidy, and small communities service questions at the CAB and these matters more properly fall within the scope of the Department of Law and the Governor's Office. Similarly, deregulation at the ICC and FMC is rapidly approaching and the state position on whether modifications should be sought for Alaska interests is one which should be developed by the Governor and presented by the Attorney General. This approach would parallel the state's activities regarding energy deregulation before FERC, where it is the Attorney General, not the APC, who represents the state.

Finally, the Department of Law is adamantly opposed to the decentralization of the Attorney General's staff. If, as the auditor recommends, attorneys whose duties are primarily directed towards a single agency are transferred to that agency, the Department of Law would virtually disappear and the Attorney General would no longer direct the state's legal business. Obviously, if state agencies retained their own counsel there would be tremendous pressure upon the in-house attorney to issue opinions favorable to the agency's desires and there would be no control over the state's legal policy. The balkanization of the Department of Law proposed here is unworkable.

Gerald Wilkers
January 11, 1979
Page Five

Additionally, it should be pointed out that the Department of Law's Tariff Analyst is not simply assigned to transportation regulation matters. Since pipelines, telecommunications, and surface and air carriers are all somewhat similarly regulated industries, expertise in one area is in many instances transferable from one endeavor to another. The tariff analyst has, for example, been active in pipeline proceedings and is currently being assigned an expanded role in telecommunications. Consequently, transfer of the position from the Department of Law to the ATC would simply fragment a developing cohesiveness in the state's approach to presenting its views to a wide range of federal regulatory agencies. Moreover, the position is heavily involved with consumer advocacy and reassignment to the ATC would surely restrict the Department of Law's ability to bring consumer actions before federal regulatory agencies.

Sincerely,



Avrum M. Gross
Attorney General

AMG:ams

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

FINANCE DIVISION
POUCH WF—STATE CAPITOL

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

January 9, 1979

Members of the
Legislative Budget and Audit Committee:

We have reviewed the responses of the Alaska Transportation Commission to our audit report dated October 24, 1978. The responses appear thoughtfully prepared and we believe they will assist you in evaluating the Alaska Transportation Commission. Our comments on the responses follow.

Recommendation No. 5

ATC enforcement staff duplicates the motor vehicle safety inspections done by the Department of Public Safety.

The response states ATC safety inspections complement rather than duplicate safety inspections done by the Department of Public Safety.

We found ATC inspections at the scale houses were performed only during the hours State Troopers were performing similar activities at the scale houses. These ATC inspections do not result in increased safety enforcement.

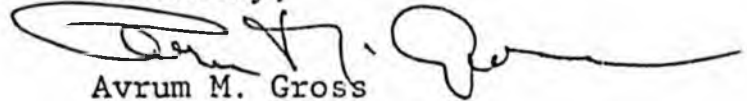
Further, the State Troopers provide ATC with copies of any citations for safety violations issued at the scale houses during periods ATC enforcement personnel are not present. The copies provided include any instances of failure to display required ATC certificate numbers in addition to the safety violations.

We therefore reaffirm our finding that ATC safety inspections at the scale houses do not result in additional enforcement but merely duplicate State Troopers' activities, and should be discontinued.

Gerald Wilkerson
January 11, 1979
Page Five

Additionally, it should be pointed out that the Department of Law's Tariff Analyst is not simply assigned to transportation regulation matters. Since pipelines, telecommunications, and surface and air carriers are all somewhat similarly regulated industries, expertise in one area is in many instances transferable from one endeavor to another. The tariff analyst has, for example, been active in pipeline proceedings and is currently being assigned an expanded role in telecommunications. Consequently, transfer of the position from the Department of Law to the ATC would simply fragment a developing cohesiveness in the state's approach to presenting its views to a wide range of federal regulatory agencies. Moreover, the position is heavily involved with consumer advocacy and reassignment to the ATC would surely restrict the Department of Law's ability to bring consumer actions before federal regulatory agencies.

Sincerely,



Avrum M. Gross
Attorney General

AMG:ams

Recommendation No. 6 :

Applications should be processed by the ATC in a more timely manner and temporary operating authority should be granted in accordance with Alaska Statutes.

The Commission stated it grants temporary authority if a carrier can show a need exists for the particular service. They also stated a substantial number of temporary authorities are granted by the Commission each year of which a great portion are in the nature of a transfer of control from one business entity to another.

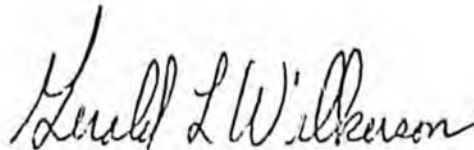
The Commission's response does not fully address our recommendation with regard to the granting of temporary authority. Both the Motor Freight Carrier Act and the Air Commerce Act require demonstration of either an emergency situation or unusual circumstances before temporary permits may be issued. Our test sample indicated 55% of the temporary permits were not accompanied by these criteria. Moreover, it is not relevant, with regard to Motor or Air Carrier, that the reason for issuing a temporary permit is a change in firm ownership. An emergency or unusual circumstance must first be demonstrated. The change of firm ownership exemption from the demonstrated emergency requirement applies only to Motor Passenger Carriers (buses) which constituted two percent of our sample.

Recommendation No. 10

ATC should issue orders in accordance with Alaska Statutes.

The Commission believes that it is issuing its orders in substantial compliance with Alaska Statutes.

We believe that the Commission is not in compliance with AS 42.07.141 or 3 AAC 60.350 which require the written decision to contain the findings of fact and conclusions of law. During our audit we observed a case in which authority was issued by telegram but the required findings of fact and conclusions of law were not formulated or reduced to writing until several days after the authority was granted.



Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

Box 10-2089
Anchorage, AK 99511



Anch: 349-2577
Kenai: 283-7975

JUST TRUCKERS

Senator Richard I. Eliason, Chairperson
Senate Labor and Commerce
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

March 30, 1983

Re: Sunset Review of The Alaska Transportation Commission

Dear Senator Eliason,

I would first of all thank you for your interest in the Trucking Industry in Alaska.

Let me introduce myself and tell you a little of my past experience. My name is Richard A. Asay. I came to Alaska in 1958 from Bakersfield, California. I have lived in Iniskin, Kenai, Soldotna and the past eighteen years in Anchorage. My wife Monetta and I have four children ranging in age from four years to twenty-two years, all born in Alaska. I have worked the past twenty-one years in the Trucking Industry mostly in oilfield trucking and heavy hauling, from Icy Bay to Prudhoe Bay, Beaver Creek to Cold Bay. The past nine years I have worked in management. At the present I am a stockholder and member of the Board of Directors of Hustlers, Inc. We haul oilfield and construction equipment throughout the State of Alaska and have been in business for just over two years.

I feel that the funding of the Alaska Transportation Commission is vital to a healthy transportation industry. At present the Commission is in a down swing, not knowing which way to turn. We have several ICC carriers from outside with one person in a small office with very little overhead, cutting prices so low that the local established carriers are hauling at a loss. Where can this lead? I definitely do not feel that deregulation is the answer.

Once again I would like to state my support for the Alaska Transportation Commission. Thank you for your time in this matter.

Sincerely,

Richard A. Asay
Richard A. Asay
Hustlers, Inc.

cc: Sen. Bob Muleahy, Sen. Don Bennett
Sen. John C. Sackett, Sen. Patrick Rodey

ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD L. ELIASON

LABOR AND COMMERCE COMMITTEE, CHAIRMAN
RESOURCES COMMITTEE
JUDICIARY COMMITTEE
FISHERIES SUB-COMMITTEE



P.O. BOX 143
SITKA, ALASKA 99835

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4916

Make file
Labor + Commerce 4

April 6, 1983

Richard Gregory, President
Sourdough Express, Inc.
P. O. Box 73398
Fairbanks, Alaska 99707

Dear Mr. Gregory:

Thank you for your letter of March 29 which you had telecopied down to Juneau for the hearing on the Alaska Transportation Commission. Unfortunately, our hearing/teleconference concluded at 3:00 p.m., and your telecopy did not arrive in Juneau until 4:30 p.m. Juneau time.

The Senate Labor and Commerce Committee has not yet taken any formal action on SB 184 (extending the termination date for the Alaska Transportation Commission), although hearings and teleconferences have been held. Your letter will be added to our master file on the issue, and will appear in the members' files should another hearing be held.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dick Eliason".
Sen. Dick Eliason

TELECOPY COVER SHEET

TO: Sen. Eliason PHONE: _____

FROM: FAIRBANKS I.L.O. PHONE: 452-4448

INSTRUCTIONS: Please contact his office for pickup

RECEIVED: DATE: _____ TIME: _____

SENT: DATE: 3/29/83 TIME: 12:35

BY: (YOUR OFFICE AND PHONE NO.)

DISPOSAL OF ORIGINAL: _____ THROW AWAY

_____ HOLD FOR PICK UP

NUMBER OF PAGES: 1 (NOT COUNTING THIS COVER SHEET)

* came in @ 4:30 Juneau Time

March 29, 1983

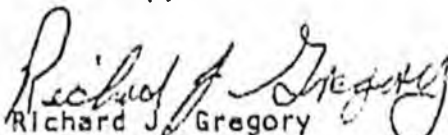
Senator Richard Ellason
Senate Labor and Commerce Committee
Teleconference, Fairbanks, Ak.

Dear Senator Ellason:

I would like the following statement read into the record for this hearing. I would like to have the Alaska Transportation Commission remain a sovereign commission. I feel that the ATC has a vast area to regulate and that to make it a sub-committee would be to strip it of the effectiveness that it could have. I would like to see a Legislative Review Committee that would be empowered to make the ATC come into compliance with the last two audits that it has had. I feel that if the ATC would regulate the industries under its area of responsibility to the letter of the regulations that are already on the books, then they would be an effective arm of the government. I would like to see that the Review Board have the power to make suggestions to the ATC that would assist them in returning them to their position of effectiveness.

If I can be of further assistance to you in this matter please contact me at the above number or address.

Sincerely,


Richard J. Gregory
President, Sourdough Express, Inc.

RJG/1s

Alaska Transportation Since 1898

• General Commodities • Bulk Commodities • Household Goods • Electronics

*This was
late -
we should
write him*

STATE OF ALASKA
ALASKA TRANSPORTATION COMMISSION

S E R V E D,
JUL 02 1982

In the Matter of the Application)
of VETERAN'S AIR SERVICE, INC.,)
for authority to engage in air)
commerce as an air taxi utilizing)
fixed wing aircraft having a) Docket 82-93-AT/O
maximum payload of 7,500 pounds)
- 30 passengers or less from a)
base of operations at Tok, AK)

*PROPOSED ORDER 15-82 DENYING APPLICATION

Having made the required findings of fact and conclusions
of law on the basis of the evidence of record,

IT IS ORDERED THAT:

1. The application of Veteran's Air Service, Inc., for
air taxi authority to operate fixed wing aircraft from a base
of operations at Tok is denied.

DATED at ANCHORAGE, ALASKA, this 2 day of July, 1982.

ALASKA TRANSPORTATION COMMISSION

George Benesch
George Benesch
Chief Hearings Examiner

*THE FOREGOING IS NOT A FINAL ORDER OF THE COMMISSION.
The pages following set forth the procedural history of the
case, the findings made, the conclusions reached, and fi-
nally, in Appendix I, the steps to be taken if one or more of
the parties intend to take exception to this proposed, condi-
tional order.

EXHIBIT 1

TEXT OF ORDER

By application filed February 24, 1982, Veteran's Air Service, Inc. (Applicant) seeks authority to operate an air taxi utilizing fixed wing aircraft from a base of operations at Tok, Alaska. Notice of the application was published in the Commission Journal, Volume 9, No. 5, on March 10, 1982. Timely protests were filed by Devil's Mountain Lodge; by Ellis Air Taxi, Inc.; by 40-Mile Air, Ltd.; by Cassaron Turbo Helicopters (Ron M. Warbelow, d/b/a); and by Northway Airport Enterprises.

On April 23, 1982, a Notice of Hearing and Procedures was served on all parties. [REDACTED]

At hearing or prior thereto all Protestants except 40-Mile Air, Ltd. withdrew their protests or were dismissed either for lack of standing or for failure to appear at the hearing.

Applicant called four public witnesses concerning public use of the proposed service; the aircraft mechanic from Gulkana who would do the required inspections; and one company witness, Mr. James Wihlborg, its chief executive and manager. Applicant also called one rebuttal witness following completion of Protestant's case.

Applicant submitted seventeen exhibits in evidence including but not limited to its financial statement and update; a pro forma financial statement; equipment and facilities list; statement of experience; and letters from two major tour operators who operate bus tours through Tok in summer.

Protestant called six witnesses including one of the principals of 40-Mile Air. Protestant also submitted three exhibits including a purported Market and Demographics review of the Tok area (in which the opinion and conclusions of the compiler as to air traffic are given no weight) a layout plot of the portion of the Tok airport area in which Applicant's and Protestant's property lies; and a comparative summary of Protestant's operations for the first quarter 1981 and 1982.

The record shows that Applicant corporation is wholly owned by James H. and Barbara T. Wihlborg of Tok; that they are the corporate officers and directors; that Mr. Wihlborg will manage the proposed air taxi operations and will be its chief pilot. The Wihlborgs also own a sporting goods retail store at Tok, the Bullshooter. Doing business as the Bullshooter, the Wihlborgs have acquired a Cessna 172 which is leased to the Applicant corporation for \$1 per month plus \$10 per revenue flight hour. Wihlborgs have also acquired property at the airport to be used for the proposed air taxi operation, for a flight training business which they operate and for an aircraft rental business also conducted by Wihlborgs. The airport facilities are to include four aircraft tie downs, an office, and aircraft refueling facilities.

The corporation balance sheet lists two aircraft as assets of the corporation, a Cessna 150 and a 76 CBC Citabria which are used in flight training and rental but would not be used in the air taxi operation. Applicant's pro forma profit and loss statement for first year operations includes income from aircraft rental and flight instruction and other misc. income as well as income from their estimate of 200 hours of air taxi operations. Related expenses are also included to the extent that actual expenses of operation of the business are disclosed. The statement shows an approximate break even margin for the Applicants' first year of operation. It is clear however, that substantial normal expenses of air taxi operations are being subsidized by the owners and are omitted from the reflected costs of operation. The Cessna 172 is being leased to the corporation at \$10 per revenue hour with no minimum except \$1 per month. The Applicant corporation is stated to have no employees and no payroll to meet. All piloting, ground handling, bookkeeping, etc., are theoretically performed for the corporation without charge.

Although this approach might be an accepted operating option to the corporate owners, it does not present an adequate picture for determining economic feasibility of the proposed air taxi operation as a going concern and independent business enterprise.

Section AS 02.05.080 of the Air Commerce Act, as amended in 1980, provides in part:

Sec. 02.05.080. ISSUANCE OF CERTIFICATE. (a) Subject to the provisions of (d) of this section, the commission shall

issue a certificate authorizing the applicant to engage in air commerce as a scheduled or contract carrier or air taxi operator, or authorizing the whole or any part of the operation covered by an application for a certificate,

(1) if the commission finds that
(A) the applicant is fit, willing and able to engage in air commerce properly and to comply with the provisions of this chapter and the regulations of the commission, and
(B)....

(b)....

(c) If all of the findings required in (a) of this section are not made, then the application shall be denied.

(d) No certificate may be issued to a person to operate as an air carrier unless the applicant submits evidence, satisfactory to the commission, showing that it can and will comply with the provisions of the laws of the United States and the State, and the rules, regulations and orders respecting safety of operation.

(e)....

(f) A person is fit, willing and able to engage in air commerce if the commission finds that

(1) the proposed service is economically feasible and the applicant has the financial capability to provide it;

(2) a physical base of operations and maintenance capabilities will be available for the proposed service;

(3) the applicant has financial management capabilities for the proposed service;

(4) the applicant has operational management capabilities for the proposed service; and

(5) the applicant has adequate equipment to provide and maintain the proposed service.

In essence, the Commission has defined "economic feasibility" of a proposed new air taxi authority as the capability of the proposed operation to obtain sufficient local transportation business and revenue to offset the true costs of providing such services, thereby enabling the Applicant to provide a safe and efficient local service to the public for a substantial period of time.

As the Commission stated in its Order 81-467 denying the application of A.I.R. Center, Docket 81-157-AT/O:

"The economic feasibility of a proposed operation in air commerce must be examined in context with the purposes and policy of the Legislature as expressed in AS 02.05.010(3) and (4):

(3) promote, adequate, economical and efficient service by air carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices;

(4) provide for fair and equitable competition through qualified operators who are fit, willing, and able to serve the public with safe, efficient and continuous air service."

We do not perceive this expressed policy as advocating or condoning unbridled competition by an Applicant whose operating costs will, in significant part, be subsidized by other enterprises of the Applicant; or by some other business or individual who leases aircraft to the Applicant as non-compensatory rates to avoid income taxes."

Having fully reviewed the record in this proceeding in context with the pertinent provisions of the Alaska Air Commerce Act (AS 02.05) and the Commission Regulations (3 AAC 68) the Commission makes the following findings and conclusions:

1. The Alaska Transportation Commission has jurisdiction over the parties and the subject matter pursuant to AS 02.05 and AS 42.07.

2. Applicant has adequate facilities and equipment available for the proposed operation.

3. Applicant has sufficient financing available and adequate operational management capabilities.

4. The proposed operation is not shown to be economically feasible within the purview of legislative policy and purposes.

5. The proposed operation contravenes the policy and purposes expressed in AS 02.05.010(3) and (4) and is contrary to the public interest.

6. The application should be denied.

C E R T I F I C A T I O N

I HEREBY CERTIFY that I have this date mailed a true and correct copy of the PROPOSED ORDER 15-82 DENYING APPLICATION in Docket 82-93-AT/O, postage prepaid to the following parties of record:

Veteran's Air Service, Inc.
P. O. Box 142
Tok, AK 99780

Edward T. Noonan, Esq.
406 Cushman Street
Fairbanks, AK 99701

40-Mile Air, Ltd., and
Cassaron Turbo Helicopters
c/o Richard R. Cole, Esq.
Cole & Downs
1255 Airport Way, Suite 202
Fairbanks, AK 99701

DATED at ANCHORAGE, ALASKA, this 2nd day of July, 1982

ALASKA TRANSPORTATION COMMISSION


Jody L. White, ASI IV

RECEIVED

AUG 10 1982

STATE OF ALASKA

ALASKA TRANSPORTATION COMMISSION

In the Matter of the Application)
of VETERAN'S AIR SERVICE, INC.,)
for authority to engage in air)
commerce as an air taxi utilizing)
fixed wing aircraft having a)
maximum payload of 7,500 pounds)
30 passengers or less from a)
base of operations at Tok, AK.)

Docket 82-93-AT/O

Order 82-383

ORDER ADOPTING PROPOSED ORDER 15-82
DENYING APPLICATION

Proposed Order 15-82 denying the captioned application was issued by the Hearing Examiner July 2, 1982. Exceptions were timely filed by Applicant on July 23, 1982. No exceptions were filed by Protestant.

The Commission has reviewed the proposed order in context with the evidentiary record upon which it was predicated, and the exceptions, and finds that Proposed Order 15-82 accurately reflects the facts upon which the denial is based; reached the correct conclusions of law; correctly reflects the Legislative Policy and the policy of this Commission; and should be adopted as the order of the Commission. Therefore,

IT IS ORDERED THAT:

1. Proposed Order 15-82 denying the application of Veteran's Air Service, Inc. is adopted in its entirety as the final order of the Commission.

2. The effective date of this Order is the date of service.

3. Applicant's Motion for Reccnsideration filed August 2, 1982, although premature, will be considered as Motion filed in response to this Order. It appears from the text of the Motion that it is not founded on the evidence of record in this proceeding but rather the additional and revised information and exhibits that Applicant filed after close of hearing. These are more appropriately matters for a Motion for further hearing rather than for Reconsideration. Applicant's Motion will therefore be considered as a motion for further hearing and will be decided in a subsequent order of the Commission.

DATED at ANCHORAGE, ALASKA, this 10 day of August, 1982.

BY THE COMMISSION

ALASKA TRANSPORTATION COMMISSION



H. D. Scougal, Commissioner

Commissioner Miller concurring.

(S E A L)

TEXT OF ORDER

Hearing in this matter was held in Tok and in Fairbanks June 9 and 10, 1982. The record was closed at the conclusion of the hearing.

The Hearing Examiner's Proposed Decision denying the application was issued and served July 2, 1982. Exceptions to the proposed order were authorized to be filed on or before July 23, 1982. A document titled "Exceptions of Applicant Veteran's Air Service, Inc. to Proposed Order 15-82" was filed by Applicant's counsel July 23, 1982, within the time allowed.

For the most part Applicant's so-called "Exceptions" are non responsive to the proposed order and are improper. Counsel has taken the unauthorized liberty of attempting to supplement the record in the guise of "exceptions." Such a procedure is not acceptable in any jurisdiction and is not condoned by this Commission.

The Hearing Examiner's proposed decision must be made on the basis of the proper evidentiary record before him at the time of the decision. Obviously, exceptions to the proposed order must be based on the same record.

Equally reprehensible is counsel's inclusion in its so-called "exceptions" a reference and quotation of a statement made in a CAB merger case of which notice, even if requested, would have been improper and which proceeding and statement are totally irrelevant to this proceeding.

Counsel takes exception to the Hearing Examiner's conclusions relative to the application of the Commission's definition of economic feasibility [3 AAC 68.04!(a)]. In support of this exception counsel then points to "the revised pro forma income statements attached (to the exception)," which counsel then contends "show clearly that the revenue is adequate." Again, it is to be noted that the rates reflected in the referenced "revised pro forma income statements," are not the proposed rates submitted in evidence at the hearing.

In those instances where an applicant has made a strong showing that there is a substantial public need for an essential air service which service is not otherwise reasonably available, the Commission may consider the availability of income to the applicant from other revenue sources, in determining economic feasibility in terms of continuity of service and the public interest.. However, the record in this proceeding does not show that the applicant proposes to provide essential air services not otherwise reasonably available.

C E R T I F I C A T I O N

I HEREBY CERTIFY that I have this date mailed a true and correct copy of the ORDER ADOPTING PROPOSED ORDER 15-82 DENYING APPLICATION, in Docket 82-93-AT/O, postage prepaid to the following parties of record:


Veteran's Air Service, Inc.
P. O. Box 142
Tok, AK 99780

Edward T. Noonan, Esq.
406 Cushman Street
Fairbanks, AK 99701

40-Mile Air, Ltd.,
c/o Richard R. Cole, Esq.
Cole & Downs
1255 Airport Way, Suite 202
Fairbanks, AK 99701

DATED at ANCHORAGE, ALASKA, this 10th day of August, 1982.

ALASKA TRANSPORTATION COMMISSION


Judy L. White, AST IV

August 11, 1982

Alaska Transportation Commission
1000 MacKay Building
338 Denali Street
Anchorage, Alaska 99503

RE: Veterans Air Service, Inc.
Order No. 82-383

Dear Commissioners:

Please take notice that pursuant to Alaska Statute §02.05.070(d) and 3 AAC 60.120(i) the Commission's failure to deny the application of Veteran's Air Service, Inc. to engage in air commerce within 60 days from the hearing held thereupon on June 9 and 10, 1982 constitutes approval of the application. Order No. 82-383 is void because it was dated more than 60 days from the hearing held on VASI's application and more than 120 days from the date of receipt of VASI's completed application. Please issue Veteran's Air Service, Inc. an air taxi certificate immediately.

Very truly yours,



Edward T. Noonan
Attorney at Law

ETN/jp

C E R T I F I C A T I O N

I HEREBY CERTIFY that I have this date mailed a true and correct copy of the letter by EDWARD T. NOONAN dated August 11, 1982 in Docket 82-93-AT/O, postage prepaid, to the following parties of record:

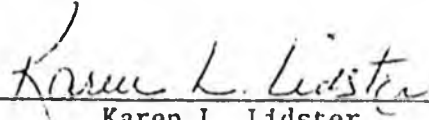
Alaska Transportation Commission
1000 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Veteran's Air Service, Inc.
P. O. Box 142
Tok, Alaska 99780

40-Mile Air, Ltd., and
Cassaron Turbo Helicopters
c/o Richard P. Cole, Esq.
Cole & Downs
1225 Airport Way, Suite 202
Fairbanks, Alaska 99701

DATED at FAIRBANKS, ALASKA, this 11th day of August, 1982.

LAW OFFICES OF CHARLES E. COLE



Karen L. Lidster

EXHIBIT 3

Sec. 02.05.955. Requirements for operation of different types of aircraft. Before a certificated carrier may operate a different type of aircraft from that authorized by his certificate or which he operated in Alaska during the period of May 1, 1978 to May 1, 1980, there must be a finding by the commission that public convenience and necessity require it. (§ 1 ch 147 SLA 1966; am § 4 ch 203 SLA 1968; am § 8 ch 115 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "carrier" for "contract or air taxi operator" and "May 1, 1978, to May 1, 1980" for "May 1, 1965, to May 1, 1966" and inserted "authorized by his certificate or."

Sec. 02.05.070. Applications for certificates. (a) The commission may not consider an application for a certificate unless the application is in writing, in the form required by the commission, and accompanied by a proof of service upon the interested parties as required by the commission.

(b) Upon the receipt of an application for a certificate, the commission shall give notice (1) to the public by posting a notice of the application in the office of the commission; and (2) to those persons, and by such means as the commission determines by regulation. A public hearing shall be held on the application if the commission determines under regulations adopted by it that

- (1) a person requesting a public hearing has a substantial interest in the proceeding; and
- (2) there are material issues of fact that require a hearing.

(c) The commission, upon its own initiative, may conduct investigations to determine the need for additional air commerce and, if it appears to be needed, the commission may encourage the filing of applications for certificates authorizing the furnishing of air commerce.

(d) ~~The failure of the commission to deny authority to engage in-air commerce within (1) 60 days from a hearing held on a completed application under AS 02.05.010 — 02.05.260; or (2) 120 days from the date of receipt of a completed application, whichever is later, constitutes approval of the application~~
 (§ 9 ch 161 SLA 1960; am § 5 ch 203 SLA 1968; am §§ 9, 10 ch 115 SLA 1980)

Effect of amendments. — Section 9 of ch. 115, SLA 1980 substituted the language beginning "commission determines under regulations" for "applicant, or a person having a substantial interest in the proceeding, requests it within the time provided by regulation" in the second sentence of subsection (b). Section 10 of ch. 115 added subsection (d).

Sec. 02.05.080. Issuance of certificates. (a) Subject to the provisions of (d) of this section, the commission shall issue a certificate

EXHIBIT 3A

RECEIVED

AUG 16 1982

STATE OF ALASKA

ALASKA TRANSPORTATION COMMISSION

In the Matter of the Application)
of VETERAN'S AIR SERVICE, INC.,)
for authority to engage in air)
commerce as an air taxi utilizing)
fixed wing aircraft having a)
maximum payload of 7,500 pounds)
- 30 passengers or less from a)
base of operations at Tok, AK.)

Docket 82-93-AT/O

Order 82-404

ORDER DENYING LETTER REQUEST TO ISSUE AN AIR TAXI
CERTIFICATE PURSUANT TO AS 02.05.070(d);
AND CONDITIONALLY VACATING ORDER 82-385
SETTING FURTHER HEARING

Ordering paragraph one of Order 82-383 provides that "Proposed Order 15-82 Denying the Application of Veteran's Air Service, Inc. is adopted in its entirety as the final order of the Commission." The effective date of Order 82-383 is stated to be the date of service. Order 82-383 was signed and served August 10, 1982. Proposed Order 15-82 Denying the Application was issued and served July 2, 1982.

On August 11, 1982, the Commission issued Order 82-385 setting further hearing on the application to be held August 27, 1982, in Fairbanks.

By letter dated August 11, 1982, and received by the Commission August 13, Counsel for Veteran's Air Service, Inc. (VASI) contends that Commission Order 82-383 is void and that in essence Applicant has been granted an air taxi authority by virtue of AS 02.05.070(d). Counsel gives as the basis for this contention the fact that Order 82-383 "was dated more than 60 days from the hearing held on VASI's application and more than 120 days from the date of receipt of VASI's completed application."

EXHIBIT 4

The Commission finds and concludes that Counsel's contention is without merit; that Order 82-383 is an effective and valid order of the Commission; and that the issuance of an air taxi certificate to Veteran's Air Service, Inc. is not required by AS 02.05.070(d).

The Commission further finds and concludes that if Applicant intends to appeal the Commission's denial of Applicant's August 11, 1982, demand that a certificate be issued, no further hearing on the merits of the application is justified or warranted pending final outcome of such appeal. Therefore,

IT IS ORDERED THAT:

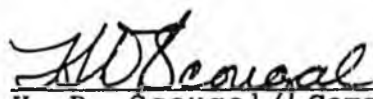
1. This is a final order of the Commission denying Applicant's August 11, 1982, request for issuance of an air taxi certificate to Veteran's Air Service, Inc., pursuant to AS 02.05.070(d).

2. Order 82-385 Setting Further Hearing on the application of Veteran's Air Service, Inc. is vacated unless on or before August 20, 1982, Applicant has notified the Commission in writing, that Applicant has abandoned its demand that an air taxi certificate be issued by the Commission by operation of AS 02.05.070(d).

DATED at ANCHORAGE, ALASKA, this 16 day of August, 1982.

BY THE COMMISSION

ALASKA TRANSPORTATION COMMISSION



H. D. Scougal, Commissioner

Commissioner Miller concurring.

(S E A L)

C E R T I F I C A T I O N

I HEREBY CERTIFY that I have this date mailed a true and correct copy of the ORDER DENYING LETTER REQUEST TO ISSUE AN AIR TAXI CERTIFICATE PURSUANT TO AS 02.05.070(d); AND CONDITIONALLY VACATING ORDER 82-385 SETTING FURTHER HEARING in Docket 82-93-AT/O, postage prepaid to the following parties of record:

Veteran's Air Service, Inc.
P. O. Box 142
Tok, AK 99780

Edward T. Noonan, Esq.
406 Cushman Street
Fairbanks, AK 99701

40-Mile Air, Ltd.,
c/o Richard R. Cole, Esq.
Cole & Downs
1255 Airport Way, Suite 202
Fairbanks, AK 99701

DATED at ANCHORAGE, ALASKA, this 16th day of August, 1982.

ALASKA TRANSPORTATION COMMISSION

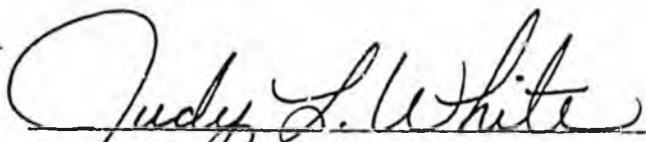

Judy L. White, AST IV

EXHIBIT 4

Maule Aircraft

Steve Dewar
Owner

P.O. Box 193
Delta Junction, Alaska

(907) 895-4543

February 2, 1982

Alaska Transportation Commission
Department of Commerce & Economic Development
1000 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

DOCKET NO.: 81-473-AT/O

Dear Sirs:

The following is in response to the two questions you raised in previous correspondence.

Question #1 - What management experience do I have?

1. 1965-67 - Assisted in managing the family farm.
2. 1968 - Managed my own custom combining business.
3. 1969 - Foreman of a fertilizer plant.
4. 1970 - Started a steel grain bin erection business.
5. 1973-79 - Taught high school math, business and aviation.
6. 1976-79 - Started an aircraft sales business.
7. 1979-82 - Began working for Alyeska Pipeline Service Company as an Operation Technician. Presently, am an Acting Chief Pump Station Supervisor responsible for personal safety and plant operation. DOT and OSHA regulations are strictly adhered to.
8. 1979-82 - Worked for Sewell Airways, the last year as a part 135 operator. Was responsible for booking, flying, and collected for approximately 200 hours flying this fall.

Question #2 - Who is responsible for the aircraft maintenance?

Steven J. Dewar will be responsible for maintenance.

1. I have operated aircraft for the last 7 years.
2. Received two years of training on operations and maintenance of Super Cubs from Sewell Airways.
3. Have 4 years associated with aircraft parts sales, salvage and rebuild.
4. Am not a licensed A.I.
 - a) Have two A.I.'s doing my maintenance.
 - 1) Phil Holbrook - A.I.
 - 2) Jack Warden - A.I. (Jack also does maintenance for 40-Mile Air)

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BOOKING 1982

EXHIBIT SA

Alaska Transportation Commission
February 2, 1982
Page Two

DOCKET NO.: 81-473-AT/O

5. I supervise all maintenance done to my aircraft personally rather than hire a full time maintenance director.

6. I presently pull maintenance on three Rolls Royce jets (13000 hp) at the Pump Station.

7. I coordinated maintenance for Sewell Airways in Delta this past year.

Thank you for your time. Hopefully, this information answers your questions satisfactorily.

Sincerely,



STEVEN J. DEWAR

SJD/pd

EXHIBIT 5A

Maule Aircraft

Steve Dewar
Owner

P.O. Box 193
Delta Junction, Alaska

(907) 895-4543

EXHIBIT V

My house, which is near the BLM airstrip, will be used as an office.

This spring, I plan to have a hanger on the BLM airstrip. When land is available, I will also build a hanger on Allen Airfield, Fort Greely.

EXHIBIT 5 B

Maule Aircraft

eve Dewar
Owner

P.O. Box 193
Delta Junction, Alaska

(907) 895-4543

EXHIBIT VII

1. Start up costs: none
2. sources of business and revenues: hunting, tourism, miners, game counting for Fish & Game.
3. financing: none needed.
4. cash flow: \$1,000 monthly average.
5. sources of capital: salary as Alyeska employee, fees from flights
6. accounting policies: advance payment required on all flights.

7. expenses:

fixed: plane payments \$850 x 12 = \$10,000/ yr. NANA
insurance 7,000
hanger 10000

maintanance:

fuel 300 hrs @ 10 = 3,000 gal
x 2 = 6,000
inspections 1,000

INCOME : \$34,000
300 hrs. @ \$130 = \$39,000
PROFIT:.....\$5,000

EXHIBIT SC

DEWAR AIRWAYS
DELTA JUNCTION, AK

DOCKET 81-473-
AT/O

TEXT OF ORDER (ORDER 82-59 2/10/82)

On December 11, 1981, the Commission received for filing from Steven Jon Dewar, d/ba/ Dewar Airways (Applicant) an application for authority to engage in air commerce as an air taxi operator utilizing fixed wing aircraft having a maximum payload capacity of not more than 7,500 pounds or a seating configuration, exclusive of pilot's seat, of not more than 30 passengers from a base of operations at Delta Junction. This matter is being considered in Docket 81-473-AT/O.

Pursuant to 3 AAC 60.180, the application was noticed to the public in Vol. 8, No. 24, of the Commission's Journal dated December 25, 1981. No protests or statements of interest were received.

A review of the application shows Applicant presently owns two PA 18's which will be available for the proposed operations. Further, it appears that Applicant has planned to build facilities at two airstrips, an office at the BLM airstrip and a hangar at the Fort Greely Airfield.

The financial statement show the Applicant to have a positive net worth and the pro forma profit and loss statement shows that the Applicant can be expected to operate at a profit. The proposed tariff rates appear to be appropriate for the type of aircraft to be flown and equivalent to other aircraft of the same type operated by other carriers.

Steve Dewar, who will be the pilot, is properly licensed and has 920 hours of flying experience in the area being served.

Information submitted shows the Applicant to have management experience, both in his own businesses and as an employee of other companies. Applicant has had operational experience as an employee of Sewell Airways and was responsible for "booking, flying and collecting." Further, Applicant has available qualified aircraft maintenance personnel, in the Delta area to ensure that the aircraft are properly maintained and repaired.

(1)

ATL DOCKET 82-93 AT/O
VETERAN'S AIR SERVICE, INC (VASI)
PO Box 142
TOK, AK 99780

I SEQUENCE OF EVENTS DURING PURSUIT OF ATL AUTHORITY:

2/15/82 (APPROX) SUBMITTED APPLICATION FOR AUTHORITY

3/10/82 APPLICATION PUBLISHED IN ATL JOURNAL (VOL 9 NO 5)

6/9, 6/10/82 ATL HEARING (6/9 IN TOK; 6/10 IN FAIRBANKS)
George Benesch - Hearing Officer

7/2/82 ATL PROPOSED ORDER 15-82 ISSUED, RECOMMENDING
APPLICATION BE DENIED [EXHIBIT 1]

7/23/82 VASI'S ATTORNEY FILED EXCEPTIONS TO PROPOSED
ORDER 15-82

8/9/82 60TH DAY AFTER END OF HEARING

8/10/82 ATL ISSUES ORDER 82-383 ADOPTING PROPOSED
ORDER 15-82 (DENYING APPLICATION) [EXHIBIT 2]

8/11/82 VASI ADVISED THE ATL THAT MORE THAN
60 DAYS EXPIRED SINCE END OF HEARINGS
WITHOUT DENIAL OF THE APPLICATION CONSTITUTED
APPROVAL (AS 02.05.070.(d).), AND REQUESTED
ISSUANCE OF THE CERTIFICATE. [EXHIBITS 3, 3A]

8/11/83 ATL ISSUES ORDER 82-385 SETTING FURTHER
HEARING FOR 8/27/82

8/16/82 ATL ISSUES ORDER 82-404 DENYING "REQUEST"
FOR ISSUANCE OF CERTIFICATE AND CONDITIONALLY
VACATING ORDER 82-385 [EXHIBIT 4]

8/20/82 ATL'S DEADLINE FOR VASI TO ABANDON DEMAND
FOR CERTIFICATE BY REASON OF AS 02.05.070.(d).

(2)

ATC DOCKET 82-93 AT/O
VETERAN'S AIR SERVICE, INC
PO BOX 142
TOK, AK 99780

II PERSONAL EXCEPTIONS TO PROPOSED ORDER 15-82
DENYING APPLICATION:

- A. VASI IS 100% OWNED BY JIM & BARBARA WILBORG, AS ~~THE~~ IS "THE BULL SHOOTER," A RETAIL SPORTING GOODS STORE WHICH OWNED THE CESSNA 172 AT THE TIME OF APPLICATION AND HEARING. THE AIRCRAFT WAS NOT TRANSFERRED TO VASI FOR 2 SOUND REASONS:
1. WITHOUT CHARTER AUTHORITY, THE AIRPLANE WAS USED ALMOST EXCLUSIVELY TO HAUL FREIGHT FOR THE BULL SHOOTER'S RETAIL OPERATIONS.
 2. THE BULL SHOOTER DID NOT WANT TO LOSE THE INVESTMENT TAX CREDIT TAKEN WHEN THE AIRCRAFT WAS PURCHASED
- B. THE THOROUGH PROFORMA STATEMENT CLEARLY SHOWED THAT VASI WAS WILLING AND CAPABLE TO MAINTAIN ITS SHARE OF THE AIRCRAFT OPERATIONS.
- C. THE WILBORG'S ARE CONSERVATIVE BUSINESS PEOPLE. IN THE 9 YEARS SINCE STARTING THE BULL SHOOTER, NEITHER HAS EVER TAKEN SO MUCH AS AN HOUR'S WAGES FROM THE STORE. HOWEVER, FROM AN INITIAL INVESTMENT OF \$600.00, ITS NET WORTH HAS GROWN TO WELL OVER \$100,000, WITH GROSS SALES AVERAGING \$90,000/YEAR.
- D. THE WILBORG'S PLANS CALL FOR CONSERVATIVE GROWTH OF VASI.
- E. THE HEARING EXAMINER INSINUATED THAT VASI (THE WILBORG'S) WAS TRYING SOME LESS-THAN-ETHICAL TACTICS TO AVOID INCOME TAXES. NOTHING COULD BE FURTHER FROM THE TRUTH. BOTH