ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6692 SENATE STATE AFFAIRS

1096

INTRASTATE LONG DISTANCE TELEPHONE COMPETITION
EXECUTIVE SUMMARY

The technological revolution which brought interstate long distance telephone competition to the lower 48 and Alaska is now bringing the same pressure to bear on Alaska's regulators to introduce intrastate long distance service. While many states have introduced competition, Alaska's unique demography, small telephone market, and the absence of subsidies which are available to interstate users but not intrastate users make the benefits of competition less clear.

Normally, the agency which would make the decision of whether or not to introduce competition is the Alaska Public Utilities Commission (APUC). The APUC has recently completed a variety of telecommunications related decisions which could set the stage for a decision on competition. However, two private long distance carriers, Alascom and GCI, have placed initiatives on the November 1990 ballot which would provide for a competitive intrastate structure. If either initiative passes, it would supersede any previously approved regulations adopted by the APUC.

Unfortunately, because Alascom and GCI are adversaries, their respective initiatives represent the extremes in terms of regulatory options Neither initiative provides the APUC the flexibility to adopt a more moderate approach. Although voters will have a choice of regulatory options to vote on in November 1990, that choice is extremely limited and may not include the most appropriate public policy for Alaska. In addition, it is likely that objective public policy analysis of this complex issue will not be heard in the public relations blitz that will precede the November vote.

Because the implications of adopting either initiative have not been fully explored, it is very possible that either initiative could create a substantial legal, administrative and financial burden on the State and possibly adverse economic impacts on some telephone consumers. A more rational and responsible approach, at this point, appears to be to continue a decision-making process through the APUC which balances the goals of affordable, universal service with the efficiency and pricing incentives of competition.

An initiative can be removed from the ballot only if the legislature passes legislation which in the Attorney General's opinion is substantially similar to the initiative. To retain the ability to develop other options through the APUC process, it is recommended that the Legislature consider legislation which comprehensively addresses this subject and could be found to be "substantially similar" to both the proposed initiatives, thereby removing them from the ballot.

INTRASTATE LONG DISTANCE TELEPHONE COMPETITION

The State of Alaska is rapidly approaching a decision on whether to allow competition in the provision of intrastate long distance telephone service. The process of deciding this issue has been initiated in three different forums: the Alaska Public Utilities Commission (APUC), the State Legislature, and the public ballot (through the initiative process). However, which public body will make the final decision is unclear. A decision in one forum could well be nullified by a subsequent decision in different forum. The process is complicated by the likelihood that a final decision reached in any one of these forums will be challenged in the courts.

BACKGROUND

National Trends

At the national level, the telephone industry is currently in the midst of a rapid market structure transition. Once considered a natural monopoly, the telephone industry is now being transformed into a competitive market structure. New technology, federal regulatory policies and the divestiture of AT&T have all contributed to the growth of competition, particularly in the interstate long distance market.

1) Technology -- New technologies, such as digital switching, satellite and microwave transmission and fiber optic cable, have significantly lowered the cost of providing service. This has lowered economies of scale and made it possible for firms much smaller than AT&T to enter the market.

2) Federal Policies -- In the late 1960's and early 1970's, the Federal Communications Commission (FCC) and the courts reversed long standing policies against entry into telecommunications markets. In addition to finding that competition was in the public interest, the FCC also promoted

competition by ensuring through regulation that AT&T did not use its market dominance to stifle competition.

3) Divestiture -- In 1984, AT&T was divested of its 22 local operating companies as the result of the negotiated settlement of a Justice Department antitrust suit. The terms of the settlement required that the newly independent Bell operating companies (BOCs) provide access to all interstate long distance companies on an equal basis. Not only did divestiture remove AT&T's superior access to the local exchange, it removed a portion of its operation that could have been used to subsidize its long distance service.

The Alaska Market -- Interstate

Interstate long distance service in Alaska is provided by Alascom and, since 1982, by GCI. Alascom serves the entire state. GCI serves Anchorage, Fairbanks, Juneau, Matanuska Valley, Kenai, Ketchikan and Adak. GCI carries approximately 50% of the southbound interstate long distance traffic originating in the areas that it serves.

Interstate long distance service in Alaska is characterized by fewer competitors than in the lower 48. Two factors are largely responsible for this: 1) Alaska's small market size; and 2) financial support from AT&T to Alaska's interstate long distance companies, Alascom and GCI, which is not available to other would-be interstate long distance carriers.

1) Small Size of Market -- The Alaska market is extremely small in comparison to the rest of the U.S. Alaska's local subscribers account for only 250,000 (0.2%) of the nation's 120 million access lines. Interstate long distance calls originating within Alaska account for only 0.015% of total interstate calling.

2) Financial Support -- Alascom provides interstate service through a joint service agreement with AT&T in which AT&T terminates Alascom's southbound traffic and Alascom terminates AT&T's northbound traffic. The joint service agreement is the result of an FCC policy, adopted in the early

1970's, to integrate the rates available in the lower 48 with Alaska, i.e. to use the same nationwide average rates in Alaska as elsewhere. Under the agreement, all costs, including Alascom's return on investment, are paid for by AT&T. In return AT&T keeps all revenues. AT&T estimates that in 1989 costs will exceed revenues by $85 million. AT&T also argues that $30 million of Alascom's costs should be allocated to intrastate services rather than interstate services. Alascom disputes this charge and maintains that AT&T's costs are inflated. A joint federal and state advisory board, to the FCC, is currently examining what, if any, market structure changes are necessary to reconcile the FCC's rate integration and pro-competition policies for Alaska as well as what changes in either cost separations or support may be necessary to effect that market structure.

GCI also receives financial support from AT&T, in the form of discounted rates on a limited number of leased lines, as a result of an antitrust suit. GCI's carrier lease agreement provides significantly less support in total dollars than Alascom's joint service agreement with AT&T. GCI estimates Alascom's financial support at approximately 12 cents per minute or greater compared to the approximately 2 cents per minute GCI receives for lines leased from AT&T. AT&T affirms that Alascom's support is at least five times greater than GCI's but also maintains that, for a variety of reasons, the figures are not really comparable. These reasons include the fact that: Alascom serves the entire state, GCI serves only urban routes; Alascom's profit is guaranteed, GCI's is not; and GCI's support is limited to only a portion of its southbound traffic not its entire operation, as is the case with Alascom. GCI's carrier lease agreement expires in 1992.

The Alaska Market -- Intrastate

Alascom is the sole provider of intrastate long distance service in Alaska. In 1988 its total intrastate long distance minutes of traffic were 229.6 million, compared to total originating interstate minutes of traffic of 283.4 million. Alascom intrastate long distance revenues in 1988 were approximately $85 million. By comparison Alascom will receive approximately $117 million from AT&T in 1989 in compensation for use of its interstate facilities.

An important aspect of Alascom's intrastate operation is that it offers statewide average rates. Under this policy, two calls on different routes of equal distance are charged the same rate, even though the cost of providing service on the two routes might be very different. As a result, rates for low traffic rural routes tend to be below cost, and rates for high traffic urban routes tend to be above cost. This subsidy flow helps to support remote areas of the state that might not otherwise be able to afford long distance service.

In April 1987, Alascom presented data to the APUC which indicated that the flow of support, from Anchorage, Juneau and Fairbanks to the rest of the state, was approximately $3.6 million. More recently, Alascom reported to the Chairman of the Senate State Affairs committee that based on an examination of its 26,000 routes, 6000 high traffic urban routes were generating a subsidy of $27 million which was being used to support its remaining 20,000 low traffic rural routes. Calculating the actual amount of the subsidy is not possible given the information that is currently available to the public. Alascom treats its cost, revenue and traffic data on individual routes as proprietary, and the APUC has supported Alascom's requests to keep it that way.

Alaska Public Utilities Commission (APUC)

Regulation of long distance service in Alaska is divided into intrastate service under the authority of the APUC and interstate service under the authority of the FCC. In 1983, in conjunction with considering whether to adopt intrastate access charges, the APUC undertook the question of whether competition in the provision of intrastate long distance service was in the public interest. In late 1986, GCI filed a request to provide limited intrastate long distance service and proposed regulations to govern competition. In response to GCI's proposal, the Commission turned its attention to possible rules for competitive entry. Hearings were held on GCI's initial regulations in March and April 1987 and on GCI's modified regulations in February 1988. However, in June 1988, the Commission issued its omnibus telecommunications order which, among other things, postponed a decision on these regulations until it had the opportunity to address a number of interrelated issues which "affect the ultimate question of whether or not there should be competition in state toll [long distance] services." The most important of these issues include:

1) Cost separations -- Historically, because long distance companies rely on local phone companies to originate and terminate long distance calls, the long distance companies have been made to share in paying for the fixed, non-traffic sensitive (NTS) costs[1] of providing local service. On the federal level, cost separations is the process of deciding how to divide NTS costs between interstate and intrastate use. On the state level, cost separations is the process of dividing intrastate NTS costs between local and intrastate long distance service.

Recently, the FCC decided to limit the percentage of NTS costs attributable to interstate long distance service to 25%. In Alaska, this has had the effect of increasing the cost burden on intrastate users and has required the APUC to decide how to allocate this increased cost between local and intrastate long distance companies.

In November, the APUC completed its cost separations rulemaking. According the the APUC, "cost separations must be in place before the financial implications and mechanics of competition can be analyzed and decided."

2) Access charges -- Prior to divestiture, compensating unaffiliated local companies for the use of their facilities was done through settlement agreements. These were private contracts between AT&T and each local exchange company. This system was workable when there was only one long distance carrier but as competitive long distance carriers entered the market the FCC found that they too should share

---

[1] "NTS costs do not vary with the volume of traffic. For example, the cost to construct and maintain the wire loop from an individual's telephone to the local telephone company's central office does not depend on the type or volume of traffic that individual generates." [Correspondence with APUC, Jan. 11, 1990]

some of the costs of local facilities. The FCC replaced settlement agreements with access charges. Access charges are charges assessed on a per minute basis to long distance companies for originating or terminating an interstate long distance call to a local exchange.

In November, the APUC issued an order to replace settlements with access charges effective January 1, 1991. Although it was not necessary that a decision on access charges precede a decision on competitive regulations, it is generally agreed that access charges would be necessary in order for competition to work. Therefore, having an access charge system in place will expedite the introduction of competition should the APUC move in that direction.

3) Subscriber line charges -- Like access charges, subscriber line charges are a mechanism for recovering a portion of the NTS costs of local companies. Currently, subscriber line charges are only being used at the interstate level. Since 1985, the FCC has gradually increased subscriber line charges. For example, the subscriber line charge for residential and single-line business customers has increased from $2.00 per month per subscriber to the current rate of $3.50. This has allowed interstate access charges to decline. In the process, long distance rates have declined and basic local rates have gone up. What the FCC has done, through subscriber line charges, is subvert the intent of the cost separations process by shifting the portion of NTS costs allocated to the interstate jurisdiction back onto local service.

In Alaska, adoption of subscriber line charges would have shifted costs from long distance users to local users, enabling intrastate long distance companies to lower rates and, thereby, increase demand and total revenues. The trade-off, however, would be considerably higher local rates. Beneficiaries of a subscriber line charge system would be intrastate long distance companies and users that make a large number of intrastate long distance calls. Losers would be basic local rate payers, in particular, those who are infrequent intrastate long distance users.[1] In November, the APUC rejected the use of intrastate subscriber line charges.

4) Alascom's rate design -- "There are two basic parts to setting any utility's rates. First, there is a calculation of the total revenues it is allowed to earn, and second, there is a determination of the rates it will charge for each type of service in order to collect its total allowed revenue requirement. The second part is called the rate design or rate structure." [Restructuring Alaska's Telecommunications Industry: Objectives, Issues, and Plan; APUC]

In November, the APUC established new rates for Alascom's intrastate long distance services. The principal change was to lower the rate for long-haul calls and raise rates for short-haul calls According to the APUC, Alascom's rate design will "provide useful information for the ultimate resolution of the competition question." For example, the APUC's examination of Alascom's rate structure has highlighted the importance of distance sensitive average rates in maintaining universal service. However, the data the APUC received from Alascom still does not provide the APUC with the information it would need to determine the subsidy flow on individual routes.

With these issues complete the Commission held a two day hearing on November 27 and 28 to make a decision on GCI's proposed regulations for intrastate long distance telephone competition. The substance of what was discussed and decided at that hearing is contained in Order #14 of Docket R-86-2, Order Addressing Objectives; Rejecting Proposed Regulations; and Establishing Procedure. In the order, the APUC states that "preserving and promoting universal service" is its most

---

[1] "Each $1.00 of an intrastate SLC [subscriber line charge] would generate only $2.9 million dollars of revenue per year. This approximates 4 percent of Alascom's revenue requirement. A $1.00 SLC would mean that subscribers need to make intrastate toll calls of $25.00 or more per month to avoid increased telephone bills. For every $1.00 spent on intrastate toll calls thereafter, the subscriber would save approximately 4 cents. Although Alascom's requested SLC was $4.00 and was intended to reduce intrastate toll rates by 15.8 percent, its relative benefits would have to be judged by weighing a consumer's intrastate toll usage against a $4.00 per month increase in basic monthly charges." [from APUC order on subscriber line charges.]

important telecommunications policy objective. The APUC also recognizes that there would be a number of advantages to allowing competition. These include: 1) an incentive for carriers to operate efficiently; 2) lower rates; 3) new, innovative, and more diversified services; 4) faster, more effective response to customers' needs; and 5) eventual self regulation of the market.

In view of this, the Commission determined that "competition is in the public interest, if and only if, the benefits of competition can be achieved and universal service can be preserved." In evaluating GCI's proposed regulations with respect to this dual goal, the APUC further determined that the regulations were inadequate to protect universal service.

> [The regulations] prepared and submitted by GCI in this proceeding proposed to protect universal service by requiring each competitive carrier to pay to Alascom a per minute 'contribution for statewide service' for each call carried by the competitive carrier. The primary issues during the hearings held on GCI's regulations were how the proposed contribution should be calculated and whether or not it would protect universal service...
>
> Although the evidence was not conclusive, the Commission is not convinced that GCI's ... regulations resolve the problem. Tremendous controversy surrounds GCI's proposed calculation of the contribution, and it is not clear that the controversy can be resolved in a manner which protects service to high-cost areas and still allows GCI to compete in other areas.

The APUC has left open the option of allowing GCI to resubmit new regulations which would meet the Commission's new criteria. However, in the meantime, the APUC has hired a consultant to help staff develop regulations. The first draft of the Commission's regulations are expected to be completed by January 31, 1990.

Public Ballot Initiatives

Two initiatives dealing with the question of intrastate competition have been certified for inclusion on the November 1990 ballot. One is sponsored by GCI ("An Act relating to intrastate long distance telephone competition"). The other is sponsored by Alascom ("An Act relating to the creation of competitive long distance telephone services within Alaska").

Despite similar titles there are important differences between the two initiatives:

1) GCI's mandates competition while Alascom's does not. GCI's initiative presumes that competition is in the public interest. Under the section on Findings and Purpose, it states that "long distance service should be provided by competing suppliers wherever possible." In other words, the APUC would be required to permit competition as long as there are qualified long distance companies willing and able to provide service.

Alascom's initiative would require the APUC to make a number of specific public interest findings before permitting competitive entry. Specifically, a long distance company could not be certified to provide service unless the APUC finds that issuing a certificate:

a) will reduce rates and enhance services on the routes the applicant proposes to serve;

b) will promote economic efficiency;

c) will not cause rate increases that jeopardize the universal availability of affordable long distance telephone services; and

d) will be in the long-term best interests of the state.

2) Both initiatives also differ with respect to how Alascom would be regulated.

GCI's initiative requires the APUC to distinguish between companies with market power and those without market power. The initiative does not define market power, but directs the APUC to "refer to reported court and administrative agency decisions interpreting state and federal laws concerning monopolies, restraint of trade, and telecommunications industry." Companies with market power would be subject to full regulation under AS 42.05 [Alaska Public Utilities Commission Act]; companies without market power would not.

Initially, all new intrastate long distance companies would be exempt from regulation, and only Alascom or an affiliate of Alascom would be regulated. The APUC would have the authority to regulate or re-regulate any company that gains market power in an intrastate long distance service. Upon request, the APUC would have to deregulate, on a service by service basis, any company that can show that it lacks market power for a particular service. The APUC must also ensure that the deregulated carrier does not shift costs from its deregulated service onto its remaining regulated services. In this regard, the initiative stipulates the use of fully distributed costing which is only one of several cost methodologies normally used by regulatory agencies in determining costs of service.

In contrast, under the Alascom initiative, Alascom would be automatically deregulated on any route on which two or more carriers were authorized to provide service. Deregulation would involve exemption from the sections of AS 42.05 dealing with the setting of rates and tariffs [AS 42.05.361 - 42.05.431]. Alascom could be re-regulated on any route on which, for whatever reason, it again became the sole service provider.

3. Only the GCI initiative specifically provides for a mechanism to subsidize high cost regulated routes.

While both Alascom and GCI recognize that competition would cause a disequilibrium in the subsidies flowing from profitable to unprofitable routes, the methods they propose in their initiatives to respond to that problem are different. GCI's initiative provides that the APUC may adopt an Universal Service Fund (USF) to "provide financial support, where necessary." The USF would be funded through an access charge surcharge or "other means" not specified.

Alascom's initiative is silent on the question of subsidies to high cost areas. The initiative does not specifically prohibit a USF, however, it is unclear whether establishment of such a fund would require additional legislation. Again, Alascom's primary method for preventing an interruption of subsidy flows that would threaten universal service is to prohibit competition.

4. Alascom's initiative contains a section which would automatically repeal the GCI initiative in the event that both initiatives are approved by the voters, regardless of the respective margins of voter approval.

The relevant section of the Alascom initiative [Sec. 42.05.861 (b)] reads: "If the bill entitled "An Act relating to intrastate long distance telephone competition" that amends AS 42 by adding a new Chapter 12 is enacted, that bill is repealed."

To summarize, GCI's initiative would mandate competition and allow open entry and full deregulation for firms without market power, but limited deregulation for Alascom, affiliates of Alascom or other firms that may gain market power. In addition, the APUC would have the option of creating a fund to provide support where necessary to maintain universal service.

Alascom's initiative would require a continuation of the status quo unless the APUC decides, based upon guidelines which are stricter than existing statutes, that the public interest is served by competition. Also, if competition is permitted, Alascom would be free to set rates as it pleased on any route where two or more carriers provide service. Finally, GCI's initiative would be repealed in the event that both initiatives pass.

The Legislature

Two bills were introduced in the Senate in the 1989 session dealing with intrastate competition. SB 206, sponsored by Senators Frank, Sturgulewski and Fischer, is, with a few minor exceptions, identical to the GCI initiative. The other bill, SB 242, sponsored by Senators Adams, Binkley and Zharoff, was introduced at the request of five rural telephone utilities.

SB 242 seeks to: 1) require continuation of settlement agreements (the current method by which the intrastate long distance carrier, Alascom, compensates local phone companies for local facilities used for both local and long distance service); and 2) prevent the APUC from issuing a certificate to a telephone utility to provide service in an area already served by an existing telephone utility unless "the existing utility is not providing adequate service and is unlikely to improve to a satisfactory level within a reasonable period of time." The practical outcome of SB 242 is that it would make it difficult, if not impossible, for the APUC to institute intrastate long distance competition. SB 242 would overturn the Commission's recent order adopting access charges which the APUC considers a necessary antecedent to competition. The bill would also effectively preclude GCI, or any other carrier, from entering the intrastate market unless the APUC finds Alascom's service inadequate and unlikely to improve.

Any bill passed by the legislature concerning competition during this session would supersede any decision on competition by the APUC. Whether the same legislation would remove from the ballot one or both of the initiatives is much less certain. Legislation which is "substantially similar" to a proposed initiative would remove the initiative from the ballot. However, whether the legislature could pass a bill which is determined to be "substantially similar" [see Appendix on substantially similar legislation] to both the GCI and the Alascom initiatives is an open question. That determination would be made, at least initially, by the Lt. Governor based upon a legal opinion from the Attorney General.

ANALYSIS

Universal Service and Subsidies

One issue that is central to the discussion of intrastate competition is the question of universal service. Universal service is currently maintained primarily through statewide average rates, a mechanism which creates a subsidy flow from profitable routes to unprofitable routes, and thereby maintains the viability of the entire system. Both initiatives propose to preserve universal service, but in very different ways. In its initiative, in its proposed regulations, and in SB 206, GCI has proposed a mechanism, the universal service fund, which would allegedly preserve universal service. Alascom addresses universal service by requiring the APUC to prohibit competition if it threatens "the universal availability of affordable long distance telephone service."

There are problems with both approaches. GCI's universal service fund (USF) works by replenishing any subsidy lost through competition via a fund generated through access charges. However, the workability of the USF becomes problematic as the size of the subsidy increases; the greater the subsidy, the more that access charges would have to increase.

Estimates of the subsidy range from $3.6 million to $27 million. Depending on the size of the actual subsidy, an USF funded through an access charge surcharge would add 2 cents per minute [$3.6 million/229.6 million intrastate minutes] to 12 cents per minute [$27 million/229.6 million intrastate minutes] to the price of a call. If the surcharge were limited to just calls on competitive routes, the surcharge amount would certainly increase, but by how much is unknown. Currently the rate for a intrastate long distance call after the first three minutes, ranges from 10 cents per minute to 84 cents per minute, depending on mileage band, for a daytime call. Although a 2 cent per minute surcharge on a 84 cent per minute call (2% increase) might be considered reasonable, its likely that a 12 cent per minute, or higher, surcharge on a 10 cent per minute call (120% increase) would not. It is, in part, the confusion which surrounds the calculation of the surcharge which recently led the APUC to reject GCI's proposed regulations for competition.

Another problem with a USF established by the APUC is its questionable legality. GCI's initiative permits the establishment of a USF "to the extent [that it is] permitted under Article IX, Section 7, of the Alaska Constitution." This section of the constitution requires that "[t]he proceeds of any state tax or license shall not be dedicated to any special purpose, except provided in Section 15 of this article [Alaska Permanent Fund] or when required by the federal government for state participation in federal programs." Alascom and the Teamsters Union have already attempted, through court action, to prevent GCI's initiative from reaching the ballot, in part, for this very reason. Although GCI won the first round of court battles in December and had its initiative certified for the November 1990 ballot, this issue is still subject to challenge.

Alascom's approach to universal service is problematic in that it involves a type of "catch-22." Alascom's initiative would allow competition only if the APUC could find that it would not threaten universal service. However, the only regulatory structure permitted under the Alascom initiative is one that is almost guaranteed to threaten universal service.

For example, Alascom's total revenues would decline under competition because of lost market share and because of lower rates on competitive routes. This revenue shortfall would have to be made up in some manner. The most likely method, and perhaps the only legal method for doing so under the Alascom initiative, would be to raise rates on regulated routes. However, if the APUC determines ahead of time that the rate increases on regulated routes will likely threaten universal service the APUC would be required to prohibit competition. One can almost say, a priori, that the only way to preserve universal service under the Alascom initiative is to prohibit competition.

Regulatory Concerns

The transition to competition will require a balancing act on the part of the APUC with respect to the regulation of Alascom. Complete deregulation of Alascom on competitive routes could give that company an unfair competitive advantage over its competitors. Compared to a company like GCI, Alascom has considerable financial resources at it disposal. These include the possibility of raising rates on its regulated routes and the guaranteed profit that it earns on its interstate services. Without regulatory oversight it is possible that Alascom could temporarily price its competitive services below the true cost of service. Because Alascom is a monopoly there is always the danger that it might attempt to subsidize its below cost competitive rates with profits earned on monopoly services. If GCI or some other competitors were forced to leave the market because of this type of predatory pricing, then customers would be deprived of the long term benefits of competition.

The opposite problem could occur if the APUC were to allow competition but instead of completely deregulating Alascom chose to over-regulate Alascom. For example, if Alascom were prohibited from decreasing rates on competitive routes unless the decrease was part of a system wide rate reduction, then Alascom would in effect be unable to compete with its "competitors." This is because the average cost of providing system wide service (which is the cost that Alascom faces) is much greater than the average cost on competitive routes (which is the cost Alascom's competitors face). This scenario would lead to a pricing structure in which Alascom's competitors would just underprice Alascom's rates and would only provide service on profitable routes. This "creamskimming" could significantly reduce the contribution currently available for subsidizing high cost routes as well as reducing Alascom's market share and return on investment.

The challenge the APUC faces in considering an appropriate regulatory structure is to find an acceptable balance between these two extremes. However, the APUC has been reviewing the issue of intrastate long distance telephone competition for the past six years. Although minimum policy objectives were established in December 1989, there is no guarantee that regulations on competition will be adopted anytime soon.

Problems with the Initiative Process

Although the prospect of letting the voters decide this issue may seem a politically expedient one at first glance, there are some clear problems with it. The first is that the choices available to the public are limited. The options available to the voters in November were conceived and advocated by two very interested private parties and probably represent the extremes in a range of options.

Another problem is the lack of information available to voters upon which to base a decision. Most of the information available to voters on this complex issue will be highly biased and presented in 30-second TV spots by two private companies, GCI and Alascom. Objective factual analysis of the issue will, in all likelihood, not lend itself to this type of encapsulation nor have the funding available for an effective media presentation.

A third problem with the initiatives is that both rigidly define the APUC's role in implementing competition. Neither allow the APUC much leeway to make basic changes in the competitive frameworks established by the initiatives if they prove to be flawed in some way.

A final problem is that the vote on the two initiatives is not an either/or choice between the two initiatives. It is possible that both initiatives could pass. Alascom's clause repealing GCI's petition may not be legal and will certainly be challenged in court. This could open the process to further delays and uncertainties and the possibility that the court could be the final arbiter on this issue.

The first three problems with the initiative process just discussed are not without precedence. A case in point is California's Proposition 103 which passed in November 1988 and called for a rollback of auto insurance rates.

In order to implement the initiative, as amended by a subsequent court ruling, the California Department of Insurance (DOI) will need to expand its existing staff by 263 positions. That increase plus other Proposition 103 associated expenses resulted in a FY 90 budget request of $26 million more than the previous year's budget.

The California insurance Commissioner has described the problems brought on by Proposition 103 in the following way:

> Proposition 103 was a poorly-drafted measure and parts of it were held unconstitutional by the state Supreme Court ... [T]he inherent defects in Proposition 103 create conflicts which, if the measure is literally implemented, will discourage competition, result in higher rates for many, create arbitrary rates for some, create excessive and discriminatory rates for some, and make insurance less available.

CONCLUSIONS AND RECOMMENDATIONS

The APUC appears to have taken inordinate time deciding if and under what conditions intrastate telephone competition can occur in Alaska. However, the two initiatives certified on the November 1990 ballot are extreme approaches to the issue, representing the respective best interests of two corporate competitors, Alascom and GCI. Both initiatives lack proper analysis as to public policy impacts and both appear to have deficiencies which could result in significant implementation problems if adopted.

The Alaska legislature needs to ask itself whether it is headed for an administrative, financial and consumer nightmare with intrastate telephone competition through the initiative process. The legislature could let the current process play itself out and then subsequently attempt to address any problems that may develop in the future. However, a more prudent alternative would be to attempt to adopt legislation which comprehensively addresses the subject and includes many of the concepts in both ballot initiatives, but also directs the APUC to fashion a competitive structure that is appropriate to Alaska's circumstances. This approach has some obvious advantages:

1. It could remove both the Alascom and GCI initiatives from the ballot. Neither approach would be precluded by the APUC but both would be objectively compared to other approaches.

2. The APUC could be directed to justify its decision based upon empirical analysis of Alaska's intrastate market. This would reduce the likelihood of future problems resulting from a decision made without complete information on possible consequences.

3. A legislative solution to the current regulatory debate on competition might be warranted even if there were not initiatives headed for the public ballot. The APUC has dealt with this issue for six years without a resolution. The legislature could specify a time frame for a decision. This would ensure full consideration of the competition question and prompt resolution.

4. By fashioning a competitive structure that is less extreme than either GCI's or Alascom's initiatives, this approach might reduce the possibility of a court challenge.

5. A legislative solution implemented by the APUC could allow consideration of any impact of the interstate joint board proceeding on intrastate competition.

APPENDIX

Substantially Similar Legislation

Article XI, Section 4. Initiative Election. An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filling. If, before the election, substantially the same measure has been enacted, the petition is void. [Constitution of Alaska; Amendment approved August 25, 1970]

"It is clear that the legislative act need not conform to the initiative in all respects, and that the framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same.

"Upon reflection we have concluded that the legislature's discretion in this matter is reasonably broad. If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or if it requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative." [Warren v. Boucher. Pacific Reporter, 543 P.2d 731 (1975), p. 736]

SENATE COMMITTEE REPORT

DATE: January 17, 1990

FURTHER: L & C

DATE TURNED INTO OFFICE: 3-12-90

State Affairs Committee considered HOUSE BILL NO. 13

An Act declaring that telecommunications service utilities affect the public interest; and directing that regulation of telecommunications service utilities maintain and further universal basic telecommunications service.

and recommended:

[ ] replace with ______ CS ______________ [ ] same title
[ ] or adopt ______ CS ______________ [ ] new title
[ ] technical title change (HB only)

[ ] attached amendment(s)
[ ] ______________ letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

[X] individual recommendations

[ ] further referral to ______________

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

[ ] fiscal note(s) ______________

[X] zero fiscal ~~note(s)~~ updated DCED

[ ] appropriation-no fiscal note

APPROVES PREVIOUS:

Dept/Date:

[ ] fiscal note(s) ______________

[ ] zero fiscal note(s) ______________

[ ] Governor's bill w/fiscal note

SIGNING DO PASS:

Tim Kelly

OTHER RECOMMENDATIONS:

Al Adams - No Rec

Rick Uehling No Rec

Pat Pourchot do pass

Chair: Signature and Recommendation

HB 13, Universal Service   March 12, 1990

TELECONFERENCE; Anchorage LIO only. Teleconference was set up to allow someone from Bureau of Vital Statistics to testify on next bill, SB 332. IMPORTANT: We only have one hour of teleconference time (1:30-2:30) so please watch the time and make sure we are hearing SB 332 no later than 2:15.

Scheduled first on agenda to accommodate a request by Gordon Parker, local companies are holding a meeting today.

TO TESTIFY;

Representative Boucher
Claude Zike: speaking on behalf of local companies.

NOTES;

We took public testimony on HB 13 at the Feb. 16, 1990 hearing. All testimony received was in favor of HB 13.

*Gordon Parker called to say NO ONE from local companies will be offering amendments this time around.

*RE: Reed Stoops request to tighten title. Legal says "no", Phil suggested putting the words"amen" or "the end". In other words, it is as tight as it is going to get without opening the can of worms of defining universal service.

APUC letter of support is in packets.

Passed "DO PASS"

3.12.90

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : HB 13
PUBLISH DATE :

FISCAL NOTE

REQUEST:

Revision Date:
Title : An Act relating to regulation of telecommunication services
Sponsor : Boucher
Requestor : Senate State Affairs

Agency Affected : Commerce & Economic Dev.
BRU : APUC
Components : Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The bill proposes a basic statement of telecommunications policy and is not expected to have any fiscal impact on this agency.

Prepared by : T.S. Moninski II, Executive Director
Phone : 276-6222
Division : Alaska Public Utilities Commission
Date : 3/9/90

Approved by Commissioner : Larry Merculieff [signature]
Date : 3-9-90
Agency : Department of Commerce & Economic Development

Distribution (by preparer) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

LW/dg16447D/3990a

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : HB 13 — No. 3
PUBLISH DATE : HOUSE 1/12/90

FISCAL NOTE

REQUEST:

Revision Date:
Title : HB 13 - An Act realting to regulation of telecommunication services.
Sponsor : Boucher
Requestor : House Rules Committee

Agency Affected : Commerce & Econ. Development
BRU : APUC
Components : Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS: N/A

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Fiscal Note updated from previous year.
This bill proposes a basic statement of telecommunications policy and is not expected to have any fiscal impact on this agency.

Prepared by : Rep. Ben Grussendorf, Chairman — Phone : 465-3764
Division : House Rules Committee — Date : January 11, 1990

Approved by Commissioner : — Date :
Agency :

Distribution (by preparer) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA
1990 LEGISLATIVE SESSION

No. 3

BILL VERSION: HB 13
PUBLISH DATE: HOUSE 1/12/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: HB 13 - An Act realting to regulation of telecommunication services.
Sponsor: Boucher
Requestor: House Rules Committee

Agency Affected: Commerce & Econ. Development
BRU: APUC
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS: N/A

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Fiscal Note updated from previous year.
This bill proposes a basic statement of telecommunications policy and is not expected to have any fiscal impact on this agency.

Prepared by: Rep. Ben Grussendorf, Chairman
Phone: 465-3764
Division: House Rules Committee
Date: January 11, 1990

Approved by Commissioner:
Date:
Agency:

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

420 "L" STREET
SUITE 100
ANCHORAGE, ALASKA 99501
(907) 276-6222

ALASKA PUBLIC UTILITIES COMMISSION

COMMENTS ON HB 13

February 7, 1989

The Commission supports HB 13 and has included universal service in the policy objectives which the Commission adopted to guide its adjudication of the complex telecommunications issues currently pending.

Sent copy to: Phil Boucher

February 15, 1990

Unicom

UC90-5026

STATE AFFAIRS COMMITTEE
Senator Pat Pourchot, Chairman
Senator Al Adams
Senator Jan Faiks
Senator Rick Uehling
Senator Jim Kelly
Pouch V
Juneau, Alaska 99811

REFERENCE: H.B. 13

Dear Senators:

It is our understanding your committee has before it H.B. 13 which declares that universal basic telecommunications service is in the public interest.

United Utilities is a local exchange telephone company serving 56 communities within the State of Alaska. Federal legislation, the Federal Communications Commission (FCC), and the Alaska Public Utilities Commission (APUC) have all adopted legislation and/or policies promoting the availability of universal basic telecommunications service. If it were not for the federal legislation and the regulatory policies, our customers, and other rural customers within the state, would be without telephone service.

We strongly recommend that you pass this legislation as currently there is no legislative authority that we are aware of adopting the universal basic telecommunications objectives for Alaska. This is particularly critical considering the advent of competition and other changes in the telecommunications industry.

To strengthen this legislation, we are asking that your committee consider adding the following language to the bill:

> "Universal basic telecommunications service is defined as having household telephone subscribership penetration levels within each community that approximate the household telephone subscribership penetration levels being experienced nationally. Universal basic telecommunication service is also defined as having statewide message toll rates that are not substantially greater than those in effect on January 1, 1990."

An Alaskan Native Owned Corporation

Unicom, Inc.
Subsidiaries:
United Utilities, Inc.
UniVista, Inc.
Manley Utility Co., Inc.

5450 A Street
Anchorage
Alaska
99518
(907) 561-1674

By 1993, Alaska local exchange companies will be receiving in excess of $34 million from the federal Universal Service Fund to assist in achieving the FCC's universal service objectives. The proposed working definition is consistent with the FCC's goals and sound public policy.

Considering that the APUC's decisions will impact the availability of the federal Universal Service Funds for furthering universal service, and considering the possible harmful affects on rural customers should competition be permitted, we are requesting the proposed working definition be included in H.B. 13.

If you would like more information, please contact me.

Respectfully submitted,

UNITED UTILITIES, INC.

Steve Hamlen

Steve Hamlen
President

SH/ab

Representative H.A. "Red" Boucher

Chairman House Committee on State Affairs • Special Committee on Telecommunications

HB 13 - Universal Services
Supplemental Statement

Essentially, HB 13 is a simple statement of state policy.

That policy is: ...regulation of telephone utilities shall aim at making basic telephone service available to as many Alaskans as possible.

The motivation for this policy is twofold. First, national consistency. Universal Service has been the fundamental tenet in FCC policy since its inception in 1934. While it has been codified in some states, it has been the unspoken rule in all states.

The second motivation for codifying Universal Service as our state policy is to demonstrate that Alaska does, within our state, what we are asking the FCC and the Joint Board to do for us on a national basis. By that we mean that Alaska is a remote and expensive part of the national telephone network. Alaska seeks subsidy and deferential treatment from the FCC which lowers our interstate telephone rates. Former APUC Commissioner, Marvin Weatherly, has testified that Alaska has been subject to criticism because we have not formalized the same Universal Service policy for intra-state telephone service that we're seeking for inter-state service.

P.O. Box V • Juneau, Alaska • 99811 • (907) 465-4931
3111 C Street • Suite 445 • Anchorage, Alaska • 99503 • (907) 561-7624

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M February 24, 1989

SUBJECT: Sectional analysis of HB 13
(Declarations and directions concerning telecommunication services)

TO: Representative H.A. "Red" Boucher

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 states that a utility that provides local exchange or interexchange telecommunications service affects the public interest and directs that regulation seek to maintain and further the efficiency, availability and affordability of universal basic telecommunications service.

If I may be of further assistance, please advise.

TBC:gc
WKG7/056

HB 13
Universal
Service

Representative H.A. "Red" Boucher

Chairman House Committee on State Affairs • Special Committee on Telecommunications
Member Labor & Commerce Committee • Chairman Commission on the Future of the Permanent Fund

STATEMENT ON HB 13

HB 13 is a very simple bill. In very few words, HB 13 makes Universal Telephone Service a policy and a priority of the State of Alaska. What is Universal Telephone Service? Universal Telephone Service is simply the right of all citizens to have telephone service available to them at a reasonable cost.

In asking the Legislature to pass HB 13, we are following the lead of the United States Congress, the Federal Communications Commission and the Alaska Public Utilities Commission. The Congress, in statute, and the FCC and APUC, through regulation, have all stated that Universal Telephone Service is a desirable goal. We believe Alaska statutes should reflect the same priority.

The effect of this legislation is very basic. It will mean that, as the regulatory bodies of the state guide us through the multitude of complex changes rapidly taking place in the telecommunications industry, they will keep in mind the needs of all our citizens to have access to basic communications services.
With that goal in mind, I urge this body to pass HB 13.

Room 102 Capitol • P.O. Box V • Juneau, Alaska • 99811 • (907) 465-4931
3111 C Street • Suite 445 • Anchorage, Alaska • 99503 • (907) 561-7624

Alaska Telephone Association
201 E. 56th Avenue / Suite 230
Anchorage, Alaska 99518
(907)563-4000 / FAX (907)562-3776

Claude Zike
President

Gordon Parker
Executive Director

SUMMARY OF HB 13

UNIVERSAL TELEPHONE SERVICE

HB 13 establishes universal telephone service as being in the public interest and, therefore, a priority of the State of Alaska.

Universal telephone service refers to the right of all residents to have available to them basic telephone services at a reasonable rate.

At the federal level, universal telephone service was adopted as government policy with the passage of the Communications Act of 1934 and remains a priority today. The Federal Communications Commission has also adopted universal telephone service as a priority. In Alaska, the Alaska Public Utilities Commission, in its omnibus telecommunications order of June, 1988, established universal telephone service as one of its six goals in addressing telecommunications issues pending before it. With HB 13, the legislature is being asked to place this critical policy into statute.

The question will be asked, "What effect does HB 13 have on the current debate regarding intrastate competition?" The answer is that the only effect would be to require the APUC to maintain the preservation of basic universal telephone service as a priority as the intrastate competition issue is considered. This is a stated goal of all parties to the intrastate competitive debate.

Alaska Telephone Association
201 E. 56th Avenue / Suite 230
Anchorage, Alaska 99518
(907)563-4000 / FAX (907)562-3776

Claude Zike
President

Gordon Parker
Executive Director

SUMMARY OF HB 13

UNIVERSAL TELEPHONE SERVICE

HB 13 establishes universal telephone service as being in the public interest and, therefore, a priority of the State of Alaska.

Universal telephone service refers to the right of all residents to have available to them basic telephone services at a reasonable rate.

At the federal level, universal telephone service was adopted as government policy with the passage of the Communications Act of 1934 and remains a priority today. The Federal Communications Commission has also adopted universal telephone service as a priority. In Alaska, the Alaska Public Utilities Commission, in its omnibus telecommunications order of June, 1988, established universal telephone service as one of its six goals in addressing telecommunications issues pending before it. With HB 13, the legislature is being asked to place this critical policy into statute.

The question will be asked, "What effect does HB 13 have on the current debate regarding intrastate competition?" The answer is that the only effect would be to require the APUC to maintain the preservation of basic universal telephone service as a priority as the intrastate competition issue is considered. This is a stated goal of all parties to the intrastate competitive debate.

H B
28

4.9.90

Clyde Bright
P.O. 962
Sitka, AK L.M.

747-3939

HB 28 . . .

Supports —
Superior Court has ruled it is illegal — (last fall)

APUC / AG =

INTRASTATE LONG DISTANCE TELEPHONE COMPETITION

SENATE STATE AFFAIRS COMMITTEE

SECOND SESSION

16TH ALASKA STATE LEGISLATURE

Senator Pat Pourchot, Chairman

Report to the Senate

January 1990

The Chairman extends special thanks to Philip Treuer for his work in the drafting of this report.

INTRASTATE LONG DISTANCE TELEPHONE COMPETITION
EXECUTIVE SUMMARY

The technological revolution which brought interstate long distance telephone competition to the lower 48 and Alaska is now bringing the same pressure to bear on Alaska's regulators to introduce intrastate long distance service. While many states have introduced competition, Alaska's unique demography, small telephone market, and the absence of subsidies which are available to interstate users but not intrastate users make the benefits of competition less clear.

Normally, the agency which would make the decision of whether or not to introduce competition is the Alaska Public Utilities Commission (APUC). The APUC has recently completed a variety of telecommunications related decisions which could set the stage for a decision on competition. However, two private long distance carriers, Alascom and GCI, have placed initiatives on the November 1990 ballot which would provide for a competitive intrastate structure. If either initiative passes, it would supersede any previously approved regulations adopted by the APUC.

Unfortunately, because Alascom and GCI are adversaries, their respective initiatives represent the extremes in terms of regulatory options. Neither initiative provides the APUC the flexibility to adopt a more moderate approach. Although voters will have a choice of regulatory options to vote on in November 1990, that choice is extremely limited and may not include the most appropriate public policy for Alaska. In addition, it is likely that objective public policy analysis of this complex issue will not be heard in the public relations blitz that will precede the November vote.

Because the implications of adopting either initiative have not been fully explored, it is very possible that either initiative could create a substantial legal, administrative and financial burden on the State and possibly adverse economic impacts on some telephone consumers. A more rational and responsible approach, at this point, appears to be to continue a decision-making process through the APUC which balances the goals of affordable, universal service with the efficiency and pricing incentives of competition.

An initiative can be removed from the ballot only if the legislature passes legislation which in the Attorney General's opinion is substantially similar to the initiative. To retain the ability to develop other options through the APUC process, it is recommended that the Legislature consider legislation which comprehensively addresses this subject and could be found to be "substantially similar" to both the proposed initiatives, thereby removing them from the ballot.

INTRASTATE LONG DISTANCE TELEPHONE COMPETITION

The State of Alaska is rapidly approaching a decision on whether to allow competition in the provision of intrastate long distance telephone service. The process of deciding this issue has been initiated in three different forums: the Alaska Public Utilities Commission (APUC), the State Legislature, and the public ballot (through the initiative process). However, which public body will make the final decision is unclear. A decision in one forum could well be nullified by a subsequent decision in different forum. The process is complicated by the likelihood that a final decision reached in any one of these forums will be challenged in the courts.

BACKGROUND

National Trends

At the national level, the telephone industry is currently in the midst of a rapid market structure transition. Once considered a natural monopoly, the telephone industry is now being transformed into a competitive market structure. New technology, federal regulatory policies and the divestiture of AT&T have all contributed to the growth of competition, particularly in the interstate long distance market.

1) Technology -- New technologies, such as digital switching, satellite and microwave transmission and fiber optic cable, have significantly lowered the cost of providing service. This has lowered economies of scale and made it possible for firms much smaller than AT&T to enter the market.

2) Federal Policies -- In the late 1960's and early 1970's, the Federal Communications Commission (FCC) and the courts reversed long standing policies against entry into telecommunications markets. In addition to finding that competition was in the public interest, the FCC also promoted

competition by ensuring through regulation that AT&T did not use its market dominance to stifle competition.

3) Divestiture -- In 1984, AT&T was divested of its 22 local operating companies as the result of the negotiated settlement of a Justice Department antitrust suit. The terms of the settlement required that the newly independent Bell operating companies (BOCs) provide access to all interstate long distance companies on an equal basis. Not only did divestiture remove AT&T's superior access to the local exchange, it removed a portion of its operation that could have been used to subsidize its long distance service.

<u>The Alaska Market -- Interstate</u>

Interstate long distance service in Alaska is provided by Alascom and, since 1982, by GCI. Alascom serves the entire state. GCI serves Anchorage, Fairbanks, Juneau, Matanuska Valley, Kenai, Ketchikan and Adak. GCI carries approximately 50% of the southbound interstate long distance traffic originating in the areas that it serves.

Interstate long distance service in Alaska is characterized by fewer competitors than in the lower 48. Two factors are largely responsible for this: 1) Alaska's small market size; and 2) financial support from AT&T to Alaska's interstate long distance companies, Alascom and GCI, which is not available to other would-be interstate long distance carriers.

1) Small Size of Market -- The Alaska market is extremely small in comparison to the rest of the U.S. Alaska's local subscribers account for only 250,000 (0.2%) of the nation's 120 million access lines. Interstate long distance calls originating within Alaska account for only 0.015% of total interstate calling.

2) Financial Support -- Alascom provides interstate service through a joint service agreement with AT&T in which AT&T terminates Alascom's southbound traffic and Alascom terminates AT&T's northbound traffic. The joint service agreement is the result of an FCC policy, adopted in the early

1970's, to integrate the rates available in the lower 48 with Alaska, i.e. to use the same nationwide average rates in Alaska as elsewhere. Under the agreement, all costs, including Alascom's return on investment, are paid for by AT&T. In return AT&T keeps all revenues. AT&T estimates that in 1989 costs will exceed revenues by $85 million. AT&T also argues that $30 million of Alascom's costs should be allocated to intrastate services rather than interstate services. Alascom disputes this charge and maintains that AT&T's costs are inflated. A joint federal and state advisory board, to the FCC, is currently examining what, if any, market structure changes are necessary to reconcile the FCC's rate integration and pro-competition policies for Alaska as well as what changes in either cost separations or support may be necessary to effect that market structure.

GCI also receives financial support from AT&T, in the form of discounted rates on a limited number of leased lines, as a result of an antitrust suit. GCI's carrier lease agreement provides significantly less support in total dollars than Alascom's joint service agreement with AT&T. GCI estimates Alascom's financial support at approximately 12 cents per minute or greater compared to the approximately 2 cents per minute GCI receives for lines leased from AT&T. AT&T affirms that Alascom's support is at least five times greater than GCI's but also maintains that, for a variety of reasons, the figures are not really comparable. These reasons include the fact that: Alascom serves the entire state, GCI serves only urban routes; Alascom's profit is guaranteed, GCI's is not; and GCI's support is limited to only a portion of its southbound traffic not its entire operation, as is the case with Alascom. GCI's carrier lease agreement expires in 1992.

The Alaska Market -- Intrastate

Alascom is the sole provider of intrastate long distance service in Alaska. In 1988 its total intrastate long distance minutes of traffic were 229.6 million, compared to total originating interstate minutes of traffic of 283.4 million. Alascom intrastate long distance revenues in 1988 were approximately $85 million. By comparison Alascom will receive approximately $117 million from AT&T in 1989 in compensation for use of its interstate facilities.

An important aspect of Alascom's intrastate operation is that it offers statewide average rates. Under this policy, two calls on different routes of equal distance are charged the same rate, even though the cost of providing service on the two routes might be very different. As a result, rates for low traffic rural routes tend to be below cost, and rates for high traffic urban routes tend to be above cost. This subsidy flow helps to support remote areas of the state that might not otherwise be able to afford long distance service.

In April 1987, Alascom presented data to the APUC which indicated that the flow of support, from Anchorage, Juneau and Fairbanks to the rest of the state, was approximately $3.6 million. More recently, Alascom reported to the Chairman of the Senate State Affairs committee that based on an examination of its 26,000 routes, 6000 high traffic urban routes were generating a subsidy of $27 million which was being used to support its remaining 20,000 low traffic rural routes. Calculating the actual amount of the subsidy is not possible given the information that is currently available to the public. Alascom treats its cost, revenue and traffic data on individual routes as proprietary, and the APUC has supported Alascom's requests to keep it that way.

Alaska Public Utilities Commission (APUC)

Regulation of long distance service in Alaska is divided into intrastate service under the authority of the APUC and interstate service under the authority of the FCC. In 1983, in conjunction with considering whether to adopt intrastate access charges, the APUC undertook the question of whether competition in the provision of intrastate long distance service was in the public interest. In late 1986, GCI filed a request to provide limited intrastate long distance service and proposed regulations to govern competition. In response to GCI's proposal, the Commission turned its attention to possible rules for competitive entry. Hearings were held on GCI's initial regulations in March and April 1987 and on GCI's modified regulations in February 1988. However, in June 1988, the Commission issued its omnibus telecommunications order which, among other things, postponed a decision on these regulations until it had the opportunity to address a number of interrelated issues which "affect the ultimate question of whether or not there should be competition in state toll [long distance] services." The most important of these issues include:

1) Cost separations -- Historically, because long distance companies rely on local phone companies to originate and terminate long distance calls, the long distance companies have been made to share in paying for the fixed, non-traffic sensitive (NTS) costs[1] of providing local service. On the federal level, cost separations is the process of deciding how to divide NTS costs between interstate and intrastate use. On the state level, cost separations is the process of dividing intrastate NTS costs between local and intrastate long distance service.

Recently, the FCC decided to limit the percentage of NTS costs attributable to interstate long distance service to 25%. In Alaska, this has had the effect of increasing the cost burden on intrastate users and has required the APUC to decide how to allocate this increased cost between local and intrastate long distance companies.

In November, the APUC completed its cost separations rulemaking. According the the APUC, "cost separations must be in place before the financial implications and mechanics of competition can be analyzed and decided."

2) Access charges -- Prior to divestiture, compensating unaffiliated local companies for the use of their facilities was done through settlement agreements. These were private contracts between AT&T and each local exchange company. This system was workable when there was only one long distance carrier but as competitive long distance carriers entered the market the FCC found that they too should share

---

[1] "NTS costs do not vary with the volume of traffic. For example, the cost to construct and maintain the wire loop from an individual's telephone to the local telephone company's central office does not depend on the type or volume of traffic that individual generates." [Correspondence with APUC, Jan. 11, 1990]

some of the costs of local facilities. The FCC replaced settlement agreements with access charges. Access charges are charges assessed on a per minute basis to long distance companies for originating or terminating an interstate long distance call to a local exchange.

In November, the APUC issued an order to replace settlements with access charges effective January 1, 1991. Although it was not necessary that a decision on access charges precede a decision on competitive regulations, it is generally agreed that access charges would be necessary in order for competition to work. Therefore, having an access charge system in place will expedite the introduction of competition should the APUC move in that direction.

3) Subscriber line charges -- Like access charges, subscriber line charges are a mechanism for recovering a portion of the NTS costs of local companies. Currently, subscriber line charges are only being used at the interstate level. Since 1985, the FCC has gradually increased subscriber line charges. For example, the subscriber line charge for residential and single-line business customers has increased from $2.00 per month per subscriber to the current rate of $3.50. This has allowed interstate access charges to decline. In the process, long distance rates have declined and basic local rates have gone up. What the FCC has done, through subscriber line charges, is subvert the intent of the cost separations process by shifting the portion of NTS costs allocated to the interstate jurisdiction back onto local service.

In Alaska, adoption of subscriber line charges would have shifted costs from long distance users to local users, enabling intrastate long distance companies to lower rates and, thereby, increase demand and total revenues. The trade-off, however, would be considerably higher local rates. Beneficiaries of a subscriber line charge system would be intrastate long distance companies and users that make a large number of intrastate long distance calls. Losers would be basic local rate payers, in particular, those who are infrequent intrastate long distance users.[1] In November, the APUC rejected the use of intrastate subscriber line charges.

4) Alascom's rate design -- "There are two basic parts to setting any utility's rates. First, there is a calculation of the total revenues it is allowed to earn, and second, there is a determination of the rates it will charge for each type of service in order to collect its total allowed revenue requirement. The second part is called the rate design or rate structure." [Restructuring Alaska's Telecommunications Industry: Objectives, Issues, and Plan; APUC]

In November, the APUC established new rates for Alascom's intrastate long distance services. The principal change was to lower the rate for long-haul calls and raise rates for short-haul calls. According to the APUC, Alascom's rate design will "provide useful information for the ultimate resolution of the competition question." For example, the APUC's examination of Alascom's rate structure has highlighted the importance of distance sensitive average rates in maintaining universal service. However, the data the APUC received from Alascom still does not provide the APUC with the information it would need to determine the subsidy flow on individual routes.

With these issues complete the Commission held a two day hearing on November 27 and 28 to make a decision on GCI's proposed regulations for intrastate long distance telephone competition. The substance of what was discussed and decided at that hearing is contained in Order #14 of Docket R-86-2, Order Addressing Objectives: Rejecting Proposed Regulations: and Establishing Procedure. In the order, the APUC states that "preserving and promoting universal service" is its most

---

[1] "Each $1.00 of an intrastate SLC [subscriber line charge] would generate only $2.9 million dollars of revenue per year. This approximates 4 percent of Alascom's revenue requirement. A $1.00 SLC would mean that subscribers need to make intrastate toll calls of $25.00 or more per month to avoid increased telephone bills. For every $1.00 spent on intrastate toll calls thereafter, the subscriber would save approximately 4 cents. Although Alascom's requested SLC was $4.00 and was intended to reduce intrastate toll rates by 15.8 percent, its relative benefits would have to be judged by weighing a consumer's intrastate toll usage against a $4.00 per month increase in basic monthly charges." [from APUC order on subscriber line charges.]

important telecommunications policy objective. The APUC also recognizes that there would be a number of advantages to allowing competition. These include: 1) an incentive for carriers to operate efficiently; 2) lower rates; 3) new, innovative, and more diversified services; 4) faster, more effective response to customers' needs; and 5) eventual self regulation of the market.

In view of this, the Commission determined that "competition is in the public interest, if and only if, the benefits of competition can be achieved and universal service can be preserved." In evaluating GCI's proposed regulations with respect to this dual goal, the APUC further determined that the regulations were inadequate to protect universal service.

> [The regulations] prepared and submitted by GCI in this proceeding proposed to protect universal service by requiring each competitive carrier to pay to Alascom a per minute 'contribution for statewide service' for each call carried by the competitive carrier. The primary issues during the hearings held on GCI's regulations were how the proposed contribution should be calculated and whether or not it would protect universal service...
>
> Although the evidence was not conclusive, the Commission is not convinced that GCI's ... regulations resolve the problem. Tremendous controversy surrounds GCI's proposed calculation of the contribution, and it is not clear that the controversy can be resolved in a manner which protects service to high-cost areas and still allows GCI to compete in other areas.

The APUC has left open the option of allowing GCI to resubmit new regulations which would meet the Commission's new criteria. However, in the meantime, the APUC has hired a consultant to help staff develop regulations. The first draft of the Commission's regulations are expected to be completed by January 31, 1990.

Public Ballot Initiatives

Two initiatives dealing with the question of intrastate competition have been certified for inclusion on the November 1990 ballot. One is sponsored by GCI ("An Act relating to intrastate long distance telephone competition"). The other is sponsored by Alascom ("An Act relating to the creation of competitive long distance telephone services within Alaska").

Despite similar titles there are important differences between the two initiatives:

1) GCI's mandates competition while Alascom's does not. GCI's initiative presumes that competition is in the public interest. Under the section on Findings and Purpose, it states that "long distance service should be provided by competing suppliers wherever possible." In other words, the APUC would be required to permit competition as long as there are qualified long distance companies willing and able to provide service.

Alascom's initiative would require the APUC to make a number of specific public interest findings before permitting competitive entry. Specifically, a long distance company could not be certified to provide service unless the APUC finds that issuing a certificate:

a) will reduce rates and enhance services on the routes the applicant proposes to serve;

b) will promote economic efficiency;

c) will not cause rate increases that jeopardize the universal availability of affordable long distance telephone services; and

d) will be in the long-term best interests of the state.

2) <u>Both initiatives also differ with respect to how Alascom would be regulated</u>.

GCI's initiative requires the APUC to distinguish between companies with market power and those without market power. The initiative does not define market power, but directs the APUC to "refer to reported court and administrative agency decisions interpreting state and federal laws concerning monopolies, restraint of trade, and telecommunications industry." Companies with market power would be subject to full regulation under AS 42.05 [Alaska Public Utilities Commission Act]; companies without market power would not.

Initially, all new intrastate long distance companies would be exempt from regulation, and only Alascom or an affiliate of Alascom would be regulated. The APUC would have the authority to regulate or re-regulate any company that gains market power in an intrastate long distance service. Upon request, the APUC would have to deregulate, on a service by service basis, any company that can show that it lacks market power for a particular service. The APUC must also ensure that the deregulated carrier does not shift costs from its deregulated service onto its remaining regulated services. In this regard, the initiative stipulates the use of fully distributed costing which is only one of several cost methodologies normally used by regulatory agencies in determining costs of service.

In contrast, under the Alascom initiative, Alascom would be automatically deregulated on any route on which two or more carriers were authorized to provide service. Deregulation would involve exemption from the sections of AS 42.05 dealing with the setting of rates and tariffs [AS 42.05.361 - 42.05.431]. Alascom could be re-regulated on any route on which, for whatever reason, it again became the sole service provider.

3. <u>Only the GCI initiative specifically provides for a mechanism to subsidize high cost regulated routes</u>.

While both Alascom and GCI recognize that competition would cause a disequilibrium in the subsidies flowing from profitable to unprofitable routes, the methods they propose in their initiatives to respond to that problem are different. GCI's initiative provides that the APUC may adopt an Universal Service Fund (USF) to "provide financial support, where necessary." The USF would be funded through an access charge surcharge or "other means" not specified.

Alascom's initiative is silent on the question of subsidies to high cost areas. The initiative does not specifically prohibit a USF, however, it is unclear whether establishment of such a fund would require additional legislation. Again, Alascom's primary method for preventing an interruption of subsidy flows that would threaten universal service is to prohibit competition.

4. <u>Alascom's initiative contains a section which would automatically repeal the GCI initiative in the event that both initiatives are approved by the voters, regardless of the respective margins of voter approval</u>.

The relevant section of the Alascom initiative [Sec. 42.05.861 (b)] reads: "If the bill entitled "An Act relating to intrastate long distance telephone competition" that amends AS 42 by adding a new Chapter 12 is enacted, that bill is repealed."

To summarize, GCI's initiative would mandate competition and allow open entry and full deregulation for firms without market power, but limited deregulation for Alascom, affiliates of Alascom or other firms that may gain market power. In addition, the APUC would have the option of creating a fund to provide support where necessary to maintain universal service.

Alascom's initiative would require a continuation of the status quo unless the APUC decides, based upon guidelines which are stricter than existing statutes, that the public interest is served by competition. Also, if competition is permitted, Alascom would be free to set rates as it pleased on any route where two or more carriers provide service. Finally, GCI's initiative would be repealed in the event that both initiatives pass.

The Legislature

Two bills were introduced in the Senate in the 1989 session dealing with intrastate competition. SB 206, sponsored by Senators Frank, Sturgulewski and Fischer, is, with a few minor exceptions, identical to the GCI initiative. The other bill, SB 242, sponsored by Senators Adams, Binkley and Zharoff, was introduced at the request of five rural telephone utilities.

SB 242 seeks to: 1) require continuation of settlement agreements (the current method by which the intrastate long distance carrier, Alascom, compensates local phone companies for local facilities used for both local and long distance service); and 2) prevent the APUC from issuing a certificate to a telephone utility to provide service in an area already served by an existing telephone utility unless "the existing utility is not providing adequate service and is unlikely to improve to a satisfactory level within a reasonable period of time." The practical outcome of SB 242 is that it would make it difficult, if not impossible, for the APUC to institute intrastate long distance competition. SB 242 would overturn the Commission's recent order adopting access charges which the APUC considers a necessary antecedent to competition. The bill would also effectively preclude GCI, or any other carrier, from entering the intrastate market unless the APUC finds Alascom's service inadequate and unlikely to improve.

Any bill passed by the legislature concerning competition during this session would supersede any decision on competition by the APUC. Whether the same legislation would remove from the ballot one or both of the initiatives is much less certain. Legislation which is "substantially similar" to a proposed initiative would remove the initiative from the ballot. However, whether the legislature could pass a bill which is determined to be "substantially similar" [see Appendix on substantially similar legislation] to both the GCI and the Alascom initiatives is an open question. That determination would be made, at least initially, by the Lt. Governor based upon a legal opinion from the Attorney General.

ANALYSIS

Universal Service and Subsidies

One issue that is central to the discussion of intrastate competition is the question of universal service. Universal service is currently maintained primarily through statewide average rates, a mechanism which creates a subsidy flow from profitable routes to unprofitable routes, and thereby maintains the viability of the entire system. Both initiatives propose to preserve universal service, but in very different ways. In its initiative, in its proposed regulations, and in SB 206, GCI has proposed a mechanism, the universal service fund, which would allegedly preserve universal service. Alascom addresses universal service by requiring the APUC to prohibit competition if it threatens "the universal availability of affordable long distance telephone service."

There are problems with both approaches. GCI's universal service fund (USF) works by replenishing any subsidy lost through competition via a fund generated through access charges. However, the workability of the USF becomes problematic as the size of the subsidy increases; the greater the subsidy, the more that access charges would have to increase.

Estimates of the subsidy range from $3.6 million to $27 million. Depending on the size of the actual subsidy, an USF funded through an access charge surcharge would add 2 cents per minute [$3.6 million/229.6 million intrastate minutes] to 12 cents per minute [$27 million/229.6 million intrastate minutes] to the price of a call. If the surcharge were limited to just calls on competitive routes, the surcharge amount would certainly increase, but by how much is unknown. Currently the rate for a intrastate long distance call after the first three minutes, ranges from 10 cents per minute to 84 cents per minute, depending on mileage band, for a daytime call. Although a 2 cent per minute surcharge on a 84 cent per minute call (2% increase) might be considered reasonable, its likely that a 12 cent per minute, or higher, surcharge on a 10 cent per minute call (120% increase) would not. It is, in part, the confusion which surrounds the calculation of the surcharge which recently led the APUC to reject GCI's proposed regulations for competition.

Another problem with a USF established by the APUC is its questionable legality. GCI's initiative permits the establishment of a USF "to the extent [that it is] permitted under Article IX, Section 7, of the Alaska Constitution." This section of the constitution requires that "[t]he proceeds of any state tax or license shall not be dedicated to any special purpose, except provided in Section 15 of this article [Alaska Permanent Fund] or when required by the federal government for state participation in federal programs." Alascom and the Teamsters Union have already attempted, through court action, to prevent GCI's initiative from reaching the ballot, in part, for this very reason. Although GCI won the first round of court battles in December and had its initiative certified for the November 1990 ballot, this issue is still subject to challenge.

Alascom's approach to universal service is problematic in that it involves a type of "catch-22." Alascom's initiative would allow competition only if the APUC could find that it would not threaten universal service. However, the only regulatory structure permitted under the Alascom initiative is one that is almost guaranteed to threaten universal service.

For example, Alascom's total revenues would decline under competition because of lost market share and because of lower rates on competitive routes. This revenue shortfall would have to be made up in some manner. The most likely method, and perhaps the only legal method for doing so under the Alascom initiative, would be to raise rates on regulated routes. However, if the APUC determines ahead of time that the rate increases on regulated routes will likely threaten universal service the APUC would be required to prohibit competition. One can almost say, a priori, that the only way to preserve universal service under the Alascom initiative is to prohibit competition.

Regulatory Concerns

The transition to competition will require a balancing act on the part of the APUC with respect to the regulation of Alascom. Complete deregulation of Alascom on competitive routes could give that company an unfair competitive advantage over its competitors. Compared to a company like GCI, Alascom has considerable financial resources at it disposal. These include the possibility of raising rates on its regulated routes and the guaranteed profit that it earns on its interstate services. Without regulatory oversight it is possible that Alascom could temporarily price its competitive services below the true cost of service. Because Alascom is a monopoly there is always the danger that it might attempt to subsidize its below cost competitive rates with profits earned on monopoly services. If GCI or some other competitors were forced to leave the market because of this type of predatory pricing, then customers would be deprived of the long term benefits of competition.

The opposite problem could occur if the APUC were to allow competition but instead of completely deregulating Alascom chose to over-regulate Alascom. For example, if Alascom were prohibited from decreasing rates on competitive routes unless the decrease was part of a system wide rate reduction, then Alascom would in effect be unable to compete with its "competitors." This is because the average cost of providing system wide service (which is the cost that Alascom faces) is much greater than the average cost on competitive routes (which is the cost Alascom's competitors face). This scenario would lead to a pricing structure in which Alascom's competitors would just underprice Alascom's rates and would only provide service on profitable routes. This "creamskimming" could significantly reduce the contribution currently available for subsidizing high cost routes as well as reducing Alascom's market share and return on investment.

The challenge the APUC faces in considering an appropriate regulatory structure is to find an acceptable balance between these two extremes. However, the APUC has been reviewing the issue of intrastate long distance telephone competition for the past six years. Although minimum policy objectives were established in December 1989, there is no guarantee that regulations on competition will be adopted anytime soon.

Problems with the Initiative Process

Although the prospect of letting the voters decide this issue may seem a politically expedient one at first glance, there are some clear problems with it. The first is that the choices available to the public are limited. The options available to the voters in November were conceived and advocated by two very interested private parties and probably represent the extremes in a range of options.

Another problem is the lack of information available to voters upon which to base a decision. Most of the information available to voters on this complex issue will be highly biased and presented in 30-second TV spots by two private companies, GCI and Alascom. Objective factual analysis of the issue will, in all likelihood, not lend itself to this type of encapsulation nor have the funding available for an effective media presentation.

A third problem with the initiatives is that both rigidly define the APUC's role in implementing competition. Neither allow the APUC much leeway to make basic changes in the competitive frameworks established by the initiatives if they prove to be flawed in some way.

A final problem is that the vote on the two initiatives is not an either/or choice between the two initiatives. It is possible that both initiatives could pass. Alascom's clause repealing GCI's petition may not be legal and will certainly be challenged in court. This could open the process to further delays and uncertainties and the possibility that the court could be the final arbiter on this issue.

The first three problems with the initiative process just discussed are not without precedence. A case in point is California's Proposition 103 which passed in November 1988 and called for a rollback of auto insurance rates.

In order to implement the initiative, as amended by a subsequent court ruling, the California Department of Insurance (DOI) will need to expand its existing staff by 263 positions. That increase plus other Proposition 103 associated expenses resulted in a FY 90 budget request of $26 million more than the previous year's budget.

The California insurance Commissioner has described the problems brought on by Proposition 103 in the following way:

> Proposition 103 was a poorly-drafted measure and parts of it were held unconstitutional by the state Supreme Court ... [T]he inherent defects in Proposition 103 create conflicts which, if the measure is literally implemented, will discourage competition, result in higher rates for many, create arbitrary rates for some, create excessive and discriminatory rates for some, and make insurance less available.

CONCLUSIONS AND RECOMMENDATIONS

The APUC appears to have taken inordinate time deciding if and under what conditions intrastate telephone competition can occur in Alaska. However, the two initiatives certified on the November 1990 ballot are extreme approaches to the issue, representing the respective best interests of two corporate competitors, Alascom and GCI. Both initiatives lack proper analysis as to public policy impacts and both appear to have deficiencies which could result in significant implementation problems if adopted.

The Alaska legislature needs to ask itself whether it is headed for an administrative, financial and consumer nightmare with intrastate telephone competition through the initiative process. The legislature could let the current process play itself out and then subsequently attempt to address any problems that may develop in the future. However, a more prudent alternative would be to attempt to adopt legislation which comprehensively addresses the subject and includes many of the concepts in both ballot initiatives, but also directs the APUC to fashion a competitive structure that is appropriate to Alaska's circumstances. This approach has some obvious advantages:

1. It could remove both the Alascom and GCI initiatives from the ballot. Neither approach would be precluded by the APUC but both would be objectively compared to other approaches.

2. The APUC could be directed to justify its decision based upon empirical analysis of Alaska's intrastate market. This would reduce the likelihood of future problems resulting from a decision made without complete information on possible consequences.

3. A legislative solution to the current regulatory debate on competition might be warranted even if there were not initiatives headed for the public ballot. The APUC has dealt with this issue for six years without a resolution. The legislature could specify a time frame for a decision. This would ensure full consideration of the competition question and prompt resolution.

4. By fashioning a competitive structure that is less extreme than either GCI's or Alascom's initiatives, this approach might reduce the possibility of a court challenge.

5. A legislative solution implemented by the APUC could allow consideration of any impact of the interstate joint board proceeding on intrastate competition.

APPENDIX

Substantially Similar Legislation

Article XI, Section 4. Initiative Election. An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filling. If, before the election, substantially the same measure has been enacted, the petition is void. [Constitution of Alaska; Amendment approved August 25, 1970]

"It is clear that the legislative act need not conform to the initiative in all respects, and that the framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same.

"Upon reflection we have concluded that the legislature's discretion in this matter is reasonably broad. If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or if it requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative." [Warren v. Boucher. Pacific Reporter, 543 P.2d 731 (1975), p. 736]

HB 28, disclosure of surcharges imposed by owners of places that aggregate phone business,

April 18, 1990

TO TESTIFY;

Representative Boucher
APUC: Peter Solkolov (via teleconference)

NOTES;

1. APUC supports.

2. Phil researched, says it is a good bill.

3. It is virtually impossible to find who the AOS owners are given their fly-by-night nature.

Further Referral: Rules

House Vote: 36 Yeas
0 Nays

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : CSHB 28 (Finance)
PUBLISH DATE :

FISCAL NOTE

REQUEST:

Revision Date:
Title : "An Act relating to telecommunications alternate operator service."
Sponsor : House Finance
Requestor : House Rules

Agency Affected : Department of Law
BRU : Consumer Protection
Components : Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard L. Pegues

Prepared by : Richard L. Pegues, Director
Division : Administrative Services
Phone : 465-3672
Date : March 29, 1990

Richard L. Pegues / FOR
Approved by Commissioner : Douglas B. Baily, Attorney General
Agency : Department of Law
Date : March 29, 1990

Distribution (by preparer) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 28 (Finance)

This bill amends As 42.05 to provide for the regulation of alternate operator service under the Alaska Public Utilities Commission Act. The bill defines alternate operator service to mean a connection to intrastate or interstate long-distance telecommunications facilities from a nonresidential location in the state including a hotel, motel, hospital, or customer-owned pay telephone, or a place where business from consumers is aggregated, by a person that does not own any of the telecommunications facilities being connected by the service.

The bill also amends the state's Unfair Trade Practices and Consumer Protection Act (AS 45.50.471-561) to require that a person may not provide an alternate operator service without disclosing to the consumer before a charge is incurred the cost of the service provided by the person and the identity of the person providing those services. A violation of the disclosure provision would constitute an unfair or deceptive practice or act under AS 45.50.471. The bill provides a statutory presumption that actual damages to the consumer are equal to the cost of the service provided plus $200, and any additional damages must be proved.

The addition of this practice would increase the number of unfair or deceptive practices, made unlawful by the state's Unfair Trade Practices and Consumer Protection Act, from 28 to 29. Information is not available to the department that would indicate the number of violations that might occur if the bill is enacted and it is therefore not possible to predict a fiscal impact. As a practical matter, the small size of Department of Law's consumer protection section would probably prevent it from taking any significant enforcement action against violations of this nature. Because of this factor, the section's limited resources must be devoted to more serious violations.

To a great extent, however, the bill's provisions are somewhat self-regulating because of the private right of action provided to consumers by AS 45.50.531. Either disclosure is made or it is not, and if it is not there would be prima facie evidence of a violation.

CS FOR HOUSE BILL NO. 28 (Finance)

This bill places certain requirements on "alternate operator services" that do business in Alaska. An alternate operator service or "AOS" is basically a company that buys time from a long distance carrier and then charges consumers for the use of that time when the consumer makes a call from a location where the "AOS" is in service (typically a hotel, motel, hospital or other entity which has contracted with the "AOS").

The problem occurs when the consumer receives his or her bill for the call. The charges incurred can be many times what they would have been had the consumer been calling on a regulated carrier such as GCI or ALASCOM. These alternate operator services have been in business for some time in the Lower 48 and the FCC and Congress have received thousands of complaints from consumers who have suffered "check out shock", where they have been presented with an outrageously high bill for the phone calls.

House Bill 28 (Finance) requires any "AOS" doing business in Alaska to register and file tariffs with the Alaska Public Utilities Commission, and to disclose the cost of the service prior to the time the consumer uses the service. If those charges are not disclosed, the "AOS" may be charged with an "unfair or deceptive trade practice" and the consumer is presumed under the law to have been damaged in the amount of $200 plus the charges incurred.

THE AMENDMENT.

The amendment being offered will require all hotels, motels, hospitals, and other "aggregators" of consumer calls, whether or not they have contracted with an "AOS", to disclose any surcharges to local or long distance calls made by consumers. The reason for the amendment is that, at this point in time, there are few, if any, "alternate operator services" doing business in Alaska; there are, however, a number of hotels, motels and other "aggregators" adding surcharges to the actual cost of phone calls and not disclosing those surcharges prior to the time the consumers place the calls.

All the amendment requires is disclosure. There is no requirement that hotels or other aggregators register or make any filings with the APUC. The amendment would change only that part of the bill dealing with Title 45 - the Consumer Protection statutes. The disclosure can be made by posting a sign near the telephone or by any other reasonable means, oral or written.

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON

February 16, 1990

OFFICE OF
THE CHAIRMAN

Honorable Douglas B. Bally
Attorney General of Alaska
P.O. Box K, State Capitol
Juneau, Alaska 99811-0300

Dear Mr. Attorney General:

The activities of alternative operator service (AOS) providers have long been a matter for concern in both the State and Federal arenas. This letter is intended to alert you to the efforts of the Federal Communications Commission with regard to AOS providers.

Last February, in an attempt to address consumers' concerns about AOS, the Commission's Common Carrier Bureau ruled on a complaint against five AOS companies. In that order, the Bureau directed the AOS providers to stop blocking calls to other interexchange carriers, unless the AOS provider obtained a waiver on the grounds that such blocking was necessary to prevent fraud. In addition, the Bureau required identification of the AOS provider on or near the phone, as well as "call branding" -- oral identification of the service provider to the caller --and disclosure of rates. Finally, the Bureau directed that "call splashing" -- an AOS practice involving transfer of the call to another interexchange carrier at a location other than the caller's so that the caller's bill reflects a charge from the distant point -- be terminated to the extent technically feasible.

The Commission's previous actions have not satisfactorily addressed my concerns regarding the activities of AOS providers. I have directed the Common Carrier Bureau staff to draft a notice of proposed rulemaking containing regulations applicable to all operator service providers and call aggregators, such as hotels, airports and hospitals, that have a relatively "captive" clientele. The rulemaking will be an opportunity to gather information about problems experienced in the States and about State efforts to prevent abuses by AOS providers. For these reasons, I hope that the State Attorneys General and other State officials will participate in the AOS rulemaking. In particular, I would be interested in learning about what remedies are available to consumers under State consumer protection or other laws.

The core of the problem is that a business with a captive group of users enters into an arrangement with an AOS provider. In many instances the AOS provider, at most, provides a service quite similar to what many others provide, but increases significantly the price charged the customer. The customer may be deprived of the information needed to make a purchase decision or prevented from accessing a competing service provider. The AOS provider and the business then share the resulting profit. It is quite possible that such an arrangement is in violation of one or more state consumer protection laws.

Thank you for your interest. I appreciate any assistance you may be able to give us in our ongoing efforts to enable consumers to obtain the best possible telecommunications services.

Sincerely,

Alfred C. Sikes
Chairman

Congressmen Ask FCC To Monitor Services

BY KATHLEEN KILLETTE

WASHINGTON — House lawmakers last week called for more FCC involvement in policing the burgeoning market for so-called "alternative" operator services.

Members of the House Telecommunications Subcommittee blasted the practices of operator service providers, who have been hounded by more than 2,000 consumer complaints to the FCC. The complaints generally involve the providers' failure to notify callers of their rates and/or identities, blocking access to other carriers, and charging for incomplete calls.

AT&T's director of product management, Gerald Hines, noted that AT&T is considering whether to introduce an "800" toll-free number to combat the call-blocking problem.

Operator service providers typically compete for the long distance traffic generated by "call aggregators"—such as hotels and hospitals—that make coin-operated and non-coin-operated phones available to their patrons.

Rep. Markey: Some providers act like 'muggers.'

Currently, certain call aggregators who have chosen an operator service provider block callers' access to other carriers' "1-0-NXX" dialing codes. For example, a caller wanting to use AT&T must dial 1-0-288 and then the area code and number. AT&T sources said an 800 code could solve that problem because the aggregators typically do not block access to 800 numbers.

Comparing the practices of some operator service providers to "muggers," House Telecommunications Subcommittee Chairman Edward Markey, D-Mass., voiced strong support for legislation written by Rep. Jim Cooper, D-Tenn.

The bill would require operator service providers to post written notices about rates, answer callers' questions about rates and complaint procedures, refrain from blocking access to other carriers, refrain from charging for incomplete calls, and charge "just and reasonable" rates.

But FCC Common Carrier Bureau Chief Gerald Brock told the panel that the legislation may "tie the commission's hands."

FCC Action Inadequate

Last July, two consumer groups—the Washington-based Telecommunications Research Action Council (TRAC) and San Francisco-based Consumer Action—filed a complaint against five operator service providers.
(Operators, Cont. on Page 63)

Reps. Blast Operator Services

(Operators, Cont. from Page 12)

The FCC issued an order in February stating that it did not have enough evidence to act on the groups' claims that the companies' rates were unreasonable. But the FCC ordered all operator service providers to identify themselves to callers, post their rates and refrain from call blocking.

These actions, however, have not appeased the agency's critics. "I remain unconvinced that the market alone will solve the problem of overcharging," Markey said.

Brock said the burden of proving that an operator services' rate is unreasonable rests on the consumer, who can complain to the FCC.

Tennessee Public Service Commissioner Steven Hewlett disagreed, saying that making the consumer prove that a rate is unlawful is "in itself, unjust and unreasonable." Markey then told Brock that the FCC "has a higher responsibility" to ensure that rates are reasonable.

Cooper called the FCC "distressingly naive" in its reliance on market forces to hold rates down.

Executives from two competing operator service providers—National Telephone Services Inc., Rockville, Md., and International Telecharge Inc., Dallas—noted that the industry is still in its infancy.

Brad Mutchelknaus, secretary and general counsel of NTS, said that while the legislation's goal's are "laudable," the bill fails to recognize that most operator service providers are given technically inferior access to telephone companies—which can result in charges for incomplete calls and other problems.

David Wagenhauser, staff attorney for TRAC, pointed out that on April 1, the Bell companies began sending out ballots to let call aggregators choose carriers other than AT&T to provide operator services for Bell-owned pay phones. Because these phones will be available to competing operator service providers, "the April Fools' Day joke could be on consumers" unless Congress passes legislation, he said.

recd 4-17-90

Clyde Bright
PO Box 962
Sitka, AK 99835
747-3939 work

Senator Pat Pourchot
Senate State Affairs

Re: H.B. 28

Dear Senator Pourchot;

H.B. 28 is a good bill that will save alot of your fellow Alaskans grief. Undisclosed phone charges nearly got me into jail for "defrauding a inn keeper" when I refused to pay them at a hotel here in Sitka.

The charges were uncalled for, and unreasonable. I was charged up to $2.81 for calls that never went through, (no one answered), the highest rates no matter the time of day, and as oprator assisted calls, when all calls were direct dialed.

Surcharges were added on to this at up to 168%!

Because I refused to pay I was evicted and taken to court. After a court battle of a little over one year I won the case and didn't have to pay. The Superior Court ruled that undisclosed surcharges were illegal and didn't have to be paid.

However that hotel is still doing the same thing, as well as most others in the state - to different degrees.

The state now needs a law to go along with what the courts have already said. Please have a hearing on this as soon as possible so it can go to the floor for a vote before the end of this session.

The people of your state need your help on this, as do the thousands that visit here each year. They need to be protected and informed, I will be looking for your quick action on this bill soon.

Thank You Clyde Bright

CS HB 28

Representative H.A. "Red" Boucher

Chairman House Committee on State Affairs • Special Committee on Telecommunications
Member Labor & Commerce Committee • Chairman Commission on the Future of the Permanent Fund

CS HB 28 (FIN) - ALTERNATE OPERATOR SERVICES

SPONSOR STATEMENT

This bill places certain requirements on "alternate operator services" that do business in Alaska. An alternate operator service or "AOS" is basically a company that buys time from a long distance carrier and then charges consumers for the use of that time when the consumer makes a call from a location where the "AOS" is in service (typically a hotel, motel, hospital or other entity which has contracted with the "AOS").

The problem occurs when the consumer receives his or her bill for telephone calls. The charges incurred can be many times what they would have been had the consumer been calling on a regulated carrier such as GCI or ALASCOM. These alternate operator services have been in business for some time in the Lower 48 and the FCC and Congress have received thousands of complaints from consumers who have suffered "check out shock", where they have been presented with an outrageously high bill for the phone calls. The Chairman of the Federal Communications Commission sent a letter to the Attorney General of Alaska on February 16, 1990 to alert Alaska to the efforts of the FCC regarding AOS providers.

CS for House Bill 28 (Fin) requires any "AOS" doing business in Alaska to register and file tariffs with the Alaska Public Utilities Commission, and to disclose the cost of the service prior to the time the consumer uses the service. If those charges are not disclosed, the "AOS" may be charged with an "unfair or deceptive trade practice" and the consumer is presumed under the law to have been damaged in the amount of $200 plus the charges incurred.

The bill also requires <u>all</u> hotels, motels, hospitals and other "aggregators" of consumer calls, whether or not they have contracted with an "AOS", to disclose <u>any surcharges</u> to local or long distance calls made by consumers. At this point in time, there are few, if any, "alternate operator services" doing business in Alaska; there are, however, a number of hotels, motels and other "aggregators" adding surcharges prior to the time the consumers place the calls.

Regarding these surcharges, all the bill requires is <u>disclosure</u>. There is no requirement that hotels or other aggregators register or make any filings with the APUC. The disclosure can be made by posting a sign near the telephone or by any other reasonable means, oral or written.

Room 102 Capitol • P.O. Box V • Juneau, Alaska • 99811 • (907) 465-4931
3111 C Street • Suite 445 • Anchorage, Alaska • 99503 • (907) 561-7624

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

1016 WEST 6TH AVENUE
SUITE 400
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-6222

ALASKA PUBLIC UTILITIES COMMISSION

COMMENTS ON HB 28

April 16, 1990

The Commission supports the CS for HB28 and the Legislature's initiative to address alternate operator services (AOS). However, the bill would be improved if language were added requiring that AOS providers route all emergency calls in the fastest way to the proper local emergency service provider.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M April 10, 1990

SUBJECT: Sectional analysis of CSHB 28 (Fin) am (Telecommunications alternate operator services)

TO: Representative H.A. "Red" Boucher

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Sec. 1 sets out legislative findings concerning the provision of long distance telephone service.

Sec. 2 requires an alternate operator service to register and file tariffs with the Alaska Public Utilities Commission (APUC) before operating in the state. Subsection (b) requires the alternate operator to identify the company providing service and the cost of the service before a consumer incurs a charge for the call and to transfer the call to another carrier if requested. The alternate operator service is required to post a notice of the consumer's right to have access to the consumer's preferred carrier. Subsection (c) defines "alternate operator service."

Secs. 3 - 5 include failing to disclose the charge for an alternate operator service or for surcharges imposed by owners of places where telephone business is aggregated as unfair trade practices.

Sec. 3 adds a failure to comply with AS 45.50.473, enacted by sec. 4 of the bill, to the list of unfair or deceptive acts or practices and unfair methods of competition.

Sec. 4 adds the requirements established in AS 42.05.325, enacted by sec. 2 of the bill, as requirements for complying with the unfair trade practices law of the state. Subsection (c) establishes the amount of presumed damages.

Sec. 5 excludes the content of secs. 3 and 4 from the general exemption in the unfair trade practices act for subjects that are regulated by state boards or commissions, including the APUC.

If I may be of further assistance, please advise.

TC:pl
WKP4/050

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER HB 34

SPONSOR Donley

BILL TITLE 2-yr. residency requirement for PFD, ALB

DATE REFERRED 4-6-89

HEARING SCHEDULED 4-24-89

FISCAL NOTE PREPARED ✓

SPONSOR CONTACTED Ginger

INTERESTED PARTIES CONTACTED

Barbara Bathony

✓Jim Chase, Pioneers' Benefits, DOA 4400

~~[illegible]~~

✓Erwin Jones, PFD, DOR 2323

OPAG

Tam Cook ✓ John Gaugune, Legal 2450

Ron Lorenson

will call ✓ ~~Bob [illegible]~~, AG 3600

✓Robert Newton 586-2010

✓Ron Zobel 276-3550

No - out of staff will call Mark Sandberg 276-6363

No - in court Bob Wagstaff 277-8611

OTHER ✓Bob Pavitt, AARP 586-2066

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HB 34

House Judiciary 2/7/89
House Judiciary 2/20/89
House Judiciary 3/3/89
House Judiciary 3/6/89
House Judiciary 3/7/89

SENATE COMMITTEE REPORT

JUD
FURTHER FIN

4/6/89 DATE TURNED INTO OFFICE 4-24-89

Mr. President:

STATE AFFAIRS Committee considered CSHB 34 (FIN)

establishing durational residency requirements, not to exceed two years, for receipt of the permanent fund dividend and receipt of benefits under the longevity bonus program; efd

and recommended

[ ] replace with ___ CS ______) [ ] same title
[ ] or adopt ______ CS ______) [ ] new title
[ ] technical title change (HB only)

[ ] attached amendment(s) and

[ ] ______ letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

[X] individual recommendations

[ ] further referral to ______

FISCAL NOTE(S) [ ] zero [ ] fiscal impact [ ] appropriation no FN
[ ] new [ ] updated [X] previous
[ ] same as previous fiscal note(s) published ______

MEMBERS SIGNING DO PASS	OTHER RECOMMENDATIONS
[signature]	
[signature]	

[signature] no rec

Chairman signature and recommendation

[ ] Committee Backup attached

STATE OF ALASKA
1989 LEGISLATIVE SESSION

Bill Version: CSHB 34 (FIN)
Publish Date:

FISCAL NOTE

REQUEST:

Revision Date: March 21, 1989
Title: * See below

Agency Affected: Administration
BRU: Longevity Bonus

Sponsor: Donley
Requestor: State Affairs Committee

Components: Administration, Grants

* An Act relating estabiishing durational residency requirements, not to exceed two years, for receipt of the permanent fund dividend and receipt of benefits under the longevity bonus program; and providing for an effective date

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	(210.0)	(1080.0)	(120.0)	(120.0)	(120.0)
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	(210.0)	(1080.0)	(120.0)	(120.0)	(120.0)
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	(210.0)	(1080.0)	(120.0)	(120.0)	(120.0)
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	(210.0)	(1080.0)	(120.0)	(120.0)	(120.0)

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

See attached

Prepared By: James H. Chase
Division: Pioneers' Benefits

Phone: 465-4400
Date: 3/21/89

Approved by Commissioner: John M. Andrews
Agency: Department of Administration

Date: 3/21/89

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
cc: "House Bills" Binder

1/7K2/032107-9/1&3

Rev: 12/88

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 34 (FIN)

In order to project the fiscal impact of the passage of CSHB 34 some assumptions had to be made. These assumptions were:

1) That the number of applicants for the Longevity Bonus who have a minimum of one year of residence in the state will remain at the same ratio to the total number of applicants.

   Rationale: This ratio has remained constant for the past two years.

2) That the ratio of applicants for the Longevity Bonus who have a minimum of one year of residence in the state to the total number of applicants will remain at one in five.

   Rationale: This is the ratio demonstrated in the last two years.

3) That the passage of CSHB 34 will impact only those applicants with less than two years of residence the year following its passage.

   Rationale: Those applicant who would otherwise be qualified would have to wait another year for their applications to be accepted. Those who learn of the passage of CSHB 34 who do not have the one year of residence would apply two years after its passage and continue to do so in the following years.

4) That the average number of applicants for the Longevity Bonus who have a minimum of one year of residence in the state is 40 per month.

   Rationale: Historical trend analysis result.

With these assumptions, the following calculations were made. Each month the number of applicants who only have the minimum of one year in the state is multiplied by $250 to compute the projected savings. The first month would be 40 times $250, the second month it would be 80 times $250 and so forth until the original "40" became eligible by having the minimum of two years in the state a year after the effective date of the bill. From that point, the amount of savings would decrease until all of those originally affected would have become eligible. The savings then would level out at the initial monthly rate of 40 one year minimum applicants times the $250.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 34 (Fin)
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date: March 21,1989
Title: "An Act establishing durational residency requirements..."
Sponsor: House Judiciary
Requestor: House Finance

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL				30.0	30.0	
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	30.0	30.0	-0-

CAPITAL						

REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	30.0	30.0	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard L. Pegues, Director
Division: Administrative Services Division
Phone: 465-3672
Date: March 21, 1989

Richard L. Pegues /FOR/

Approved by Commissioner: Douglas B. Baily, Attorney Gen.
Date: March 21, 1989
Agency: Department of Law

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 34 (Fin)

The committee substitute for HB 34 adds legislative findings, and it also provides for reduced durational residency requirements if a court finds that the bill's 24 month durational requirements are invalid. Specifically, Sections 3 and 6 appear to delegate the legislature's law making authority to the court, if a court finds either a two year or a one year residency requirement invalid. In the case of the Longevity Bonus Program, this delegation could conceivably result in a shorter durational residency requirement than currently exists. However, these changes do not alter the fact that state laws containing lengthy durational residency requirements come under legal attack in Alaska. Consequently, the fiscal impact noted in the Department of Law's fiscal note of February 8, 1989, are still appropriate. The department's previous comments regarding that impact are repeated below.

Section 2 of this bill amends AS 43.23.005(a)(2) to increase the residency requirement, for an individual to receive the state's annual permanent fund dividend, from six consecutive months' residence to 24 consecutive months' residence immediately preceding April 1 of the current dividend year.

Section 5 of the bill amends AS 47.45.010(a) to increase the residency requirement, for an individual to receive the state's longevity bonus, from one year's residency to two year's residency immediately preceding an individual's application for the longevity bonus.

Historically, state laws containing lengthy durational requirements have come under legal attack in Alaska. The department anticipates that if the bill is enacted it will be challenged in the courts, on federal constitutional grounds. Fiscal note funds, in the amount of 30.0, are therefore being requested to pay for outside counsel legal scholar costs, to assist in the preparation and review of arguments that will be needed by the department to defend the state.

In addition to these costs, the department also has a hidden cost whenever it has to divert existing staff resources from other work to defend against durational residency lawsuits. As an example, the longevity bonus lawsuit, Vest v. State, cost the department about $70,000 in staff salaries and associated overhead expenses. Approximately ten weeks of attorney time was required to prepare for and defend the state at trial, on the constitutionality and retroactivity issues. Approximately eight weeks of attorney time was spent on the Alaska Supreme Court appeals, on the same issues. The average cost for the department's attorneys who handle this level of work, including normal office support costs, is $96.00 per hour. The department also paid Professor Walter Dellinger $8,200 to review and help prepare its briefs in the Vest trials. Professor Dellinger is a noted legal scholar and an expert on constitutional law. The department's outside legal expert costs in this matter would have been substantially greater had the case reached the U.S. Supreme Court. Because this particular dispute was settled on a request for a motion for summary judgement and did not require a trial on the facts, and because the dispute ended at the state supreme court level, the department's total costs were probably somewhat less than they would have been if the case had gone to the U.S. Supreme Court. Lastly, the costs, attorney fees, and interest that were awarded to the plaintiff by the court in Vest, and which were subsequently paid by the state, totalled $149,303.88.

Although an opinion cannot be offered, it should also be noted that if the bill becomes law and then is subsequently overturned by the courts, the state might be exposed to the payment of damages for any injuries or loss suffered by any classes of persons, as a result of the bill's enactment.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CS HB 34 (Fin)
PUBLISH DATE:

FISCAL NOTE

REQUEST

Revision Date: March 21, 1989
Title: Durational residency requirements for state benefit programs
Sponsor: Donley, Boucher, Boyer et al.
Requestor: House Finance

Agency Affected: Revenue
BRU: Permanent Fund Dividend Division
Components: Permanent Fund Dividend Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: See Attached

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division
Phone: 465-2323
Date: March 21, 1989

Approved by Commissioner: Hugh Malone for
Date: 3/21/89
Agency: Revenue

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Section 2 modifies one of the four general eligibility requirements to receive a permanent fund dividend. Under the law enacted in 1982, an individual must have been "a state resident for a period of at least six consecutive months immediately preceding April 1 of the current dividend year." For example, in addition to the other requirements, to be eligible for the 1990 dividend under current law, an individual must have been a state resident during the ELIGIBILITY PERIOD of October 1, 1989 through March 31, 1990. Section 2 extends the six month requirement to 24 months. In other words, the individual in the above example, in order to qualify for the 1990 dividend (see Section 9) must have been a state resident for the entire ELIGIBILITY PERIOD of April 1, 1988 through March 31, 1990.

Conservatively speaking, there are approximately 60,000 new dividend applicants each year. The first effect of Section 2 would be felt in 1990 when 60,000 new Alaskans who thought they would be eligible, find that they are not.

It will take considerable effort on the Department's part, in conjunction with the state demographer, to predict the final effect of this bill. Some of the factors to be considered include:

1) the length of the period (current proposal - 24 months);

2) the number of eligible individuals who leave Alaska each year;

3) the number of new person's arriving each year;

4) the percentage of individuals moving to Alaska who leave after six months, one year, eighteen months, etc.;

5) the seasonal distribution of new arrivals;

6) the relative birth rate of new arrivals versus individuals who have been in Alaska over two years; and

7) the reaction of military personnel to the new proposal, i.e. how do they respond to the new choice presented relative to overseas pay, overseas duty credit, etc.

The final effect on administrative costs of the Permanent Fund Dividend program would depend upon such factors as mentioned above. For the first two years, the additional costs would include informing, advising, and counseling the public; answering repeated questions as to their eligibility, plus the costs of denying the applicants who would file anyway and hearing their appeals; and the costs of assisting the Department of Law in defending the new requirement. These cost increases might be offset partially by the document processing cost savings of initially reducing the number of applicants by approximately 60,000.

Alaska Department of Revenue
Permanent Fund Dividend Division
CS HB 34 (Fin) Fiscal Note Analysis
March 21, 1989

The Department's primary concern with the bill is a clear policy call -- the likelihood of a successful legal challenge to the extended ELIGIBILITY PERIOD on constitutional grounds, i.e. durational residency tests, and the likelihood of a successful injunction request, prohibiting the Department of Revenue from distributing dividends in 1990 until the court has resolved any litigation. An effective date of 1990 does not allow much time for the courts to resolve any possible litigation, making an injunction more likely. A successful injunction request, preventing the timely distribution of the 1990 dividends, would have a definite negative effect on Alaska's economy. For those residents who depend upon the annual dividend for basic necessities, an injunction would have serious consequences. A successful injunction would also cause increased costs in the administration of the dividend program as we deal with the predictable outpouring of concern and complaints from 536,000 Alaskan residents. For the above reasons, the Department of Revenue strongly opposes changing the effective date to January 1, 1990. This issue should be carefully weighed before jeopardizing the existing dividend program.

Offered: 3/24/89
Referred: Rules

6-0107M

Original sponsors: Donley, Boucher,
Boyer, et al.

Sandra
comparison of different versions

PFD [6 mo] 24 mo
If invalid = 1 yr.
if invalid = longest allowed by law

ALB [1 yr] 2 yrs
(same)

grandfathers those who receive 1989

IN THE HOUSE BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 34 (Finance) see p. 5

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing durational residency requirements, not to exceed two years, for receipt of the permanent fund dividend and receipt of benefits under the longevity bonus program; and providing for an effective date."

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

* Section 1. FINDINGS. (a) The legislature finds with respect to the permanent fund dividend program that

(1) compared with other states, Alaska has one of the highest ratios of transients to permanent state residents;

(2) a significant number of people from other states come to Alaska to work in temporary or seasonal jobs or on short-term projects;

(3) because of the large number of transients it is very difficult for the state to determine whether a person is actually a resident with the intent to remain in the state;

(4) the permanent fund dividend program is unique to the state and provides generous benefits;

(5) the generous nature of this benefit program creates an inducement for people to claim residency inaccurately;

(6) a two-year residency requirement is a reasonable way to determine bona fide residency for the purposes of eligibility for this benefit program;

(7) a two-year residency requirement will not discourage migration to the state or otherwise interfere with interstate travel;

(8) this program does not involve a basic right under the state or federal constitutions or a basic necessity of life;

(9) a two-year residency requirement will more accurately indicate actual domicile and the intent to remain a resident than the requirement under current law; and

(10) the interest of the state in determining bona fide residence for purposes of this program is at least equal to the interest recognized in Andress v. Baxter, U.S. District Court for the District of Alaska, No. A82-307 Civ., September 8, 1983.

(b) The legislature finds with respect to the longevity bonus program that

(1) the longevity bonus is immediately payable to an applicant upon acceptance into the program;

(2) acceptance into the program is primarily based on a statement from the applicant that the applicant is a resident for the purposes of eligibility for this benefit program and that the applicant intends to remain a resident of the state;

(3) a two-year residency requirement will more accurately indicate actual domicile and the intent to remain a resident than the requirement under current law;

(4) the longevity bonus program is unique to the state and provides generous benefits;

(5) the generous nature of this benefit program creates an inducement for people to claim residency inaccurately;

(6) a two-year residency requirement is a reasonable way to determine bona fide residency for the purposes of eligibility for this benefit program;

(7) the two-year residency requirement will not discourage migration to the state or otherwise interfere with interstate travel;