

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672  
7515 SENATE LABOR & COMMERCE

*Harris & Hirschner*

Mr. C.L. Cloudy  
July 27, 1990  
Page Sixteen

liable in rem for damages caused by the negligence of the pilot.

The China v. Walsh, 74 U.S. (7 Wall.) 53, 19 L. Ed. 67

(1868). The Barnstable. 181 U.S. 464 (1900).

Washington, California (San Francisco Bay only), South Carolina, and Louisiana all have compulsory pilotage. As a consequence, it would appear that the master-servant declarations in their statutes make a substantive change of law. I have expressed previously, however, my own opinion that a statement extending liability for a pilot's negligence to a vessel and its owner and operator is a desirable and perhaps necessary feature of a system for limiting a pilot's liability. A substantive change of law to accomplish that would therefore be required by statute in compulsory pilotage states.

It seems to me that such a statutory change need not be in the form of a declaration of a master-servant relationship. A direct statement of vessel owner and operator liability without the master-servant language, such as that found in the Texas statutes, should be sufficient. There are some unfortunate, non-legal consequences to declaring a pilot to be a servant of the vessel and its owner and operator. Wherever possible, both the state and the pilots should be careful to promote the importance of the state pilot's independence of the vessel and its owner. When a state pilot boards a vessel, his primary obligation is to

*Harris & Kirchner*

Mr. C.L. Cloudy  
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protect the state, its citizens and its environment. Any unnecessary diminution of the state pilot's status should be avoided.

Federal Legislation Affecting Vessel Owner/Operator  
Liability for Pilot Negligence

An issue that has not yet been considered in any depth, to my knowledge, is the effect that the federal oil spill liability and prevention legislation may have on liability for pilot negligence. That legislation will soon be completed. It will provide that a vessel owner and operator, and perhaps the owner of the cargo, will be liable, up to the limits set in the bill, for damages from oil spills caused by the vessel owner or operator, its employees, agents, and others in a "contractual relationship, existing directly or indirectly, with the [vessel owner or operator]." Although the question has not been addressed during consideration of the bills in Congress, I would assume that a pilot, compulsory or non-compulsory, would be treated as a party in a contractual relationship with the vessel owner or operator.

If that will indeed be the case, the effect of the federal legislation would be to assure a deep pocket for oil spill damages caused by the acts of a pilot. As a consequence, there should be even less hesitancy over excluding or limiting a pilot's liability. Retaining pilot liability would provide no benefit to

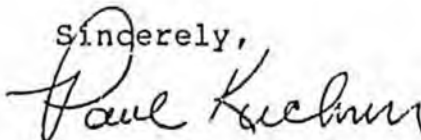
*Hurnus & Kirchner*

Mr. C.L. Cloudy  
July 27, 1990  
Page Eighteen

the public in terms of preserving useful sources for compensation. Once vessel owners are made responsible for a pilot's acts by this legislation, I am sure that they would much rather have restrained pilotage fees than pay higher fees required to cover a pilot's potential liability.

I hope that this information and these views are helpful.

Sincerely,

A handwritten signature in cursive script that reads "Paul Kirchner". The signature is written in dark ink and is positioned above the printed name.

Paul G. Kirchner

Enclosures  
PGK/aes

Licensing  
Provision of  
Ak. Marine  
Pilot Act

# STATE OF ALASKA

MAY 8 1992

WALTER J. HICKEL, GOVERNOR

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

P.O. BOX 110806  
JUNEAU, ALASKA 99811-0806  
PHONE: (907) 465-2534

### ALASKA BOARD OF MARINE PILOTS TELECONFERENCE AGENDA MAY 15, 1992 1:00 p.m.

On May 15, 1992 the Board of Marine Pilots will meet by teleconference to ratify their earlier decision of approving the Bylaws and Articles of the ALASKA COASTWISE PILOTS' ASSOCIATION, ALASKA MARINE PILOTS & DISPATCHING SERVICE, SOUTHEASTERN ALASKA PILOTS' ASSOCIATION, and SOUTHWEST ALASKA PILOTS ASSOCIATION. This teleconference is required because the regulations that govern pilot associations, Article 4 Recognition of Pilot Organizations ( 12 AAC 56.300 Standards for Recognition, 12 AAC 56.310 Qualifications for Recognition, and 12 AAC 56.320 Suspension or Revocation of Recognition), become effective May 13, 1992. While the board has already reviewed these bylaws and articles at the April 14-16, 1992 meeting and tentatively approved the bylaws and articles of each of the associations, their ultimate approval must be accomplished after the governing regulations are effective.

FRIDAY, May 15, 1992

#### MEETING OF THE BOARD BY TELECONFERENCE

	<u>TIME</u>	<u>TOPIC</u>	<u>LEAD PERSON</u>
1.	1:00 p.m.	Call to Order/Roll Call	Chairman
2.		Public Comment	Chairman
3.		Ratify the board's earlier decision to approve the Bylaws and Articles of ACP, AMP, SEAPA, and SWAPA.	Chairman
4.		Adjourn	Chairman

Note: Members of the public that desire to participate contact the Marine Pilot Coordinator at (907) 465 2548 prior to May 15, 1992.

# Alaska State Legislature

3111 C Street, Suite 150  
Anchorage, Alaska 99503  
(907) 561-2038



During Session:  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4993

Senator Drue Pearce  
District G

May 7, 1992

Alaska Board of Marine Pilots  
P.O. Box D  
Juneau, AK 99811-0800

ATTENTION: Capt. Karl Luck  
Marine Pilot Coordinator

Re: Alaska Marine Pilotage Act  
Transition Provisions

Dear Members of the Board:

It has come to our attention that a question has arisen about the transition provisions of the Alaska Maritime Pilotage Act and the effect of the Act on persons who currently hold marine pilot licenses issued prior to the effective date of the 1991 amendments to the Act. As chair and members of the Senate Labor and Commerce Committee in 1991, we are writing to the Board (with a copy to the Department of Commerce and Economic Development and the Attorney General's office) to clarify the intent of the legislature on this matter.

As we understand it, Assistant Attorney General Gary Amendola has advised the Board that licenses issued under the former statutory regime will expire on December 31, 1992, pursuant to 12 AAC 56.080, and that the holders of such licenses will not be issued new licenses unless they qualify under either AS 08.62.093 (deputy marine pilot license) or AS 08.62.100 (marine pilot license). That was not the intent of the legislature.

It was the intent of the legislature to ensure that all persons holding licenses issued under the former statutory regime would be "grandfathered" by allowing them to make a transition to the new statutory scheme. AS 08.62.100(b) was added to the Act to achieve this very objective. That subsection reads:

(b) Notwithstanding (a) of this section, a person who holds a marine pilot license of any type on the day before

May 7, 1992  
page 2

the effective date of this section shall, subject to continued eligibility for the license under this chapter and regulations adopted under this chapter, receive a renewable marine pilot license of the same type and subject to the same qualifications and endorsements as that which the person held on the day before the effective date of this section. A person who receives a license under this subsection may change the type of marine pilot license and the qualifications and endorsements attached to the license in accordance with regulations adopted by the board.

The legislative history of this subsection is set out in the minutes of a meeting of the Senate Labor and Commerce Committee on May 19, 1991, at which SCS CSHB 194 was discussed. We are sending a copy of those minutes to you for your reference.

At that meeting, the committee discussed the problem of providing a transition for the holders of licenses issued under the old regime. Senator Halford proposed the amendment that added the language now found at AS 08.62.100(b). A review of the minutes of that meeting makes it clear that the committee intended the amendment to ensure that people did not lose their licenses as a result of the new legislation.

Accompanying this letter is a copy of a memorandum dated April 29, 1992, from legislative counsel George Utermohle to Rep. Cheri Davis addressing this issue. Mr. Utermohle points out, starting with the second paragraph of his memo:

AS 08.62.100(b) provides that a person who held a marine pilot license of any type issued under AS 08.62 on the day before the current AS 08.62.100 took effect is eligible to receive a renewable marine pilot license of the same type without having to comply with the provisions of AS 08.62.100(a). . . . The Board of Marine Pilots is authorized to provide by regulation the means by which a person licensed under AS 08.62.100(b) may change the type of marine pilot license and the qualifications and endorsements attached to that license.

In order to provide for an orderly transition from the former marine pilot licensing system to the new system enacted by ch. 89, SLA 1991, a transition provision (sec. 30, ch. 89, SLA 1991) was added to allow the licenses issued under the former AS 08.62.100 to remain in effect for the remainder of the biennial period for which they were originally issued. . . .

May 7, 1992  
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Taken together, AS 08.62.100(b) and sec. 30, ch. 89, SLA 1991, provide that persons who held a marine pilot license on the day before the current AS 08.62.100 took effect may continue to provide marine pilotage services for the remainder of the period for which their license issued under the former AS 08.62.100 was issued and provide a grace period during which these persons may apply for and receive a new marine pilot license issued under the current AS 08.62.100(a) or (b).

(Footnotes omitted; emphasis added.)

Mr. Utermohle's memo to Rep. Davis goes on to explain the legislative history leading to the adoption of the language that now appears at AS 08.62.100(b).

At this juncture, we believe the most critical provision of AS 08.62.100(b) is the last sentence: "A person who receives a license under this subsection may change the type of marine pilot license and the qualifications and endorsements attached to the license in accordance with regulations adopted by the Board." This provision was intended to grant the Board broad authority to regulate the transition from the former statutory scheme to the new statutory scheme.

Under this provision, the Board has authority to convert any current license to either a deputy marine pilot license (AS 08.62.093) or marine pilot license (AS 08.62.100(a)), with appropriate qualifications and endorsements reflecting the qualifications and endorsements that are currently on the license. If the conversion is made prior to December 31, 1992, then such a license could simply be renewed pursuant to AS 08.62.120.

It appears that the persons most at risk at this time are those holding step one, step two, or channel licenses under the old regime, who cannot meet the requirements of AS 08.62.193(b) for deputy marine pilot licenses. Prior to December 31, 1992, when these licenses expire, the Board should convert these licenses to deputy marine pilot licenses with appropriate qualifications and endorsements. Subsection .120(b) gives the Board unlimited authority to regulate the renewal of deputy marine pilot licenses when they expire on December 31.

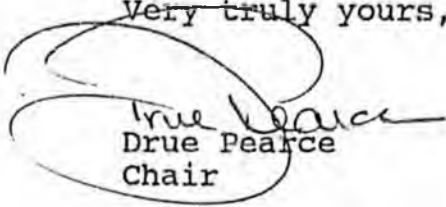
We urge the Board to adopt regulations establishing procedures and criteria for converting existing licenses to either deputy

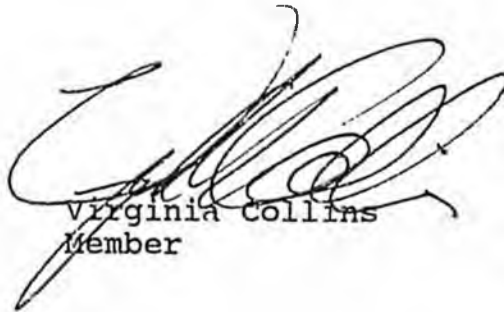
May 7, 1992  
page 4

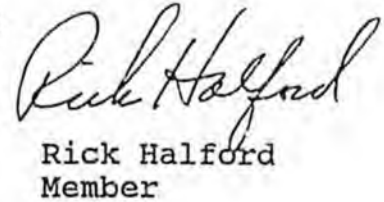
marine pilot licenses or marine pilot licenses before the end of this year, so that licensees can apply for renewal of those licenses under the new statutory regime. By doing so, the Board will be carrying out the intent of the legislature.

Thank you.

Very truly yours,

  
Drue Pearce  
Chair

  
Virginia Collins  
Member

  
Rick Halford  
Member

enclosures

cc: Department of Commerce and Economic Development  
Attention: Larry Galloway

Office of the Attorney General  
Attention: Gary Amendola

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

### MEMORANDUM

April 29, 1992

**SUBJECT:** "Grandfather" Licensing Provision of the Alaska Marine Pilotage Act (AS 08.62) (Work Order No. 7-LS2330)

**TO:** Representative Cheri Davis

**FROM:** George Utermohle *GU*  
Legislative Counsel  
Utermohle *GU*

You have asked what is the effect of the "grandfather" licensing provision (AS 08.62.-100(b)) of the Alaska Marine Pilotage Act (AS 08.62) as amended by ch. 89, SLA 1991.

AS 08.62.100(b)<sup>1/</sup> provides that a person who held a marine pilot license of any type issued under AS 08.62 on the day before the current AS 08.64.100 took effect is eligible to receive a renewable marine pilot license of the same type without having to comply with the provisions of AS 08.62.100(a). The license that such a person receives will be subject to the same qualifications and endorsements as were attached to the license under the licensing provisions that were in effect before ch. 89, SLA 1991 took effect. The ability of a person to renew a license issued under AS 08.62.-100 is subject to compliance with the licensing renewal requirements of AS 08.62.120, to the board's power to revoke licenses under AS 08.62.150, and similar provisions of AS 08.62. The Board of Marine Pilots is authorized to provide by regulation the means by which a person licensed under AS 08.62.100(b) may change the type of marine pilot license and the qualifications and endorsements attached to that license.

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<sup>1/</sup> AS 08.62.100(b) states:

(b) Notwithstanding (a) of this section, a person who holds a marine pilot license of any type on the day before the effective date of this section shall, subject to continued eligibility for the license under this chapter and regulations adopted under this chapter, receive a renewable marine pilot license of the same type and subject to the same qualifications and endorsements as that which the person held on the day before the effective date of this section. A person who receives a license under this subsection may change the type of marine pilot license and the qualifications and endorsements attached to the license in accordance with regulations adopted by the board.

In order to provide for an orderly transition from the former marine pilot licensing system to the new system enacted by ch. 89, SLA 1991, a transitional provision (sec. 30, ch. 98, SLA 1991)<sup>2/</sup> was added to allow the licenses issued under the former AS 08.62.100 to remain in effect for the remainder of the biennial period for which they were originally issued. Without this transition period, all marine pilots issued under the former AS 08.62.100 would be extinguished by the repeal of the authority under which they were issued. Until new licenses were issued under the current AS 08.62.100, there would be no one in the state who was able to provide marine pilot services required under AS 08.62. Such a result would have an adverse effect on marine commerce in the state and be contrary to the public welfare and safety that AS 08.62 seeks to promote.

Taken together, AS 08.62.100(b) and sec. 30, ch. 89, SLA 1991, provide that persons who held a marine pilot license on the day before the current AS 08.62.100 took effect may continue to provide marine pilotage services for the remainder of the period for which their license issued under the former AS 08.62.100 was issued and provide a grace period during which these person may apply for and receive a new marine pilot license issued under the current AS 08.62.100(a) or (b).

Senate CS CSHB 194 (Labor & Commerce) was passed by the legislature and became ch. 89, SLA 1991 when signed by the Governor July 1, 1991. As passed by the House, HB 194 repealed the former marine pilot licensing system under AS 08.62.100 and established a completely new system of licensing with significantly different requirements for eligibility for the license. The bill did not provide for "grandfathering" of the then current licensees.<sup>3/</sup> The then current licensees would

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<sup>2/</sup> Section 30, ch. SLA 1991 states:

TRANSITION; MARINE PILOT LICENSE. A marine pilot license issued under AS 08.62.100 before the effective date of sec. 12 of this Act shall be valid for the period for which the license was issued. (Emphasis added.)

<sup>3/</sup> Section 7, CSHB 194 (Finance) as it passed the House stated:

• Sec. 7. AS 08.62.100 is repealed and reenacted to read:

Sec. 08.62.100. QUALIFICATIONS FOR LICENSE. (a) The board shall issue a pilot license to a person if the person is a citizen of the United States, passes the written examinations given by the board, qualifies under regulations adopted by the board, and meets the qualifications in (b) - (c) of this section.

(b) In addition to the qualifications in (a) of this section, an applicant may not receive a license under this section unless the applicant provides documentation to the board of the following service:

(1) one year of service as a master of ocean or coastwise vessels while holding a license as the master of ocean steam or motor vessels of any gross tons;

(continued...)

have had to qualify for new licenses under the new licensing system by December 31, 1994 or lose their marine pilot licenses until they did qualify.<sup>4/</sup>

HB 194 as it passed the House was significantly revised in the Senate Labor and Commerce Committee. One of the last changes made by the Senate Labor and Commerce Committee before it passed the bill out of committee on May 19, 1991 was to amend the bill to provide for the "grandfathering" of the then currently licensed licensees by continuing the then current licensing system for those licensees. This amendment made by the committee incorporated the present language of AS 08.62.100(b) and replaced the former language of the marine pilot license transitional provision with the current language (sec. 30, ch. 89, SLA 1991).

In conclusion, AS 08.62 (Alaska Marine Pilotage Act) as amended by ch. 89, SLA 1991 provides that a person may obtain a renewable marine pilot license in either of two ways; by qualifying under AS 08.62.100(a) or by qualifying under AS 08.62.100(b). The transitional provision contained in sec. 30, ch. 89, SLA 1991 does not limit the ability of qualified individuals to receive and renew marine pilot licenses under AS 08.62.100(b), but instead merely serves to provide for a smooth transition from the licensing system under the former AS 08.62.100 to the licensing system under the current AS 08.62.100.

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<sup>3/</sup>(...continued)

(2) two years of service as a master of freight on a towing vessel while holding a license as the master of freight and towing vessels of not less than 1,600 gross tons;

(3) two years of service as a chief officer on ocean or coastwise vessels of not less than 1,600 gross tons while holding a license as the master of ocean steam or motor vessels of any gross tons;

(4) two years of service as commanding officer of United States government vessels of not less than 1,600 gross tons while holding a license as the master of ocean steam or motor vessels of any gross tons; or

(5) three years of experience as a professional pilot during which the candidate was actively engaged in piloting.

(c) An applicant for a license under this section shall possess an endorsement of first class pilotage on the applicant's United States Coast Guard license with no tonnage restrictions.

<sup>4/</sup> Section 16, CSHB 194 (Finance) as it passed the House stated:

\* **Sec. 16. TRANSITION; PILOT LICENSE.** (a) A pilot license issued under AS 08.62.100 before the effective date of this Act shall be valid for the period for which the license was issued and may be renewed until December 31, 1994, without examination upon payment of the pilot license fee.

(b) A person may not hold a pilot license after December 31, 1994, without satisfying the requirements of AS 08.62.100, as amended by sec. 7 of this Act.

(c) Notwithstanding (a) - (b) of this section, a person licensed under AS 08.62 who applies for a change, amendment, or an endorsement for the person's pilot license must qualify for the change, amendment, or endorsement under AS 08.62, as amended by this Act and implementing regulations adopted by the Board of Marine Pilots.

Representative Cheri Davis

April 29, 1992

Page 4

If I may be of further assistance, please advise.

GU:pl:gc  
92-310.plm

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

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JUNEAU, ALASKA 99811  
907-465-3800

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.

M. an Nimwegen

*May 19, 1991 Senate Labor & Commerce*

*4:20pm*

Small  
Telephone  
Deregulation

May 3, 1991

Drue -

RE: Small Telephone Utilities

It took a couple of days but I was finally able to get a copy of CSHB 286(CRA). It is almost opposite of what Larry Markley had described to me.

Rather than deleting Sec 2, Jurisdictional Cost Adjustments; Sec 3, Local Exchange Telephone Utility Rate Changes; and Sec 5, 2500 line exemption; Sections 2 & 3 are actually the CS.

Do you still want me to have an ~~an~~ S L&C version introduced?

*yes - like House CS.*

*Red*

April 19, 1991

Drue -

HB 286

RE: Proposed Regulation of Small telephone Utilities

Larry Markley visited me today. Jacko, the house sponsor, wants sections 2, 3, & 5 deleted. Nusiak Telephone Association withdrew support.

A house CS is being prepared.

In regard to your concerns:

1. I sent out memo to all committee members on 14th in regard to sponsorship and have received no responses.

2. Boucher bill attached.

Commissioner Don May of APUC says that they have been busy but did not consider this a high priority. He indicated that final regulations should be in place by Sept. 91.

3. Simplified regulation exists for the electric industry as follows:

An 8% rate variance for 1 year and a total of 20% over 3 years can be accomplished without commission approval. They must present documented evidence justifying the increase on a quarterly or semi-annual basis. The notification requirements are greatly simplified under this procedure.

4. Spoke with Ron Duncan. He said that Iowa does have deregulation. The driving force for its successful operation and keeping the rates from rapidly rising is the threat of competition. Ron would support limited rate flexibility and open competition. The regulations do contain a flaw according to Ron. There is an allowance for rate change without review when ever the accounting rules change. It does not matter whether the rule change was major or minor.

Ron definitely would like to speak with you prior to either a L&C or Pearce bill being introduced.

Red

# Alaska State Legislature

Senator Drue Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Ellason  
Senator Rick Halford  
Senator Jay Kerttula



WHILE IN JUNEAU  
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(907) 465-3844

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ANCHORAGE, ALASKA 99504  
(907) 561-2018

## SENATE LABOR AND COMMERCE COMMITTEE

TO: Members  
Senate Labor & Commerce Committee

FROM: Rod Mourant, Committee Aide *Rod*  
Senate Labor & Commerce Committee

DATE: April 14, 1991

RE: Simplified Regulation - Telephone Utilities

The Chair has been requested to introduce this legislation as a Senate Labor & Commerce Committee bill. If you would prefer an alternate course of action please let me know by Wednesday, April 17th.

Thank you.

Attachment

PHONE	TO	Drus	DATE	4/12	TIME	2:30	AM	<input checked="" type="radio"/>	PM				
	FROM	Bruce Kendall	AREA CODE		NO.	x 3800							
	OF		EXT.										
MESSAGE	Will be happy to help w/ deregulation of small telephone utilities.												
	Rod. Gyi												
			SIGNED										
PHONED	<input type="checkbox"/>	CALL BACK	<input type="checkbox"/>	RETURNED CALL	<input type="checkbox"/>	WANTS TO SEE YOU	<input type="checkbox"/>	WILL CALL AGAIN	<input type="checkbox"/>	WAS IN	<input type="checkbox"/>	URGENT	<input type="checkbox"/>



From the desk of:  
**Rod Mourant**

Senator Drue Pearce's Office  
P.O. Box V  
Juneau, AK 99811  
Capitol, Room 101  
(907) 465-4993

4/18

- Row Duncan → 265-5676  
CONGRATS -

WANTS TO DISCUSS  
BEFORE YOU INTRO.



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: GCI Fax: 265-5676

Attn: RON DUNCAN Phone: \_\_\_\_\_

Transmitted by: ROD MOURANT Date: 4-18-91

Re: HB 286

Comments: F9E

*Red*

Number of Pages: 7 Including Cover Sheet.



① Fax the letter  
+ write paper  
to Roy at GEI.

---

② I have the 168 sheet -  
from Stanley + Baker.  
I need to figure out  
whether to introduce.  
Ask me about it.

Rod

- 4/14
- ① let committee know we've been asked to introduce this as a committee bill. any one opposed?
  - ② get copy of Beucher's bill from last year — call APUC + find out why there isn't a docket yet.  
276-6222  
12/3/17 WCB
  - ③ make sure economic deregulation does exist in electric industry.... is the 8% what they have?
  - ④ Iowa apparently also deregulated so that anyone could compete... section 3.

COMM MAY -

PUBLIC MTGS :

11/90

1/71

REG COMMENTS :

30 DAY NEXT WK

ON BOTTOM OF FILE

OUTSIDE DATA SENT  
FOR IMPLEMENTATION

Try to find Ron Duncan  
Friday? ask him to explain  
to you the Iowa law.

~~Does~~ Does he have a way to  
get the Iowa info for us?  
A copy?

---

We want to be very  
careful with this one —  
so it doesn't become  
Alascom's vehicle to  
do mischief. Share this  
with Reed and Ed. We'll  
want a tight title.



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: GCI Fax: 265-5674

Attn: RON DUNCAN Phone: 265-5600

Transmitted by: ROD MOURANT Date: 4-13-91

Re: DEREGULATION

Comments: DRUE ASKED THAT I

FAK THIS TO YOU

Reaf

Number of Pages: 4 Including Cover Sheet.



TRANSMITTED 4/12



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: gci Fax: 465-5352

Attn: Dana + Ron Phone: \_\_\_\_\_

Transmitted by: \_\_\_\_\_ Date: \_\_\_\_\_

Re: Phone wars

Comments: This is the latest Finkley request - with Gordon Parker. Sections 1+2 are in response to the APUC's refusal to open a docket on last year's HB 168.

Rep Ivan will introduce in the House - Finkleslein will "fast track".

What does it do???

Hank Pratt has appeared - rumor is the guys in black have a plan to "get" gci.

Number of Pages: five Including Cover Sheet.



Call when you have a chance.

April 6, 1991

Drue -

Re: Prison Industries, etc.

This article touches on prison industries, state printing, and could be applied to the state "Bypass Network" for long distance telephone service.

I met with Jim Morrison and Frank Biondi on the "bypass" yesterday. They thought Comm. Keller would support privatization but that some of his middle management might try to protect bureaucracy.

They are also sending down proposed legislation dealing with a problem in last years HB 168, Simplified Regulation.

A handwritten signature in cursive script, appearing to read "Rod".

## OPINION

# Chamber of commerce could learn thing or two from Hames

JUNEAU — The Juneau Chamber of Commerce goofed recently. Many chambers do occasionally, as we've found, when some member encourages action before thinking. The Juneau chamber sent a letter to the membership scorching the new commissioner of corrections, Lloyd Hames, for promoting prison industries which might compete with private business.

Hames is a successful Sitka and Ketchikan businessman who recently completed a \$15 million shopping center in Ketchikan. He's turned the business over to his children to expand while he helps the Hickel administration solve some of state's problems. He's been an active chamber of commerce member longer than many of those in the Juneau organization.

Hames was a little upset to be slammed in a letter without anyone talking with him first. A friend in the chamber invited him to a meeting.

There are laws and regulations that were passed by the Legislature in previous years, which Juneau chamber members missed, that require the Department of Corrections to operate a prison industry program to keep inmates occupied. And state agencies are



Lew Williams Jr.

required to purchase products or services from Corrections as long as the service or product meets state standards.

Hames is following the law. The Juneau chamber doesn't like it, although why they suddenly took that stance is unclear. The law isn't new and Hames told those at the meeting, if they don't like the law, "Change the sucker."

He also said he would consider having Corrections wholesale to private retailers, but cautioned that also would take a change in the law. And he would meet with the chamber members any time to work out solutions to their problems with Corrections. Anyway, Lloyd

got their attention.

•••

When Hames was appointed head of Corrections, people wondered how he would do without any experience in running a prison system.

He is doing quite well.

He appointed an experienced person to handle the actual day-to-day operation of facilities, and he is tackling a neglected and inefficient business system.

Corrections spends more than \$5 million a year to feed inmates, but the purchases are without sensible diet considerations or savings possible with central purchasing. No one is better qualified to improve the purchase of groceries than Hames. He hasn't completed his examination yet, but he believes he can knock down the food bill by 20 percent and give the inmates a more healthy diet.

Our suggestion to the Juneau chamber is that they ask Hames to become a member of their organization and pass along a little of his business expertise.

•••

While the Juneau chamber members are urging their state senator, Jim Dun- can, to change the law on prison indus-



### PERSPECTIVE : JUNEAU

tries, they might look at another law that sneaked by the Juneau chamber last year. It is a law that requires state agencies to buy all of their printed material from Central Duplicating. Only if Central Dup can't do the job can the agency call for bids from private printers.

Central Dup is the administration's state printer with plants in Juneau and Anchorage. The Legislature and the University of Alaska also have their own printing plants.

Just what the government needs — four printing plants to keep up with the paperwork. But requiring agencies to purchase all printing through Central Duplicating appears to be a make-work

program for keeping printers on the state payroll. State agencies also pay Central Dup for its work at Central Dup's prices.

The state of California had that system for a while, commercial printers tell us. One day it was discovered the California state printer had built up an \$11 million surplus. The law was changed. California state agencies call for bids and use the state printer only when the state printer can do the work for more than 5 percent less than any private shop.

The Juneau chamber might want to encourage the Legislature to look into how the state buys many of its products and services, as well as the possible competition offered by prison industries.

The Anchorage Chamber of Commerce and similar groups may want to help the new administration by looking at many state operations which evolved when everybody had plenty of money to throw around. Government does not have it today and neither does private industry.

Lew Williams Jr. is former publisher of the Ketchikan Daily News.

# WORK ORDER REQUEST FORM

# W.O. [17] LS-1239

KEYWORDS: TELECOMMUNICATIONS ASSIGNED: Cramer

UTILITIES

REQUEST FOR: New Bill TAKEN BY: Cramer

SUBJECT: Local Exchange Phone Utility Reg

REQUESTED FOR: SC SL&C BY: Rod PHONE: 465-3844

DELIVER TO: Sen. Pearce, Attn: Rod, Cap 101

INSTRUCTIONS: Draft bill relating to regulation of local exchange telephone utilities. (Duplicate: HB 286)

<p>OBTAIN</p>	<p>SPECIAL DRAFTING INSTRUCTIONS ATTACHED [ ] AUTHORIZED TO CONFER WITH _____ _____ RETURN _____ _____ TO REQUESTOR APPROVED: <input checked="" type="checkbox"/> DIRECTOR, LEGAL SERVICES</p>
<p>REVIEWED _____ IN <u>04/17/91</u> DUE _____ TYPED: Draft _____ Date _____ Final _____ Date _____ PROOFED _____ DELIVERED _____</p>	<p>SPECIAL INSTRUCTIONS to TYPING/PROOFING _____ _____ Request for FINAL</p>

Finklestein  
wanted  
real  
person. HB 168

Two  
Two  
in House

Boucher  
passed . 90

These sections (1+2)  
would force the APUC  
to act.

1 - should say w/in  
12 months

Supposedly, the  
electric guys already  
have this.

---

#2 - Feds tell you how  
to allocate - but they  
rate case is required.

# 3 same as before

(Source research)

---

Zharoff. - is  
liberally construed  
language out.

## SECTIONAL ANALYSIS

Section 1: This section provides the procedure for local exchange telephone utilities to alter rates up or down within an eight per cent range without going through the complete rate case process. The language provides for consumer notification and a method for consumers to respond through the Alaska Public Utilities Commission (APUC). The range of eight per cent is in keeping with the figure already allowed in the electric industry.

Section 2. This section allows telephone utilities to adjust rates in compliance with regulatory orders. Under current procedures, when either the Federal Communications Commission (FCC) or the APUC orders shifts in cost allocations among the interstate toll, intrastate toll and local jurisdictions, the company must go through the rate case procedure just to comply with the required adjustments. This language would allow the shifts to take place without the expense of a rate case and the subsequent cost to consumers.

Section 3. This section would allow the very small telephone companies - those serving fewer than 2,500 customers - to become economically deregulated. They could adjust local rates without going through a rate case. The language provides consumers with the opportunity to bring a company back under full regulation. A company would remain under the authority of the commission for quality of service standards and territorial assignment. The section would allow the very small companies to adjust for cost variations without the added expense of a full-blown rate case.

Section 4. This section establishes an immediate effective date.

7-LS1207D  
Cramer  
4/24/91

CS FOR HOUSE BILL NO. 286 ( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES IVAN, Jacko

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulation of local exchange telephone utilities; and providing for an  
2 effective date."

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

4 \* Section 1. AS 42.05.381 is amended by adding a new subsection to read:

5 (f) A local exchange telephone utility may adjust its rates in conformance with changes  
6 in jurisdictional cost allocation factors required by either the Federal Communications  
7 Commission or the Alaska Public Utilities Commission upon a showing of

8 (1) the order requiring the change in allocation factors;

9 (2) the aggregate shift in revenue requirement, segregated by service classes or  
10 categories, caused by the change in allocation factors; and

11 (3) the rate adjustment required to conform to the required shift in revenue  
12 requirement.

13 \* Sec. 2. AS 42.05 is amended by adding a new section to read:

14 Sec. 42.05.383. LOCAL EXCHANGE TELEPHONE UTILITY RATE CHANGES. (a)

1 No more than once in a 12-month period, a local exchange telephone utility may adjust its  
2 monthly recurring local exchange rates and local private line rates by increasing the rates no  
3 more than eight percent or decreasing the rates no more than eight percent. The telephone utility  
4 shall publish notice of the change, as required by regulations adopted by the commission, at least  
5 60 days before the date of the change. The notice must include

6 (1) the reasons for the rate change;

7 (2) a description of the affected service; and

8 (3) an explanation of the right of a subscriber to petition the commission for a  
9 hearing on the rate change.

10 (b) At least 60 days before the date of the rate change, the local exchange telephone  
11 utility shall file with the commission a statement of intent to change rates containing

12 (1) a copy of the notice required by (a) of this section;

13 (2) the date of the most recent previous rate change made by the telephone utility;

14 and

15 (3) the increase in total gross annual local revenue expected to be produced by the  
16 proposed rates.

17 (c) The commission may require a local exchange telephone utility that proposes to  
18 change rates under this section to provide additional notice to subscribers of the utility as the  
19 commission considers appropriate. If the commission receives a petition or individual written  
20 requests from at least five percent of the subscribers of a local exchange telephone utility  
21 proposing a rate change under this section within 60 days after the notice was given to the  
22 subscribers, the commission shall review the proposed rate change. After notice to the local  
23 exchange telephone utility, the commission may suspend the rates during the pendency of the  
24 review and may reinstate the rates previously in effect.

25 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

ALASKA TELEPHONE ASSOCIATION

POSITION PAPER ON HB 286

"An Act Relating To Regulation Of Local Exchange Telephone Utilities"

Since the late 1970s, policymakers throughout the nation have been moving toward streamlined regulation and deregulation of local exchange telephone utilities. Varied versions of simplified ratemaking and deregulation have been implemented in different jurisdictions. In all cases, however, two commonalities exist: motivation and results.

A prime motivating factor in this trend has been cost. The cost of regulation has risen to the point which makes it a significant contributor to rate levels. States have found that establishing a simplified procedure and deregulating certain classes of companies reduces the cost of service, thereby reducing pressure on the pocketbooks of customers.

These states have also found that simplified ratemaking and deregulation omits the necessity of committing regulatory resources to the minor cases, freeing them to concentrate on the more complex procedures and policy issues before them.

Timeliness is another factor leading more and more states to restructure their regulatory procedures. The current system of regulation in Alaska, for instance, is modeled on that created by the federal government in 1934. It is a cumbersome, time-consuming process which ill fits an industry attempting to combine customer needs with the technology of the 1990s.

The most significant result is the level of customer satisfaction. Simply put, the experience has been that customers are comfortable with simplified ratemaking and deregulation.

Attached is a copy of the latest study of state action on simplified ratemaking and deregulation. The study was compiled by the National Regulatory Research Institute, the research arm of the National Association of Regulatory Utility Commisisoners.

The Alaska Telephone Association (ATA), a trade association representing the 22 local exchange telephone utilities authorized to provide service within the State of Alaska, has been concerned about the cost and timeliness of regulation for

many years. Our first discussion with Alaska Public Utilities Commission regarding methods of reducing the cost and increasing the efficiency of regulation occurred in 1984.

In 1990, at ATA's urging, the legislature passed overwhelmingly HB 168, calling on the APUC to implement a simplified rate filing procedure for local exchange telephone utilities. ATA had originally proposed language which described such a procedure in detail. However, at the request of the APUC, we agreed to a more general bill which left the details up to the APUC.

Almost a year later, HB 168 has not been implemented. No docket has been opened by the APUC. The only action taken thus far by the APUC was the summary rejection of proposed regulations filed by ATA in an effort to initiate the implementation of the legislative. Consequently, the legislature has before it HB 286.

#### SECTIONAL ANALYSIS OF HB 286

Section 1: This section allows the automatic applications of shifts in jurisdictional allocations resulting from regulatory decisions. Under current practice, if either the Federal Communications Commission or the APUC issues a decision requiring that costs previously allocated to either the interstate toll, intrastate toll or local jurisdictions be allocated to another jurisdiction, the company is required to file for subsequent commission approval to carry out the order.

This language would simply allow the company to accomplish the required shift without submitting to an additional complicated regulatory procedure.

Section 2: This language implements HB 168, passed by the legislature in 1990. It allows a local exchange telephone utility to adjust rates, up or down, by a maximum of eight per cent by notifying affected customers and the commission. The commission may investigate the adjustment upon receipt of requests by five per cent of the utility's customers. This concept is similar to that already in place for the electric industry.

As with any industry, costs of doing business for local exchange telephone utilities go up. This procedure will allow the utilities to accomplish modest adjustments and avoid the shock of large increases.

Section 3: The effective date of the legislation is immediate.

DRAFT BILL

For an Act entitled: "An Act relating to simplified regulation of local exchange telephone utilities; and establishing an effective date."

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

\* Section 1. AS 42.05.381(e) is amended by adding a new subsection to read:

(1) A local exchange telephone utility may adjust its monthly recurring local exchange rates and local private line rates within the range of an eight per cent increase to an eight per cent decrease by publishing notice of the change at least 60 days before the date of the change in the place and form as prescribed by the Commission. The notice must include:

(a) the reasons for the rate change;

(b) a description of the affected service; and

(c) an explanation of the right of the subscriber to petition the commission for a hearing on the rate change.

(2) At least 60 days before the date of the change,

the local exchange telephone utility shall file with the commission a statement of intent to change rates containing:

(a) a copy of the notice required by subsection (e)(1) of this section;

(b) the date of the most recent previous rate change affected by the local exchange telephone utility; and

(c) the increase in total gross annual local revenues that will be produced by the proposed rates.

(3) The Commission shall review a proposed change in the rates set by a local exchange telephone utility under this section upon receipt of a petition or individual requests aggregating at least five per cent of all affected subscribers. The Commission may require notice to ratepayers as it considers appropriate. If five per cent of affected subscribers so request within 60 days after the date notice of the rate change was sent to subscribers, the Commission shall review the proposed change. After notice to the local exchange telephone utility, the Commission may suspend the rates during the pendency of the review and reinstate the rates previously in effect.

\*Section 2. AS 42.05.381 is amended by adding a new subsection to read:

(f) A local exchange telephone utility may adjust its rates in conformance with changes in jurisdictional cost allocation factors mandated by either the Federal Communications Commission or the Alaska Public Utilities Commission upon a showing of:

(1) the applicable order mandating the change in the allocation factor(s);

(2) the aggregate shift in revenue requirement, segregated by service classes or categories, caused by the change in allocation factor(s); and

(3) the rate adjustment(s) required to conform with the mandated shift in revenue requirement.

\*Section 3. AS 42.05.711 is amended to add a new subsection to read as follows:

(m) Notwithstanding any other provisions of this chapter, any local exchange telephone utility serving fewer than 2,500 access lines is exempt from the provisions of this chapter other than AS 42.05.221 - AS 42.05.281, unless the affected utility or five per cent of its subscribers petition the Commission for regulation.

\*Section 4. This act takes effect immediately under AS 01.10.070 (c).

AS 42.05.711 is amended to add a new subsection (m) to read as follows:

Notwithstanding any other provisions of this chapter, any local exchange telephone utility serving fewer than 2,500 access lines are exempt from the provisions of this chapter other than AS 42.05.221 - AS 42.05.281, unless five per cent (5%) of its subscribers petition the Commission for regulation.



3/26/91

Steve -  
all the telephone guys  
are gone this week. I'm  
going outside tomorrow  
til next wed. (April 3).  
I'll get back to you  
then.  
THX,  
Larry M

**Markley & Company**  
Government Affairs Consulting

---

**Larry Markley**

**Washington, D.C.**

Route 1  
Box 130-A  
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ECONOMIC DEREGULATION OF SMALL TELEPHONE COMPANIES:

A BRIEFING PAPER -

Since the breakup of the Bell System and the introduction of competition in the long distance telephone market, more than a dozen states have taken steps to reduce or eliminate regulation for certain classes of local exchange telephone companies (LECs). In several instances, such action has included the economic deregulation of classes of companies. "Class of companies" is defined at various levels, i.e., Iowa has economically deregulated all but four of its 161 LECs; Nebraska establishes 5,000 access lines as the cutoff for economic deregulation, etc.

These steps to reduce or eliminate rate regulation for small companies have been taken in recognition that the telephone industry has changed dramatically in structure since the system of regulation was established in the early 1930s. Just as the structure of the industry has been changed to meet the technology explosion of the '90s and increasing demands by customers, so, too, must the structure of the regulatory system be adjusted to keep pace.

These other states have determined that it is desirable and feasible to exempt small companies from local rate regulation in order to relieve them of the costs and staff burdens of regulation. The experience in these states is that such action has been beneficial to the companies in terms of cost savings, to customers in terms of the exclusion of high regulatory costs being passed on in rates and to regulatory bodies in terms of relieving their staffs from myriad proceedings which are minor, thereby freeing them to devote their time and budgets to the more complex and critical issues facing them.

In Alaska, industry is convinced that it is time to follow the lead of these progressive states. Industry proposes the economic deregulation of telephone companies serving fewer than 2,500 access lines. This simply means that these small companies would be free to adjust local rates without going through the full rate case proceeding.

There are three critical factors which support this action:

1) Experience in Other States: As noted briefly above, the experience in other states has been positive and beneficial to companies, customers and regulatory bodies.

2) Introduction of Intrastate Competition & Accompanying Annual Reports: With the introduction of intrastate competition in Alaska, local telephone companies, beginning in 1991, are required to file annual revenue requirement studies. These studies are very near to complete rate cases. These filings mean that the commission will have extensive financial data on all local telephone companies updated on an annual basis.

3) Structure of Companies Affected: The seven companies affected by this proposed legislation are either consumer-owned cooperatives or very small companies with close community ties. Experience has shown that such companies are easily monitored and extraordinarily responsive to community needs. Attached is a list of the companies which would be affected, including the communities which they serve.

A final point which should be understood is that the proposed legislation would not remove the companies completely from regulatory control. Affected companies would be subject to commission authority in terms of quality of service and certification of exchange areas. In addition, the legislation provides for companies to be brought back under full regulation should there be abuse of their economically deregulated status.

## COMPANIES WITH 2,500 OR FEWER ACCESS LINE

<u>Company</u>	<u>Communities Served</u>
Arctic Slope Telephone Association Cooperative	Anaktuvuk Pass, Atkasuk, Deadhorse/Prudhoe Bay, Kaktovik, Nuiqsut, Pt. Hope, Pt. Lay, Wainwright
Bristol Bay Telephone Cooperative, Inc.	Ekwok, Igiugig, King Salmon, Naknek, South Naknek, Koliganek, Levelock, New Stuyahok
Bush-Tell, Inc.	Aniak, Anvik, Crooked Creek, Grayling, Holy Cross, Kalskag, Red Devil, Shageluk, Sleetmute, Stony River
National Utilities, Inc.	Craig, Dot Lake, Hydaburg, Skagway, Tetlin, Tok
Nushagak Telephone Cooperative, Inc.	Dillingham, Ekuk/Clarks Point, Manokotak
OTZ Telephone Cooperative, Inc.	Ambler, Buckland, Deering, Kiana, Kivalina, Kobuk, Kotzebue, Noatak, Noorvik, Red Dog, Selawik, Shungak
Yukon Telephone Company, Inc.	Ruby, Tanana, Whittier

redwood  
if needed.

COMPANIES WITH 2,500 OR FEWER ACCESS LINES

Arctic Slope Telephone Association Cooperative  
Bristol Bay Telephone Cooperative  
Bush-Tell - *Arctic, etc.*  
National Utilities - *Craig, Tom, Elizabeth, etc.*  
Nushagak Telephone Cooperative  
OTZ Telephone Cooperative  
Yukon Telephone Company

*some utilities  
disregarding*

COMPANIES CURRENTLY NOT REGULATED

Bettles Telephone Company  
Cordova Telephone Cooperative  
Fairbanks Municipal Utilities System  
Ketchikan Public Utilities  
North Country Telephone Company  
Summit Telephone Company

*435*

*Fairbank*

COMPANIES REMAINING UNDER REGULATION

Anchorage Telephone Utility  
Copper Valley Telephone Cooperative  
GTE Alaska  
Interior Telephone Company  
Matanuska Telephone Association  
Telephone Utilities of Alaska  
Telephone Utilities of the Northland  
United Utilities

*not  
real  
concern  
re: long  
authority*

*D. P. O. T. ...*

*Jordan Carter  
- Larry Hankley  
A.T.A. support*

*higher - supportive  
funding - no*

APR 4 1991



Tom Fink,  
Mayor

# Anchorage Telephone Utility

600 TELEPHONE AVENUE, ANCHORAGE, ALASKA 99503-6091  
TELEPHONE (907) 561-3000  
Telex 090-26-532  
Facsimile (907) 561-1703



Owned by the  
Municipality  
of Anchorage

April 4, 1991

Dear Legislator Drue Pearce,

My name is Jim Morrison and I am the General Manager of the Anchorage Telephone Utility (ATU). I am writing to you to introduce myself and Frank Biondi, Executive Director of Operations at ATU. We are in Juneau today and tomorrow for the Alaska Telephone Association (ATA) Legislative Conference being held at the Westmark Baranof Hotel.

ATU's main point of interest is the State of Alaska Bypass Network. Attached you will find a detailed paper about this issue.

ATA's interest, aside from the State of Alaska Bypass Network, is the Economic Deregulation of Small Companies - proposed regulations for the implementation of HB 168, Simplified Regulation passed by the Legislature last year.

I hope that either Mr. Biondi or I will be able to meet with you during our stay in Juneau. If not, please contact us with your questions and or comments at 564-1415.

Cordially yours,

A handwritten signature in cursive script that reads "Jim Morrison".

Jim Morrison  
General Manager  
Anchorage Telephone Utility

**THE STATE OF ALASKA'S BYPASS NETWORK  
and  
ITS IMPACT ON THE PUBLIC SWITCHED TELEPHONE NETWORK**

The State Department of Administration, Division of Telecommunications (SOA/DOA/Telcom) has spent roughly \$30 million developing a bypass network, which results in decreased revenue for the Local Exchange Carriers (LECs) and the Intrastate Carrier (Alascom), with resultant upward pressure on telephone rates in this state. A number of states have such networks. However, in a state that has 7 or 8 million access lines, the impact on potential revenue generation for the LECs and Intrastate Carriers is far less than it is here. Here there are only about 1/4 million access lines total in the State, and the SOA is the biggest single potential subscriber in the public switched telephone network.

A January, 1987 study by the State House Special Committee on Telecommunications stated that the SOA accounted for 29% of Alascom's intrastate revenues, and that, "If the State no longer pays the entire \$8.75 million (annual revenues) into the public network, the phone companies will have to recover their costs from a smaller ratebase. This will raise rates for those remaining on the network. The savings realized by having a state-owned network must be balanced with the social cost of the public network." The study concluded that it might be "wise for the State to not build its own network at this time." Also, "The State should work with the private industry to reduce costs." These recommendations have not been followed.

SOA/DOA/Telecom's bypass network has been a source of heartburn for the LECs and Alascom and their representative organization the Alaska Telephone Association for many years. There may have been some justification for its establishment years ago. At that time, modern telecommunications facilities were not available at any number of locations in the bush. Such is no longer the case. The entire State of Alaska is served by a state-of-the-art telecommunications network through its various LECs, Alascom and soon to be GCI. Now, the State's bypass voice network has the effect of indirectly taxing the state's residents, by forcing the LECs and toll carriers to raise their rates to recover revenues lost to bypass. In short, any savings which may or may not be realized through this network (see discussion of the legislative audit below) are paid for through increased local and intrastate telephone rates.

With these facts in mind, SOA/DOA/Telecom was directed by Governor Hammond's Executive Order 50 of 1981 that, "in the interest of minimizing the size and influence of government, private ownership and control of telecommunications should be facilitated and enhanced." Likewise, Governor Cowper's Executive Order 66 of 1987 instructed Telecom, "whenever feasible, procure services from private enterprise or certified and franchised utilities...". Telecom has ignored these orders.

A legislative audit by the State dated March 6, 1989, includes the following information:

- \* SOA/DOA/Telecom's accounting of costs does not compare to the telephone industry's. Consequently, when SOA/DOA/Telecom claims savings for the State through utilization of its network, there is no substance to the claim.

- \* Telecom reports only the incremental costs of expansion of the network. It neither knows nor reports the cost of capital operations, overhead, or personnel which support its voice network.

For example, they exclude substantial costs associated with transmission facilities and allocate only \$2,200 for the salaries and benefits of technicians who support the network over a 15 month period. This is an absurd figure.

- \* The rate structure, per the former Telecom Director, was established based simply on "a gut feeling".
- \* The SOA argues before the FCC that the Alaskan rate payers cannot absorb additional rate increases on the intrastate side. Meanwhile the State itself is bypassing the public switched telephone network putting further upward pressure on intrastate rates.
- \* The audit recommends the migration of all Off Premise Extension (OPX) service to the LEC where one is available. An instance of an OPX would be a Fairbanks SOA subscriber receiving ATU dial tone through the SOA/DOA/ Telecom bypass network, thus robbing both the LEC (Fairbanks Municipal Utilities System) and the Intrastate Carrier (Alascom) of revenue when a call to an Anchorage party is established.

There are political advantages to be gained by Alaska leaders who support an effort to decrease State bypass in favor of a public switched telephone network.

- \* A leader can appeal to the budget conscious rate payer throughout the State by noting the decreased pressure on their individual rates to be realized through a migration of the state bypass network back into the public switched telephone network.
- \* A high percentage of the LECs in the bush are community or native corporation owned utilities. The board members of these entities are influential and politically active and would view support for their local telephone utilities in preference to the State's bypass network as a friendly gesture.

# Second committee OKs bill easing phone restrictions

By DAVID POSTMAN  
Daily News reporter

JUNEAU — A bill allowing local phone companies to raise rates up to 8 percent without oversight of the Alaska Public Utilities Commission cleared its second committee Saturday.

But first, the state House Labor and Commerce Committee made it easier for consumers to protest such increases.

A majority of the committee, though, rejected proposals by Chairman David Finkelstein to reduce the amount of increase allowed without APUC approval to 4 percent and to delay implementing the bill to give the APUC a chance to simplify its existing rate review process.

Finkelstein said his proposals would better protect consumers.

The committee also rejected a motion by Rep. Betty Bruckman that would have allowed only non-profit and cooperative phone companies to increase rates without APUC approval.

In all three votes, Finkelstein and Bruckman were joined by fellow Anchorage Democrat Dave Donley. Voting against the measures were Democrats Pat Parnell and Ivan Ivan, the bill's

sponsor, and Republicans Robin Taylor and Jim Zawacki.

At present, the APUC must approve any increase in phone rates. But the APUC now allows some electric utilities to increase rates without its approval, and the Alaska Telephone Association says phone companies should be given the same treatment.

The bill now goes to the House Finance Committee and then to the House floor for a vote. It must then be approved by the Senate and signed by Gov. Wally Hickel to become law.

As originally written, the APUC could review proposed rate changes only if 5 percent of the companies' subscribers petitioned the commission. In Anchorage,

that would have required 5,000 signatures.

At Ivan's suggestion, the Labor and Commerce Committee changed the bill to bring in the APUC if it got complaints from 5 percent of subscribers of phone companies that have less than 15,000 local lines, 4 percent for utilities with between 15,000 and 35,000 lines and 3 percent for more than 35,000 lines.

# SURVEY OF STATE UTILITY COMMISSIONS ON REGULATORY OPTIONS FOR SMALL TELEPHONE COMPANIES

by  
William Pollard  
Dr. Raymond W. Lawton  
David C. Wagman  
James Landers

**Introduction:** The purpose of this report is to delineate the regulatory options adopted by public utility commissions regarding the regulation of small telephone companies.<sup>1</sup> The impetus for this report is House Bill 563 that allows the Public Utility Commission of Ohio (PUCO) to establish or place into effect alternative ratemaking and regulatory procedures for basic local exchange service for telephone companies having fewer than 15,000 access lines. The alternative regulatory structures allows the PUCO to exempt such companies from many provisions and sections of Title 49. Considerable latitude was given to the PUCO in developing and implementing a regulatory environment specifically suited to the situation of small telephone companies in Ohio. In examining regulatory options for small telephone companies, the PUCO staff contracted with The National Regulatory Research Institute (NRRI) to conduct a survey of state utility Commissions to discover changes in regulatory structures aimed specifically at small telephone companies. The NRRI focused the survey on deregulation, exemptions, and simplified regulatory procedures for small telephone companies.

The NRRI assembled a research team, wrote a questionnaire, reviewed the questionnaire with PUCO staff and conducted a telephone survey of state utility commissions. Alternative regulatory structures have been adopted for small telephone companies and these alternatives fall into three general categories. They are:

1. Deregulation of ratemaking for local exchange services offered by small telephone companies of a specified size, with provisions for reregulation.
2. Simplification of reporting and filing requirements, and hearing procedures for small telephone companies for rate increases for local exchange services.
3. Other options not aimed exclusively at small telephone companies, but which affect how small telcos are regulated.

Under these three alternative regulatory structures, a commission retains regulatory control over quality of service standards and maintains a complaint and monitoring

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<sup>1</sup>This report was prepared by The National Regulatory Research Institute (NRRI) with funding provided by the Public Utilities Commission of Ohio (PUCO). The views and opinions of the authors do not necessarily state or reflect the views, opinions, or policies of the NRRI, the PUCO or the National Association of Regulatory Utility Commissioners.

structure. The emphasis of this report is on the changes in regulatory structure aimed specifically at small companies.

This letter report is organized into three sections. The first section covers state Commissions that have deregulated small telephone companies whether they are cooperatives, mutuals or for-profit companies. The second section focuses on state Commission regulatory structures that simplify the reporting, filing and hearing procedures for small companies operating under commission jurisdiction.

**Deregulation: Mutual or Cooperative Telephone Companies:** Ten Commissions responded to the telephone survey by indicating that they did not regulate cooperative or mutual telephone companies in their state. The states are: Idaho, Iowa, Minnesota, Missouri, Nevada, North Dakota, Oregon, South Dakota, Texas, and Utah. No rationale for the nonregulation of cooperatives was given.

#### For-Profit Telephone Companies

Three of the states that extended the deregulation of small telephone companies to for-profit telephone companies are: Iowa, North Dakota, and South Dakota. In each state, maximum size limitations are specified for the number of access lines or subscribers for deregulation to apply. One other state, Indiana, indicated that it had an enabling statute that allowed deregulation, but no company had yet been deregulated. The laws, rules, and procedures and other information obtained through the survey for each of these states are summarized below.

##### Iowa

Telephone companies operating in Iowa and having fewer than 15,000 access lines are not rate regulated, but do keep tariffs on file with the Commission, which monitors quality of service standards. If a telephone company has fewer than 3,000 access lines, the state utility Commission has never regulated these telephone companies. In both cases, the companies do not file rate increases, file cost support for rate increases, or go through rate cases.

The NARUC Annual Report on Utility and Carrier Regulation 1988 indicated that Iowa has 123 local exchange companies in its jurisdiction, 48 of which are cooperatives. The exact size distribution of these companies was not available because the telephone association in the state did not respond to the survey. However, no other state had more local exchange companies operating in its jurisdiction than Iowa. The Iowa law has been in effect for ten to twelve years with few reported complaints from subscribers, telephone companies, or other parties, according to the survey respondent.

##### North Dakota

North Dakota Annotated Code, Section 49-02-01.1 addresses the limitation of the Commission's jurisdiction to certain utilities. It states:

The rates for local exchange telecommunications service of any nonprofit telecommunications company or telecommunications company having less than three thousand subscribers, upon the vote of the company's owners or

board of directors, shall not be subject to the jurisdiction of the Commission.

According to the NARUC Annual Report on Utility and Carrier Regulation 1988, North Dakota had twenty-three local exchange companies operating in its jurisdiction. Fifteen of these companies were cooperatives or mutuals which operate on a not-for-profit basis. Thus, there are eight for-profit companies operating in the state with only five subject to the Commission's jurisdiction.<sup>2</sup>

#### South Dakota

South Dakota's small telephone companies have been deregulated under statute 49-315.1. This law applies to companies having fewer than 10,000 subscribers. South Dakota has acted since 1979 to eliminate regulation of small companies. Cooperatives were deregulated in 1980 and independents with fewer than 7,500 subscribers were deregulated in 1982. The 10,000-subscriber limit was instituted in 1987. The Commission still has authority to act upon complaints and examine problems concerning access charges and quality of service issues.

According to the NARUC Annual Report on Utility and Carrier Regulation 1988, there are thirty-odd local exchange companies operating in South Dakota, only one of which is subject to the Commission's jurisdiction for ratemaking. There was no indication of the number of cooperatives operating in the state.

#### Indiana

The rules and regulations for the Indiana Utility Regulatory Commission delineates procedures for the "Removal of Telephone Companies From the Jurisdiction of Commission for Approval of Rate and Charges." Under these rules and regulations, a telephone company must serve less than six-thousand access lines and not be a rural telephone cooperative. According to these rules and regulations, the telephone company or the lesser of 10 percent of the current access line subscribers of the telephone company or five-hundred subscribers must petition the Commission to schedule a public hearing to determine whether or not the telephone company should be removed from the Commission's jurisdiction over rates, charges, and financing. After a finding that the removal is in the public interest, such an exemption is granted to the petitioning telephone company.

The Commission may revoke or impose restrictions on this exemption from rate regulation on its own motion, or after receiving a petition filed by the utility consumer counsel; or the lesser of 10 percent of the telephone company's current access line subscribers, or five-hundred of the company's current subscribers.

Even though a telephone company may be exempt from the Commission's jurisdiction, it has to file an annual report with the Commission that includes certain kinds of information. The company must file a standardized income statement and balance sheet and any other information that the Commission

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<sup>2</sup> Two local exchange companies are subject to rate regulation, one exchange company is price-cap regulated, and two foreign companies are price-cap regulated.

prescribes. The telephone company also must notify its customers that the income statement and balance sheet are on file with the Commission. A telephone company exempted from rate regulation must file with the Commission its tariffs for rates and charges and any subsequent changes in tariffs.

Indiana has not yet deregulated any telephone companies with less than six-thousand lines. The legislation went in to effect on July 1, 1988. The state has forty-two local exchange companies operating in the state, eight of which are cooperatives. Indiana's law seems to differ fundamentally from laws in Iowa, North Dakota, and South Dakota. In particular, the deregulation in Indiana requires a finding that the deregulation is in the public interest where in the other three states the deregulation was directly granted or required a vote of the qualifying companies' board of directors or a petition from subscribers. Whether or not the Indiana law as written will result in deregulation of a qualifying utility is still open to question. One company did apply and was unsuccessful.

Summary on Deregulation: Three of the four states that have deregulated small telephone companies tend to be sparsely populated, low-density states with a large number of companies operating under Commission jurisdiction. In the nine states that deregulated not-for-profit cooperatives, the action seems to be based on the notion that since the subscribers are the implied owners, management, elected by the subscribers, will operate in their interest in setting rates. Whether or not complaint procedures or quality-of-service inquiries were instituted for cooperatives or mutuals was not revealed by the survey data. In the three states that have deregulated for-profit telephone companies, both complaint procedures and quality of service monitoring remained a central feature of the Commission's involvement in the operation of the small companies.

For companies not subject to rate regulation in the four states, the size limitations are Iowa, 15,000 access lines; North Dakota, 3,000 subscribers; South Dakota, 10,000 subscribers; and Indiana, 6,000 access lines. South Dakota's size restriction leaves only one local exchange company subject to the Commission jurisdiction for rate regulation. Four local exchange companies are rate regulated in Iowa and five in North Dakota.

Simplified Ratemaking Model for Small Telephone Utilities: In the last several years a number of state Commissions have changed the way in which small telephone utilities are regulated. Based upon NRRI's survey of state Commissions, it was observed that eleven states have adopted regulatory structures for small telephone utilities in which rate hearings, cost studies, and other supporting data may not be required unless the Commission is petitioned by the telephone company, a consumers' counsel, or by a specified percentage or number of customers. Based on these observations, NRRI has constructed a generic model that gives an overview of how states have simplified their ratemaking process for small telephone utilities. While no Commission has revised its regulatory treatment in a way that incorporates all of the features of the model, this model is useful because it provides a benchmark against which alternative approaches can be compared.

The simplified ratemaking model (SRM) is illustrated in figure 1 and may be described as a "complaint-driven" approach to regulatory reform. Although the details of each state's approach differ, each *variation* of the SRM has traded off simplification for "a lack of complaints." The SRM approach essentially says that if

a small telephone utility initiates rate increases that do not cause consumers (or the Commission) to complain, then the full formal review of proposed rates is waived and the rates proposed by the utility will go into effect. If complaints are heard, then a ratemaking investigation will be conducted by the Commission.

Each of the features of the SRM is briefly described below in the same order they appear below. In a subsequent section the actual actions of eleven states are described.

### A Listing of the Generic Features of the Simplified Ratemaking Model (SRM)

<u>Feature</u>	<u>Description</u>
Joint task force	The process to initiate a SRM may begin with a task force with members from the Commission, industry, legislators, and other interested parties.
Legislative action	Because the shift to a "complaint-driven" model from a traditional "administrative-due-process" model of ratemaking represents a significant change, state legislatures have passed laws instructing and/or authorizing Commissions to engage in simplified ratemaking for small telephone utilities.
Alternatives to rate-of-return regulation	SRM may or may not be included in a larger effort to have the Commission consider alternatives to rate setting through traditional rate-of-return regulation (AROR). Accordingly SRM may be embedded in an AROR effort or may simply run parallel to it. The legislation accompanying the SRM may or may not make this distinction clear.
Recognition that small telephone utilities are different from large telephone utilities	Small size, having a non-Bell corporate history, serving a rural/suburban population, and having a relatively homogeneous customer base are some of the features that distinguish small telephone utilities from large telephone utilities. From an SRM perspective rate case costs for small telephone utilities seem disproportionately high for the benefits received. The SRM may work for small telcos because notification may be easier and because of the homogeneity of interests (for example, getting 10 percent of the customers of a large local exchange carrier to petition may be extremely difficult because of the different economic interests and wider geographical area served, whereas this may not be the case for the customers of a small utility).
Definition of a small telephone utility	All SRM approaches have a specific definition of small telephone utility. Most of the definitions focus on the number of access lines, although some count the number of subscribers.

Annual reporting requirements

Small telephone companies may have different annual reporting requirements from large utilities under an SRM approach. This may be specified by legislation or derived from the generic rulemaking authority of the Commission.

Monopoly services

The central focus of SRM is on monopoly services provided by a small local telephone company. A state may have other proceedings that address the issues associated with the provisioning of nontraditional and nonmonopoly services by a small telephone company.

Commission oversight and authority on non-ratemaking issues

SRM deals with ratemaking and Commission authority to deal with other issues, such as quality of service or rate discrimination, and is often explicitly recognized in the SRM legislation.

Petition for permanent regulation

SRM legislation may offer two instances where permanent regulation may be petitioned. Here the utility would be subject to whatever form of regulation was being practiced by the Commission. One form of petition is to have the customers of the utility petition, the other is to have the board of directors of the utility petition. The focus here is not on a complaint that is connected with one proposed rate increase, but rather on allowing the utility or its customers to opt out of SRM and to use some other method for setting rates.

Utility initiated rate increase

The heart of the SRM approach is the initiation of the process by the small utility. Traditional ROR has this same feature, but what distinguishes SRM is that the utility knows that if it can establish a rate below a complaint threshold, the rate will automatically be adopted. Some SRM have complaint thresholds defined by the number of petitioners needed to complain and others use various financial measures.

Commission notification of proposed rate increase

SRM requires the utility to send the Commission a notice of the proposed rate increase and may specify the form and content of the information needed. The utility must notify the Commission within a specified number of days prior to the date the utility wishes the rate to take effect.

Customer notification of proposed rate increase

The utility must notify its customers a specified number of days prior to the date of the scheduled increase and this notification must follow certain rules.

Complaint initiated by customers

If a specified number of customers complain and petition the Commission before the notification period expires, the Commission is required to investigate the proposed rates.

Petitions typically need to be signed by 5 to 10 percent of a utility's customers.

Action by a Commission on its own motion to initiate an investigation of a proposed rate increase. Complaint initiation by the consumer's counsel or others

In addition to a customer complaint an investigation may be initiated by the Commission after its inspection of the rate material sent to it under the notification procedure. Guidelines may or may not exist that would explicitly mark the occasions when the Commission must initiate a rate investigation and when it may not investigate.

Some SRM approaches allow the consumers' counsel and others to initiate a complaint that must be investigated by the Commission. These parties must follow any applicable time constraints.

Investigation of complaint

SRM legislation specifies that once an official complaint has been received, the Commission must have a formal rate investigation.

Ratemaking guidelines

If a small utility has a proposed rate increase that fits within certain guidelines, the Commission may not be able to act, absent a complaint from consumers. The guidelines can focus on the dollar value of the increase, the size of the monthly bills of an average residential consumer, the percentage increase, or the financial condition of the utility.

External factors

Small telephone companies may have their cost of operation significantly affected by changes in access and in pooling arrangements. Commissions, in an SRM proceeding, may need to recognize the impact of these factors.

Rate increase moratorium

When a Commission sets rates after an investigation, there may be a time limit such that the utility cannot restart the SRM process for a specified time period. When there is no investigation the small telephone utility may or may not have a limit on when it can next propose a rate increase.

Implement rules

Even where detailed SRM legislation exists it may be necessary for a Commission to institute a rulemaking procedure in order to clarify potential problem areas and to inform all parties of how the Commission interprets the statute. Commissions may not revise their rules if consensus exists among all parties regarding the intent of the SRM statute.

Eleven states have adopted regulatory structures in which rate hearings, cost filings, and other supporting data are not required unless the Commission is petitioned by the telephone company, a consumers' counsel, or a specified percentage or number of subscribers. There are maximum size limitations for

telephone companies to qualify for these exemptions. States having this regulatory structure are Illinois, Indiana, Montana, Nebraska, Kansas, Virginia, Oklahoma, Oregon, Texas, Utah and Wisconsin. Each of these regulatory arrangements is discussed below, beginning with Nebraska. Following this discussion, similar proposals made by the Ohio Telephone Association are compared and contrasted to these procedures in the eleven states.

### Nebraska

Pursuant to Nebraska law, telephone companies having less than five-thousand subscribers are not subject to rate regulation by the Public Service Commission unless:

1. The Board of Directors of the company elects to be regulated by the PSC,
2. A proposed rate increase exceeds 30 percent in any one year for any subscriber's service,
3. 5 percent of the subscribers petition the Commission to regulate the rates of the company,
4. The PSC declares that the company is subject to rate regulation.

Exempt companies are required to notify their subscribers and the PSC at least sixty days in advance of the effective date for any proposed rate change. In turn, the subscribers of the exempt company may petition the PSC to determine rates in lieu of those proposed by the company. Unless petitions from at least 5 percent of the company's subscribers are attained by the effective date of the proposed rate change, the Commission will not step in to determine the rates for the company. In addition, the subscribers of an exempt company may petition the PSC in order for the Commission to declare the company subject to rate regulation. If at least 51 percent of the company's subscribers petition for rate regulation, the company will become subject to rate regulation until at least 51 percent of the company's subscribers petition to have the company exempted from rate regulation.

In addition to this exemption for telephone companies with less than five-thousand subscribers, Nebraska has a more general exemption for basic local exchange service rates. Telephone companies in Nebraska are not subject to basic local exchange service rate regulation by the PSC unless one of the following occurs:

1. A company requests the Commission to prescribe fair and reasonable rates,
2. The Commission reviews the basic local exchange rate of any company if the rates for its local service area have increased by more than 10 percent within any consecutive twelve-month period,

3. The Commission reviews basic local exchange rates if a petition is filed within sixty days of notice of the rate change to affected subscribers by:
  - a. 5 percent of all affected subscribers if the company has up to 50,000 access lines
  - b. 3 percent of all affected subscribers if the company has 50,000 but not more than 250,000 access lines
  - c. 2 percent of all affected subscribers if the company has more than 250,000 access lines.

Under this rule, basic local exchange rates are the flat monthly charge for an access line, whether the service is provided on a flat or measured basis. These rates do not include charges resulting from action by a federal agency or taxes imposed by a governmental body which are billed by a telecommunications company to its customers.

As a result of these laws, small telephone companies have three alternative processes for rate filings: (1) the traditional ratemaking process before the PSC, (2) procedures under the law exempting small companies which are defined as having five-thousand or less subscribers, and (3) procedures under the law exempting from regulation all basic local exchange service rates.

Some problems have occurred with regard to the implementation of these laws and center on the confusion created by the coexistence of laws for small companies and basic local exchange rates. The above rules and regulations were drafted pursuant to Nebraska telecommunications law and promulgated under typical administrative procedures, which included timely notice and public hearings. Small telephone companies have filed applications pursuant to all three laws regarding rate filings. The three laws applying to telephone company rate filings have caused considerable confusion with regard to the filing of petitions by the affected customers. This confusion is related to the ability of the Commission to become involved in small company rate filings. According to the respondent to the questionnaire at the Nebraska Commission, a solution to these problems would be to amend the law that exempts small companies from basic local exchange service rate regulation. Thus, small company rate filings would be handled by the traditional ratemaking process or the process set up by the small company law.

The Nebraska law sets out a framework, elements of which can be found in Illinois, Indiana, Kansas, Montana, Oklahoma, Oregon, Texas, Utah, Virginia, and Wisconsin. Each of these states has its own variations on this framework and each state Commission's implementation of these rules is discussed below.

#### Illinois

Pursuant to Section 13-504 of the Illinois Public Utilities Act, small local exchange telecommunications carriers may file noncompetitive tariffs under a streamlined tariff filing process. Provisions of the telecommunications law relating to ratemaking for noncompetitive telecommunications services do not apply to proposed changes in rates or activity which would affect rates if the service in

question is provided by a local exchange telecommunications carrier which (1) has no more than fifteen-thousand subscriber access lines, and (2) is not a subsidiary of a holding company incorporated outside Illinois. Changes in rates proposed by companies meeting the above criteria are permitted as long as (1) the changes are filed with the Commission, and (2) thirty days' notice of the changes is provided the Commission and potentially affected customers. The proposed changes are not subject to suspension by the Commission, but may be investigated by the Commission upon (1) its own motion, or (2) after at least 5 percent of the potentially affected customers of the carrier files a complaint with the Commission requesting an investigation. If the Commission finds the proposed changes to be unjust or unreasonable it is authorized, subsequent to proper notice and hearing, to establish just and reasonable tariffs. Proposed tariffs become effective thirty days after filing with the Commission.

### Indiana

The Indiana Utility Regulatory Commission has, in addition to its deregulatory option discussed above, a set of procedures that delineate a streamlined filing, reporting, and hearing process. Article 14 of the Indiana Annotated Code delineates the rules for small utilities. Rule 1 deals with rate changes. A small utility under this rule is defined as having fewer than five-thousand customers as of the date any applications for rate change are filed. The rule applies to water, gas, and telephone utilities as well as to any municipal utility or distribution cooperative. Under this article a small utility must file an application with the secretary of the Commission and serve a copy of the application on the office of the utility consumer counsel. In addition to the application, the small utility must furnish evidence of publication of a notice of filing of the application for rate change no later than ten days after the filing of the application. This must be done in a newspaper of general circulation in counties in which the utility renders service. The notice should advise the public of the date of rate changes and indicate that the rate change is to occur without the costs of a public service Commission hearing unless ten individuals, firms, corporations, or associations or ten complainants of all or any of these forgoing classes affected by the proposed rate change request a hearing, or the utility consumer counsel requests a public hearing. The public notice should also state the approximate percentage increase in revenues requested if the increase is across-the-board, or the approximate percentage increase to each class of customer. In addition to the public notice, the company is required to notify each customer in writing that the application has been filed with the same information requirements as for the public notice.

Once the application for a change in rates is made, the Commission staff has up to ninety calendar days to review the application and report to the secretary of the Commission with recommendations. The Commission staff may recommend approval, amendment of, or a public hearing on the application. The Commission must issue an order on the application for rate change, however, the order may not be issued sooner than thirty days after the filing date. The Commission has the power to extend the ninety-day period when needed. If a request for a formal public hearing on an application is received or instigated by the Commission, the Commission has at least thirty calendar days to render a decision. Ten customers are needed to petition the Commission for a hearing. If no formal hearing is required, the Commission may issue an order on the application for rate change based on the data in the application and the reports filed by the Commission's staff.

## Kansas

Rule 82-1-204, classifies electric, gas, water, and telephone utilities, distinguishing between large and small utilities. A Class "A" telephone utility is defined to include local exchange companies with twenty-thousand or more access lines and all interexchange companies and resellers. A Class "B" telephone utility is defined to include local exchange companies with less than twenty-thousand access lines.

Pursuant to Rule 82-1-231, fixed utilities other than Class "A" utilities may elect to follow simplified procedures for filing applications in rate cases outlined in Rule 82-1-231b. Under Rule 82-1-231b, "electric, gas, water and telephone utilities, other than Class A, may elect to prepare a less extensive application with schedules that are more appropriate to the operations of smaller utilities." To be considered pursuant to this rule, written notice of intent to file a rate case application must be received by the Commission not less than thirty nor more than ninety days prior to the filing date of the application. The applicant utility must inform the Commission's technical staff regarding (1) its approximate revenue requirement, (2) any proposed changes in the apportionment of the revenue requirement among rate classes, and (3) any proposed rate design changes. Further, the applicant must have held a public meeting, for which adequate notice was provided, in order to inform customers of the proposed rate filing. Subsequent to consideration of the application, the Commission may (1) approve the application as filed, (2) approve the application with modifications, (3) suspend the application pending a hearing regarding the application and further investigation by the technical staff, or (4) deny the application. If the Commission approves the application as filed or with modifications, the proposed rates are temporarily set for a comment period of ninety days. If "substantial comment" is received from customers, then further investigation and a hearing may be necessary. Subsequent to the comment period, the temporary rates may be instituted as permanent rates or set aside for further investigation and hearing by the Commission. For "good cause," requirements of this rule may be waived by the Commission.

The rule relating to classification of small and large telephone utilities and expedited rate filings for small telephone utilities in Kansas were not the result of a recent enactment. Rather, the Corporation Commission pursuant to its own regulatory authority implemented the classification system and expedited the rate filing process at the recommendation of the Commission staff. The specific rule changes resulted from negotiations between the Commission staff and representatives (which included various telephone company officials) of the Kansas Telephone Association. Furthermore, comments from interested parties (namely individual telephone companies) were considered in implementing the two revisions. The Commission is awaiting its first use of the classification scheme and expedited rate filing process, though problems arising from the revisions are not expected. In addition, the Commission recently adopted an expedited access charge proceeding for all telephone companies operating in the state of Kansas, except Southwestern Bell and United Telephone. In terms of future revisions, the telephone companies are now seeking rules permitting rate increases up to \$2 per customer per year without a hearing, provided a specified threshold of customers opposed to the rate increase is not surpassed.

## Montana

The Montana Public Service Commission has a set of rules and procedures that simplify the rate regulation of small telephone companies. Under this set of rules, a small telecommunications provider means a person, partnership, corporation, or other entity providing regulated telecommunications service to less than five-thousand subscribers in Montana. This definition does not include rural telephone cooperatives. The rules and procedures for rate increases contain provisions for (1) notifying Commission, customers, and the consumers counsel, (2) petitioning the Commission to review the proposed increase, and (3) Commission action on the proposed increase.

The rules specify that a notice of the proposed rate increase by a small telecommunications provider be mailed to each affected subscriber, the Commission, and the Montana consumers' counsel. The notice must include a summary of the justification for the proposed rate increase, a list of the number of affected subscribers in each category of rate proposed to be increased, and, if requested by the Commission, a list of the names of the affected subscribers. The notification to customers is required to include a schedule of the proposed rates, the effective date of the proposed rate increase, and a description of the petition procedure.

Commission review and determination of rate increases only takes place if a petition for review is received within the sixty-day period. The petition must come from at least 10 percent of the affected customers, or from the consumers' counsel, or the Commission may act on its own motion. If by the sixtieth day following notice to subscribers of a proposed rate increase the Commission has not received a petition for review, the Commission must certify this fact to the small telecommunications provider and the proposed rate increase becomes effective as published in the notice of proposed rate increase.

## Oklahoma

Telephone companies which serve less than fifteen-thousand line subscribers within the state and telephone cooperative are not subject to local exchange rate regulation by the Oklahoma Corporation Commission. These regulations and rules have no effect whatsoever over the Commission's authority to regulate rates for intrastate toll, access rates, and charges. However, there are certain circumstances in which local exchange rates are subject to rate regulation. They are:

1. The company elects by action of its board of directors to be subject to such local exchange rate regulation by the Commission,
2. The proposed local exchange rate increase exceeds \$2 per access line per month in any one year,
3. 15 percent of the subscribers petition the Commission to regulate local exchange rates, or
4. The Commission declares that the company shall be subject to local exchange rate regulation by the Commission.

Exempted companies are required to notify the Commission and each of the subscribers of the company of the proposed local exchange rate change at least sixty days prior to the date the proposed rate is to become effective. The notice to subscribers should be in a form prescribed by the Commission and include the schedule of the proposed local exchange rates, the effective date of the rate increase, and the procedure necessary for the subscribers to petition the Commission to examine and determine the reasonableness of the proposed rates. If by the effective date of the proposed rates the Commission has not received petitions from at least 15 percent of the subscribers, the proposed rates become effective as published in the notice to subscribers. If an appropriate petition is received, the Commission notifies the company that the proposed rate shall be examined and a determination made as to the reasonableness of the proposed local exchange rates. Rates so determined by the Commission shall be in effect for at least one year.

The subscribers of a telephone company not subject to the rate regulation of the Commission may petition the Commission to declare the company subject to rate regulation. If 51 percent of the subscribers of the company have properly petitioned the Commission, the company is subject to rate regulation for local exchange rates. Similarly, a petition from 51 percent of the subscribers to a company can remove the company from the rate regulation of local exchange rates.

#### Oregon

The Public Utility Commission of Oregon exempts telecommunications utilities serving less than fifteen-thousand access lines in Oregon from regulation of rates, regulation of purchasing, and regulation of issuance of securities. The small telephone company must petition the Commission for this exemption, and the Commission must find the exemption to be in the public interest. The regulations stipulate that the Commission may hold hearings with regard to the reasonableness of proposed rates if the small telephone company or the lesser of 10 percent of the subscribers or five-hundred subscribers petition the Commission. Under these stipulations, the company is required to provide notice to customers at least forty-five days prior to the date the rates take effect.

#### Texas

In Texas, Section 43B of the Public Utilities Reform Act gives authority to the Commission to adopt streamlined regulatory treatment for utilities serving fewer than five-thousand access lines. The change was intended to allow the small companies the flexibility to respond to significant competitive challenges in certain service markets. It also allows small companies to have small rate increases through a greatly streamlined process.

The new filing requires the company to notify its customers and the Commission at least sixty days in advance and to provide the Commission with certain specified financial information. Upon a complaint signed by at least 5 percent of all affected subscribers, the Commission must review the proposed change. Unless a complaint is heard, the Commission only reviews proposed changes if the total gross revenues are increased by more than 2 1/2 percent or if the proposed change would increase any rate by more than 25 percent with the exception of basic local service. The rate for basic local service is limited to a maximum increase of 2 1/2 percent of the companies' total gross annual revenue.

No particular changes have been made to the substantive rules of the Commission. Staff felt that this meant that all parties understood the legislative changes and that no further elaboration was necessary. Texas is also undergoing a number of regulatory reforms primarily directed at the larger companies, and some of these changes have been elaborated in the substantive rules.

One small telephone company filed under Section 43B and modified its tariff filing in order to meet certain objections of the Commissioner examiner. No complaints were received from this company during the hearing.

#### Utah

Utah has streamlined its rate filing procedures for telephone utilities with less than five-thousand subscriber access lines. A utility's proposed rate increase may become effective upon filing of the tariff revisions and necessary information to support a determination by the Commission that the proposed rate increase is just and reasonable. The utility must provide thirty days' notice to the Commission and to all potentially affected access line subscribers of the proposed increase.

The Commission may initiate an investigation on its own or in response to a complaint and may approve the proposed rates or set rates that it finds to be just and reasonable. An investigation is required if 10 percent of the utility's potentially affected subscribers file a complaint or petition requesting an investigation and a hearing. This approach follows the basic outlines used in the other states examined in this section.

#### Virginia

Pursuant to Section 56-531 of the Code of Virginia, a small investor-owned telephone utility is defined as (1) not including any cooperative, (2) having gross annual operating revenue not exceeding \$10 million, or (3) having gross annual operating revenue greater than \$10 million but less than \$30 million and not being a subsidiary of an interstate utility holding company and owning, managing or controlling the plant and equipment operated in Virginia.

Pursuant to Section 56-532 of the Code of Virginia, any change in tariffs of a small investor-owned telephone utility becomes effective thirty days after notice of the tariff change has been mailed to customers. This provision does not apply if (1) a protest is filed by either 5 percent or 150 of the customers subject to the company's tariffs, whichever is less, or (2) the Commission investigates the utility's tariffs after at least thirty days' notice.

Whenever a protest is filed by the customers, the Commission is authorized to suspend the proposed tariffs for up to 150 days subsequent to the filing date of the proposal. Also, the Commission is authorized to suspend the utility's proposed tariffs on its own motion. If the proposal is suspended, the Commission is required to hold a hearing to determine whether the proposed tariffs are just and reasonable. Notice of the suspension and hearing time are to be given prior to the expiration of the utility's thirty-day notice for changing tariffs. After the hearing, the Commission is authorized to set aside tariffs proposed by the utility and substitute those it deems just and reasonable. If consideration of the tariff

proceeding is not concluded and an order not issued by the end of the 150-day suspension period, the proposed tariffs become effective. Whenever proposed tariffs become effective in such a manner, the Commission must:

1. Require the utility to post bond for any refund ordered by the Commission,
2. Require the utility to maintain detailed accounts of the amounts received as a result of the proposed tariff increase,
3. Require the company to refund the portion of the tariff increase deemed to be unjustified after the hearing is completed and the decision rendered.

### Wisconsin

The 1989 Wisconsin Act 344 defined small telephone companies as having less than nine-thousand access lines in use<sup>3</sup> and gave the Commission the explicit rulemaking authority to modify regulatory practices and procedures for small telephone utilities. This act revised the small telecommunication flexible regulation portion of Act 297, passed in 1986. The act deals both with simplification and ratemaking.

The small telephone utility can change its rates on its own initiative as long as it follows specific notification rules, and a valid customer petition is not received. The act specifies a rate of return that fluctuates with a utility's equity. The range is based upon the Moody average of yields on Baa public utility bonds existing on January 1st of each year. The rate may be up to 3.65 percent above the Moody's index for telephone companies with a common stock equity of 70 percent or more. It increases to 8.65 percent above the Moody's index for utilities with 25 percent equity. Utilities with equities below 25 percent are not subject to review if they pay less than 50 percent of earnings in dividends or submit financial plans to show how they are building equity.

The act establishes time frames for customers to petition for permanent regulation, or to challenge proposed rates, or on other matters. At least 9.5 percent of the affected customers must petition the Commission within a sixty-day period. The act sets 150 days (or 180 days if a hearing is involved) for cases to be reviewed by the Commission.

Act 344 took effect May 11, 1990 and the process to begin to incorporate the provisions of the act into the formal rules and procedures of the Commission is expected to begin in Fall 1990.<sup>4</sup> A task force composed of Commission and Wisconsin telephone association staff, plus various intervenors worked to revise the old law and recommend Act 344. It is anticipated that a similar task force structure may be used to help in the preparation of the rules and procedures.

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<sup>3</sup> Previously this had been legislatively defined as less than 7,500 customers.

<sup>4</sup> The Wisconsin Commission is in the process of reorganizing itself from a functional structure into one organized along industry lines, such that a new telecommunications division will be in place to regulate telecommunications utilities.

Due to the heavy work load at the Commission it is not now known how long it will take to develop the rules and procedures. Section 42 of the act establishes the following nonstatutory provisions that affect implementation of the Act by having the Commission

1. Issue an order establishing the Moody's average of yields on Baa public utility bonds in order to determine the target rate per the act,
2. Prepare a report to the legislature summarizing the experience of the Commission in regulating small telephone utilities and including recommendations on the need for changes,
3. Govern rate changes pending but not in effect, or a rate review commenced before the effective date by the law existing before the effective date of this subsection,
4. Submit proposed rules establishing percentages used to calculate target rates to the legislative council staff no later than the first day of the tenth month beginning after the effective date of this subsection.

Revising the rules should help in dealing with the waiver requests of small telephone utilities. Under Act 344 utilities can ask the Commission for a waiver; three did so within one week of the effective date of the act. One waiver was denied because it did not comply with existing Commission policy on directory assistance. Another waiver was approved because it resolved an abnormality created by raising pay phone charges to 25 cents. Waivers not acted upon within twenty days are automatically denied. Staff feel that 20 days is sufficient time for truly routine items, but inadequate for items requiring staff research and scheduling of reasonable discussion time on the calendar of the official Commission's agenda.

Annual reports are filed in April and companies are expected to be told by October whether they are overearning according to the several criteria. Eight telephone utilities have voluntarily initiated rate reductions or refunds since publication of the act.

Summary of Simplified Ratemaking Approaches: The eleven state Commissions that have adopted simplified ratemaking procedures have many key features in common. First, each law or procedure specifies a maximum size for telephone companies that can avail itself of the law. Second, there is a specified notice period during which the Commission and affected customers must be notified of the proposed change in rates. Third, some percentage of customers or number of customers may petition the Commission to review the reasonableness of the rates. Fourth, procedures specify which parties may petition the Commission and whether the Commission on its own accord may review the reasonableness of the rates. Finally, the procedures for some state Commissions specify an upper limit on the proposed rate increase, while other state Commissions have no set criteria for determining the reasonableness of the proposed rate increase. Each of these features is summarized in Table 1.

Table 1  
Summary of Key Features of Streamlined Regulatory Hearings

<u>State</u>	<u>Size of Company</u>	<u>Days Notice</u>	<u>Petition Size</u>	<u>Petitioners</u>	<u>Limit on Rate Change</u>
Illinois	15,000 lines	30	5% of affected subscribers	Notification required customers or commission	Commission review and approval.
Indiana	5,000 customers	90	10 customers	Any customer or consumers counsel notification required	Commission staff reviews and makes recommendation
Kansas	20,000 lines	90	Substantial comment	Notice and public hearing	Commission review and approval
Montana	5,000 customers	60	10% of subscribers	Notification required subscribers and consumers counsel	None mentioned
Nebraska	5,000 customers	60	5% of subscribers	Customers, the company's board or commission	30% for any one customer group or 10% for local
Oklahoma	15,000 lines	60	15% of subscribers	Notification required customers, the company's board or commission	\$2 for local exchange rates
Oregon	15,000 lines	45	Lesser of 10% or 500 subscribers	Notification required customers, the company's board or commission	None mentioned
Texas	5,000 lines	60	5% of affected subscribers	Notification required customers, commission	25%, except for local service

Table 1 (Continued)  
Summary of Key Features of Streamlined Regulatory Hearings

<u>State</u>	<u>Size of Company</u>	<u>Days Notice</u>	<u>Petition Size</u>	<u>Petitioners</u>	<u>Limit on Rate Change</u>
Utah	5,000 lines	30	10% of affected subscribers	Notification required customers, commission	None mentioned
Virginia	\$10 mil. in gross operating revenues	30	Lesser of 5% or 150 customers	Notification required customers or commission	Commission review and approval
Wisconsin	9,000 lines	60	Less of 9.5% or 500 subscribers	Notification required customers, the company's board or commission	Based on rate of return criteria

Source: Survey Data.

**Other Regulatory Options:** The actions by state Commissions in the previous two sections followed common lines of reasoning and focused on certain key variables or factors. For example, nearly all states in section three included a provision for a customer petition, with the major differences being whether a 5 percent threshold versus a 10 percent level was chosen. In this section, approaches Commissions have used that are not complaint driven are examined.

#### Alternatives to Rate of Return Regulation

Three states have modified their treatment of their small telephone utilities within the context of their movement away from rate base/rate of return regulation. These states are Missouri, Colorado and Florida. Each is described below.

##### Missouri

Missouri has modified its regulatory treatment for all telecommunications utilities. H.B. 360 established a set of procedures and definitions that classify services offered by telecommunications companies as competitive, transitional and noncompetitive. Telephone companies having fewer than 25,000 subscriber access lines are defined as small companies and have accelerated procedures for Commission approval of a proposed rate increase.

Acceleration occurs because of the time the Commission has for consideration of the proposed increase. Large utilities may have their rate increase suspended six months beyond the initial 120-day suspension period. Small companies can only have a suspension period of 150 days, after which the rates shall be considered approved for all purposes.

The Commission has the authority to require different forms of annual reports and may exempt any telecommunications utility from filing annual reports until further order of the Commission. The Commission has not acted to modify the reporting requirements for small utilities.

### Colorado

Colorado has undergone a change in its regulatory regime similar to that in Missouri. Legislation (H.B. 1336) has the Commission classify services according to their competitive characteristics and prescribes the type of regulation appropriate for each type. Title 40, article 5 of this bill treats small telephone companies differently for access charges. Small companies are defined as having fewer than fifty-thousand access lines and may elect to have services remain under rate-of-return regulation rather than have them classified as competitive services. The intent of H.B. 1336 is to create a three-tier structure whereby telecommunications services are defined as fully regulated, subject to flexible regulation, and deregulated. The regulation of small telephone utilities would otherwise follow this pattern. Small companies receive different treatment for reporting. Colorado allows its average schedule companies to use a simplified form.

### Florida

Florida has legislation authorizing the Commission to undertake alternative regulation for telephone utilities having fewer than 100,000 access lines. S.B. 2398 requires large telephone utilities to file financial reports every four years and small companies to file every five years. Both are to use the same filing reports.

The frequency of the surveillance report (earnings report) for small companies has also been changed. Large companies are required to file monthly, whereas only quarterly reports are necessary from small companies.

S.B. 2398 will not become effective until October 1, 1990. Staff is considering whether to reduce the information required in the five year filing for small telephone companies.

## Small Rate Increases

Three states address the issue of small utilities through the use of criteria that are used to evaluate the size of the rate increase. "Small" increases are not subject to rate case investigation, whereas those exceeding the criteria are investigated. The three states are New York, California, and Mississippi. Each is described below.

### New York

The New York Commission has a long-standing method for treating small telephone, electric, gas, and water utilities differently from large utilities. More than a

decade ago the New York legislature passed a statute requiring the Commission to hold rate case hearings except when the utility's requested increase was less than \$100,000 or less than 2.5 percent.

Staff noted that the state telephone association has from time to time raised the issue of increasing the \$100,000 limit. No action has been undertaken at the Commission or by the legislature to raise this limit.

New York also has an existing law that allows simplified filings and rate case proceedings for small utilities. The utilities are differentiated by their class size, with class A telephone utilities having the most detailed requirements and procedures and class D the least detailed requirements and simplified procedures.

### California

California has an approach that is similar in some respects to New York's. The California Commission issued general order 96-A that stated that "Any utility or district of a utility may request authority for a general rate increase by an advice letter filing (rather than by a formal application) if the projected annual operating revenues, including the requested increase, are no greater than \$750,000."

There have been no small company rate cases since 1985. Staff report that the companies claim that the expense and difficulty in forecasting a forward-looking test year in a climate of regulatory change, increased competition, the 1986 tax reform, and the Commission's investigation into alternative regulatory frameworks have been responsible, in part, for the lack of filings.

### Mississippi

H.B. 885 was enacted into law in 1989 and encouraged the Commission to investigate innovative ratemaking procedures, including the use of "formula type rate of return." If a formula approach is used, each revenue adjustment will be separately considered for the purpose of determining whether a hearing is required. A hearing shall be required to determine a utility's compliance with the formula rate plan and the accuracy of the data prior to making any change in the revenues if the cumulative change in any calendar year exceeds the greater of \$200,000 or 4 percent of the annual revenues of the utility.

Like New York, Mississippi uses the size of the increase, rather than the size of the utility to determine the need for a Commission investigation. The Commission still retains the necessary authority to set just and reasonable rates.

## Accelerated Procedures

### Minnesota

Minnesota has legislation authorizing the Commission to adopt alternative regulatory structures, but prescribes that the end product be an incentive regulation plan. In a separate statute small companies are identified as having fewer than thirty-thousand access lines. These companies have a simplified rate filing and may not require a full hearing if the preliminary investigation by the Department of Public

Service does not reveal the need for a full hearing. Small telephone utilities file a simple one-page annual report.

#### Summary

Two main approaches were examined in this section. New York, California, and Mississippi address the issue of "small rate increases" rather than small companies. For all practical purposes, however, these limits are generally used only for small utilities.

The Missouri, Colorado, and Florida Commissions' treatment of small telephone utilities is entirely within the context of their larger alternative rate-of-return proceedings. Their focus is on changes that are not complaint driven, but which are largely guided by the principles governing the larger reform effort. Under this approach small telephone utilities simply have fewer requirements placed on them compared with large utilities.

ADN 4/30

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## Alascom aims bill at GCI switchers

By DAVID POSTMAN  
Daily News reporter

JUNEAU — After an uneasy, yearlong truce, Alaska's phone war has erupted again.

Alascom says it has had to go to the legislature to protect its customers from being tricked into switching to GCI. GCI is set this fall to break Alascom's monopoly on in-state, long-distance service.

Alascom says it is worried about its customers being the target of fraudulent and deceptive marketing practices.

GCI says Alascom is trying to stymie competition.

The bill that Alascom has gotten introduced is "a sham," GCI said.

In a briefing paper, GCI says the bill, called the Interexchange Consumer Protection Act of 1991, would be better named, "The Telephone Consumer Harassment Act of 1991."

The bill would set out standards a company would have to follow before switching a customer from one telephone company to another.

A recent Alaska Public Utilities Commission ruling

Please see Back Page.  
**ALASCOM**

# ALASCOM: Bill would hinder changing companies

Continued from Page A-1

says that before a customer can be switched from one company to another, the customer must be given written notice and then send a written confirmation back to the company.

The Alascom bill would require a second round of confirmation. After the company received the customer's acceptance, it would have to wait 72 hours to give the customer a cooling-off period and then either send out another letter — which would also have to be returned — or hire an independent third party to confirm the customer's choice.

Since Alascom now has all the long-distance customers and GCI wants them, GCI says, it would be hurt by the proposed deadlines and requirements for written or third-party confirmations before a customer could be switched.

Sen. Pat Pourchot, D-Anchorage, who forged a compromise between the two telephone companies last year, said Alascom's moves may violate the spirit of an agreement between the two companies and lawmakers to

*“You would have to be an extremely motivated consumer to change carriers. This bill clearly is biased in their favor.”*

— Dana Tindall,  
GCI's vice president  
for regulatory affairs

leave the rules of competition up to the Alaska Public Utilities Commission.

Alascom lobbyist Ashley Reed said the company asked Sen. Pat Rodey, D-Anchorage, and Rep. Gene Kubina, D-Valdez, to introduce identical measures in the House and Senate earlier this month.

Rodey said Monday he agreed to introduce the bill so it could get a hearing, and he told Alascom lobbyist's that he did not necessarily support it. Kubina could not be reached for comment.

Rodey said it is unlikely the bill will come up for a vote in the three weeks left in this legislative session.

The problem, Alascom

says it is trying to head off is known in the Lower 48 as “slamming.” That's when a local phone utility switches customers from one long-distance carrier to another without telling the consumer, or at least without telling all the details.

“Because slamming is fostered by loose regulations and the fierce competition among long distance carriers, it is necessary to protect long distance consumers by adopting appropriate rules,” Alascom wrote in a position paper.

The law would require a long list of procedures that a company soliciting customers would have to follow.

“I think the (public utilities) commission has discussed this already by regulation,” said Ray Wipperman, acting executive director of the APUC. Wipperman said the commission has adopted regulations requiring written confirmation before a customer can be swapped to a new phone company.

Wipperman said the Federal Communications Commission is also considering new rules to restrict slamming. Wipperman said the

practice is a problem in the Lower 48, but not in Alaska. He said there have been no recent complaints of slamming in interstate service by either CCI or Alascom, where the two companies have been competing for years.

But Alascom says the activity on the state and federal level is evidence that slamming is a real problem that needs to be addressed in state law.

GCI's vice president for regulatory affairs, Dana Tindall, said the proposal is more of an Alascom protection bill than a consumer protection bill.

“You would have to be an extremely motivated consumer to change carriers. This bill clearly is biased in their favor,” Tindall said.

“It would be easier to buy a handgun than it would be to switch telephone companies.”

GCI's position paper says the bill is “unnecessary, anti-competitive and anti-consumer.”

“This bill is not designed to protect consumers, it is purely designed to frustrate and delay robust competition,” the statement said.

Sunset

Bills

## 1992 LEGISLATIVE SESSION

Revision Date: 04/27/92 Department Affected: Commerce & Economic Development  
 Title: An Act extending the Real Estate Commission BRU: Occupational Licensing  
 Component: Administration  
 Sponsor: House Rules/Governor  
 Requestor: Senate Labor & Commerce COMPONENT SERIAL NO. 

0	3	5	6
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## Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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## FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

## POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: None

## ANALYSIS: (Attach a separate page if necessary)

Funding for the Real Estate Commission is included in the department's FY 93 operating budget request and, therefore, new funds are not required. Estimated costs for the Real Estate Commission are explained on the attached page.

Prepared By: Jennifer Strickler Phone: 465-2144  
 Division: Occupational Licensing Date: 04/27/92

Approved by Commissioner: Glenn A. Olds  
 Agency: Department of Commerce & Economic Development Date: \_\_\_\_\_

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

## CONTINUATION OF FISCAL NOTE ANALYSIS - HB 160

The Division of Occupational Licensing, Department of Commerce & Economic Development, is funded primarily by program receipts generated from licensing fees. All licensing programs share in the responsibility of covering administrative costs which are based on the number of current program licensees divided by the total number of current division licensees plus, the direct program costs.

### REAL ESTATE COMMISSION

Average Annual Cost: \$ 300.5

Average Annual Revenue: \$ 316.9

HB 160: "An Act extending the Real Estate Commission in the Department of Commerce and Economic Development; and providing for an effective date."

The Real Estate Commission is responsible for the regulation and licensing of the real estate profession in the state. Under AS 08.03.010(c)(21), the Real Estate Commission terminated on June 30, 1991. HB 160 will extend the termination date of the Commission to June 30, 1995.

The statutory authority in Section 1 of the bill requires a correction to reflect the appropriate subsection for the Real Estate Commission which should read: AS 08.03.010(c)(21).

There are approximately 3,339 licensees regulated by the Real Estate Commission in Alaska. The department concurs with the findings documented in the performance audit conducted by the Division of Legislative Audit; in particular, that the Commission is necessary to protect the public from the potential for substantial economic loss resulting from unqualified, incompetent, or dishonest practitioners.

The department strongly supports continuation of the Real Estate Commission and requests favorable support in passage of HB 160.

  
\_\_\_\_\_  
Glenn A. Olds, Commissioner

Date: 4.29.92

1992 LEGISLATIVE SESSION

Revision Date: 04/27/92 Department Affected: Commerce & Economic Development  
 Title: An Act extending the State Medical Board... BRU: Occupational Licensing  
 Component: Administration  
 Sponsor: House Rules/Governor  
 Requestor: Senate Labor & Commerce COMPONENT SERIAL NO. 

0	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Funding for the State Medical Board is included in the department's FY 93 operating budget request and, therefore, new funds are not required. Estimated costs for the State Medical Board are explained on the attached page.

Prepared By: Jennifer Strickler Phone: 465-2144  
 Division: Occupational Licensing Date: 04/27/92  
 Approved by Commissioner: Glenn A. Olds  
 Agency: Department of Commerce & Economic Development Date: 4.29.92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

## CONTINUATION OF FISCAL NOTE ANALYSIS - HB 161

The Division of Occupational Licensing, Department of Commerce & Economic Development, is funded primarily by program receipts generated from licensing fees. All licensing programs share in the responsibility of covering administrative costs which are based on the number of current program licensees divided by the total number of current division licensees plus, the direct program costs.

### STATE MEDICAL BOARD

Average Annual Cost: \$ 264.3

Average Annual Revenue: \$ 307.4

HB 161: "An Act extending the State Medical Board in the Department of Commerce and Economic Development; and providing for an effective date."

The State Medical Board is responsible for the regulation and licensing of the medical profession in the state. Under AS 08.03.010(c)(14), the State Medical Board terminated on June 30, 1991. HB 161 will extend the termination date of the board to June 30, 1995. The statutory authority in Section 1 of the bill requires a correction to reflect the appropriate subsection for the State Medical Board which should read: AS 08.03.010(c)(14).

There are approximately 1,561 practitioners licensed by the State Medical Board in Alaska. The department concurs with the findings documented in the performance audit conducted by the Division of Legislative Audit; in particular, that the board is necessary to protect the public's health, safety, and welfare, therefore, the board should be reestablished.

The department strongly supports continuation of the State Medical Board and requests favorable support in passage of HB 161.



Glenn A. Olds, Commissioner

Date: 4.29.92

**DEPARTMENT OF COMMERCE &  
ECONOMIC DEVELOPMENT**

*DIVISION OF OCCUPATIONAL LICENSING*

*7TH FLOOR FRONTIER BLDG.  
3601 C STREET, SUITE 722  
ANCHORAGE, ALASKA 99503  
PHONE: (907) 561-2878*

December 23, 1991

Senator Drue Pearce, Chair  
Senate Labor and Commerce Committee  
P. O. Box V  
Juneau, Alaska 99811

Dear Senator Pearce:

Thank you for your letter of November 4, 1991, requesting input from the State Medical Board regarding dissolution, reorganization or the combining of professional regulatory boards.

The sunset review of the medical board has been a topic of discussion in recent board meetings. These discussions have also included the topics of reorganization and the possibility of combining the medical board with other professional regulatory boards. After receiving your letter, a renewed discussion of this topic was added to the agenda for the meeting which was held on December 5 - 6, 1991, in Anchorage. Due to unexpected demands for the board to deal with several lengthy license probation matters, the board was forced to reschedule a number of very important items, including a renewed discussion of the sunset review and related issues.

A further discussion of the sunset legislation has been rescheduled for the next regular medical board meeting on March 5, 1992. However, as input from the board was requested by January 1, 1992, I am responding now based on prior discussions of the board. Therefore, the following summarizes the medical board's decisions, concerns and recommendations regarding the future of the board.

**DECISION**

The board believes there is a definite need for the State Medical Board to continue to function, and that it should continue to function as an independent board.

Need for a State Medical Board

There is a need for the state to ensure that the practice of medicine protects the public health and safety, including:

- Ensuring that only qualified persons be licensed to practice medicine;
- Ensuring the continued competence of persons licensed to practice medicine;
- Ensuring procedures used in the practice of medicine protect the public health and safety;
- Investigating and imposing appropriate disciplinary sanctions on persons who violate state statutes and regulations governing the practice of medicine;
- Ensuring that persons licensed to practice medicine who abuse addictive substances are identified, confronted, evaluated and treated in a manner consistent with protection of the public.

## Need for continuing the State Medical Board as an independent board

There is a need for the state to continue utilizing the comprehensive and cost-effective structure of the already combined medical board, including:

1. Since its inception in 1949, the State Medical Board has been through a number of major reorganizations. Recent reorganizations include the addition of public members to the board (1976), the addition of physician assistants to the jurisdiction of the board in 1980, and the addition of board staff (which are self-supported through increased licensing fees) in 1987.
2.
  - a. The purpose of the medical board is to protect the public health and safety through regulation of the medical profession. To carry out this purpose, the board: 1) scrutinizes applications and issues licenses and permits to physicians qualified to practice medicine in Alaska, in addition to podiatrists, physician assistants and mobile intensive care paramedics; 2) investigates, through the Division of Occupational Licensing, complaints received about practitioners under its jurisdiction; 3) conducts disciplinary action against those who violate the medical practice act.
  - b. Board members volunteer untold hours to reviewing license applications and supporting documentation. Though the executive secretary and licensing examiner are knowledgeable in this area, there are some questions which can only be answered with physician expertise.
  - c. One of the most important aspects of serving as a medical board member is that board members serve as expert advisors to the Division's investigator. The alternative to utilizing board member expertise free of charge would be to hire a medical consultant to serve in this capacity. Not only would this increase the cost but it would narrow the objectivity to that of one person rather than having a different board member advising on each case.
  - d. Finally, board member input is vital when assessing the appropriate disciplinary action against those who violate the medical practice act. Physician board members have the medical knowledge and public members contribute consumer perspective, unique to those outside the health care industry, to ensure a fair and effective sanction.
3. The board's five physician members and two consumer members have the necessary medical expertise and the public objectivity to do the job most effectively. These seven members contribute their time and expertise due to their interest and commitment, they are not compensated financially in any way. Out of town board members only receive per diem and are reimbursed for direct travel expenses to attend board meetings. There is no other financial compensation. In addition, the physician community recognized the need for the board to obtain the services of a full-time executive secretary and the full-time services of an investigator dedicated to the medical board. Legislation was passed in 1987 and a surcharge was assessed on licensed physicians to raise the funds for these new positions. Since that time, renewal fees have been adjusted accordingly to fund these positions. The executive secretary maintains the day-to-day operation of the medical board and is responsible for a vast multitude of duties. The investigator has become quite knowledgeable in the intricacies of investigating medical complaints.
4. At this time, the board cannot see any financial advantage to consolidation with other boards. Increased case load would no doubt require meetings of a consolidated board more frequently and of longer duration than the quarterly one-to-two day meetings of the medical board. This would limit the pool of physicians who would be willing to "donate" the necessary hours/days to serve. Board members would need considerably more education as they seek to become fluent in a broader range of licensing areas. Professional services on a paid, contract basis would be necessary to provide the medical expertise required for application, investigation and litigation matters.

5. Though there are certainly some issues in common to all the health care regulatory boards, the medical board encounters some unique concerns and has some unique advantages:
- a. Unlike some other professions, the medical profession already has standardized, nationally recognized examinations for physicians. In addition, beginning in 1992, the profession will begin the transition to having one universal exam for all physicians, including foreign trained physicians. Other professions are still struggling with regional and/or state examinations not recognized in all jurisdictions. Consequently, the medical board spends significantly less time on examinations and their validity than the other boards do.
  - b. The medical boards of the United States have a highly sophisticated disciplinary data bank to which each state contributes. This enables Alaska to uncover potentially problematic applicants and investigate these concerns prior to licensure. The executive secretary is also a vital link in the scrutinizing of these outlier applications and obtaining pertinent data to enable the board to make an informed decision on a given applicant with a questionable history. Most other professions have no such resource and therefore spend their time differently when scrutinizing applications.
  - c. Investigative activity relative to the medical board is one of the busiest areas within the Division of Occupational Licensing. The costs of investigating and litigating of these cases, and conducting hearings when necessary, would not be reduced by a consolidated board.
  - d. At the current fee level the medical board is meeting its funding requirements and is self-supporting. Though the services the board provides could, to some degree, be contracted out, the valuable expertise contributed by medical board members far exceeds the potential cost of contracting for these services.

### RECOMMENDATIONS

The board concurs with the recommendation of the Legislative Budget and Audit Committee, which submitted its report regarding the sunset review of the medical board on October 15, 1990. The committee found that the board was "conducted in a professional, competent and efficient manner," and recommended that the medical board be continued until June 20, 1999.

The board recommends that the current consolidated medical board, which already combines the licensing and regulating of four different groups of medical professionals (physicians, podiatrists, physician assistants and mobile intensive care paramedics), is an effective board organization which should be continued in its current form.

The board recommends that the current fee structure continue as it meets the funding requirements of the many and varied functions of the board and is self-supporting.

### SUMMARY

The State Medical Board sees that there is a great need for the state to ensure the practice of medicine protects the public health and safety by continuing the current strong and cost-effective board organization. The board very much appreciates the opportunity to provide this information to the Senate Labor and Commerce Committee and will schedule a further discussion of these issues for the next regular board meeting.

In the meantime, I urge you to call me (563-8141) or Pam Ventgen, Executive Secretary for the medical board (561-2878) if we can further clarify or provide additional information to the committee.

Sincerely,



Michael H. Newman, M.D.  
Chairman  
State Medical Board

cc: Ann Boudreaux, Director, Division of Occupational Licensing  
Ray Schalow, Executive Director, Alaska State Medical Association  
Members, State Medical Board

1209M

## 1992 LEGISLATIVE SESSION

Revision Date: 04/27/92 Department Affected: Commerce & Economic Development  
 Title: Extending the Board of Psychologist and Psychological Associate Examiners... BRU: Occupational Licensing  
 Component: Administration  
 Sponsor: House Rules/Governor  
 Requestor: Senate Labor & Commerce COMPONENT SERIAL NO. 

0	3	5	6
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## Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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## FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

## POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: None

## ANALYSIS: (Attach a separate page if necessary)

Funding for the Board of Psychologist and Psychological Associate Examiners is included in the department's FY 93 operating budget request, and therefore, new funds are not required to extend the board or implement the amendment in Sec. 2 of the bill. Estimated costs for the board are explained on the attached page.

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 Division: Occupational Licensing Date: 04/27/92  
 Approved by Commissioner: Glenn A. Olds  
 Agency: Department of Commerce & Economic Development Date: \_\_\_\_\_

Distribution: (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, &amp; Impacted Agency(ies).

## CONTINUATION OF FISCAL NOTE ANALYSIS - CSHB 163(HES)

The Division of Occupational Licensing, Department of Commerce & Economic Development, is funded primarily by program receipts generated from licensing fees. All licensing programs share in the responsibility of covering administrative costs which are based on the number of current program licensees divided by the total number of current division licensees plus, the direct program costs.

### BOARD OF PSYCHOLOGIST & PSYCHOLOGICAL ASSOCIATE EXAMINERS

Average Annual Cost: \$ 41.0

Average Annual Revenue: \$ 14.1

The Division of Occupational Licensing is currently working on a regulation project that will adjust licensing fees so that revenue will cover or come close to reflecting the entire costs of administering the program.