

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10574 SENATE • JUDICIARY

# ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair  
Sen. Dave Donley, Vice-Chair  
Sen. John Cowdery  
Sen. Gene Theriault  
Sen. Johnny Ellis



State Capitol  
Juneau, AK 99801-1182  
(907) 465-3717  
Fax: 465-3922

## Senate Judiciary Committee

SENT VIA FACSIMILE JUNE 7, 2002

June 7, 2002

**TO: BERNIE SMITH, COMMISSIONER  
REGULATORY COMMISSION OF ALASKA**

The Senate Judiciary Committee of the Alaska State Legislature is holding hearings regarding the early re-authorization of the Regulatory Commission of Alaska on June 12 and 13, 2002. These hearings will be held in the Anchorage Legislative Information Office located at 716 W 4<sup>th</sup> Avenue, Suite 200, Anchorage, Alaska.

The Senate Judiciary Committee respectfully invites you to appear at 10:00 A.M. on June 13, 2002, to give testimony and answer questions from the committee regarding this early re-authorization.

We would appreciate your response to this invitation by close of business on Monday, June 10, 2002. Please send your response via phone to 1-877-463-3873; via fax to 1-907-225-0713, or via e-mail to [Senator\\_Robin\\_Taylor@legis.state.ak.us](mailto:Senator_Robin_Taylor@legis.state.ak.us).

Sincerely,

A handwritten signature in cursive script that reads "Robin L. Taylor".

Senator Robin L. Taylor, Chair

# ALASKA STATE LEGISLATURE

Sen. Robla Taylor, Chair  
Sen. Dave Donley, Vice-Chair  
Sen. John Cowdery  
Sen. Gene Therriault  
Sen. Johnny Ellis



State Capitol  
Juneau, AK 99801-1182  
(907) 465-3717  
Fax: 465-3922

## Senate Judiciary Committee

SENT VIA FACSIMILE JUNE 7, 2002

June 7, 2002

**TO: JOE GRIFFITH, GENERAL MANAGER  
CHUGACH ELECTRIC**

The Senate Judiciary Committee of the Alaska State Legislature is holding hearings regarding the early re-authorization of the Regulatory Commission of Alaska on June 12 and 13, 2002. These hearings will be held in the Anchorage Legislative Information Office located at 716 W 4<sup>th</sup> Avenue, Suite 200, Anchorage, Alaska.

The Senate Judiciary Committee respectfully invites you to appear at 1:30 P.M. on Wednesday, June 12, 2002, to give testimony and answer questions from the committee regarding this early re-authorization.

We would appreciate your response to this invitation by close of business on Monday, June 10, 2002. Please send your response via phone to 1-877-463-3873; via fax to 1-907-225-0713, or via e-mail to [Senator\\_Robin\\_Taylor@legis.state.ak.us](mailto:Senator_Robin_Taylor@legis.state.ak.us).

Sincerely,

A handwritten signature in cursive script that reads "Robin L. Taylor".

Senator Robin L. Taylor, Chair

# ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair  
Sen. Dave Donley, Vice-Chair  
Sen. John Cowdery  
Sen. Gene Therriault  
Sen. Johnny Ellis



State Capitol  
Juneau, AK 99801-1182  
(907) 465-3717  
Fax: 465-3922

## Senate Judiciary Committee

SENT VIA FACSIMILE JUNE 7, 2002

June 7, 2002

**TO: RED BOUCHER, BOARD OF DIRECTORS  
CHUGACH ELECTRIC**

The Senate Judiciary Committee of the Alaska State Legislature is holding hearings regarding the early re-authorization of the Regulatory Commission of Alaska on June 12 and 13, 2002. These hearings will be held in the Anchorage Legislative Information Office located at 716 W 4<sup>th</sup> Avenue, Suite 200, Anchorage, Alaska.

The Senate Judiciary Committee respectfully invites you to appear at 1:30 P.M. on Wednesday, June 12, 2002, to give testimony and answer questions from the committee regarding this early re-authorization.

We would appreciate your response to this invitation by close of business on Monday, June 10, 2002. Please send your response via phone to 1-877-463-3873; via fax to 1-907-225-0713, or via e-mail to [Senator\\_Robin\\_Taylor@legis.state.ak.us](mailto:Senator_Robin_Taylor@legis.state.ak.us).

Sincerely,

A handwritten signature in cursive script that reads "Robin L. Taylor".

Senator Robin L. Taylor, Chair

# ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair  
Sen. Dave Donley, Vice-Chair  
Sen. John Cowdery  
Sen. Gene Theriault  
Sen. Johnny Ellis



State Capitol  
Juneau, AK 99801-1182  
(907) 465-3717  
Fax: 465-3922

## Senate Judiciary Committee

SENT VIA FACSIMILE JUNE 7, 2002

June 7, 2002

**TO: RON DUNCAN, PRESIDENT  
GCI**

The Senate Judiciary Committee of the Alaska State Legislature is holding hearings regarding the early re-authorization of the Regulatory Commission of Alaska on June 12 and 13, 2002. These hearings will be held in the Anchorage Legislative Information Office located at 716 W 4<sup>th</sup> Avenue, Suite 200, Anchorage, Alaska.

The Senate Judiciary Committee respectfully invites you to appear at 10:00 A.M. on June 13, 2002, to give testimony and answer questions from the committee regarding this early re-authorization.

We would appreciate your response to this invitation by close of business on Monday, June 10, 2002. Please send your response via phone to 1-877-463-3873; via fax to 1-907-225-0713, or via e-mail to [Senator\\_Robin\\_Taylor@legis.state.ak.us](mailto:Senator_Robin_Taylor@legis.state.ak.us).

Sincerely,

A handwritten signature in cursive script that reads "Robin L. Taylor".

Senator Robin L. Taylor, Chair

**LEGAL SERVICES**

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3887 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 128 6th St., Rm. 329


**MEMORANDUM**

June 10, 2002

**SUBJECT:** Boards and commissions affected by failure of the legislature to extend their existence under the Sunset Law, AS 44.66.

**TO:** Senator Robin Taylor

**FROM:** Jack Chenoweth  
Assistant Revisor of Statutes



This is by way of response to direction given in our Friday phone conversation.

The Sunset Law, AS 44.66, derives from ch. 149, SLA 1977, and became effective September 16, 1977. In the intervening 25 years, by my calculations, 10 different boards and commissions listed in the chapter, on 13 different occasions, have terminated under AS 44.66.010(a), functioned through part or all of the succeeding wind-down year as authorized under AS 44.66.010(b), and, during that year, had their existences continued by later legislative action. This tally is made without reference to the professional and vocational boards and commissions regulated under AS 08, a chapter that has separately operating "sunset" provisions.

## I

A June 21, 1994, opinion of the attorney general identifies "five different Title 44 boards and commissions, on seven different occasions, [that] have expired under AS 44.66.010(a) and functioned during the succeeding year under [AS 44.66.010(b)]." Through that date, the opinion identifies those AS 44.66 boards and commissions as follows:

- *The Alaska Transportation Commission* expired on June 30, 1979, functioned during the succeeding year, and was continued by the legislature in 1980. Sec. 1, ch. 115, SLA 1980. (This agency was eventually terminated by an initiative. 1983 Initiative Proposal No. 2, sec. 6.)

- *The Alcoholic Beverage Control Board* also expired on June 30, 1979, functioned during the succeeding year, and was continued by the legislature in 1980. Sec. 11, ch. 131, SLA 1980.

Senator Robin Taylor  
June 10, 2002  
Page 2

-- The *State Board of Parole* has expired twice, June 30, 1980, and June 30, 1982, functioned during the succeeding years, and was continued by the legislature in 1981 and 1983, respectively. Sec. 1, ch. 32, SLA 1981; Sec. 1, ch. 20, SLA 1983.<sup>1</sup>

-- The *Alaska Code Revision Commission* expired June 30, 1985, functioned during the succeeding year, and was continued by the legislature in 1986. Sec. 1, ch. 121, SLA 1986. This commission expired again on June 30, 1993, and was not extended by the legislature in the 1994 legislative.<sup>2</sup>

-- The *Alaska Women's Commission* has a more convoluted legislative history. It expired on June 30, 1987, functioned during the succeeding year, but was not continued by the legislature in 1988. On June 23, 1988, Governor Cowper signed Administrative Order No. 1.0 establishing the Interim Women's Commission in the Office of the Governor. The order took effect July 1, 1988, so that there would be no time gap between the discontinued Alaska Women's Commission and the Interim Women's Commission. Under the order, the Interim Women's Commission was to remain in existence until the adjournment of the next legislative session. In 1989, the legislature extended the duration of the Interim Women's Commission to June 30, 1989, and reestablished the Alaska Women's Commission, effective July 1, 1989, as a continuation of the Interim Women's Commission. In 1993, the Governor, by Executive Order No. 84, merged the Women's Commission with the Alaska Commission on Children and Youth to create a new Alaska Human Relations Commission in the Governor's Office.

The circumstances that prompted the attorney general opinion inquiry adds a sixth board and an eighth instance: In 1994, the then-*Alaska Public Utilities Commission* was scheduled for termination, with an existing "wind-down" year set for July 1, 1994 - June 30, 1995. The commission was extended during the 1995 session. Sec. 12, ch. 1, SLA 1995.

## II

That attorney general opinion summary covered the years through 1994. Beginning in 1995, then, it appears that four additional Title 44 boards and commissions, on as many as five different occasions, have expired under AS 44.66.010(a) and functioned during the succeeding year under AS 44.66.010(b).

---

<sup>1</sup> Taking into consideration that the State Board of Parole was caught up in a wind-down period when the attorney general opinion was authored, that board has actually expired three times. The existence of the State Parole Board, then in a wind-down year following its termination effective June 30, 1993, was continued during the 1994 session. Sec. 5, ch. 44, SLA 1994.

<sup>2</sup> Statutory references to the Alaska Code Revision Commission were repealed in the 1995 Revisor's Bill. See sec. 33, ch. 23, SLA 1995.

Senator Robin Taylor  
June 10, 2002  
Page 3

-- The former *Older Alaskans Commission*, subsequently redesignated as the Alaska Commission on Aging, was scheduled for termination June 30, 1993, with an existing wind-down year set to end June 30, 1994. The life of the commission, as renamed, was continued during that wind-down year by sec. 10, ch. 131, SLA 1994.

-- The *Hazardous Substance Spill Technology Review Council* established under AS 46.13.100 - 46.13.130 and AS 46.13.900 expired June 30, 1994, operated for one wind-down year, was extended during that wind-down year by sec. 9, ch. 93, SLA 1995 through June 30, 1995, expired on that date, theoretically functioned during the following fiscal year to conclude its affairs, and was not continued by the legislature.<sup>3</sup>

-- The *Citizens' Review Panel for Permanency Planning* under former AS 47.14.400 was also scheduled for termination June 30, 1994, with an existing wind-down year set to end June 30, 1995. The life of the panel was continued during that wind-down year by sec. 1, ch. 5, SLA 1995. Before reaching the revised termination date, the panel was abolished by 1997 legislation establishing a "Citizens' Foster Care Review Board."

-- The *Board of Storage Tank Assistance* established in AS 46.03.360 was scheduled to terminate June 30, 2000. During the 1999 legislative session, the scheduled termination date was moved to June 30, 1999, thus putting the board into a wind-down year through June 30, 2000. See sec. 1, ch. 70, SLA 1999. Then, during the 2000 legislative session, the termination date was amended to June 30, 2001. Sec. 1, ch. 125, SLA 2000. The board thus has again functioned during the current state fiscal year in a wind-down mode. In SB 115, the board is continued by the legislature for another year through June 30, 2003; the extension bill is before the governor for signature.<sup>4</sup>

JBC:pjc  
02-089.pjc

---

<sup>3</sup> Subsequently, statutory references to the council were repealed in the 2000 Revisor's Bill, sec. 102, ch. 21, SLA 2000.

<sup>4</sup> In addition to the preceding, in each of the following instances, the named board or council expired and presumably functioned during the wind-down year to conclude its affairs, but the legislature made a conscious decision not to extend its life:

-- The *Tourism Coordinating Committee* of former AS 44.33.122 expired June 30, 1993, enjoyed authority to operate for one further year, and was not continued by the legislature; statutory references to the committee were repealed in the 1995 Revisor's Bill, sec. 33, ch. 23, SLA 1995.

-- The *Citizens' Foster Care Review Board* established under AS 47.14.200 expired on June 30, 2000, enjoyed authority to function during the following year through June 30, 2001, and, so far as I have been able to determine, has not been continued by the legislature.

**LEGAL SERVICES**

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3887 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

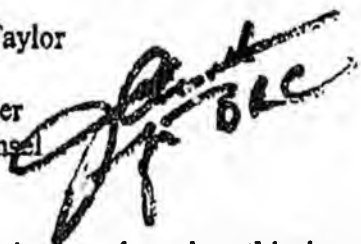
**MEMORANDUM**

June 6, 2002

**SUBJECT:** Ethical standards applicable to members of the Regulatory Commission of Alaska (Work Order No. 22-LS1843)

**TO:** Senator Robin Taylor

**FROM:** Barbara R. Craver  
Legislative Counsel



You asked several specific questions in regard to the ethical standards applicable to members of the Regulatory Commission of Alaska.

1. What ethical standards apply to members of the Regulatory Commission of Alaska (RCA)?
  2. What changes could be made to the ethical standards applicable to the RCA?
  3. What ethical restrictions do other states place on utility regulatory boards?
- 
1. What ethical standards apply to members of the Regulatory Commission of Alaska (RCA)?

The RCA is an independent agency within the Department of Community and Economic Development. AS 42.04.010. Commissioners of the RCA are public officers and are subject to the Executive Branch Ethics Act. <sup>1</sup> AS 39.52. RCA commissioners are also

---

<sup>1</sup> Sec. 39.52.110. Scope of code.

(a) The legislature reaffirms that each public officer holds office as a public trust, and any effort to benefit a personal or financial interest through official action is a violation of that trust. In addition, the legislature finds that, so long as it does not interfere with the full and faithful discharge of an officer's public duties and responsibilities, this chapter does not prevent an officer from following other independent pursuits. The legislature further recognizes that

- (1) in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without personal and financial interests in the decisions and policies of government;
- (2) people who serve as public officers retain their rights to interests of a personal or financial nature; and
- (3) standards of ethical conduct for members of the executive branch need to distinguish between those minor and inconsequential conflicts that are

Senator Robin Taylor  
June 6, 2002  
Page 2

subject to the Public Official Financial Disclosure Act.<sup>2</sup> AS 39.50. The Executive Branch Ethics Act prohibits a public officer from using an official position for personal or financial benefit. The Public Officer Disclosure Act focuses more specifically on the type of financial interests which might pose an apparent or actual conflict of interest for a public officer.

To the extent that you are concerned with the standards imposed on commissioners in the course of administrative hearings, provisions in the Executive Branch Ethics Act would

---

unavoidable in a free society, and those conflicts of interests that are substantial and material.

(b) Unethical conduct is prohibited, but there is no substantial impropriety if, as to a specific matter, a public officer's

(1) personal or financial interest in the matter is insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officer belongs; or

(2) action or influence would have insignificant or conjectural effect on the matter.

(c) The attorney general, designated supervisors, hearing officers, and the personnel board must be guided by this section when issuing opinions and reaching decisions.

<sup>2</sup> Sec. 39.50.010. Findings and purpose.

(a) It is declared by the people of the State of Alaska that the purposes of this chapter are:

(1) to discourage public officials from acting upon a private or business interest in the performance of a public duty;

(2) to assure that public officials in their official acts are free of the influence of undisclosed private or business interests;

(3) to develop public confidence in persons seeking or holding public office, enhance the dignity of the offices and make them attractive to citizens who are motivated to public service; and

(4) to develop accountability in government by permitting public access to information necessary to judge the credentials and performance of those who seek and hold public office.

(b) The people of the State of Alaska declare that:

(1) public office is a public trust that should be free from the danger of conflict of interest;

(2) the public has a right to know of the financial and business interests of persons who seek or hold public office;

(3) a compelling state interest requires that candidates for office and office holders disclose their personal and business financial interests;

(4) reasonable disclosure requirements do not violate an individual's right to privacy when the individual seeks or holds public office and a compelling state interest in the disclosure exists; and

(5) reasonable disclosure requirements do not have the effect of chilling the exercise of the right of a qualified person to seek or hold public office.

Senator Robin Taylor  
June 6, 2002  
Page 3

generally prohibit a commissioner acting as a hearing officer from performing that function improperly.<sup>3</sup> RCA commissioners can be removed by the governor for cause. AS 42.04.020(e).

Under the adjudication provisions of the Administrative Procedure Act:

<sup>3</sup> AS 39.52.120. Misuse of official position.

(a) A public officer may not use, or attempt to use, an official position for personal gain, and may not intentionally secure or grant unwarranted benefits or treatment for any person.

(b) A public officer may not

(1) seek other employment or contracts through the use or attempted use of official position;

(2) accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the state;

(3) use state time, property, equipment, or other facilities to benefit personal or financial interests;

(4) take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest;

(5) attempt to benefit a personal or financial interest through coercion of a subordinate or require another public officer to perform services for the private benefit of the public officer at any time; or

(6) use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for partisan political purposes; this paragraph does not prohibit use of the governor's residence for meetings to discuss political strategy and does not prohibit use of the communications equipment in the governor's residence so long as there is no special charge to the state for the use; in this paragraph, "for partisan political purposes"

(A) means having the intent to differentially benefit or harm a

(i) candidate or potential candidate for elective office; or

(ii) political party or group;

(B) but does not include having the intent to benefit the public interest at large through the normal performance of official duties.

(c) In addition to other provisions of this section, a public officer who is a member of the Board of Fisheries or the Board of Game may not act on a matter before the board if the public officer has not disclosed in the manner set out in AS 39.52.220 all personal or financial interests in a business or organization relating to fish or game resources.

(d) In this section, when determining whether a public officer is considered to be performing a task on government time, the attorney general and personnel board shall consider the public officer's work schedule as set by the public officer's immediate supervisor, if any. A public officer other than the governor and lieutenant governor who, during the work days, engages in political campaign activities other than minor, inconsequential, and unavoidable campaign activities shall take approved leave for the period of campaigning.

Senator Robin Taylor  
June 6, 2002  
Page 4

The functions of hearing officers and those officers participating in decisions shall be conducted in an impartial manner with due regard for the rights of all parties . . . . These officers . . . may not engage in interviews with, or receive evidence or argument from, a party, directly or indirectly, except upon opportunity for all other parties to be present. . . .

AS 44.62.330. However, the RCA is specifically exempt from portions of the Administrative Procedure Act which govern the conduct of administrative adjudications under AS 42.05.161(a).<sup>4</sup> The commission is directed to adopt regulations consistent with the standards of due process of law for the practice and procedures of the RCA. AS 42.05.151(b). The regulations adopted by the RCA do not contain any specific standards for the conduct of the commissioners or hearing officers relevant to impartiality and *ex parte* contacts. 3 AAC 48. (Practice and Procedure.)

One specific area of concern in your request is the standards applicable to *ex parte* contacts of a commissioner with a party or witness involved in a hearing before that commissioner. There is nothing specific in the procedures applicable to RCA matters which specifically forbids *ex parte* contacts. However, AS 42.05.151(b) clearly directs the RCA to conduct its affairs consistent with the standards of due process of law. A hearing officer improperly having *ex parte* contacts raises due process issues. An *ex parte* communication is generally regarded as a violation of due process. Louisiana Pac. Corp. v. Koons, 816 P.2d 1379, 1382 (Alaska 1991).<sup>5</sup>

**2. What changes could be made to the ethical standards applicable to the RCA?**

There are provisions which apply to other boards and commissions with administrative adjudications to ensure the impartiality and forbid *ex parte* contacts. Although existing law would probably be sufficient to support a removal for cause if an RCA commissioner were to violate the due process rights of a party being heard by the commission, here are a few of the provisions which could be added to the statutes governing the RCA to make

---

<sup>4</sup> AS 42.05.161. Application of Administrative Procedure Act.

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

(b) AS 44.62 (Administrative Procedure Act) applies to regulations adopted by the commission. [This statute was adopted in 1970.]

<sup>5</sup> A member of a worker's compensation hearing board initiated a conversation with two party's witnesses regarding some collateral issues after a hearing. The court found that *ex parte* communications with a member of an adjudicatory board are a violation of the fundamental standards of due process.

Senator Robin Taylor  
June 6, 2002  
Page 5

the standards for the impartiality of commissioners while conducting hearings more explicit:

a. From the Administrative Procedure Act:

AS 44.62.630. Impartiality. The functions of hearing officers and those officers participating in decisions shall be conducted in an impartial manner with due regard for the rights of all parties and the facts and the law, and consistent with the orderly and prompt dispatch of proceedings. These officers, except to the extent required for the disposition of ex parte matters authorized by law, may not engage in interviews with, or receive evidence or argument from, a party, directly or indirectly, except upon opportunity for all other parties to be present. Copies of all communications with these officers shall be served upon all parties.

b. Hearings before the Local Boundary Commission:

3 AAC 110.500. LIMITATIONS ON ADVOCACY. (a) Unless otherwise ordered by the chairperson of the commission, for good cause shown, no document, letter or brief will be accepted for filing and consideration by the department or the commission except in accordance with the procedures, timeframes, hearings and meetings specified in 3 AAC 110.400 - 3 AAC 110.660.

(b) A member of the commission is prohibited from ex parte contact and communication with any person except the staff of the commission, concerning a matter pending before the commission that has been filed as a petition, from the date the petition was first submitted to the department through the last date available for the commission's reconsideration.

c. Hearings on revenue matters:

15 AAC 05.030. FORMAL HEARINGS

...

(d) A hearing officer may not communicate with a party, directly or indirectly, regarding a case unless notice and opportunity to participate is given to all parties. A hearing officer may communicate with a party without notice and opportunity for all other parties to participate if the communication involves a procedural matter and the other parties have verbally or in writing waived notice and participation. A verbal waiver may be communicated directly to the hearing officer or through an opposing party. A party conveying a waiver of another party to the hearing officer must first declare that the subject matter of the communication was discussed with the other party and the other party expressly authorized the communication. A hearing officer who receives an ex parte

Senator Robin Taylor  
June 6, 2002  
Page 6

communication in violation of this subsection may be disqualified if necessary to eliminate the effect of the communication.

In addition, some guidance is offered in the Judicial standards found in the Code of Judicial Conduct:

Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

...  
(7) A judge shall accord to every person the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications or other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except as allowed by this Section. A judge shall make reasonable efforts to see that law clerks and other court staff carrying out similar functions under the judge's supervision do not violate the provisions of this Section.

(a) A judge may initiate or consider an ex parte communication when expressly authorized by law to do so.

(b) When circumstances require, a judge may engage in ex parte communications for scheduling or other administrative purposes, provided that:

(i) the communications do not deal with substantive matters or the merits of the issues litigated,

(ii) the judge reasonably believes no party will gain a procedural or tactical advantage because the communication is ex parte, and

(iii) the judge takes reasonable steps to notify all other parties promptly of the substance of the ex parte communication and, when practicable, allows them an opportunity to respond. This subsection does not apply to ex parte communications by law clerks or other court staff concerning scheduling or administrative matters.

(c) If all the parties have agreed to this procedure beforehand, either in writing or on the record, a judge may engage in ex parte communication on specified administrative topics with one or more parties.

(d) A judge may consult other judges and law clerks or other court staff whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

Senator Robin Taylor  
June 6, 2002  
Page 7

(c) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

**3. What ethical restrictions do other states place on utility regulatory boards?**

In the interest of responding to your request in a timely manner, I will provide the results of my research on the ethical standards for utility regulatory boards in other states in a separate memorandum. Prior to proceeding with that research, I would like to talk to you to see if I can focus my research on the ethical issues of most concern to you. It may also be that the information in the memorandum is adequate to assist you, without reference to other states. I will call you to follow up on this portion of your request.

BRC:pjc  
02-087.pjc

**LEGAL SERVICES**

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3887 or 465-2460  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

**MEMORANDUM**

June 11, 2002

**SUBJECT:** Wind-down year of the Regulatory Commission of Alaska - scope of authority (Work Order No. 22-LS1845)

**TO:** Senator Robin Taylor

**FROM:** Barbara R. Craver  
Legislative Counsel 

You have asked what functions the Regulatory Commission of Alaska (RCA) can perform in the "wind-down year" following its termination and how much discretion it has to determine the scope of its actions during that year. You provided a letter dated May 20, 2002, from G. Nannette Thompson, Chair of the RCA to you ("RCA letter"). You also attached a copy of a memorandum from the Attorney General to Commissioner Paul Fuhs, dated June 21, 1994 ("AG memo").

The RCA is terminated on June 30, 2002, by AS 44.66.010(a)(4). AS 44.66.010(b) provides that "[u]pon termination, a commission listed in (a) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs." While the RCA continues to operate, its existence in the final year after it has failed to be continued is for the purpose of bringing its activities to a close. AS 44.66.060 provides that any claim against a board is not extinguished by the termination of the board. Under AS 42.05, the Public Utilities Regulatory Act, there is no other statutory guidance as to what the Board is to do in its "wind-down" year. It is our position that the statutes governing the RCA do not curtail the performance of any of its functions during its wind-down year.

As stated in the 1994 AG memo, several boards subject to Title 44 have been terminated and have gone into a wind-down year. That memo was updated by Jack Chenoweth in a memo dated June 10, 2002, a copy of which is attached. The AG memo states that it has been the administration's practice to advise agencies in their wind-down year to continue to operate fully. The advice and practice since 1979 is that an agency's powers are not curtailed during the wind-down year.

As noted in the AG memo, the "wind-down" language used in AS 08.03.020(a) for the termination of regulatory boards specifically provides "[d]uring this period, termination does not reduce or otherwise limit the powers or authority of each board." This is of interest when compared to the language used in AS 44.66. Because the language in AS 44.66.010(b) does not contain the additional phrase found in AS 08.03.020 the

Senator Robin Taylor  
June 11, 2002  
Page 2

implication is that the powers and authority of boards and commissions in AS 44.66.010 are more limited during the wind-down period. The AG memo concludes after an extensive review of legislative history that it can find no reason for the difference, and that the sponsor of the bill did not intend that the agencies covered by Title 44 be treated differently than Title 8 agencies during the wind-down year. As a matter of practice, the AG memo states that several Title 44 agencies have continued business as usual during their wind-down year.

We agree with the conclusion found in the AG memo:

[T]he impact of AS 44.66.010(a)(4) on the Alaska Public Utilities Commission [now the RCA] is to impose an additional duty to prepare for closing, but not to eliminate the commission's power to conduct its regulatory functions. The Commission should comply with the sunset law by preparing for the exigency that it may be required to cease all activities, lay off all staff and close its doors at the end of the next fiscal year. We suggest the commission should examine the time demands and completion dates of its current workload, determine what additional investigations can be accomplished by the end of the sunset year, develop a plan to conclude as many matters as possible before the end of the year, and publicize plans to wind down and phase out by June 30, 1995. We emphasize that how to do this is within the commission's discretion since the statutes offer little guidance.

The RCA has considerable discretion to determine how it can best prepare for complete cessation of its work, while at the same time continuing to fulfill its regulatory duties. Some diminution in "business as usual" would be understandable. The RCA letter identifies several proposed actions for the RCA in its wind-down year. The agency has the discretion to carry out its statutory responsibilities consistent with the expectation that it will cease to exist after June 30, 2003. Whether the proposed actions are reasonable or not are questions of fact that are beyond my expertise.

If I may be of further assistance, please advise.

BRC:pjc  
02-090.pjc

Enclosure

cc: John Tillinghast



June 10, 2002

The Honorable Robln Taylor  
Chair, Senate Judiciary Committee  
Alaska State Senate  
State Capitol, Room 121  
Juneau, Alaska 99801-1182

Dear Mr. Chairman:

I am writing this letter on behalf of Chugach Electric Association's Board of Directors and its 60,000 members to express our appreciation for your willingness to address the current problems that exist with the Regulatory Commission of Alaska's (RCA) ratemaking processes. As we have shared with you during prior conversations, Chugach Electric Association, Inc. (Chugach) is frustrated with the current process. There are three primary problems we wish to outline:

1. The Commission takes way too long to make decisions - A hearing on Chugach's 1998 Test Year rate case was held in September, 2001, and the decision was not issued until six months later. Chugach's 2000 Test Year general rate case was filed in July, 2001 - we are unlikely to have a decision within 18 months.
2. The Commission does not control its proceedings well - over 57,000 pages of discovery to five parties each have been disclosed thus far after two rounds of discovery in our pending rate case. There are four rounds of discovery scheduled.
3. The Commission considers the same issues in multiple proceedings (issues never seem to go away) - in our current case, the Commission is considering a financing issue it has considered twice before.

The message we are sending is that the existing process is quite inefficient and our members are not getting much value from the regulatory processes before the RCA. Chugach members pay for the RCA in their monthly electric bill through the regulatory cost charge. In addition, base electric rates are also impacted by this inefficiency (that is, costs are driven up by the expenses of outside counsel and the staggering costs of discovery). The Chugach Board of Directors has an obligation to its members to assure that costs incurred are for the benefit of its members. The current high costs of regulation and more importantly, the diversion of key staff resources, are benefiting no one.

Chugach is not the only electric utility that has concerns with the RCA. Eric Yould, Executive Director of ARECA, stated in a recent letter to House Finance Co-Chairman Eldon Mulder: "...the regulatory process is still broken and must be fixed. The present process costs the electric utility industry much time and ... money to run the regulatory gauntlet."

Jun. 11 2002 11:27AM P2

PHONE NO. :

FROM :

Communications Systems;

907 207 8850

USA BROADCASTING

JUN-10-02 8:13PM;

Page 3/3  
2003

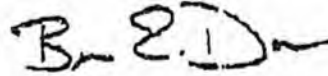
Honorable Robin Taylor  
Chair, Senate Judiciary Committee

June 10, 2002  
page 2

We concur with Mr. Yould's comments and welcome the Committee's involvement. Addressing the ineffectiveness of the RCA's current regulatory process will benefit all of our constituents. We believe there are solutions to the problems we are encountering, but steps must be taken now to start the process.

If you have any questions regarding this letter, please do not hesitate to contact me or Joe Griffith, Chugach's General Manager. We would be happy to meet and further discuss this important matter at your convenience.

Sincerely,



Bruce Davidson  
President, Board of Directors

Comments by Joe Griffith  
Senator Taylor's Committee  
Sunset Review of RCA  
June 12, 2002

Good afternoon. My name is Joe Griffith. I am the General Manager of Chugach Electric Association. Though I was just recently appointed to this position, before that I was Executive Manager overseeing regulatory matters.

Chugach is a member-owned cooperative consisting of 60,000 retail members. Chugach also sells power wholesale. The result is that Chugach supplies most of the electric power for the Anchorage area, almost all of the power for the Matsu Valley and Kenai Peninsula areas, and supplies substantial amounts of power to the Fairbanks area. It is important to note that as a cooperative, our members elect the directors that sit on our Board of Directors. And, they have elected well. We have dedicated and knowledgeable directors with considerable professional expertise which meet over 25 times a year, ensuring that they keep very close track of our members' interests.

The message I bring to you today is simple: our members are not getting good value from the regulatory processes before the RCA. Chugach continues to have serious difficulties with the regulatory process before the RCA.

Before I elaborate on that message, let me say that it is with considerable trepidation that I appear before you. Many would say that it is a fool's errand to complain publicly about an agency that has such absolute power and authority over every aspect of each of our utility's operations. This agency sets the prices at which we sell our services. It sets the terms of our service. It has virtually unlimited investigative authority and ultimately, in extreme circumstances, has the authority to take on management authority at the company.

But despite the risks, we feel we owe it to our members to give you the benefit of our experience. However, I want to stress that what we have to say is offered in the spirit of constructive criticism and we trust and hope that it will be accepted that way.

Let me tell you a little about our experience which is, of course, unique. With a few notable exceptions, when we are actually able to get a decision, we are generally happy with the narrow result. It's getting a result that is the problem. There are three points I want to make in this regard:

**First**, the Commission takes far too long to make decisions. Let me give you a couple of examples.

- 1) A rate case was opened in 1996. A hearing was held in September, 2001, and a decision was issued six months later in March, 2002. This rate review process is over 6 years old and still open.

- 2) The 2000 Test Year general rate case was filed in July, 2001, and we are unlikely to have a decision before 18 months has passed.

**Second**, the Commission does not control its proceedings well. In excess of 60,000 pages of discovery have been disclosed thus far after two rounds of discovery. There are four rounds of discovery scheduled.

**Third**, the Commission has a tendency to make the least final decision possible in many circumstances. The result is that issues don't go away. In our current rate case, the Commission is considering a financing issue it has considered twice before. The Commission confronted the issue once in a separate docket opened to decide whether to investigate the claim. It closed the docket, finding no basis for investigation, but allowed consideration of the issue in the case I just mentioned that has been open for six years. They rejected the claim again in that case, but now it's back in the 2000 Test Year case. The Commission seems to have trouble with the issue of finality. As I said, the Commission sets prices at which we can sell our services, but once they have set the price and we have sold the service, the Commission asserts it has the right to and actually does go back in time to change that price. You can imagine trying to run a business when you can't know whether the revenues you receive are going to be taken back years later.

**In conclusion**, Chugach looks to the Commission to perform its role. We think they have an important role in Alaska. In a sense, we are a customer of the RCA. From our perspective, one of its main functions is to adjudicate cases which come before it. The RCA has become ineffective in performing this function.

Chugach has and will continue to participate in good faith and try to make work whatever regulatory structure the legislature determines is best, but the current situation is not good for our members. We currently pay \$365,475 to fund a regulatory process that adds little value and costs the members hundreds of thousands of dollars annually and, more importantly, diverts the considerable talents of my staff on work which benefits no one, for example in our 2000 Test Year rate case, we have already expended over 6,000 staff hours and we still have months to go. We need to expedite and improve the process.

### **Possible Questions**

1. What do you recommend?
2. Why does a coop with an elected board need regulatory oversight?
3. Does Chugach (or other coops or munis) need to be regulated?

*TESTIMONY  
SENATE JUDICIARY COMMITTEE  
JUNE 12 2002*

TESTIMONY OF:

KRISTI CATLIN  
DIRECTOR, GOVERNMENT RELATIONS  
AT&T ALASCOM

Chairman Taylor, Senators. Good Afternoon.

I would like to begin by thanking you for the opportunity to supplement the record on HB333. For the record, my name is Kristi Catlin, and I am the Director of Government Relations for AT&T Alascom.

AT&T Alascom supports the Telecommunications Study currently being let by the Department of Administration designed to examine the telecommunications market in Alaska. An unbiased study will help give the legislature and the commission guidance in developing telecommunications policy in Alaska. We support the reauthorization of the Commission, because this commission is well educated on the issues and represents stability and continuity. And we support gaining a commitment from the Commission to deal with critical issues affecting the telecommunications market at this vital time in our history. The market is changing and regulation must change with it, and at a pace.

AT&T Alascom believes that this Commission is in the best position to help us because of their longevity in studying the issues over which it regulates, but let's not mistake a vote for the Commission to mean that we support every Commission decision. We do not. However, the Commission is well informed, and it appears to make every effort to follow the law as it understands it.

The complex telecommunications market is only one of the fields that RCA commissioners regulate. As you know, they also wrestle with water, sewer, electric, gas, garbage and pipeline. Understanding all elements takes time. Quite frankly, the prospect of educating another commission is daunting, especially when this one is just gaining its own wings. There are times when drastic measures, such as Sun-setting a commission, are necessary. We do not believe that this is one of them.

It is important to understand that, with the current state of telecommunications and market forces in this state, re-appointing a new commission would not necessarily serve the best interests of the process. Critical decisions must be made this year, otherwise the telecommunications infrastructure of this state will be in serious jeopardy. Re-appointing another commission will only extend the time to educate the commission; and to then get quality, considered opinions and decisions made on behalf of the telecommunications providers of this state, and ultimately Alaska consumers.

TESTIMONY OF KRISTI CATLIN  
SENATE JUDICIARY COMMITTEE  
JUNE 12, 2002  
PAGE 2

It is imperative that this Commission not mistake our support of their re-appointment for a vote to leave market structure and regulation the way it has been for the last four years. We think the Commission is in the best position, with the aid of an un-biased market study, to help us sort through the policy issues of the past; get an understanding on competition and market forces that is based in reality; and set a direction for the future that protects the interests of the citizens they serve, as well as ensure the viability of the companies that provide those services.

What is clear to us is this: the best way to get the problems addressed is to (1) reauthorize this Commission, (2) get the study done, and (3) obtain a commitment from the Commission to deal with the tough telecommunications market issues in its first year.

This concludes my comments. I would be happy to entertain your questions.

Testimony of Harold W. Furchtgott-Roth

Before the Judiciary Committee  
Alaska Senate  
June 12, 2002

**I. Personal Background**

My name is Harold W. Furchtgott-Roth. I am a visiting fellow at the American Enterprise Institute for Public Policy Research (AEI) in Washington, D.C. where I am writing a book on the Telecommunications Act of 1996.

From November of 1997 through May of 2001 I served as a Commissioner of the Federal Communications Commission (FCC). In that capacity, among other responsibilities, I reviewed, deliberated, and voted on all matters before the FCC. These matters included common carrier issues including many relevant to the Regulatory Commission of Alaska, Alaska Communications Systems (ACS), GCI, and all other common carriers in Alaska.

I have worked for many years as an economist. From 1995 to 1997, I served as Chief Economist of the House Committee on Commerce where, among other responsibilities, I was one of the principal staff members helping to draft the Telecommunications Act of 1996. From 1988 to 1995, I served as a senior economist for Economist Incorporated where I worked on econometric matters in regulatory, antitrust, and commercial litigation cases. These cases included many matters in the broadcast, cable, and telecommunications industries. From 1984 to 1988, I served as a research analyst for the Center for Naval Analyses where I conducted quantitative studies and analyses on behalf of the Department of the Navy.

6/12/2002

From 1981 to 1982, I had a graduate student fellowship to serve as a research assistant at the Department of Energy. From 1978 to 1979, I served as an assistant analyst at the Congressional Budget Office. In the summers of 1980, 1977, and 1976, I served as an intern at the Office of Management and Budget, the Department of Labor, and the Senate Appropriations Committee, respectively.

My academic research concerns economics and regulation. I am the coauthor of three books: *Cable TV: Regulation or Competition*, with R.W. Crandall, (Washington, DC: The Brookings Institution), 1996; *Economics of A Disaster: The Exxon Valdez Oil Spill*, with B.M. Owen, D.A. Argue, G.J. Hurdle, and G.R. Mosteller, (Westport, Connecticut: Quorum books), 1995; and *International Trade in Computer Software*, with S.E. Siwek, (Westport, Connecticut: Quorum Books), 1993. I am a frequent commenter on matters before the Federal Communications Commission, and my opinion pieces have been published by daily newspapers including the *Wall Street Journal*. I have testified on many occasions before committees of the U.S. Senate and House of Representatives. My statements as a commissioner at the FCC have been cited by federal courts.

I received an S.B. in economics from the Massachusetts Institute of Technology in 1978 and a Ph.D. in economics from Stanford University in 1986. I was a research fellow at the Brookings Institution from 1983 to 1984.

I submit this testimony in my individual capacity, and not on behalf of the American Enterprise Institute or any other organization.

**II. Purpose of testimony**

I am honored to be invited to appear before this committee. As I will describe later, I have a great attachment to the State of Alaska. I understand that the purpose of this hearing is the reauthorization of the Regulatory Commission of Alaska (RCA). I have come not to tell you what to do. Your duty is to your constituents, not to the federal government, much less private citizens from other states.

But I can share with you my experiences in the telecommunications sector, my familiarity with the FCC and federal communications law, my disappointment in how the Telecommunications Act has been implemented around the country. I can offer a framework that may be helpful to the RCA. I can try to answer any questions you may have.

I have advised ACS in the past. I have a great regard for the company and its management. My views are not necessarily the views of ACS. My views are my own. I have offered advice to companies afflicted by all manner of regulations, competitors and incumbents, broadcasters and cable companies alike. Much of America is a battleground between large Regional Bell-Operating Companies (RBOCs) on the one side and formerly large competitive carriers on the other. I am not a partisan in these fights. I have no view as to which companies should succeed or fail, nor do I believe that that is a proper issue for government to contemplate. I have not come to say bad things about GCI or any other company. I have only the utmost respect for private businesses trying to make a profit.

### III. Foundations of law and economics

I do have consistently strong views about one matter: laws should be followed, by private parties, and even more so by the government. Property, contracts, and liability rules are the building blocks of all economic activity. If they are predictable and enforceable by private parties, economies thrive. If they are not enforceable, or if only at the discretion of the government, economies flounder.

To an economist, competition is about using property, contracts, and assets to provide services to customers as efficiently as possible, with an awareness that other firms are doing the same; it is not about competing to see who can curry the most favor with a government agency to hobble other firms in the market. The typical advice I give to companies is not so much about how to succeed in business as about how to convince the government to follow the law. Sadly, it is an all too common problem. Most regulatory problems have their origin not in bad business behavior by private parties, nor even so much in bad laws or bad regulations, but rather in the unwillingness of government agencies to follow the very laws entrusted to them.

Over the years, I have worked closely with the states and state officials including governors, legislators, and regulators. From education to the environment, from roads to public safety, most government in America is at the state and local level. You have an enormous responsibility. The Nobel Laureate Milton Friedman wrote eloquently in *Capitalism and Freedom* about the close relationship between free markets and political liberty. In the same book, he also emphasized the importance of having as many political decisions as possible made at the decentralized levels of government closest to the

electorate. Such a framework of government, as is America's, is the most conducive to free enterprise.

Every state is looking for more investments. An investment is nothing more and nothing less than a contract for property. Where the rights to property are eroded, where the rights to contracts are limited, investments will decline. This is not the result of complicated economics. It is simply common sense.

#### **IV. Relevant Alaska background**

As an FCC Commissioner, I visited Alaska in July 1998 and in May 2000. I traveled around the state meeting with state officials, municipal officials, industry representatives, tribal councils, teachers, and anyone I could possibly meet with. And I met with the state regulatory commissioners. I traveled with Commissioner Jim Posey in 1998 and with Nan Thompson in 2000. I gave a few speeches, but mostly I came to listen and to learn. I traveled to cities such as Anchorage, Fairbanks, Juneau, and Ketchikan. I traveled to small towns such as Whittier, Galena, and Dillingham. I traveled to villages such as Tanana, Nuiqsit, Deadhorse, Huslia, Aniak, and smaller settlements without names. For all I have seen of Alaska, I am grateful. Yet I have seen very little of the state, not nearly enough.

As an FCC commissioner, I took a special interest in Alaska. Partly, it was the kindness and interest of Senator Stevens and his staff took to be sure that I understood some of the problems of your great state. But having visited Alaska, it was hard not to take an interest in it.

I have traveled much of the world. I have met many people. But there are few places I yearn more to see than Alaska. Alaskans are fortunate people. You live in some of the most beautiful and majestic land in the world. I have no delusions that life here is easy. To the contrary, your life is a daily challenge. Climate, geography, remoteness, and darkness conspire to make life less comfortable and less convenient than the sedentary life available to us in the Lower 48. It is in part the difficulty of life here in Alaska that both attracts and shapes rugged individualists, people who look to themselves to solve most of their problems.

To see Alaska is to see the future of the United States. This is where new opportunities lie. This is where growth will occur. This is where new investments will be made and new jobs created. Economic growth will come to Alaska not just because of beauty and natural resources. Laws must make sense as well, laws that protect property and contract interests.

#### **V. An apparent success story**

At first blush Alaska is the great success story of the Telecommunications Act of 1996. Residents in the largest communities have choices for local, long-distance, and broadband access services. Telecommunications prices have fallen. More the 50 percent of Anchorage residents use a competitive service. Universal service continues in rural areas.

Beneath the surface is a different story. Yes, consumers have choices, but it is competition primarily for different providers on the same network, not competing networks. Moreover, a government agency compels one private party to provide services

to another private party at rates determined not by negotiation but by state central planning. Investment decisions are distorted by government decisions, all of which erode incentives to invest. Some private companies are in financial distress directly as the result of government decisions. Throughout, there are legitimate concerns about process, about whether laws are followed, about whether government agencies feel compelled to follow the law.

Which is the real story about telecommunications in Alaska: the one on the surface or the one below the surface, or perhaps both or neither? Has the role of the RCA been to champion private decisions about the use of property and contracts? Or has the RCA role been to determine the outcomes of transactions between private parties? If so, have those determinations been as minimally invasive as possible consistent with the law? Has the RCA done as the Legislature would choose, or are there areas where it could be predictably improved? No simple answers are available. Those are judgments that you alone can make. I can offer some advice on how to frame the issues, and share a few observations on specific issues that I follow.

## **VI. A framework for examining government institutions**

I am currently writing a book on the implementation of the Telecommunications Act of 1996. In the course of writing the book, I thought much about how to evaluate laws and government institutions. In my view, the Telecommunications Act of 1996 has been grossly misinterpreted. The obvious question is: What can or should be done about it? The answer is not obvious.

Misapplication of laws, broken laws, and poor exercises of judgments: these are not exceptional events in either the public or private sector. They go together with the brilliant insights, the fortunate guesses, the hard work and efforts that make up daily life. Institutions and laws can do a perfect and wonderful job, and still be rationally phased out. For example, at the end of every war, military forces are demobilized rather than kept on indefinite active duty.

On the other hand, a poorly performing law or institution may still be better than no institution. Government agencies that might plausibly have had an opportunity to detect and stop the terrorists last year may have performed below hopes, but it does not necessarily follow that they should all be abolished.

How can the effectiveness and longevity of public laws and institutions be evaluated? In my book, I focus on three forms of liberty that public laws and institutions should protect: political liberty (the public's choice and control of their government); economic liberty (individual's relationships for economic relationships for property and contracts with other individuals); and what I term administrative liberty (an individual's freedom from abusive treatment by government). I use these three areas of liberty to evaluate the Telecommunications Act of 1996. While the Act reflects progress on the first two forms of liberty, it has had substantial failings in administrative liberty.

Questions that the legislature might consider are as follows:

*Political liberty:* Has the RCA been responsive to the legislature and to the people of Alaska?

*Economic liberty:* Has the RCA respected and enforced property and contract rights of private parties in Alaska consistent with relevant laws? Has the RCA enforced liability

rules for those who violate property or contract rights? Are the cumulative economic and social benefits of RCA decisions greater or lesser than the cumulative costs of the decisions?

*Administrative liberty:* Has the RCA interpreted relevant laws with the clearest, most predictable meanings in a manner than can withstand judicial review? Are processes predictable, expeditious, and consistent with administrative law? Has the RCA treated all parties before it equally and fairly within the law? Have parties before the RCA felt at liberty to appeal unfavorable rulings without fear of retribution?

I know the answer to some of these questions in the context of the FCC, but I do not pretend to know the answers to these questions for the RCA. I hope that this framework may be of some use to you as you consider the RCA.

#### **VII. The strengths of Alaska state government**

It is easy to point to the failings of government and government officials. Each of us is human and fallible. Whether in private life or in public office, none of us is beyond reproach. None of us would willingly submit to microscopic review of our every move, our every motive. Each of us has made a great many mistakes. We do not become perfect or beyond reproach merely by entering public office. No matter our intentions or efforts, we still make mistakes. The mistakes of the FCC, many of which I contributed to, are legion. It is an imperfect institution. I am familiar with the strengths and weaknesses of the FCC; I am far from familiar with the same detail for the RCA.

At the same time, it would be inappropriate for a legislative body to turn a blind eye to the possibility of improving government. Laws are made by legislators, and the

purpose of laws is to make improvements where they can obviously be made. My first job in government was for Congress. I hold the legislative body to be the highest form of government. Yours is a solemn undertaking.

Despite the sentiments of those who live on the Potomac, I firmly believe that all of the wisdom of America is not to be found in Washington, DC. Indeed, I often find that views of proper government improve with distance from Washington; it is no surprise to me to find that the good people of the Alaska legislature have developed two brilliant innovations in government management.

#### *Sunset provisions*

The first innovation is the sunseting of authority for government agencies. Other than legislatures, government institutions need not be permanent. The institutions of the federal government change over time with awkward transitions. New institutions are occasionally required, much as President Bush last week called for a new cabinet agency for homeland security. But as new institutions are required, the need for existing ones can wither away. Some institutions remain for decades beyond any reasonable purpose. Thus, if the federal Interstate Commerce Commission had been abandoned years before its ultimate demise, the United States would not have been the worse for it.

In the past 25 years, sunset provisions have been inserted into Congressional legislative language, but usually just for specific sections or provisions. The Telecommunications Act of 1996 has several sunset provisions. Sunset provisions have three clear purposes: (1) legislators believe that a provision need not necessarily remain in place indefinitely; (2) the duration of the provision may depend on information that

will only be revealed in the future, not at the time of the initial legislation; and (3) legislators today may wish to establish the relevant tests and procedures, including burden of proof, to continue a provision beyond an established date. Of course, a future legislature has the prerogative of writing a new law to extend the authority, but that is based on the legislative authority and burden of the new legislature.

Alaska has extended the concept of a sunset for a specific section of statute for a sunset of authorization for an entire agency. Presumably, the Alaska legislature believed that, at some future date, the regulatory commission as currently constituted may no longer be necessary. The exact information necessary to continue the RCA was not known at the time of the original legislation, but the burden of proof to continue the agency was clearly placed on the state legislature. That is presumably the purpose of this hearing.

To sunset an agency is not an unnatural event; it is not the end of the world. Alaska has direct experience with the closing of a regulatory agency. No calamity resulted. Federal funds to the state did not cease. Universal service remained in place.. The former regulatory agency was immediately replaced by a new agency. The new agency was known to be governed by a specific sunset provision. The new agency knew that it was accountable to the legislature and would be periodically evaluated.

Even if Alaska had not created a new regulatory agency, the rights and obligations of carriers and citizens of Alaska under federal communications law would not have ended. The Communications Act of 1934 and The Telecommunications of 1996 do not place unfunded mandates on the state of Alaska or any other state. The state alone chooses whether to fund a regulatory agency to implement those provisions of the Act

which are reserved for state control. If the state chooses not to fund such an agency, or if a state agency were to decline to perform such activities, the FCC is obligated to perform them. It is not without precedent. Within the past two years, the Virginia Corporation Commission refused to arbitrate a Section 252 contract under the Telecommunication Act. The FCC was forced to provide the arbitration.

*Practical cost-benefit analysis*

The second innovation of Alaska in the area of good government is a practical cost-benefit analysis of telecommunications regulation as it effects the economic environment in the state of Alaska. Government activity is for a broader good; it is not an end unto itself. Moreover, there must be, and are, ways of measuring how well government performs regulation.

Measuring performance of government activity is not a novel idea. In education, for example, President Bush and others have emphasized measuring the academic performance of students as a means of evaluating the effectiveness of education programs. It is a simple concept, but one that is applied to surprisingly few government programs. At the federal level, there are no such evaluations for telecommunications regulation. I believe that federal communications regulation would be much more accountable and effective if there were periodic evaluations of efficacy.

The evaluation of the Alaska telecommunications industry will provide the state legislature with much of the information that it may need in evaluating the sunset review of the RCA.

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services  
Department of Education & Early Development  
State of Alaska

which are reserved for state control. If the state chooses not to fund such an agency, or if a state agency were to decline to perform such activities, the FCC is obligated to perform them. It is not without precedent. Within the past two years, the Virginia Corporation Commission refused to arbitrate a Section 252 contract under the Telecommunication Act. The FCC was forced to provide the arbitration.

*Practical cost-benefit analysis*

The second innovation of Alaska in the area of good government is a practical cost-benefit analysis of telecommunications regulation as it effects the economic environment in the state of Alaska. Government activity is for a broader good; it is not an end unto itself. Moreover, there must be, and are, ways of measuring how well government performs regulation.

Measuring performance of government activity is not a novel idea. In education, for example, President Bush and others have emphasized measuring the academic performance of students as a means of evaluating the effectiveness of education programs. It is a simple concept, but one that is applied to surprisingly few government programs. At the federal level, there are no such evaluations for telecommunications regulation. I believe that federal communications regulation would be much more accountable and effective if there were periodic evaluations of efficacy.

The evaluation of the Alaska telecommunications industry will provide the state legislature with much of the information that it may need in evaluating the sunset review of the RCA.

### VIII. The Telecommunications Act of 1996

I may be one of the last people in America who believes passionately in the Telecommunications Act of 1996, who believes that it would work if it were properly implemented. I believe in all of the provisions of the Act including Section 251 with its unbundled network elements, and I believe in the deregulatory provisions of Sections 10 and 11. I don't believe that the government can pick and choose which sections and which words of a law to implement, and choose to ignore the rest. Such an implementation renders the democratic process of legislation meaningless.

Sadly, much of the implementation of the Telecommunications Act of 1996 has not happened. I am writing a book about how it has not been implemented properly and the dire consequences not just for the telecommunications sector, but for democracy and government as well.

For the past six years, the federal government has misinterpreted many sections of the Telecommunications Act of 1996. Some states have made similar mistakes. The courts, slowly but surely, are correcting the mistakes of the government. But the damage has largely been done. Unlawful and unpredictable regulation has helped to wipe out an entire generation of investment. Badly burned in the past, investors shun this sector today.

Part of the Act has been properly interpreted, particularly where the government has properly followed statutory instructions to get out of the way. One example is cable rate regulation. From 1993 through 1996, the federal government embarked on a futile effort to make consumers better off by regulating cable rates. A consistent finding in economic history is that rate regulation does not work. When consumer rates are

regulated, investment declines, quality suffers, and consumers ultimately are harmed. Such was the case in cable. The Telecommunications Act of 1996 ended this experiment and, predictably, cable investment and quality of service recovered with the end of rate regulation for cable companies around America, including GCI. This result is entirely consistent with my own empirical research as published in my 1996 book of cable rate regulation.

Let me briefly review some parts of the Telecommunications Act of 1996. It is a painful review because it has been badly handled by the FCC.

1. Open local exchange markets, except in rural areas, to competition (Section 251-254);
2. Use of contracts, not tariffs or regulations, for transactions between and among carriers (Section 252);
3. Introduce the use of unbundled network elements (UNEs) through contract mechanisms (Section 251-252);
4. Place the burden of proof on the FCC to continue regulation in the presence of competitive markets (section 11);
5. Local markets deregulated largely under state supervision (Sections 252-252).

Sadly, important parts of Sections 251-252 were misinterpreted by the FCC, and the courts have been sorting through the damage over the past few years.

The Act also establishes the principle of universal service, particularly for rural and high cost parts of the country

6. Section 254 of the Act contains specific statutory direction on universal service;
7. The section was written for the benefit of small telephone companies in largely rural states such as Alaska;
8. While universal service is one of the Act's objectives, implicit subsidies are supposed to be made explicit;
9. Rural telephone companies were exempted from the UNE unbundling obligations until it could be shown that terminating the exemption would not be "unduly economically burdensome" or inconsistent with the Act's provisions for universal service.

**IX. The FCC: an agency unsympathetic to rural America**

Over the years, I have come to the reluctant conclusion that the FCC has great disdain for rural America in general and small telephone companies in particular. I reach this conclusion not as an avid partisan on behalf of small rural telephone companies. To the contrary, during the drafting of the Telecommunications Act of 1996, I was the lead staffer for the House trying to limit in size and scope Section 254. In helping to negotiate the language with Senate staffers, I learned all too well exactly what the language of the Act said, and exactly what the Senate, which largely prevailed in conference, meant.

The FCC followed neither the statutory language nor the intent of the Senate—a large targeted program to small rural telephone companies—nor the wishes of the House: a small, manageable program. Instead, the FCC developed its own program. I have followed these programs with great interest not out of any inherent sympathy to small telephone companies but rather out of a sense moral indignation at watching a government agency, seemingly intent on harming small businesses in America, systematically circumvent a law carefully crafted by a legislative body. Like many regulated entities at the FCC, small telephone have avoided litigating their mistreatment for fear of retribution.

Few sections of the Act have been as misconstrued as Section 254. Seven years ago, universal service was less than a \$2 billion program funded with implicit subsidies, almost entirely targeted at small telephone companies in rural America. Today, universal service is over \$5 billion with an explicit fee contribution system. The funding mechanism is broken with the tax base, interstate revenue, shrinking. The net result is a death spiral of increasing rates on interstate telecommunications services to support ever-expanding universal service expenditures. I mention this program because it is particularly important to Alaska, and the state regulatory authorities have failed to challenge the FCC's poor implementation.

*Use universal service to address problems outside of rural America*

Almost all of the growth in universal service expenditures since 1996 has been outside of rural America. The primary beneficiaries of Section 254 have not been Alaska but rather California and other large urban states. The section was usurped for political

purposes to support an unsuccessful presidential campaign. The Schools and Libraries program remains, siphoning \$2.25 billion to largely urban school districts in politically important states. In addition, the FCC managed to broker a deal between large RBOCs and long distance carriers to create a new universal service program to help large RBOCs under the euphemistically entitled CALLS program. Thus, in the name of promoting universal service under Section 254, the FCC doles out \$700 million annually to support large carriers outside of Alaska whose primary areas of operation are in the nation's largest metropolitan areas.

Some small percentage of the Schools and Libraries money finds its way to Alaska and other rural states, but in no sense has the program been targeted to rural America or used to help small telephone companies in rural America. The FCC, in coordination with some state agencies, has in fact used the universal programs to put financial pressure on small telephone companies, making additional funds available only to new carriers.

What happened to the intended beneficiaries of Section 254, the small telephone companies of America? All other requests for universal service from schools and libraries and large RBOCs were dealt with expeditiously by the FCC. But the FCC decided to delay deciding how to address the intended beneficiaries of universal service. Instead, it invented two new mechanisms intended to punish rural America. One was the Joint-Board Rural Task Force. It would take years to make a recommendation, valuable time that would be lost for small companies, but not for schools and libraries or large RBOCs. The other was a universal service computer cost model so outrageously bad that

the only plausible explanation for its existence was to insult the intelligence of anyone working in the area of universal service.

*The model that does not work*

It is worth a few moments to describe just how bad this model was and is. In its initial inception, it took 180 hours to run in its entirety with all of its so-called optimization routines. That run would result in a calculation of a unbundled network element price for every central office in the Lower 48, not that the FCC had any particular reason to calculate all of this information.

Keep in mind today that most computer models take at most a few tenths of a second to run: not 18 seconds, not 180 seconds, not 1.8 hours, not 18 hours, and certainly not 180 hours. That is more than one week with a computer running around the clock. Indeed, I suspect that you would have to pay a premium to find a computer programmer willing to risk his or her professional reputation to write a program that takes 180 hours to run. A program that takes that long obviously does not work. For much of my tenure at the FCC, I went around the country listing the "model that doesn't work" as exhibit A in describing the hostility of the FCC towards rural America including states such as Alaska.

I can't say for certain why the model was first developed. I do not believe that it was for the purpose of distributing universal service funds. Nor do I believe it was for the purpose of estimating UNE rates in Alaska. Yet those are two of the unintended uses for the model. It was used for the CALLS program to distribute the \$700 million to large RBOCs. In one of the first runs of the model, BellSouth in Kentucky was to receive tens

of millions of dollars. Practically all of that money disappeared in the next run of the model. When a model takes more than a week to run, it is not surprising that it is hard to get all of the kinks out. What the model said one month would change the next. It was embarrassing for the FCC.

Qwest, US West at the time, opposed the model because the model said that US West did not deserve any universal service support. Imagine: no universal service for the RBOC serving the Rocky Mountain states and the Great Plains, but plenty of support for Verizon in the Middle Atlantic States and New England. But it was clear at that the time that the FCC ran the model several times, adjusting inputs with the specific purpose of getting money to the "right" states, rather than having all of the money go to Mississippi, which was the result of some of the earliest runs.

#### *The Rural Task Force*

Someone at the FCC had the cynical idea of using the "model that doesn't work" to distribute universal service payments not just to the RBOCs but to small telephone companies. Perhaps they wouldn't know any better.

The Rural Task Force included representatives from companies that historically mistrusted each other. In other words, the Task Force was designed to fail. Miraculously, in part because of the leadership of Commissioner Bill Gillis of Washington State, the Task Force did not end in the apparently intended complete deadlock.

When I met with Jack Rhyner in Alaska in 1998, he was disillusioned about the Rural Task Force. He said that the FCC staff had given the RTF its instructions, and

those instructions were to find the appropriate input values for the "model that doesn't work" so that the FCC could use the model to allocate universal service funds to small telephone companies. Moreover, it was clear that the primary purpose of using the "model that doesn't work," aside from juvenile mischief of testing the intelligence of rural Americans, was to cut the size of federal support for small telephone companies, including those in Alaska.

Mr. Rhyner was not happy, and neither was I. I told Jack that the Rural Task Force was not appointed to be the lap dog for the FCC staff. I told him that he was appointed to represent the interests of his company and rural America, and that those were unlikely to intersect with the interests of the FCC staff. I worked closely with members of the RTF, including Jack Rhyner, with one overriding objective: to be certain that the Rural Task Force did not recommend the use of the universals service cost model. Chris McLean, head of the Rural Utility Service of the Department of Agriculture, went to great trouble to develop specific examples of how the model did not work with mountainous geography or bodies of water. The model was never written for Alaska, where peculiar terrain and geography are the norm rather than the exception.

The Task Force and some members of the Joint Board on Universal Service met here in Anchorage in May of 2000. I had the honor of addressing that group and telling them as politely as I could that it would be a grave mistake to use this model for any purpose. Ultimately, despite intense pressure from the bureaucracy at the FCC to use the "model that doesn't work," the Rural Task Force did not recommend its use for universal service allocations for small companies.

*The RCA made an ill-advised choice*

Two years ago, I had reason to believe that the Rural Task Force had put the stake in the heart of the use of the "model that does not work" in rural America. I was wrong. Despite the fact that the model optimizes based on information for the Lower 48 States, and does a poor job of that, the RCA has incredibly selected the "model that does not work" to estimate UNE rates for the formerly designated rural areas of Juneau and Fairbanks. No doubt, the juvenile pranksters on the FCC staff are rolling with laughter; they pulled a fast one on rural America, and the most rural state, Alaska, fell for the prank.

Doubtlessly, the model must have improved in the past year or two. But the parentage and history of the model is so bad and offensive that I wonder why anyone would choose to use it. I would not have expected any state to adopt this model, least of all Alaska and Hawaii, the two states specifically excluded in the development of the model.

**X. RCA has further compounded FCC hostility towards, and disdain for, rural America**

Let me briefly describe six additional examples where the FCC has misinterpreted the universal service provisions of the Telecommunications Act of 1996 systematically to the disadvantage of small rural telephone companies. In each instance, RCA decisions have systematically compounded the FCC mistakes, perhaps to the detriment of Alaska.

*1. Designation of eligible telecommunications carrier (ETC)*

The Act gives clear authority to States and States alone to designate ETCs. But an ETC must be capable of serving an entire area, and be capable of being designated as a carrier of last resort when a non-ETC carrier is unwilling to serve an area. The FCC has occasionally and improperly tried to insinuate itself into these designation decisions. As a carrier of last resort, an ETC must have its own facilities, not relying on other facilities. The issue of whether UNEs count as one's own facility is a semantic issue, but for these purposes of universal service, it is difficult to classify them as owned facilities. RCA compounded this situation by designating GCI as an ETC in areas of Alaska where its phone service would be entirely based on UNEs, someone else's facilities. Implicitly, that someone else is the party that is only possible carrier of last resort, the only possible eligible telecommunications carrier.

2. *Awarding of universal service funds to non-ETCs*

Section 254 limits universal service awards to ETCs. This was an inconvenient statutory limitation for the FCC which wanted to award funds to school districts and other entities under the Schools and Libraries Program. The FCC avoided the statutory language, which led to the award of SLC funds to many entities in Alaska and around the United States, few of which were truly ETCs.

A state regulatory commission might have challenged the FCC decision and stated that it alone has the authority to determine which entities are ETCs, and thus which entities would receive SLC funds. Neither the APUC nor RCA chose this path.

3. *Awarding of universal service funds for purposes other than investment in plant and equipment*

Section 254 is quite clear that universal service funds are to be used for investments in plant and equipment. The words of the statute must have some meaning, but the FCC has refused to give them meaning. A State commission committed to the statute could insist that ETCs used federal USF funds to invest in plant and equipment. Neither the RCA nor other state commissions has done that.

4. *Removal of exemptions from Section 251 obligations*

Under the Act, rural carriers are exempted from some Section 251 obligations. That exemption can be removed by a state regulatory commission if the commission can make certain showings. The RCA removed the rural exemptions from the Juneau and Fairbanks study areas, but without the RCA making the statutory showings. Both federal courts and the FCC are consistent in the interpretation that the state commission bears the burden of proof in such a decision. The apparently improper action of the RCA is currently in litigation.

5. *Using federal USF to support a carrier whose costs are substantially below the national average.*

FCC rules limit rural universal service subsidies to carriers whose loop costs are roughly 15 percent above the national average. The UNE cost structure in Fairbanks is below the national average, yet, based on an RCA ETC designation, GCI will receive

federal rural universal service support. This is a perversion of the federal universal service support program.

6. *Waiver for use of SLC funds for non-educational purposes*

Commission rules are quite specific that funds received for the Schools and Libraries program must be used exclusively for educational purposes. In the past year, the RCA lobbied the FCC for a waiver of this rule so that schools and libraries funds could be used for non-educational purposes in rural Alaska where broadband services are not commercially available.

Broadband is important to American communities, particularly small communities in the Alaska bush. A waiver could have equally well been sought, and perhaps obtained, to get funds for commercially available broadband services through the rural universal service program. Such funds would have gone to eligible telecommunications carriers, not just the recipients of funds for educational programs. Paradoxically, the RCA efforts, while getting broadband services to some communities, has the effect, intended or not, of putting financial pressure on small telephone companies which now have no viable business plan to bring broadband services to communities where federally-subsidized programs are in place.

**XI. Facilities based-competition**

Competition and deregulation are the parallel goals of the 1996 Act. Competition means letting the market, not government, determine the use of resources. Competition does not mean multiple carriers all riding the same network. Indeed, Section 271 of the

Act, which provides for the FCC to review whether competition in a state is sufficient to permit an RBOC to enter long-distance services, first calls on the FCC to examine the state of *facilities-based* competition. Multiple carriers all using the same facilities is an interesting idea, but it does not fall under the heading of competition.

I have been told that some government officials in this great state have been ill-advised on this specific matter. Any suggestion that the purpose of the Act is to prevent or in any way limit investment in new equipment or duplicating networks reflects is simply wrong.

What is the "correct" rate to charge for residential service or for unbundled network elements? I don't know. As I mentioned earlier, practically all empirical economic research finds rate regulation to be counterproductive. As such, there is no "correct" rate that can be set by coercion.

This is not an obscure economic theory. It is the standard result presented in practically every introductory economics textbook. In every regime that sets prices, whether Communist Cuba or World War II America, one observes shortages, long queues, and hoarding of some goods; other goods have plentiful supply but few transactions. In the former case, prices are set below what most producers are willing to supply the product. For all but a few situations, price is set below the market-clearing price. Both incumbent and potential suppliers are discouraged from expanding production because such production at regulated prices would lead to economic and financial losses. If prices were not set, practically all consumers would be better off because they could predictably purchase all they want at the prevailing price. For many such goods, a black market develops to sell goods at prices below the regulated rate. But

such black market transactions are inferior to an unregulated transaction because they lack many of the contractual safeguards, such as insurance and warranties, that characterize unregulated transactions.

In the latter case, prices are set above market-clearing prices. Here, producers expand production, but sales are illusory because are unwilling to pay the regulated rate. For many such goods, a black market develops to sell goods at prices above the regulated rate. But such black market transactions are inferior to an unregulated transaction because they lack many of the contractual safeguards, such as insurance and warranties, that characterize unregulated transactions. Again, consumers would be much better off without the price regulation.

In a market without price regulation, no demand goes unmet between willing buyers and willing sellers. One need not visit Havana to see the harms of price regulation. Last September in Anchorage, I visited a brand new residential development in Anchorage. It is near both ACS and GCI switches. Yet neither company was willing to wire the new development for telephone service at the regulated rates made available by the RCA. GCI did, however, wire the community for cable service. The decision not to wire the community at regulated rates for phone service was not based on heartlessness or mean-spiritedness or any form of social disorder. Rather, the decision, like practically all business decisions, represented a rational view of business behavior: businesses do not willingly make investments for which there is not possibility of financial return. The companies have investors, and these investors would be harmed if the companies had made an unwise investment.

It is impossible to say that the residents of this residential community benefited from this regulatory decision of the RCA. If, alternatively, RCA had compelled either ACS or GCI to wire the residential community for telephony service, the residential consumers might have been momentarily better off, but the company investors would have been worse off as a result of government coercion. Such coerced investments have in fact been required of ACS in many residential developments, only to see most if not all the residential customers subscribe with GCI.

The benefits to residential consumers of coerced corporate investment may be short-lived. Companies have little incentive to maintain or upgrade coerced investment. As in the case of Cuba and other countries that have followed price regulation, corporate investment dries up altogether. The next residential development may have no company left with investors willing to make unprofitable investments.

GCI has a modern, two-way coaxial cable plant in Anchorage. Like other cable companies around America, GCI faces a choice to provide competitive phone service. It can use its own plant to provide pure facilities-based competition. Or it can lease loops or an unbundled network element platform to provide service on the incumbent network. If UNE rates were subject to negotiated prices, one would expect to find a result familiar to anyone who negotiates a contract for service: negotiated rates would roughly reflect cost of service, and the competitive carrier would use its own network in neighborhoods where its costs of providing service is less than the cost of incumbent, and the competitive carrier would lease facilities where the incumbents costs were substantially lower than its own. (The negotiated rates would in fact reflect costs and option value of assets because the incumbent could not set a monopoly rate when the competitor has the

alternative of using its own network in which fixed costs are already sunk. Moreover, at negotiated rates above its cost structure, the incumbent is more profitable to lease its service than not. It can even be mutually profitable for the competitive cable carrier to lease its facilities where it has a lower cost structure than the incumbent.)

The empirical observation of 100% leasing by GCI of incumbent facilities in Anchorage is puzzling. If rates were freely negotiated, this is consistent with the hypothesis that the GCI plant and equipment is uniformly more costly than the ACS system. Rates in Anchorage were not freely negotiated, and it is impossible to tell much about the relative costs of the plant and equipment.

The Supreme Court has upheld the authority of the FCC to set regulated pricing standards for unbundled network elements. But price regulation, under Section 252, should only be a last resort. Negotiation between private parties should be the primary method of setting rates under Section 252.

## **XII. Deregulating Anchorage**

Regardless of how it occurred, the residential market share of the competitive carriers in Anchorage of over 50 percent is unique in America. The two principles cited in the preamble to the Telecommunications Act of 1996 are competition and deregulation. If Anchorage isn't ripe for deregulation and allowing market forces to work, no city in America is or ever will be. Alaska has the opportunity to fulfill the vision of the Act and deregulate telecommunications services in Anchorage.

### XIII. Conclusion

Over the coming days and weeks, you will hear from many different parties about the reauthorization of the RCA. No doubt, that information will not all be the same. Much will be contradictory; some will be tedious and incomprehensible; some will make perfect sense.

Some will urge a quick decisions. Others will urge caution and circumspection. Some will point the finger of blame at one company. Others will point to another company. Others will single out individuals for blame.

In negotiations, whether with children or government agencies, there is always a grave threat if you don't do exactly as you are requested. Threats are the common denominator of negotiations. A great many people will threaten some dire consequence if you do not follow their advice precisely. Consumers will be hurt. Businesses will shut down. Individuals will lose their jobs. The federal government will take over Alaska. Your worst nightmares will be conjured before your very eyes. I cannot speak to other possible threatened outcomes, but as far as federal communications law and federal universal support to Alaska, there is no need for you to rush to judgment; no bad outcome will result regardless of your decisions.

You alone will have to sort out the conflicting claims. Perhaps you know the right answer today and come to an expeditious resolution of this matter. If not, you will have much information to weigh, with some people screaming at you to make a quick decision on an extraordinarily complicated matter. You may reasonably wish to hear the results of the state-sponsored study on the health of the telecommunications industry in Alaska.

The proper answer on timing for the legislature is not what is convenient for others; the proper timing is what is convenient for the legislature. Do not be rushed to judgment if you need more time; do not be slowed to judgment if you have sufficient information to decide.

It seems you have four broad choices: (1) cease to have a state regulatory agency; (2) reauthorize the RCA in its present form; (3) reauthorize the RCA with statutory modifications; or (4) abandon the RCA and create a new state regulatory agency. In evaluating these options, I have proposed reliance on the three principles of liberty: political liberty, economic liberty, and administrative liberty.

I have great confidence that the decision you make will be the right one. My confidence is not based on any prior knowledge of what you may decide, but rather it is based on a belief in democracy in America. You, as the state legislature, are the democratic law-making institution in Alaska. We all make mistakes. In a non-democratic government, governmental mistakes are not corrected, and government ultimately fails. In a democracy, the mistakes of government are reviewed, and where particularly troublesome, they are corrected. That is the purpose of this hearing.

Thank you for your kind invitation to appear here today. I will be happy to answer any questions that you may have.



# ARECA

Alaska's Electric Association

*"Electric Service for 556,000 Alaskans"*

---

May 8, 2002

The Honorable Robin Taylor  
Chairman, Senate Judiciary Committee  
Alaska State Legislature  
Juneau, Alaska

Subject: Sunset Date for the RCA: HB 333 and SB 253

Dear Senator Taylor,

Attached herewith is a resolution passed by my Board of Directors regarding the sunset date for the RCA. In short, the electric utility industry supports a two-year sunset date for the RCA as opposed to the four-year sunset contained in HB 333 and SB 253. In addition, we strongly support the time-line amendments contained in HB 333. ARECA is the prime author of these amendments.

Please call upon me if you have any other questions on our position regarding the RCA.

Sincerely,

Eric P. Yould  
Executive Director



## ARECA

Alaska's Electric Association  
*"Electric Service for 556,000 Alaskans"*

---

### Resolution 02-19

#### **A Resolution Supporting Legislation to Conditionally Extend the Life of the Regulatory Commission of Alaska for Two Years**

Regulated utilities depend on the RCA for prompt and fair regulatory decisions. Since its establishment, the RCA continues to struggle with its workload. The RCA has created an additional load of work for itself by initiating dockets and inquiries without having first cleared the backlog of old matters. The RCA must work to resolve cases decisively and finally.

ARECA supports the extension of the life of the RCA for only two additional years contingent on an explicit legislative requirement that the RCA complete the activities described below:

- Establish a dialogue with regulated utilities to discuss reform of the regulatory process.
- Prepare an annual report to the legislature addressing the following:
  1. How the RCA will reduce the backlog of cases and other matters pending before it.
  2. How the RCA can revise its processes to assure that fewer issues must be tried in trial-type proceedings.
  3. How deadlines for adjudication and other approval processes can be incorporated in RCA procedures to produce better and timelier decisions.
  4. Identify areas for which the RCA is currently responsible for regulation that provide the highest public benefit and areas in which regulation produces lower public value.
  5. Recommend areas of regulatory oversight that may be eliminated.

Adopted: February 22, 2002

Reauthorization of the Regulatory Commission of Alaska (RCA)

**Subject: Reauthorization of the Regulatory Commission of Alaska (RCA)**

**Date: Fri, 7 Jun 2002 11:38:54 -0800**

**From: e\_anderson@telalaska.com**

**To: nanette\_thompson@rca.state.ak.us**

**CC: Senator\_Robin\_Taylor@legis.state.ak.us, Senator\_Dave\_Donley@legis.state.ak.us,  
Senator\_John\_Cowdery@legis.state.ak.us, Senator\_Gene\_Therriault@legis.state.ak.us,  
Senator\_Johnny\_Ellis@legis.state.ak.us**

Commissioner Thompson and Senate Judiciary Committee members:

A hard copy of the following letter will be mailed to you next week.

Sincerely,

Everette Anderson  
Administrative Office Manager  
TelAlaska

June 6, 2002

The Honorable Robin Taylor, Chair  
Senate Judiciary Committee  
Alaska State Legislature  
State Capital, MS 301  
Juneau, AK 99801-1182

Re: Reauthorization of the Regulatory Commission of Alaska (RCA).

Dear Senator Taylor:

When we met in March, I expressed my concerns and my unequivocal support for the reauthorization of the Regulatory Commission of Alaska (RCA) for two major reasons: the loss of full and timely receipt of Universal Service Fund support for affordable telephone service and the possible derailment of an effort to address staff issues that have inhibited the performance of the RCA and its predecessor, the Alaska Public Utilities Commission (APUC). For the telephone industry, a primary concern is certification to receive Universal Service Support (USF). The state regulatory body must certify each local telephone company as an eligible telecommunications carrier annually to receive USF. This year, for Alaska, USF was nearly \$75 million. These funds are applied directly to the cost of providing local service and are the only reason local rates remain affordable in high cost areas. With the exception of Anchorage, every other community in the State of Alaska benefits from these funds. Without these funds, it is quite likely that there would be no affordable phone service outside Anchorage, Fairbanks and Juneau. Without a state regulatory body to certify the local telephone companies, we would have to individually apply to the FCC for certification. This process could well jeopardize part or all of this funding.

Additionally, there are two organizations the Alaska Exchange Carriers Association (AECA) and the Alaska Universal Service Administrative Company (AUSAC), whose continued operation and administration may be called into question if the state regulatory body goes into wind-down. While these organizations are private nonprofit corporations, the courts have nevertheless ruled that they are extensions of the state regulatory body. AECA administers the collection and distribution of \$30 million per year in access charges, again for the small telephone companies outside of Anchorage, Fairbanks and Juneau. AUSAC administers the collection and distribution of \$1.9 million in state universal service funding (AUSF) which pays for "life line and link up" programs for low income households

## Reauthorization of the Regulatory Commission of Alaska (RCA)

throughout the state. It is not clear how these organizations would function without a state regulatory body or what their legal obligations are within the frame work of a wind-down year. The uncertainty and possible legal entanglement again places a sizable portion of the small telephone companies' revenues and continued service to low income households at risk.

In RCA Chair Thompson's May 20th letter to you she provided a laundry list of her legal obligations once the agency enters a wind-down year. There are two items which are especially disturbing. Chair Thompson, at the very least, places in question whether or not the RCA will have the resources available to conduct the USF certification in 2002. Timing is critical, there are no second chances if we must apply directly to the FCC. We must have as much lead time as possible with the as yet unknown FCC processes.

The other issue that concerns me as a rural provider is the cessation of work on regulation dockets. In my opinion, an extensive part of the problem with the APUC and now the RCA, is with the "staff" and how it functions. During the Second Session of the Twenty-Second Legislature, Chair Thompson testified before several Committees that she would deal with this problem through regulation for the Public Advocacy Section of the Commission. True to her word, the RCA opened Docket R-02-2 by the end of May. While it is never certain that any agency will truly reform itself from within, the opening of this docket at least provides for that opportunity in this case. If the RCA is not reauthorized and goes into a wind-down year, all work on this docket will cease, thus, delaying the resolution of what truly has been the fundamental underlying problem of the state regulatory body for 20 years or more. The creation of a new commission by the next Governor and Legislature, presuming a new slate of commissioners, could delay resolution of this problem for several more years.

This letter is intended to restate my strong support for reauthorization of the RCA because of the risk its disruption carries for rural Alaskans and the companies that serve their communications needs. Dissolution and the interim wind-down of the agency threatens Universal Service Support. Without that support it is quite likely that there will be no affordable phone service available outside of Anchorage, Juneau and Fairbanks. Certification of companies to receive USF support will transfer to the FCC through lengthy and obscure procedures that will certainly stall and probably reduce available funds. An additional concern is derailing the RCA Chair's effort to address the underlying staff problem through an existing docket. This issue is long overdue for attention and I fear that it will languish during the wind-down.

I understand that an old Attorney General's opinion was floated during the legislative session, that the regulatory body could conduct business as usual in a wind-down year, on the premise that we have been through all of this before and it is not a major concern. Let me point out that it is obvious Chair Thompson does not subscribe to that opinion. When the APUC went through wind-down, state commissions had not been given the responsibility to certify eligibility to receive USF support. For reasons that I am unaware of, at that time no one had considered the question of AECA and AUSAC continued operation.

My concern is that in order to make whatever gains you intend, harm will result in fundamental areas that affect communications services in rural Alaska and the companies providing those services. I urge you to reconsider your position and support efforts to reauthorize the RCA.

Sincerely,

Jack Rhyner, CEO  
TelAlaska



PROVIDING ADMINISTRATIVE SERVICES TO  
COLLEGE UTILITIES CORP. AND GOLDEN HEART UTILITIES, INC.

June 19, 2002

Senator Robin L. Taylor, Chair  
Senate Judiciary Committee  
PO Box 1441  
Wrangell, AK 99929

RE: RCA SUNSET SPECIAL SESSION

Dear Senator Taylor:

As the date for the special session regarding the sunset of the Regulatory Commission of Alaska (RCA) approaches, the issues surrounding the extension or sunset of the RCA appear to be more, rather than less, complicated.

I testified before the Senate Judiciary Committee hearing in Anchorage last week in support of a one year extension of the RCA. I also had the opportunity to observe other witnesses. These hearings demonstrated that many utilities, and not just utilities from one sector of the utility industry, believe that legislative and administrative changes may be necessary to improve the RCA. However, I am concerned that legislative changes, conceived and/or enacted in haste during a special session, may not be well thought out.

Therefore, in an attempt to provide a solution to the dilemma I suggest the following:

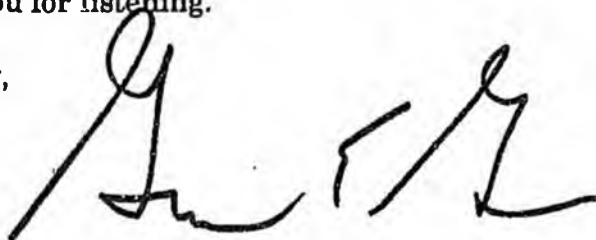
1. Extend the Commission for one year.
2. Hold off on any legislative changes to the RCA.
3. Form a work group to assist LB&A in continuing and expanding their audit of the Commission. The goal being to come up with legislative and administrative changes for the next legislature to consider. The work group should be comprised of industry and Commission representatives, and other stakeholders.

Letter to Senator Robin L. Taylor  
June 19, 2002  
Page 2

This is the least complex, safest, and most logical approach to addressing this difficult and politically charged issue at this time. Efforts to fix the problems identified by the testimony should be reserved for the regular legislative session, and given the due consideration and public debate they deserve.

Thank you for listening.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Gordon", written over a light blue horizontal line.

George E. Gordon,  
President/CEO

cc: Governor Tony Knowles  
Senator Rick Halford, Senate President  
Representative Brian Porter, Speaker of the House  
All Legislators



# UTILITY SERVICES OF ALASKA, INC.

PROVIDING ADMINISTRATIVE SERVICES TO  
COLLEGE UTILITIES CORP. AND GOLDEN HEART UTILITIES, INC.

S. Records  
File

## Sunset Talking Points

My name is George E. Gordon. I am the President/CEO of Utility Services of Alaska, a service company that provides administrative and customer service to two regulated water and wastewater utilities. I am also the President/CEO of Golden Heart Utilities and College Utilities Corporation, who are regulated by the RCA and provide water and wastewater service to the entire Fairbanks area.

1. Our utilities, Golden Heart and College Utilities, do appreciate the effort Sen. Taylor has devoted to this issue. Perhaps the concerns that the utility industry has will not be lost in the crush of legislative business.
2. This testimony is not to be considered approval of how the Commission has been conducting its business.
3. There are several common threads when talking to other utilities.
  - a. General dissatisfaction with how RCA is operating
  - b. Tremendous reluctance to publicly speak out. There is a fear that expressing criticism or supporting sunset could result in negative regulatory action.
  - c. There appears to be a lack of concern or awareness on the part of the Commission of the problems created by their actions (or inactions) for utilities, i.e., no dialogue.
  - d. ARECA resolution #02-19 seems to be right on point with many RCA issues.
4. Our utilities reluctantly support a one-year (or even slightly shorter) extension.
  - a. However, in the short run, a sunset may exacerbate the procedural problems.
  - b. In this one year extension there must be concerted effort, with industry participation, to address RCA problems and fashion a remedy.
  - c. An extension of longer than one year will not create an environment in which effective change will occur.

5. What do we see as the major problems:

- a. It takes too long to get action or a decision.
  - i. CS for HB 333 (finance), and the time frames incorporated in that bill, are simply too long. This bill authorizes by statute the Commission's inefficiencies.
  - ii. There does not appear to be a recognition on the part of the Commission that delay translates into lost revenue or lost opportunity for growing utilities.
  - iii. Our utilities continue to experience substantial delay in processing relatively routine tariff changes.
- b. This business of just issuing orders out of the blue and prompting Reconsideration motions has got to stop.
- c. RCA orders, inquiries, and requests for action in response to Commission staff or PAS causes a great deal of time spent over non-issues.
- d. There is no one for the utility to talk to and no way to carry on a dialogue.
  - i. Form is elevated over substance.
  - ii. This creates a lack of ability to fully define issues and focus on the process.
  - iii. Ex Parte should not be a problem, just schedule a hearing with all parties, **but allow discussion.**
- e. Because of the foregoing, the process is simply too expensive.
- f. There is no feeling that the process is fair.
  - i. While some will say that this is just dissatisfaction with RCA decisions, I disagree. With my 35 years of experience, I recognize you win some and lose some. But there must be a belief that the process works, before adverse results can be accepted.

6. What do we see as potential solutions that need to be examined in the one-year extension?

- a. Creation of a new position of executive director
- b. Reshape PAS and define its mission
  - i. Is it there as a consumer advocate or to be objective?
- c. More hearing officers (even contract hearing officers) and the ability to disqualify a hearing officer, just like parties can disqualify a judge.
- d. Shorter time frames (not longer) for requiring the Commission to do its work. If the commission can't get its work done with the staff it has, require it to demonstrate that and give it the resources it needs.
- e. Consider a mechanism for the solicitation of anonymous comments so a full and frank discussion can occur.

S. Records

*Golden Heart*  
UTILITIES, INC.

 College Utilities  
Corporation



UTILITY  
SERVICES OF  
ALASKA, INC.

PROVIDING ADMINISTRATIVE SERVICES TO  
COLLEGE UTILITIES CORP. AND  
GOLDEN HEART UTILITIES, INC.

**George E. Gordon**  
President & CEO

P.O. Box 80370  
Fairbanks, AK 99708-0370  
(907) 479-3118  
Fax (907) 474-0619



June 11, 2002

**Wesley E. Carson**  
President & Chief Operating Officer  
wcarson@acsalaska.com

Senator Robin L. Taylor, Chairman  
Senate Judiciary Committee  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

RE: Judiciary Committee Review of the Regulatory Commission of Alaska

Dear Senator Taylor:

On behalf of Alaska Communications Systems (ACS), I wish to express appreciation for the strength and resolve you demonstrated during the recent legislative session on the matter of the proposed reauthorization of the Regulatory Commission of Alaska (RCA). We believe, as you do, that the State would benefit from a more thorough consideration of the regulatory policies affecting Alaskan utilities. Some wish to portray the matter as a simple one. Unfortunately, it is extremely complex. And so, while I apologize for the length of the discussion that follows, we believe an intelligent and thorough review of the regulatory situation in the State requires this level of detail and more.

ACS supported the legislature's action last year to allocate funding for a study of Alaska's telecommunications industry. Inasmuch as that study has still not been undertaken, the Judiciary Committee's review of RCA reauthorization is of great importance to the industry. The RCA's regulatory authority certainly extends beyond ACS and the telecommunications industry. However, we believe our situation offers the most compelling justification for the proposition that the regulatory status quo is unacceptable.

We contend that ACS has suffered greater economic harm than any other Alaskan utility as a direct result of the policies and orders of this Commission. Frankly, we are convinced that ACS will be in serious financial jeopardy, such that we will be unable to continue to build and maintain Alaska's primary local telephone network, if the RCA is permitted to proceed with its current regulatory direction.

The actual current and potential future harm for ACS is serious, but what must be of greater concern for the Judiciary Committee is ultimately the harm to the State of Alaska and to its citizens. No state in the Union is more dependent upon telecommunications than is Alaska. Quality of life for Alaskans and the economic strength of the State require a modern, well-maintained telecommunications infrastructure. If the regulatory regime in Alaska discourages investment in the network, as it now does, Alaska and Alaskans will be the losers.

Senator Robin Taylor  
June 11, 2002  
Page 2 of 6

Many of the issues ACS has with the RCA are consistent with themes we have heard from telecommunications, sewer and water, and electric industry representatives. Protracted and expensive rate case proceedings, unreasonably burdensome discovery demands, lack of due process, etc., are problems that impact many, if not all, of the regulated utilities. There is a real dollar cost to all of us in terms of compliance and delays.

Our gravest concerns, however, are unique to ACS as the State's largest provider of local telephone service. Of the more than 20 incumbent local exchange companies (ILECs) providing telephone service in Alaska, only the ACS companies have been required to engage in "interconnection competition," which has also resulted in the only terminations of a "rural exemption" in the State. Interconnection competition occurs when a competitive local exchange company (CLEC), such as GCI, is allowed to lease portions of the ILEC's network so as to compete for customers without having to risk its own capital to build facilities. Such competition may be required by a state commission under the Telecommunications Act of 1996 (Telecom Act).

#### The ACS Local Exchange Companies

ACS owns and operates four ILECs that are subject to State regulation. Each of these companies holds a certificate of public convenience and necessity to operate as a public utility in the State; is subject to regulatory approval for setting local service rates; and has "carrier of last resort" obligations, meaning the RCA can require these ILECs to build plant and provide service to customers within the certificated service areas.

In a sense, the "quid pro quo" for the RCA's imposition of such regulatory control over the ILECs is the State commission's use of its regulatory authority to assure each ILEC a "reasonable rate of return" on its investment. The primary sources of revenue for these companies are:

- retail rates, established by the RCA and paid by consumers for local service;
- unbundled network element (UNE) loop rates, established by the RCA and paid by GCI to lease the element of the ACS network that connects a customer with a central office;
- intrastate access charges, established by the RCA and paid by interexchange companies (i.e., long distance carriers) for use of the local network to originate and terminate in-state long distance calls;
- interstate access charges, established by the Federal Communications Commission (FCC) and paid by interexchange companies for interstate long distance calls; and,
- federal subsidies from the Universal Service Fund to support high cost service areas.

The four ACS local telephone companies subject to RCA regulation are:

Senator Robin Taylor  
June 11, 2002  
Page 3 of 6

- ACS of Alaska, Inc., serving Juneau, Douglas, Sterling, Ft. Wainwright and Eielson.
- ACS of Anchorage, Inc., serving the Anchorage and south to Girdwood.
- ACS of Fairbanks, Inc., serving Fairbanks and surrounding areas.
- ACS of the Northland, Inc., serving North Pole and communities in the interior; Kenai/Soldotna and communities on the Kenai Peninsula; Kodiak, Sitka and communities throughout Southeast; and bush communities, including on the Aleutian Chain and the Pribilof Islands.

All of these companies, with the exception of ACS of Anchorage, Inc., were designated as "rural" under the Telecom Act. The rural designation was extended to companies serving areas that are expensive to serve and which receive federal subsidies from the Universal Service Fund (USF). The Telecom Act seeks to protect companies serving high cost areas because of the complex economics and the USF subsidies supporting the construction and maintenance of loops in these areas. Under the Telecom Act, these companies were granted a "rural exemption," meaning they were not required to open their networks for interconnection absent an affirmative finding by the state regulatory commission that such competition "is not unduly economically burdensome" and is consistent with "specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."

#### Economic harm from RCA Actions

There are several egregious actions the RCA has taken with respect to ACS local exchange companies that have caused us the greatest economic harm. These actions, which we believe are incongruent with federal law and injurious in the long run to the Alaskan consumer, relate to terms of interconnection with competitors and to the termination of rural exemptions. Without offering a detailed analysis at this time, I would draw your attention to the following:

- ACS of Anchorage, Inc.: Our July 1, 2001 rate case filings demonstrate that our Anchorage telephone company is not earning any return on its assets. The RCA has had a number of opportunities to fulfill its obligation to permit the company to earn a reasonable rate of return, but has failed to do so.

Specifically, the RCA has not approved an appropriate and lawful interconnection rate for ACS to lease to GCI local telephone lines (the so-called unbundled network elements, or UNE loops). The initial rate approved in January 1997 was termed "temporary" by the Alaska Public Utilities Commission (APUC), as it was not based on a "forward-looking economic cost" methodology, reflecting the cost of providing the element, as required by the Telecom Act. The Act mandates that the owner of the network, the ILEC, be compensated at a rate "based on the cost ... of providing the interconnection or network element ... and may include a reasonable profit" (Telecom Act, section 252(d)(2)). The Anchorage "temporary" rate has not been in compliance with the law since January 1997.

Senator Robin Taylor  
June 11, 2002  
Page 4 of 6

ACS began petitioning the RCA early in 2000 for an appropriately determined rate, arguing that the then three-year old rate of \$13.85 was so low as to effectively force ACS to subsidize GCI's competing local telephone service.

Finally, during the latter part of 2001, the RCA held a hearing in which ACS submitted extensive evidence supporting a rate at or about \$24.00. As ACS was experiencing a severe revenue deficiency, we requested an immediate "interim and refundable" UNE loop rate increase. This means that in the event a finally adjudicated rate was less than the interim rate, ACS would refund to GCI any overpayment - thereby protecting GCI from economic harm. On the other hand, if the interim rate was set too low, and the finally adjudicated rate was higher than the interim rate, ACS would have no recourse to collect the underpayments from GCI. The RCA had every reason to grant a reasonable interim rate, knowing that GCI was protected from economic harm - and that the unlawful rate in effect was then nearly four years old.

The transcript of the hearing shows that GCI made an oral representation - totally unsupported by any evidence submitted in connection with the hearing - that their models could not justify a rate greater than \$14.92. ACS submitted extensive models and data supporting a \$24.00 rate; GCI made a bald assertion that \$14.92 was the maximum they could justify. The RCA granted an interim refundable rate of \$14.92. The company (along with its predecessor, ATU) has been operating under an unlawful - and, we assert, non-compensable - rate for five and one-half years and is still waiting for the RCA to approve a final rate.

- ACS of Fairbanks, Inc. and ACS of Alaska, Inc.: Because these companies serve high cost areas, these companies were deemed "rural" under the Telecom Act and exempted from interconnection competition (i.e., granted a rural exemption). The Act seeks to protect companies serving high cost areas because of the complex economics and subsidies supporting the construction and maintenance of loops in these areas.

GCI requested in 1997 that the APUC terminate rural exemptions for Fairbanks, Juneau and other ACS rural service territories. The APUC placed the burden of proof on GCI and found that the economics of interconnection competition would be unduly burdensome on the companies. The APUC ruled that the exemption should be preserved, at least until certain market restructuring took place, including:

- re-balancing rates to eliminate or minimize implicit subsidies, whereby businesses paid more than the cost of service so that residential customers could pay less than the cost of service;
- de-averaging rates so that ratepayers in higher cost areas paid their fair share; and
- de-averaging federal universal service fund support to preserve such support for the construction and maintenance of the higher cost loops.

Senator Robin Taylor  
June 11, 2002  
Page 5 of 6

GCI appealed the order and the Alaska Superior Court remanded the case back to the APUC with the instruction to place the burden of proof on the ILECs (ACS of Fairbanks, Inc. and ACS of Alaska, Inc.), consistent with a then-existing FCC rule. The APUC did so and then terminated the rural exemptions of the ILECs and ordered interconnection with GCI on June 30, 1999, its last day of business before the RCA commenced operations. ACS appealed the APUC's decision to the new RCA. Without a hearing, the RCA sustained the termination of the rural exemption.

ACS appealed the termination. In July 2000, the 8<sup>th</sup> Circuit Court of Appeals invalidated the FCC rule the Superior court had relied upon in remanding the matter back to the commission. The 8<sup>th</sup> Circuit decision, which was binding on all other circuits, held that:

- o the burden of proof must be on the CLEC, not the rural ILEC, and
- o the economic burden on the ILEC associated with competitive entry must be considered.

Obviously recognizing that the termination of the ACS of Fairbanks, Inc. and ACS of Alaska, Inc. rural exemptions had been done in a manner contrary to federal law, GCI appealed to the U.S. Supreme Court to review the 8<sup>th</sup> Circuit's ruling on these specific issues. The U.S. Supreme Court denied the GCI request, leaving the 8<sup>th</sup> Circuit's decision on these matters as the law of the land.

Yet the RCA refused to comply with the law, stating: "The 8<sup>th</sup> Circuit's ruling on the assignment of the burden of proof in a rural exemption proceeding does not persuade us to revisit that issue here.... To assign the burden of proof to the CLEC would be impractical." ACS has appealed the matter to the Alaska Supreme Court, where it is now pending review.

As a result of the termination of the rural exemption, ACS has been compelled to permit GCI to interconnect and lease UNE loops in Fairbanks and Juneau. Exacerbating the economics of forcing competition in these high cost markets, the RCA also issued an order granting GCI the right to receive the USF subsidy – specifically intended by federal law for the support of constructing and maintaining high cost loops – for every customer they take by means of a leased UNE loop. The RCA granted this windfall to GCI, despite the fact that GCI does not build or maintain any loops in these markets.

- ACS of the Northland, Inc.: The most rural and highest cost communities served by ACS lie within the certificated service territory of ACS of the Northland, Inc. Inexplicably, without any evidence in the record to support the action, the RCA this year terminated the rural exemption relative to 10 of these communities in what is referred to as the "Glacier State study area" for purposes of USF. Included among the communities affected by the termination are Ninilchik (861 access lines), Nenana (493 access lines), and Seldovia (422 access lines).

Senator Robin Taylor  
June 11, 2002  
Page 6 of 6


The local loop costs in the study area average approximately \$50.00 per month. Yet the residential consumer pays a monthly rate of only \$16.30 as contribution to the Company's revenue requirement to maintain the loop and all other expenses associated with providing the service. More than half of the loop costs is supported through federal USF. Consider the implication of opening these areas to interconnection competition and, as the RCA did in Fairbanks and Juneau, granting to GCI the right to receive the USF. ACS will have neither the funds nor the incentive to build another loop in the Glacier State study area. Yet the RCA had an obligation to make an affirmative finding, supported by a record, that competition in the Glacier State study area would not be "unduly economically burdensome" and that it would not jeopardize "specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."

These are complex issues that do not lend themselves to simple explanation. However, ACS would be most grateful for the opportunity to more fully explain these situations through written and oral testimony. We believe the Judiciary Committee would find significant value in a review of these matters because the practical effect of all this is to discourage investment in the network. No rational shareholder would or should be content to have ACS make substantial investments to build state-of-the-art networks, only to have to lease them to the competition at below cost. And when the incentive for investment is destroyed, it will be the Alaskan economy and the Alaskan consumer who lose.

The hearings scheduled by the Judiciary Committee offer the opportunity to create a public record documenting these regulatory matters. ACS applauds this action by you and the Committee to review the RCA's record in the light of day. We would be pleased to contribute in whatever way you deemed appropriate.

Thank you again for your commitment to assuring a comprehensive review of the Regulatory Commission of Alaska.

Sincerely,



Wesley E. Carson

*S. K. ...*

dba **DELTA**  
Thomas B. Wood  
P. O. Box 14  
Eagle River AK 99577  
907.694.9430 Office  
907.227.8844  
akbucket@alaska.com

## FAX TRANSMITTAL

**Date:** June 12, 2002  
**To:** Robin Taylor – Chair Judiciary Committee  
**Fax #:** LIO - 269.0229  
**Subject:** Regulatory Commission Reauthorization  
**Pages:** 1 including this page  
**From:** Thomas B. Wood  
**Fax #:** 907.696.2782 Cell 907.227.8844

Dear Mr. Taylor,

Please do not reauthorize the **Regulatory Commission of Alaska**.

I have on several occasions tried to get information from this bunch about my two cooperatives; Matanuska Telephone and Electric, concerning their actions against the two.

They either were uninformed or were blowing me off over the questions I had for them. I eventually did get the information directly from the cooperatives. I feel that the RCA does not have the best interests of my cooperatives in mind, but is nothing more than a partisan political group acting as a front for special interests, such as the IBEW.

I strongly urge you not to reauthorize until an in-depth investigation of their dealings for the past few years is undertaken. I do not trust the existing State Administration to do an objective investigation.

I would be happy to discuss this issue with you, but I do not have the actual dates that I called them.



OFFICE OF  
THE COMMISSIONER

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

June 5, 2002

Senator Robin Taylor  
50 Front Street, Suite 203  
Ketchikan, Alaska 99901

Dear Senator Taylor:

I understand that the Alaska Legislature is conducting proceedings concerning the reauthorization of the Regulatory Commission of Alaska. I have been asked to share my perspective as a Commissioner of the Federal Communications Commission and as Chair of the Federal-State Joint Board on Universal Service on my experiences working with Chairman Nan Thompson. Without commenting on how the legislature ultimately should structure the state regulatory commission, I am pleased to comment on Chairman Thompson's contributions to federal-state processes. In short, having worked closely with Chairman Thompson over the past year, I have observed first-hand her commitment to the people of Alaska, and to Americans generally. She ably represents their interests on critical matters relating to universal service and the deployment of advanced telecommunications and information services.

The Federal-State Joint Board on Universal Service (Joint Board), which was established pursuant to section 254(a) of the Communications Act of 1934, as amended, advises the FCC in most universal service proceedings that affect state interests. The FCC often formally refers a matter to the Joint Board for its recommendation, and in other cases the state members of the Joint Board file comments or informally advise the FCC. The National Association of Regulatory Utility Commissioners (NARUC) appointed Chairman Thompson to the Joint Board, and the state members of the Joint Board elected her State Chair.

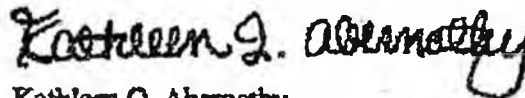
Chairman Thompson has proven an extremely effective leader and valuable colleague. Largely as a result of her organizational skills and hard work, the Joint Board is operating more efficiently than ever before. Even more importantly, from a substantive standpoint, Chairman Thompson has been a leading voice in debates over the administration of the federal universal service support mechanisms. For example, the Joint Board is presently considering whether to modify the list of services supported by the federal mechanism, how to improve the administration of the federal low-income assistance programs (Lifeline and LinkUp), and how to distribute high-cost support to

non-rural carriers. In each of these proceedings, Chairman Thompson has effectively articulated the interests of Alaska consumers.

In addition to her work on the Joint Board, Chairman Thompson has been active in collaborative federal-state efforts to promote the deployment of broadband services. Former FCC Chairman William Kennard, in conjunction with NARUC, appointed her as Chair of the Joint Conference on Advanced Services, which provides a forum for federal and state commissioners to consider a wide range of crucial policy issues. Congress directed the FCC to take steps to encourage the deployment of advanced services, and we cannot accomplish that pivotal task without working closely with our state colleagues — particularly leaders like Chairman Thompson.

In sum, Chairman Thompson is a dedicated public servant and has been a highly effective partner in federal-state policymaking efforts. I hope to have the opportunity to continue working with her in the telecommunications arena.

Sincerely,



Kathleen Q. Abernathy  
Commissioner, FCC

**Subject: RCA reauthorization**

**Date: Fri, 31 May 2002 06:32:00 -0800**

**From: "akpratts" <akpratts@acsalaska.net>**

**To: <Senator\_Robin\_Taylor@legis.state.ak.us>**

Senator Taylor-

I currently work for ACS and live in Senator Ward's district on the Lower Hillside. Thank you for your leadership in reviewing the RCA which seems to be out of touch with both common sense and the future of the state. Please continue to press for completing the review of RCA actions re Telecom prior to re-authorization. Some of this stuff is just plain weird, like the RCA's decision to establish prices for the purpose of allowing GCI shareholders "to accumulate capital", rather than simply allowing them the opportunity to earn a return on their own invested capital.

Thank you for your continued leadership contributions to me, my family, and all Alaskans.

**Subject: Robin, here is my two cents on RCA from a consumer perspective**

**Date: Wed, 29 May 2002 13:40:30 EDT**

**From: ConnAlaskaconn@aol.com**

**To: Senator\_Robin\_Taylor@legis.state.ak.us**

**CC: steveconn@hotmail.com, akpirg@akpirg.org**

Dear Robin, since the RCA issue is not going away, I thought I'd share a few thoughts from my perspective as a person who deals with the agency for consumers with real problems. Here are a few of my concerns:

The public advocacy section has about half the staff of the other units. This means that all sides on water and sewer, cable, electric and other issues aren't fully represented with the limited resources allocated to public advocacy.

The consumer protection unit that screens consumer complaints does not bring individual complaints that seem to have broader application to the attention of the commission and doesn't use the press to draw in broader participation. Instead it leaves it to an individual consumer to go through the petition process which they rarely do and sends out only official- and often unreadable official notices about serious rate increases, etc..

Universal service funds of about 75 million come to the state when the RCA oversees their application and vouches for their use.

The program that is critical to elders, funded by this federal pot, is the Lifeline

program which allows people to call their doctor and make local calls.

The last I heard only about a third of eligible people get this special service because social service agencies and others do a lousy job putting out the word. I sent Barbara Williams of the Injured Workers Alliance (whom you heard at the bar's sunset hearing) to a meeting and she offered to be proactive with her volunteer group by reaching out to elders, mentally disabled and others about this program. She was given a cold shoulder. So some focus on whether universal service money is getting to the right people is important, and how money to get better outreach is spent should be addressed.

As to the ACS-GCI fight, there are valid points on all sides. I agreed with GCI getting to Juneau and Fairbanks because I believe in competition in the market place is good for consumers.

ACS has a point related to their infrastructure burden that could be worked out, but I have objected to its tactics- like using consumers, including developers, as pawns when they refused to expand infrastructure, bully boy tactics.

On GCI's end, cable does need more public monitoring, especially since it

gives an edge to GCI because of the internet. Raises in rates have outpaced inflation.

There is no movement on GCI's part to extend cable into parts of downtown anchorage where many small businesses operate (including us) I don't know the situation in other places.

So, are there problems- you bet. Do we need RCA? Yes, because at least it provides a modest platform for the public interest on many essential services can

be heard, things like garbage, sewer, electricity, etc. if people know it exists and if it uses its muscle to get utilities to improve its customer service. I have it on good authority, for example, that persistent complainers to ACS are put into a kind of never, never land dead zone. This is bad business practice in a competitive environment that ACS can't blame on government bureaucracy. They have a case that can and should be made to the public. ACS's tv ads make the point that they are the ones who maintain the infrastructure, but ACS never carries through with second part of their argument. Who knows why not?

Understand that the staff and commissioners are all nice people and treat us politely and professionally, but of course the problems we have and ACS has are not about how nice people are.

Thanks for hearing me out.

**Subject: Re: your e-mail of 5/28 RCA**

**Date: Wed, 29 May 2002 16:20:51 EDT**

**From: Swiftaudl@aol.com**

**To: Senator\_Robin\_Taylor@legis.state.ak.us**

Dear Senator Taylor,

And THANK YOU for one of the most encouraging responses we received. Maybe something positive might happen. Keep it up!

We are out of the political part of the loop here, having mail only twice a week, no news papers or TV, and limited radio. The web is not an option either as our phone system cannot process data reliably. However, I can add a few references that might make it easier for you to find supporting examples.

Our first experience with RCA was at staff level, and was file No. C-00-104. Agnes Pitts, of staff, closed this complaint on April 21, 2000, with the comment that they found "no violation of any statute, regulation of CVTC's tariff....." Now come on, to take tariff designated money without notice of billing out of a customers account for work not done, and report it on a tariffed form, is that not violating a tariff?

The second attempt was for formal hearing, and this was designated U-01-38. The Commission dismissed this complaint on the 16th of July 2001, saying that no new evidence was presented. They ignored the several letters with blatant lies or outright silly arguments. They also ignored detailed logs showing clearly that the phone system is operating very poorly. (At that time, 192 failed calls in a year, and to date, well over 300 failed and dropped calls in two years. Per line!)

We circulated a petition here, asking again, for reconsideration. This petition specifically requested an open hearing on our case # U-01-38. It was signed by 32 people, out of the forty people in the area at the time. (80%) Almost all the signers also took time to add long comments on the poor phone service.

The RCA did open a new case, U-01-102, and scheduled a teleconference hearing on Dec. 10, 2001. They absolutely refused to consider our case U-01-38 about the theft of customers money, and at the Dec. 10 hearing, specifically ordered me to shut up about it when I tried to bring it up. They allowed Mr. Rennie however, to testify, under oath, that they did not charge customers for checking CVTC equipment on complaints. Since this is just exactly what they did in our case, isn't there a word for this?

I did get a chance to speak to Mr. Abbott of RCA later, and when I asked him if that did not bother them, well, he did not actually say anything, but I got a clear feeling his attitude was "well so what?"

There is a 125 page transcript of this hearing dated Dec 12, 2001.

Now, they have ordered CVTC to keep more detailed records over a period of time. CVTC asked this period to be moved to next winter. Of course in winter, there are only a few people around to have failed calls, so they can have a much easier time to get out of reporting the actual fact that the equipment is probably "junk" as testified at the hearing. RCA readily went along with this request.

I realize, Senator Taylor, that your perspective is the overall performance, or non-performance, of RCA, while ours is more local in wrongdoing by the utility, and the RCA just condones and supports this wrongdoing.

I should add that I personally, am not making such a fuss over the bad service, as most others. I have lived in McCarthy for 47 years, and forty of those years, there was no phone within 100 miles of us. What we have is better than that. Our complaint is that the utility just takes money out of accounts without cause, and the RCA refuses to hear about it.

We also do not understand why the Ombudsman also refuses to look into this kind of abuse. Even when we pointed out to them that the issue is not just one customer squawking, but that the utility actually told us that they could not charge other customers (who complain) if they gave us our money back. So it is a larger social issue, but their refusal sounded absolute.

It is probably not practical for us to attend your hearings in June, since it is a 9 or 10 hour drive each way to ANC, so I would ask if we might be able to get a transcript of them, at some point?

I used to kind of like Wrangell, as a place to stop for fuel on some of my trips down the coast with my private airplane. Easy and interesting to just walk down town, when there was time. Less formal place than Ketchikan.

Jim Edwards  
McCarthy, Alaska

Mr. Taylor, I am Jim's wife, and thought maybe the following letters would help you. I get the impression that Governor Knowles is pushing a closed session because of communication received from the offices of, Congressman Don Young, Senator Ted Stevens, Senator Georgianna Lincoln, and Representative Carl Morgans. As back up I have attached copies of the letter I wrote to Governor Knowles, who has not had to courtesy to answer me back, and the letters I received from Congressman Don Young, and Senator Ted Stevens.

Thank you for your attention in this matter,  
Audrey Edwards

Office of the Governor  
Tony Knowles, Governor

April 18, 2002

RE: Regulatory Commission of Alaska

Dear Governor Knowles,

Just what does a person have to do to get your Regulatory Commission of Alaska, (RCA) to do the job they were appointed to do? They ignore consumer complaints, and close the cases brought without investigating.

We had, and still have, a legitimate complaint against Copper Valley Telephone for taking monies out of our account for charges not due them. The RCA denied hearings, not once but several times without an explanation. They just will not allow the true facts to be debated, so we had to do our own research and investigation.

The utility told the RCA that we were charged because the technicians worked on Customer Owned Equipment. This is patently untrue. #1, We talked directly with the technicians that supposedly worked on our equipment. #2, They both denied working on our equipment, but only tested their own. #3, Both technicians stated that they were not aware of the monies taken from our account without billing or just cause. One of the technicians sat at our desk the entire time he was in our home, and never touched or tested any part of our equipment. He told us that he did not make out a work sheet, that when he returned to the office he was handed a ticket and was requested to sign off on it. When someone else has to do the RCA's investigation for them, and the findings are still denied, where do we turn?

Of the residents in our community, 80%, signed petitions on two different occasions, stating they were having the same problems that we were having, and that they felt we should be given a hearing. The RCA even ignored

requests from Senator Georgianna Lincoln's office and Representative Carl Morgan's office to honor a hearing. Finally, a teleconference hearing was set up for our community, but we were instructed that we were not allowed to bring up any reference to our complaint. The teleconference was set up when Mr. Rennie knew most of our residents would be gone for the winter. He also stated under oath that he was not aware of any problems with the phone service here in McCarthy. A blatant lie under oath, because all our petitions had been sent to him.

He also stated, under oath, that they did not charge customers for testing the utilities equipment. This also seems to be perjury, as that is exactly what they did to us.

So, again, I ask you, where do we turn when, "OUR Regulatory Commission will not do the investigation they are getting paid to do while sitting and taking up space in an office. In my estimation, if there are to be funds cut, maybe you should start with your RCA program, as they don't seem to do anything except collect a paycheck. We have been told no one can touch them because they are appointed and funded by you.

I won't bother sending you any of our back up material right now, as it would probably be a waste of time, but if you are truly interested in helping, and making a wrong a right, then I would be more than happy to enlighten you in the events as they have taken place.

I am hoping you will respond, but if not, then in all fairness to you, I want you to know that I will continue to publicize the issue at every chance I find, and to anyone that will listen about the way things have been run with the RCA. In addition, I will be sending this same message to, Congressman Don Young, Senators Ted Stevens, and Frank Murkowski with the hope that they will take this matter into consideration. I hope the ball will stop with you. After all, isn't that what we elect our representatives for? To help the general public from businesses taking advantage of them?

All we ever wanted was a fair hearing, and an honest investigation.

Thank you for your attention,

Audrey Edwards  
McCarthy, Alaska  
(907) 554-4414

cc: Honorable Donald Young, Congressman  
Honorable Ted Stevens, Senator  
Honorable Frank Murkowski

[Unable to display image]

[Unable to display image]

Sorry I could not get my scanner to print these letters the actual size.

**Subject:** (no subject)

**Date:** Tue, 28 May 2002 22:40:40 EDT

**From:** Rweimer461@cs.com

**To:** Senator\_Robin\_Taylor@legis.state.ak.us

Dear Senator:

It has come to my attention that your Judiciary Committee is holding SB2010 from passage. I have worked in Alaska since 1974 with PTI, FMUS, Alascom and Alaska Gas and Service Company. My job was regulatory affairs manager. Never did the RCA (APUC) do exactly what I recommended. Why? Simply because what I advocated as best for my company was not necessarily best for the local rate payers or the state as a whole. What ACS is advocating today is what is best for them and their shareholders--a very rational advocacy. However, their plans will *never* deliver communications services to anyone (let alone rural Alaska!) at the lowest economic cost. The competitive model is flawed when it comes to most of Alaska and cannot possibly work effectively without the RCA oversight.

I too am appalled by the appointments that Knowles has made over his last two terms but exactly how did he get there in the first place? It was the divisive bickering of Republicans that put him in office. (Him along with an equally liberal string of predecessors.) Draw together as Republicans for a change. Do something good for the state. Support SB2010.

Then work to change the make up of the RCA.

I now live in North Carolina having lost my job with FMUS after PTI took over. I supported their takeover then and now. They overspent in their acquisition binge that resulted in ACS.

Their plight is clear. They cannot afford even the semblance of competition. ACS's interests are correctly self-serving. Anything less would be a disservice to shareholders. Because of this you need the RCA.

I would be happy to work with you in any way I can. I have a strong economics background but more importantly I know the regulatory climate.

Richard M. Weimer

Communications Consulting

Dear Emily:

Hearings will be held on the EARLY EXTENTION of RCA. Nothing happens to them for 14 months if we do nothing. The New Gov. and the New legis. will have the entire session next year to decide RCA's fate if we do nothing. I'd personally rather have them take up this issue but apparently the Gov. and his GCI supporters want to force the issue NOW while they can influence the outcome for their special interests. It would take someone pretty naive to really believe that the Gov. has called this special session just for the altruistic reason of saving the RCA. Particularly since it doesn't go out of business and keeps right on taking cases and doing it's job for the next 14 months! Some think that cramming this through a special session is a good idea. I think letting the next gov. and legis. spend 4 full months coming up with good ideas for making this agency work better is a far superior concept. Ask yourself this one, what is motivating this Gov. to call this special session? Does he not trust the next gov. or the next legis. to protect his friends as strongly as he is willing to do? If I lose the Lt. Gov. race I will be back in that new legis. and if the early extention is not granted, will be working on revising the RCA to protect the consumer not this Gov.'s special interest friends. Thus I would think from your comments that you would not want me to do anything on RCA and to leave it up to new faces to have a fresh look at the problems at RCA.

The existing RCA came out of exactly such a process. The old APUC went into it's sunset year and the Legis eventually took up those concerns and created the new RCA. Why didn't that process in 1994 require a special session of the Legis? Could it possibly be that the special interests at the time did not have such a strong hold on Gov. Wally Hickel?

Sen. Robin Taylor

Emily Thatcher wrote:

I consider the open consideration of the reauthorization of the RCA by the Senate to be of utmost importance. Holding the bill in committee looks like a blatant serving of special interest rather than serving the people whom you represent. This is particularly inappropriate for someone who is interested in further statewide office. In addition, it is too late to quietly kill this bill.

I urge you to support efforts to move on the bill concerning re-authorizing the RCA . As an ordinary citizen and consumer, I benefit from competition and the RCA is essential to that end.Sincerely

Bob Solberg  
[bsolberg@gci.net](mailto:bsolberg@gci.net)  
907-745-4310

Dear Bob:

The RCA will continue to exist and continue to protect your rates for the next 14 months whether the bill moves or not. The EARLY EXTENSION of RCA sought by the Gov. will prevent the next gov. and the next legis from taking up a full review of RCA next year as would normally happen. In fact that is exactly how the current RCA was formed. The APUC went into its wind down year and the legis took up an extensive review of that commission. Out of those efforts a new agency was created called the RCA. Wally Hickel was not owned by any special interest and he let it go through the normal process and the new gov. Tony Knowles and the new legis. created RCA. Why does this Gov. use extraordinary powers, calling a special session, just to early extend? Is it because he doesn't want the new legis. to do a searching review of this agency? Does he not trust the next bunch to protect his special friends and his special interests as strongly as he is willing to do? The RCA will continue just as it has for the last several years whether I do anything or not. Your rates will continue to be protected just as they have been in the past. It is hard for me to believe that there are any real Alaskan's who are so naive as to believe that this Gov. is going to this extreme effort just for altruistic reasons. Trust me Bob the sky isn't falling, RCA is functioning and is not threatened by me or anyone, except this Gov. who by calling attention to this issue and threatening and now calling a special session will force the legis. to do a quick and dirty look at the problems. There are problems and even the house of rep. added several pages to the Gov.'s 4 year extension bill. They put in time lines and other requirements that may be good or bad for the RCA depending upon how those things work. Chugach Elect. the largest supplier of elect in Alaska (over 60,000 homes) has consistently said Don't early extend there are major problems at the RCA! Apparently this Gov. wants us to look at those problems and in a day or two come up with solutions. Now he really doesn't want that and we both know that. He wants the RCA extended and he wants no one to address the problems. Well if he keeps forcing the issue he may get more solutions than he or his special interest friends wanted. Personally I think it is a crummy way to do business. I'd rather let the next legis take 4 months to work on these issues and come up with well reasoned ideas to make this agency function better. I'm willing to trust the next bunch to do a good job. Sadly Tony is not and that is why he is frightening people into believing that if I don't do something RCA will die. It's a total lie, but he and GCI and their partner the Anch Daily News keep telling it in the hopes that the truth won't come out before they can cram this early extension through the legis.

Sen. Robin Taylor

Bob Solberg wrote:

>  
> -----Original Message-----  
> From: Dana Tindall  
> To: \*\*All GCI Users  
> Sent: 5/22/02 2:44 PM  
> Subject: Report from the Juneau Front  
>  
>  
>  
> > All:  
> >  
> >As many of you have probably heard, the legislature adjourned last  
> >night without taking action on the RCA re-authorization. Do not lose  
> >heart! This is better than it looks. We were able to stop an  
> attempt  
> >by Robin Taylor, Dave Donley and Rick Halford to pass a bill that  
> would  
> >only authorize the RCA for three months, and would also call for a  
> >special legislative council investigation into telecommunications.  
> The  
> >house held firm (particularly Eldon Mulder and Pete Kott) and would  
> not  
> >stand for it. Knowing that the Governor would call them back into  
> >special session to vote on the bill, the house adjourned rather than  
> >agree to a bad bill. Rick Halford and Robin Taylor are doing this on  
> >behalf of ACS even though all other utilities want the RCA  
> >re-authorized and Halford and Taylor cannot identify a public policy  
> >reason to kill them. ACS wants the RCA terminated because they don't  
> >like their decisions on competition and loop rates, even though ACS  
> has  
> >lost these issues on appeal. ACS has put very intense pressure on  
> the  
> >legislature, recruiting Bill Allen to come in and help them twist  
> arms.  
> >  
> >The Senate is getting very frustrated with Robin Taylor and Rick  
> >Halford. There was agreement on a one-year extension between the  
> >Governor and the House last night, but Halford would not even present  
> >it to his majority. They never got an option of deciding whether or  
> >not they wanted to take the deal. When the legislature comes back in  
> >on June 24, we will be starting all over again with a new bill to  
> >reauthorize the commission for 4 more years. I think the Senate is  
> >getting ready to revolt against Rick and Robin and will look strongly  
> >at simply passing this bill over Robin and Rick's objections.  
> >  
> >On another note, the war with Senator Taylor has gotten very  
> personal.  
> >He has held at least three press conferences and given two floor  
> >speeches stating that we are under ongoing investigation by the  
> >Department of Justice for trying to monopolize the telecommunications  
> >market. He claims that we are in bed with everyone from the Daily  
> News  
> >to the Governor to the majority of the legislature (at this rate, I  
> >will clearly have to get a bigger bed!). The news media is not

. buying

> >it since they understand the dept of Justice was merely doing a routine  
> >investigation that we requested of potential acquisition of the MCI  
> >fiber in the bankruptcy proceeding. And they also understand that our  
> >bed is just not that big.  
> >  
> >Since none of Senator Taylor's mud-slinging is working, he is now  
> >asking for subpoena powers to investigate us and our alleged link with  
> >the Governor and the RCA. At this point, it appears that if a majority  
> >of his committee and the President of the Senate go along with this, he  
> >can subpoena us. My fear is not of what we have to hide, rather that  
> >it distracts from and has nothing to do with the issue of reauthorizing  
> >the RCA. We will continue to try and focus the legislature on the  
> >ball.  
> >  
> >During the interim period from now to June 24, we will need to thank  
> >and buck up all House members to encourage them to hold the line on  
> >re-authorizing the RCA fro four more years. We also need to chastise  
> >any senate members for lack of action and request that they please act  
> >to re-authorize the RCA for 4 more years. Please be polite if you  
> >choose to e-mail your house and senate members. Please do not e-mail  
> >Robin Taylor as it will do no good and I would not want individual  
> >employees to become a target for him.  
> >  
> >The fight is not over, things are looking good. Thanks so much to all  
> >of you for your e-mails and support. It may not look like it, but they  
> >have been working!  
> >  
> >Dana

-----Original Message-----

From: Karen Perdue [mailto:karen.perdue@alaska.edu]  
Sent: Wednesday, May 29, 2002 9:22 PM  
To: brian.rogers@alaska.edu; brogers@infoinsights.com  
Subject: more on phones

a few more points and a clarification for you to consider, test out:

--ACS never testified on the sunset in the hearings in the House. If they felt so strongly that their business was at stake, why didnt they testify?

--there is a large telecommunications study that ACS lobbied to get going last year that Dept of Administration is conducting. Actually, proposals are due May 15 and about seven bidders have put together proposals. The study looks at the impact of government regulation -not just the RCA, but includes the RCA. This is the study Halford said needed to be conducted before reauthorization.

-All parties agreed to a clean one year sunset and then right before going on the floor, Halford said he forgot to mention that he wanted a "task force" to study the RCA... three house, three senata, one governor. Sounds like a witch hunt to many. This is beyond the study. This killed the deal. Very hard to get back to clean one year deal now.

ACS has at least one case at the State Supreme Court and probably one at the 9th circuit.

ACS has a big rate case pending or part still to be ruled on. Some speculation this is tactics on that. ACS alleges the RCA is delaying on rate case. Other thought is rate case was not filed until a considerable period after purchases, maybe two or three years. Also in the last month. Having to respond to political stuff is slowing the RCA's work.

Sunset laws are tight under new RCA statute. If not reauthorized ie goes into sunset as opposed to being extended under the sunset like was done several years ago means the commission must finish all business within the year. Docket of filings (from electrical and others) is expected to skyrocket on June 30 if not reauthorized or extended. Point here is the legal difference between the situation the commission is in now - simply dying away and an extension or reauthorization.

MOre later.

RCA

Dear Fe:

The RCA will not be dismantled or changed in any way if the legis does nothing this year. They will stay in existence until July 1 of 2003! They must continue to work and take new cases during that period according to a 1994 Atty. Gen's opinion. Nothing is happening to RCA. The Gov. is fixated on forcing an early extention. This forced special session may likely result in hurried decisions and major changes could result in the make up and authority of the RCA if this happens. I would rather put this war off until we have a new Gov. and a New legis. which can spend all 4 months of the next session to carefully review these matters and make such reasonable adjustments as they determine are necessary. Sadly this is the wrong time and the wrong way to cause changes in the RCA and it is being pushed by your management team. I can only assume that they see some corporate benefit in forcing this issue while Tony and Fran have the bully pulpet and can twist political arms for the benefit of GCI.

This strategy may backfire and changes may occur that are not beneficial to consumers or utility providers. I'm caught up in this, not of my choosing, but because the Gov. is forcing the issue. I intend to protect the integrity of this process and if a full review must be forced at this time then I'm going to do what I can to protect the consumers of Alaska from the power politics of these special interests.

Sen. Robin Taylor

Fe Seymour wrote:

- > Dear Senator Taylor:
- >
- > I work for GCI. I understand that dissolving the RCA will impact
- > not only my company, but all of the statewide utilities.
- >
- > This would seem to negate push for removing our only mandated
- > regulation watchdog. If there are problems or concerns regarding their
- > performance, could it be modified/improved without a complete dismantle ?
- >
- >
- > Please vote in favor of preserving the RCA.
- >
- > Sincerely,
- >