

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10587 SENATE JUDICIARY

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- ❖ I would note that neither GCI nor ATT Alascom has stepped up to build telephone facilities in places where they can't make a business case. Why should they risk their own capital when they get to make use of our network at less than what it costs us – or them – to build it?
- ❖ The bottom line is that we believe the quid pro quo for the regulation imposed on ACS by the regulators, including this carrier of last resort obligation, is that the RCA makes certain we can earn a reasonable return. That would be fair. We invest, we earn. But the reality is that they can compel us to build and serve – but we do not have a way to assure a return on investment. This is a commission that claimed “sovereign immunity” when we sought to have a matter under the federal Telecom Act reviewed by a federal district court. Where is justice when the Commission refuses to be held accountable for their decisions? Why wouldn't state commissioners want to make absolutely certain that the decisions they were making – that had a direct impact on the public interests of the State – were consistent with the law and furthering the public interest?

And this leads us to Ted Moninski to speak about issues of procedure and process. We believe the regulatory process must be fair and open, impartial, and render decisions consistent with the law. Ted is uniquely qualified to address these issues, having had responsibility during his career for regulatory affairs at ACS, ATU, and also Alascom. He was executive director of the Alaska Public Utilities Commission from 1986-1991 and served as previously as deputy director from 1981-1986. With the Committee's permission, I'll turn the time over to Ted.

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Leonard Steinberg will now address our concerns relative to telecommunications law and policy issues. Leonard has served as our General Counsel since January, 2001. He has extensive experience in private regulatory and administrative law practice representing

telecommunications and energy industry clients – and brings a very broad perspective through his education. He holds a Juris Doctor from the University of California's Hastings School of Law, a Master of Public Administration from Harvard, and a Master of Business Administration from University of California, Berkeley. Leonard.

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All of this comes down to the financial impact on ACS and the long-term implications for Alaskan consumers. ACS and its predecessors have invested substantial funds to build and upgrade the network that connects 75% of the State's population with each other and the rest of the world. We believe the quid pro quo for making these investments in a regulated environment is the opportunity to earn a reasonable return on the investment. We must be able to generate adequate financial returns if we are to continue to construct and maintain – and operate – the modern telecommunications facilities that keep Alaskans connected.

I can assure you that the capital markets are scrutinizing the impact of this Commission's regulatory decisions on the Alaskan markets. We must have access to capital from those markets to continue to invest in the business. It is a reasonable thing for shareholders and creditors to expect compensation for the opportunity cost of investing their funds.

Looking again at ACS of Anchorage, we have seen a steady decline in revenues from 1999 to 2001 that is directly proportional to the increase in UNE loops. Over that same period, we have gotten more efficient each year. Our cash expenses per line have decreased. That is one of the benefits of competition. It makes you become more efficient.

In fact, it is worth noting that ACS is a more efficient operation than many of our peer group companies. For 2001, annual cash expense per telephone line for ACS of

Anchorage was \$242. The comparative spending per line for Alltel was \$276; CenturyTel was at \$402 and the TDS expense was \$435.

We have continued to invest in the network. We have made these investments in the belief – the hope – that this regulatory commission would, through our current rate case and the Anchorage UNE proceeding, permit us to earn a reasonable return on that investment. Thus far, we have certainly been disappointed.

Our latest disappointment is the RCA's order issued this month establishing depreciation rates for the ACS telephone companies. Depreciation rates are significant drivers of both retail and interconnection rates set by the RCA. The RCA has just lowered these for each of the four ACS local telephone companies.

For example, the current depreciation rate for ACS of Anchorage is 7.80 percent. Because technology is evolving more rapidly today, particularly in a competitive market such as Anchorage, we requested a new composite rate of 9.30 percent and offered supporting expert testimony. The U.S. Supreme Court, in its decision last month in the Verizon Communications case, recognized that depreciation rates may need to be increased in a competitive market. Endorsing language in the Federal Communications Commission's "First Report and Order" regarding how to treat depreciation rates for purposes of interconnection in a competitive market, the Supreme Court stated:

“The order thus treated then-current capital costs and rates of depreciation as mere starting points, to be adjusted upward if the incumbents demonstrate the need.”

GCI, who intervened in our rate case, argued that the rate should be adjusted downward – significantly – to 4.49 percent. They made this recommendation despite the fact that public documents indicate their own composite depreciation rate is well in excess of the ACS rate.

Interestingly enough, it was GCI, our primary competitor, arguing against our depreciation rate – not the Public Advocacy Staff. Staff relied entirely on GCI to formulate a position. We found it disturbing that we were required to disclose detailed information about our network and costs to our competitor to help support their argument to ultimately lower the rates they pay to lease our network.

So what did the RCA order? They reduced our rate from 7.80 percent to 4.78 percent – remarkably close to the GCI recommendation of 4.49 percent. Incidentally, we calculate the average depreciation rate of the other telephone companies in the state to be 6.33 percent and none of them face competition. In fact, we cannot find any telephone company in the country with a lower depreciation – with the exception of ACS of Fairbanks. We will be submitting additional written testimony to the Judiciary Committee on this matter.

We must ask the question: How do we reconcile the regulatory burdens, including this carrier of last resort obligation, with a regulatory regime that does not permit us to earn a reasonable return on our investment?

We believe regulators must be concerned – and act in a manner that demonstrates that concern – about how continued investment in the network will be assured in the long run. How do we generate the capital to build the network and pay the expense of operating it? And if we cannot generate sufficient funding to build and operate the State's network, how do we assure the future of telecommunications in Alaska, the state more dependent upon modern telecommunications than any other state in the Union?

Our story is only one piece of a much broader regulatory concern in the State. But our questions are significant to the future of Alaska. We commend this Judiciary Committee, because we believe through these hearings, you are seeking answers to such questions.

We do have recommendations to this Committee:

1. Establish an oversight committee to monitor the RCA to assure that regulatory policy is aligned with long-term public interest, that processes are completed in a timely fashion, that due process is afforded, that substantive law is being applied appropriately, and that there is, in fact, an incentive to invest in Alaska's telecommunications future.
2. Then we would recommend that the information derived from these Judiciary Committee hearings, developed by the oversight committee, and received from the State Telecommunications Study be used to support the next legislature's deliberations on Alaska's future regulatory course and to establish policies to guide the regulators.

Thank you for this opportunity, Mr. Chairman and members of the Committee.

# Concerns About Due Process

- RCA's Inappropriate Use of Advisory Staff vs. Public Advocacy Section
- Absence of Codified Ex-Parte Rules and Non-Use of Disclosure Statements
- RCA's Lack of Willingness to Conduct Evidentiary Proceedings
- Apparent Violations of Open Meetings Act Requirements

## Concerns About Due Process: Example

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- RCA's Inappropriate Use of Advisory Staff vs. Public Advocacy Section
  - Role of Advisory Staff is to support the Commission in analyses of complex issues.
  - Role of Public Advocacy is to advocate the “public interest”
  - This interplay is a key “check and balance” in the decision making process.
    - PAS Created by Statute in 1999
    - 498 Formal Adjudicatory Dockets Opened; 59 (less than 12%) PAS Designated as Party

# Concerns About Due Process: Example

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- Inability to Test Advisory Staff's Conclusions
- December 18, 2001 Order: RCA states, "ACS is not entitled to cross-examine Staff about the issues."
  - ATA's Critique in Docket R-02-02

"The main problems inherent in the current regulatory scheme are: the Commission, through its various sections, continues to act simultaneously as investigator, inquisitor, prosecutor, and adjudicator in its own dockets;"

# Concerns About Due Process: Example



- Absence of Codified Ex-Parte Rules
- Difficulty in Communicating with Commissioners
  - Inconsistent Application of Ex Parte Rules Along with Lack of Evidentiary Proceedings severely limit communication with commissioners
  - Also Severely Limits Commissioners' Opportunity to Probe and Understand Complex Regulatory Issues
  - FCC's Approach to Ex Parte - Establish Rules, Allow Direct Communication with Commissioners, require written disclosures to be filed in the record

# Concerns About Due Process: Example



- RCA's Lack of Willingness to Conduct Evidentiary Proceedings
  - New "Hearing" Procedure Established February 11, 2000 re AECA Tariff Filing
    - New Procedure Limits Long-Standing Opportunity to Develop the Record (Discovery, Testimony, Evidentiary Hearing)
    - New Procedure Implemented without Prior Public Notice
    - To Date, 19 ACS Tariff Filings Have been Subjected to New Procedure
  - March 8, 2002, Superior Court of Alaska Orders RCA to Conduct Evidentiary Hearing; Evidentiary Hearing in Early 2003

# Concerns About Due Process: Example

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- Apparent Violations of Open Meetings Act Requirements
  - Department of Law Advises RCA that items must be deliberated and voted on in a Properly Noticed Public Meeting
  - Examples of Apparent Non-Compliance:
    - Of 14 Filings submitted by the RCA to the FCC, 8 Filings Not Discussed or Voted On in a Public Meeting
    - Contract and Procurement Matters Generally not Discussed at Public Meetings; Chair's Signature Authority Limited to \$5,000 [AS 42.04.050(b)]
    - RCA's Feedback re HB 333 (Re-Authorization); Various "Sunset" Public Statements and Web Site Postings re Re-Authorization.

## Law and Policy

I would like to begin by reiterating something Wes said during his opening comments:

- Interconnection agreements and rates are the drivers of local telephone competition in Alaska. If terms and rates are not properly set, there will be long-term consequences that jeopardize the ability of Alaskans to enjoy modern and affordable telecommunications services.

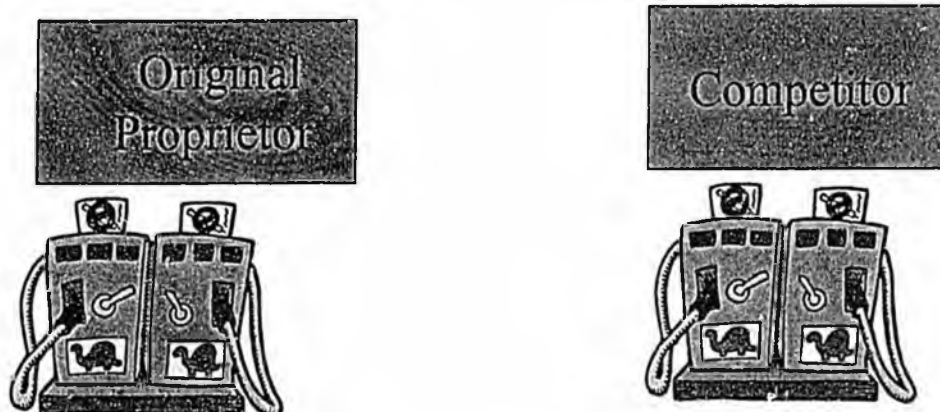
## Law and Policy

- My comments will focus on just a few of the legal and policy calls of the RCA that concern us: (1) interconnection agreements; (2) rural exemption; and (3) rate cases. In all cases, the RCA's positions generally reflect an activist commission making policy according to its own vision and implementing it through existing or new utility regulations.

## Law and Policy

- Before we jump into our discussion of interconnection agreements and rates, it might be helpful to consider an abstract and admittedly simplified example. Please imagine a gas station. The proprietor has invested in the business by building and maintaining a building, putting in tanks, installing gas pumps, and the like. The gas station owner buys gas from a distributor for \$1.50/gallon and sells it for \$1.65/gallon. Of the .15¢ margin, 10 is required to recover his investment, leaving 5 for profit.

# UNE Example



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Market share 40%

Market share 60%

# UNE Example

- Now imagine government stepping in and telling the gas station owner that he has to permit a competitor to use one of his sets of pumps, and oh yes, sell him the gasoline for \$1.00/gallon. If the competitor then decides to sell his gas for \$1.50/gallon, it will be .15¢ cheaper than the original proprietor's gas and the competitor will still have a margin of .50¢ a gallon, nearly all of which goes to profit because the competitor has not made substantial investments of his own.
- In the short term, this may look good for consumers – they are paying .15¢/gallon less for their gas. But how long do you think the original proprietor will stay in business? Moreover, how many new gas stations is this proprietor likely to build?

# Now let's turn to Interconnection Agreements and Rates in the Telecommunications Arena



- What Are Interconnection Agreements?
  - Permit competitors to lease facilities through a mechanism known as Unbundled Network Elements or UNEs.
  - Establish the UNE rates competitors pay to use ACS facilities and the processes used for the companies to interact with each other.
  - The rates directly account for most of our competitor's cost of goods sold, and therefore indirectly establish the range of possible market prices.

# Interconnection Agreements and Rates

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- Legal Obligations

- Incumbent carriers in urban areas are obligated to execute these agreements under the Telecommunications Act of 1996.
- Where the carriers are unable to negotiate mutually acceptable terms, state commissions are empowered to establish the rates, terms and conditions of these agreements through “arbitration.”

# Interconnection Agreements and Rates

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- Turning now to Anchorage
  - The Interconnection Agreement between GCI and ATU, one of the first in the nation, was approved by the APUC in January, 1997 in Order U-96-89(9)
  - In that order, the APUC established a temporary UNE loop rate of \$13.85/mo. This rate was intended to be a short term substitute for, and be replaced by, prices based on a cost study in compliance with federal law. In the Commission's own words, "all prices in the arbitrated interconnection agreement are temporary in nature and will require a full study based upon a cost methodology to be determined by this Commission at a later date."

# Interconnection Agreements and Rates

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- Anchorage
  - ACS sought, but was unable to obtain, an agreement with GCI for new cost-based rates. ACS then asked the RCA to set new rates in compliance with federal law in January 2000. The RCA granted ACS' request to set new forward looking rates on March 6, 2000, expressly recognizing that the existing rates were both temporary and "not based upon an accepted forward-looking cost methodology."
  - Nevertheless, neither the APUC nor the RCA has ever established a cost-based price in compliance with federal law. Finally, a year and a half after requesting new forward-looking rates, with no resolution in sight, ACS asked for at least a new "temporary" rate.

# Interconnection Agreements and Rates

- Anchorage

- The new temporary rate sought by ACS was \$24.00/mo. ACS provided the RCA with cost studies supporting this rate, copies of which I have available for this committee if it desires. The RCA then set a new temporary and refundable rate of \$14.92 despite the absence of any cost studies supporting that number. This is only a small increase over the old temporary rate of \$13.85. Moreover, it is prudent to look closely at where this number came from. Not the ACS cost study. In fact, the rate was not derived from any cost study or any evidence submitted to the Commission. Rather, it came from GCI's lawyer.

- Where are we then?

- Two and a half years after requesting new rates in compliance with federal law, and five and a half years after initiating facilities leases, ACS still has never had an Anchorage UNE rate in compliance with federal law. In fact, ACS has been unable to obtain even a schedule for resolving this matter.

## Why Does This Matter?

- The RCA claims it does not make law, but rather implements the law. In this case, we haven't even seen much implementation.
- It introduces uncertainty to our business plan. Anchorage UNE rates today are not only temporary, but refundable, How can we plan for the future in this environment?
- To the extent it perpetuates artificially low wholesale prices for facilities, it benefits consumers in the short run, but harms consumers in the long run by discouraging investment.

# Interconnection Agreements and Rates

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## Fairbanks

- Now lets turn to Fairbanks, where we have grave concerns about the UNE rates the RCA promptly set in response to a request by GCI.
- ACS' actual cost for an average loop in Fairbanks is about \$33.50. The RCA, however, set a UNE loop price for Fairbanks of \$19.19 – 57% of ACS' cost.

# Interconnection Agreements and Rates

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## Fairbanks

- This is our version of the gas station example. Or, if you prefer, consider the fact that in biological terms, the relationship between GCI's and ACS' local phone businesses would be described as parasitic. Here is the definition of parasite I found in one biology text book: "Organisms that live in, with or on another organism. The parasite benefits from the association without contributing to the host, usually they cause some harm to the host." Consider also the definition of "parasitism": "A form of symbiosis in which the population of one species benefits at the expense of a population of another species; similar to predation, but differs in that parasites act more slowly than predators, and do not always kill their hosts."

# Interconnection Agreements and Rates

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## Fairbanks

- Is this state-sponsored parasitism good for the people of Alaska? Perhaps it allows for lower prices in the short term, but it begs the question of who will be here to provide service in the long term. GCI's local phone business has not made the kinds of investments needed to maintain and upgrade the facilities needed to provide service and an ACS sufficiently harmed by parasites will be unable to do so.

# Interconnection Agreements and Rates

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How did this happen?

- The RCA rejected ACS' detailed cost study for Fairbanks, a copy of which is available to this committee if it desires.
- Rather, the RCA relied on an improper economic model
- The RCA ignored ACS' costs and elected to set Fairbanks prices based on Lower 48 costs.

# Interconnection Agreements and Rates

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- Fairbanks

- The model relied upon by the RCA was the “synthesis Model” used by the FCC to allocate Universal Service Funds – the same model criticized last week by Harold Furchtgott-Roth. As long ago as 1999, the FCC cautioned against using the model for UNE Pricing:

According to the FCC, “[t]he federal cost model was developed for the purpose of determining federal universal service support, and it may not be appropriate to use nationwide values for other purposes, such as determining prices for unbundled network elements.”

Tenth Report and Order, 14 FCC Rcd 20156, ¶32 (1999)

## Interconnection Agreements and Rates

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The FCC reiterated this position in an order issued just this month.

- “The Commission has cautioned against using the results of the Synthesis Model to set rates... and we emphasize that we are not doing so in this proceeding.”

Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps, Order, FCC 02-161, para 36 (June 5, 2002)

# Interconnection Agreements and Rates

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- Fairbanks

- Furthermore, it is worth noting that the Rural Task Force of the Federal-State Joint Board on Universal Service, the same Board co-chaired by Commissioner Nan Thompson, reviewed the reliability of the FCC's Synthesis Model and concluded:

“[T]he costs generated by the Synthesis Model are likely to vary widely from reasonable estimates of forward-looking costs. As a result it is the opinion of Task Force that the current model is not an appropriate tool for determining the forward-looking cost of Rural Carriers.”

Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service, September 22, 2000 at 18.

## Interconnection Agreements and Rates

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Finally, the U.S. Supreme Court recently rejected a Verizon argument which relied on the Synthesis Model to challenge the FCC's UNE pricing methodology. The Court described Verizon's argument as "spurious," noting that the Synthesis Model's numbers "are clearly wrong."

Verizon v. FCC, May 13, 2002.

Again, the RCA represents it does not make law but rather implements it. In this case, we question that representation. Moreover, we invite the legislature to investigate whether the RCA's activist policies, such as state-sponsored parasitism, reflect the will of the people and this body. If not, we recommend enacting statutes which establish policies such as competition being on a level playing field.

Now I will briefly switch topics and discuss exemption for rural companies under the Act and how that exemption can be terminated

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- What is it?
  - Incumbent carriers classified as “rural” by the Telecommunications Act of 1996 are exempt from the obligation to lease their facilities to competitors.
  - State Commissions may terminate a rural exemption, but only, according to the Act, if a state commission finds that it is not unduly economically burdensome, technically feasible, and consistent with universal service.

# Rural Exemption Termination

- Why did Congress create the rural exemption?
  - Telecommunications Act of 1996 recognized the fragile economics of most rural telephone companies and the folly of trying to bring market economics to high cost telecommunications services that can not exist without significant subsidies.
  - The rural exemption, then, is not to be terminated lightly, for doing so threatens the essence of universal service – the provisioning of modern telecommunications services to all consumers at affordable rates, a policy which ACS supports.
  - Nevertheless, the RCA terminated the exemption of ACS' three rural telephone companies.

# Rural Exemption Termination

- What are our concerns with the RCA's decisions to terminate a rural exemption?
- The RCA has ignored federal judicial decisions placing the burden of proof in rural exemption proceedings on the competitive carrier seeking to terminate the exemption.

# Rural Exemption Termination

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- The RCA also terminated the exemption for ACS' most rural company, ACS of the Northland, despite GCI's testimony in 1997 and again in 1999 that it was seeking interconnection only in North Pole and not anywhere else in the ACS of the Northland service territory. Given GCI's position, and the absence of a dispute concerning most of the ACS of the Northland territory, we do not believe any specific evidence was introduced of the impacts of competition on the economic burden or universal service in Northland's small communities such as Seldovia, Ninilchik, Delta Junction and Nenana.
- We do not understand how the RCA could make the required statutory findings when there simply was no evidence in the record.

# Rural Exemption Termination

- Why should the legislature care? Because all consumers outside of Anchorage have been put at risk of losing the benefits of universal service.
- We invite you to come to your own conclusions about whether the RCA makes law or just implements it.

Finally, I would like to address a few of our concerns regarding the RCA's handling of the ACS rate cases.

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- We are concerned about the level of effort and resources that are required – and the time to reach resolutions – for these cases.
- The ACS rate cases are commission-mandated proceedings. As a condition of transferring to ACS in 1999 the certificates of public convenience and necessity that are required to operate local telephone companies, the old APUC required ACS to file rate cases for each of its four Local Exchange Companies on July 1, 2001.
- We now anticipate rates sometime in 2003 based on data from the year 2000.
- This proceeding before the RCA has already cost ACS roughly \$1.8M – and we expect the full proceeding to cost approximately \$3.0M. This does not include the losses and costs associated with operating a business without the proper rates.

# Rate Cases

- ACS has produced more than 13,000 documents to date, and provided more than 2,500 responses to more than 850 separate discovery requests – the bulk of which came from our chief competitor, GCI.
- All of this effort is paid for by the consumers – either directly or indirectly.
  - The RCA's costs for these proceedings are collected via the RCC charge on utility bills.
  - The utilities' costs for these proceedings are generally recoverable through rates.

# Rate Cases



- Earlier this month, the RCA finally issued a depreciation decision in this proceeding that appears to conflict with the U.S. Supreme Court's decision this May in Verizon v. FCC. The U.S. Supreme Court criticized attempts to minimize depreciation and slow depreciation rates, yet that is precisely what the RCA has ordered. In fact, the depreciation rates established by the RCA for ACS of Anchorage are not only much lower than the rates employed by its competitors, but these rates appear to be significantly lower than any other telephone utility in Alaska. In fact, they appear to be lower than any known depreciation rate for any telephone utility, big or small, anywhere in the country. This is exactly the opposite result from what one would expect in the most competitive marketplace in the nation where there is heightened pressure to modernize equipment or lose customers. In light of this dramatic decision, one has to wonder if this is the RCA's way of "rewarding" ACS for speaking up in these hearings.

# Rate Cases

- In any event, one has to ask, What is the relevance of rates set by the government based on 3-year old data in a competitive market place? This question is particularly relevant in competitive markets where retail prices today are driven by artificially low UNE rates?

Moreover, why is ACS still being treated as a regulated monopoly when consumers have a choice of carriers in the areas served by 3 of the 4 ACS local exchange companies?

Before closing, let me note that there are numerous other examples of the RCA's pro-regulatory and activist policies. For example, as Wes previously noted, in comments filed with the FCC, the RCA continues to advocate regulation of broadband services provided by telephone companies while allowing other providers of broadband such as cable companies, to be unregulated. Similarly, in another FCC proceeding, the RCA advocates having a right, on its own, to add to the FCC's list of facilities and services that companies such as ACS are obligated to make available to competitors. And earlier this year, the RCA agreed to new interexchange carrier regulations that significantly increase the regulatory burden on long distance providers.

## Law and Policy - Conclusion

All of these issues lead to the question of whether the RCA's policies and procedures reflect the will of the legislature. If not, the legislature should provide the RCA with guidance concerning the state's regulatory policies.

STATEMENT OF RON DUNCAN,  
PRESIDENT AND CEO OF GCI



GCI fully supports a four-year extension of the Regulatory Commission of Alaska, the RCA. The RCA is a functioning, professional agency. Two independent auditors, the National Regulatory Research Institute and the Legislative budget auditors both found the RCA to be performing well. Sunsetting the RCA and/or terminating any sitting commissioners will not fix the complaints that have been identified. The identified issues are structural or budgetary, there is a long learning curve for new commissioners, and a new commission would be highly dependent on Staff. In the field of telecommunications, most of the Commission's decisions have been the result of federal law that cannot be changed at the state level. Continuation of the RCA is needed for consumer protection and business stability.

It is not surprising that there is dissatisfaction with the RCA. Complaints about the commission are as inevitable as complaints by teenagers about parents and homework. The RCA arbitrates among the owners and users of various utilities, and its decisions have large financial impacts on corporations and consumers alike. For those involved in the process it often seems to take too long, but the delays are often caused by the parties to the proceeding. Often, the most lengthy cases involve utility against utility, such as the electric utility disputes between Chugach, Matanuska, and Homer electric companies. Discovery and due process is necessarily time-consuming, but also

necessary for fair resolution of issues. Furthermore, in every case there must be winners and losers, and there is a natural tendency of losers to blame the Commission.

This Commission is functioning well. It gets orders out much better than the prior commission. The decisions are well reasoned and based on the facts of record. The decisions have been affirmed on appeal 90% of the time.

This is the most professional regulatory commission the state has had in a decade. The members are professional and well respected. Most of the commissioners came to the job with relevant professional background, and each has learned on the job. Chair Thompson is well regarded among her fellow state commissioners and serves on the Federal State Joint Board that will help determine rules governing universal service. This position is of critical importance to Alaska.

The situation with the RCA is not even remotely comparable to the situation with the APUC when it was eliminated. At that time, the APUC was loudly criticized as completely dysfunctional, and not a single regulated entity rose to defend the APUC. Now, to the contrary, a group of thirteen different practitioners representing diverse interests wrote a joint letter praising the RCA and supporting its continuance. Replacement of the APUC passed the House by a vote of 38-0, while continuation of the RCA passed the House by a vote of 35-1.

Reauthorization of the RCA at this time is consistent with prior legislative practice. Over the last 14 years, the APUC or RCA was routinely extended in the session before the expiration date. The only exception was 1994, when there was no

opposition to extending the agency, but the bill failed to pass because of amendments on telecommunication regulation. The APUC was given a full four-year extension at the beginning of the following session.

What would be the consequences if the RCA is allowed to terminate as provided in the statute? The Commission would go into "wind-down". At the very least, less substantive work will be accomplished because contingency plans would have to be put in place. Staff likely would be lost. And the battle over the RCA would simply be extended to next year, with the real possibility of further stalemate and the final termination of the agency in the last-minute press of legislative business.

Much of the criticism of the RCA stems from federal telecommunications law, and terminating the RCA or changing commissioners cannot change Federal telecommunication law. Federal law requires ACS to interconnect and provide services to facilitate local competition. Competition is the law of the land, and the RCA is simply enforcing the federal mandate. These requirements will be enforced by the FCC and federal courts if the Commission is terminated. Alaska regulators and courts might lose control, but the results would be the same.

The Commission has followed federal law; its decisions interpreting the Telecommunications Act have all been affirmed on appeal. I'd like to briefly address the two specific decisions that have been discussed in these hearings, the burden of proof in the rural exemption hearing and the use of the FCC model for pricing. The Commission did not make the decision to place the burden of proof on ACS—instead,

the Commission was ordered by the Alaska Superior Court to place the burden of proof on ACS. That decision was later affirmed by a different Superior Court Judge who specifically ruled that the decision of the 8<sup>th</sup> Circuit Court of Appeals was illogical and not binding on Alaska courts. The decision to use the modified FCC model to establish UNE rates was made based on the recommendation of a nationally recognized expert who was the consultant to the Commission; GCI did not request use of the FCC model. Even after the model was selected, ACS had an opportunity to contest all of the inputs (variables)—matters such as depreciation rates, loop lengths, cost of capital—that determine the ultimate price produced by the model. The initial decisions regarding the inputs were made by the Commission's Hearing Officer acting as an arbitrator pursuant to the terms of the Federal Telecommunications Act.

Eliminating existing commissioners will not eliminate procedural delays. For all new commissioners there is a steep learning curve. Getting new commissioners will not result in quicker orders. Instead, things are bound to slow down, and new commissioners will be forced to rely on recommendations of staff rather than their own expertise.

A stable regulatory environment is favored by investors. Last week's testimony on behalf of Enstar was absolutely correct. The uncertainty caused by sunset will be a disincentive to investment and will have a negative impact on all Alaskan utilities who rely even partially on public financing of capital. Speaking for GCI, my investors have expressed similar concerns.

In summary, GCI supports a full, four-year extension of the Commission. The Commission is doing its job and fulfills a vital role for both utilities and consumers.

Dale E. Lehman  
7841 Port Orford Drive  
Anchorage, AK 99507

June 12, 2002

Senate Judiciary Committee  
State Capitol  
Juneau, Alaska 99801-1182

RE: Judiciary Committee Review of the Regulatory Commission of Alaska

I am writing this letter as input to your consideration of reauthorization of the Regulatory Commission of Alaska. I am the Director of the MBA Program in Telecommunications Management at Alaska Pacific University. My comments are my own opinions and do not represent those of APU or any other party. I have a Ph.D. in Economics from the University of Rochester and 25 years university teaching experience and research experience in the telecommunications industry. I have written a book (*The Telecommunications Act of 1996: The Costs of Managed Competition* with Dennis Weisman, Kluwer Academic Publishers, 2000) and authored numerous articles on the telecommunications industry. On the basis of my experience, as well as what I have heard during this hearing, I urge you to reauthorize the RCA for 4 years. The market place is my preferred place for competitive battles. The regulatory hearing room would be my second choice. The Legislature (and particularly, the Judiciary Committee's reauthorization hearing) is a distant third. Without the required expertise and due process that occurs in regulated proceedings, the debate of detailed regulatory issues in the Legislature can only result in ill-informed and overly political decisions.

I heard the comments of Dr. Furchtgott-Roth and mostly agree with his assessment of the Telecommunications Act and its implementation. I too have criticized the FCC's implementation of the Act, but I fail to see the relevance to the current review. The failures of the FCC remain regardless of what action the Senate takes about the RCA. If the RCA were singularly responsible for, or a major contributor to, these failures then it might be appropriate to consider not reauthorizing them. However, the FCC has been responsible for most of the poor public policy decisions (such as permitting Eligible Telecommunications Carriers to receive universal service funds based on incumbent carriers' costs when using unbundled network elements (UNEs) – and many other examples). Has the RCA done a particularly poor job of implementing the (in my opinion) poor FCC policies?

I disagree with many of the RCA's decisions. For example, I do not support the use of interim UNE rates for a three year period – but, it should be noted that Illinois has had interim rates for 6 years. Illinois also has a \$2/month rate of leasing unbundled loops from Ameritech in Chicago (compared to the \$14.92/month in Anchorage). Arizona recently changed their *permanent* UNE rates, lowering them by about 50%. Texas set

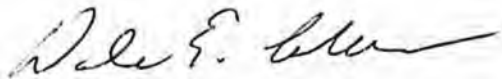
permanent UNE rates (after a contentious drawn out process) only to open a new docket to reexamine them immediately afterwards. There are numerous such examples. The point is not that the RCA has done a good job of making all their decisions – it is that the post-Telecom Act environment is complex, and avenues exist for recourse to poor decisions. ACS has litigated the lifting of the rural exemption in Fairbanks and Juneau. That is the appropriate means to address what they perceive to be a poor (even illegal) decision by the RCA. Perhaps the Judiciary Committee should be asking why the State Supreme Court has not yet ruled on this issue.

If the Senate does not like the job done by particular commissioners (although Mr. Taylor has denied such a personal dissatisfaction in the hearing), there are means to change commissioners. If the State Legislature feels that the Commission's jurisdiction is overly broad (as with the small water system – Crimson View), then they can pass legislation to circumscribe it. If the State Legislature feels that the Commission does not expeditiously process its cases (as with Chugach Electric Association's rate case), then they can pass legislation setting time limits for various regulatory actions. In short, the State Legislature can enact policies it feels are appropriate if it is dissatisfied with RCA actions.

What motivates my position and my comments is the belief that the reauthorization hearings are not the appropriate place to hear these arguments and enact policy. The only effect of allowing the clock to run out on the RCA (or to reauthorize for a short period such as a year) is to shift lobbying and argument from the regulatory hearing room to the legislative hearing room. I think such a shift would be a disservice to Alaska.

The regulatory process is already overly politicized (especially following passage of the 1996 Telecommunications Act). Shifting the debate to the legislative realm will only make it more so. **The Legislature does not have the expertise, interest, or patience** to hear arguments on subjects like rate cases, UNE pricing, ETC designation, etc. Alaskans will be better served to leave this in the hands of the RCA, with the certainty that the responsibility for such decisions resides there. The Legislature should do its job to establish policy that the RCA must enforce. The Legislature also has the responsibility of influencing federal policy if it does not serve Alaska well. The Courts have the responsibility to ensure that RCA decisions are legal. There is nothing to be gained by moving the debate to the legislature and much to be lost – these industries are too important to Alaska to further politicize the policy process.

Sincerely,



Dale E. Lehman

Testimony of A. L. Buki Wright Jr., General Manager, Aurora Energy, L.L.C.  
In the matter of the Hearing discussion of RCA Reauthorization  
Friday, June 21, 2002

Aurora Energy is a small, local utility in Fairbanks. We are a co-generation plant, providing electric power to GVEA and hot water and steam heat to business, government and residential customers in Fairbanks.

Aurora supports the reauthorization of RCA. We hope that the action - or possibly inaction - of this committee won't allow RCA's authorization to lapse, requiring the agency to "wind down" their activities.

Probably every regulated utility in the Alaska can give you examples of unpleasant dealings with just about any state agency. But, by and large, I'd have to say that I think the RCA has done a good job in their relatively young life of handling issues that our company has been involved in fairly, consistently, and generally within a reasonable amount of time.

Aurora Energy had a matter before the Commission within the last year or two. Although we didn't agree on every issue along the way, I believe we were treated fairly. At this time, Aurora has placed a petition before the Commission that is very important to our future. We are comfortable bringing this matter before this Commission. We are comfortable that we can and will receive a fair hearing, and that our matter will be handled in a timely manner.

That is, unless something isn't allowed to move out of your committee...or at least come up for consideration. If the Committee allows RCA to "sunset", it seems to me that they will have no choice but to begin preparations to shut down. It might be said that this is intended as a "wake-up call" for the RCA, and the year they will have as a "wind down" period should be sufficient for them to deal with the issues being brought up and "clean up their act". Senator Taylor, you and others here are saying there are serious issues that must be addressed. You are suggesting that maybe processes should be rethought, how communication with the Commission is handled should be reviewed, and so forth. I submit to you that it is unreasonable to expect that all those important issues can be addressed in the thorough manner you desire, while at the same time carrying on "normal business", and being responsive to the needs of the Alaskan public and the utilities that serve them - and continue to do so in an independent manner. If the concern is timeliness, focus and decisiveness, throwing a major "distraction" such as this at them ~~and performance of RCA, we urge you not to try to accomplish that by interfering with~~ the timely performance of RCA's current workload. Extend the Commission for at least two years. Allow enough time to address the important issues raised in your hearings and

elsewhere, but do it in a way that allows – and indeed encourages – the timely and thorough performance of the Commission's duties.

Clearly, just by this process, the RCA has been put on notice. All of us, the RCA, utilities, legislators and the people of Alaska, need to get on with it. Aurora Energy respectfully requests that you allow that to happen.



AARP is a consumer organization. Half of our members in Alaska are over age 65, half are under age 65. Most of our members are heads of households. People tell us that they join AARP to receive useful information. They trust us.

As consumers, we trust the oversight authority of the Regulatory Commission of Alaska.

We rely on the RCA just as our members rely on AARP.

We believe the RCA offers our members and all Alaskans the best opportunity to achieve the following basic consumer protections:

The ability to make informed CHOICES about utility services.

The security of SAFE and RELIABLE energy and telecommunications services.

The assurance that sales practices and advertisements are FAIR, so that they do not confuse, mislead or frighten the public.

And, the reassurance that consumers receive ACCURATE INFORMATION, communicated clearly and in plain language so we understand our rights and remedies.

The RCA assures consumers the right to affordable RATES and ACCESS to such basic necessary services as utilities and communications. I emphasize REASONABLE but I also emphasize ACCESS for our rural citizens.

The RCA allows consumers an opportunity to PARTICIPATE in the governmental decision-making process that shapes the marketplace and ensures meaningful consumer INPUT.

When wronged, the RCA offers consumers REDRESS and COMPLAINT RESOLUTION.

We believe the RCA is necessary for our organization and for our members. Without the RCA, we would be deprived of any public oversight of energy and

# AARP



**J. Pat Luby**

Associate State Director  
Advocacy  
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telecommunications services and, when a complaint is warranted, we would not have the RCA available and willing to listen to a consumer's side of an argument.

The RCA protects our rights as consumers. We ask that your Committee recommend the reauthorization of the Regulatory Commission of Alaska. Our AARP families need it. All Alaskans need it.

Thank you.

**TESTIMONY OF MATANUSKA TELEPHONE ASSOCIATION BEFORE THE  
SENATE JUDICIARY COMMITTEE REGARDING SUNSET OF THE RCA  
6/21/2002**

GOOD AFTERNOON MR CHAIRMAN, SENATORS.

MY NAME IS DON REED. I AM A VICE PRESIDENT WITH MATANUSKA TELEPHONE ASSOCIATION AND AM THE DIRECTOR OF THE COMPANY'S REGULATORY AFFAIRS DEPARTMENT.

AS YOU MAY KNOW, MTA IS THE SECOND LARGEST LOCAL TELEPHONE COMPANY IN ALASKA, NEXT TO ACS. WE PROVIDE OVER 60,000 TELEPHONE LINES TO CUSTOMERS FROM EAGLE RIVER IN THE SOUTH UP PAST HEALY IN THE NORTH AND FROM TYONEK AND SKWENTA IN THE WEST TO MATANUSKA GLACIER VIEW IN THE EAST. OUR SERVICE AREA COVERS MORE THAN 10,000 SQUARE MILES. WE ARE A RURAL TELEPHONE COMPANY AS DEFINED BY THE TELECOM ACT OF 1996. WE ARE ALSO A COOPERATIVE - OWNED BY THE CUSTOMERS WE SERVE.

PREVIOUSLY, YOU'VE HEARD FROM ANOTHER COOPERATIVE UTILITY - NAMELY CHUGACH ELECTRIC ASSOCIATION. ALTHOUGH THEY PROVIDE ELECTRICITY AND WE PROVIDE TELECOMMUNICATIONS SERVICE - WE ARE BOTH REGULATED UTILITIES UNDER THE REGULATORY COMMISSION OF ALASKA. WE ALSO SHARE SOMETHING ELSE IN COMMON. WE HAVE BOTH RECENTLY GONE BEFORE THE RCA IN A COMPLEX RATE CASE.

AS I UNDERSTOOD THE CHUGACH FOLKS, THEY WERE LESS THAN SATISFIED WITH THE TIME FRAMES AND THE PROCESS BY WHICH THEIR CASE HAS BEEN HANDLED BY THE RCA AND BECAUSE OF THIS THEY SUPPORT THE SUNSETTING OF THIS COMMISSION. I HAVE NO PARTICULAR KNOWLEDGE OF CHUGACH'S CASE NOR DO I DOUBT THE VERACITY OF THEIR STATEMENTS.

HOWEVER, MTA WISHES TO REPORT TO THIS COMMITTEE THAT WE ENJOYED A SATISFACTORY ADJUDICATION OF OUR RATE CASE. WE HOPE THIS WILL HELP BALANCE THE RECORD BEFORE YOU AS YOU MAKE THESE IMPORTANT DECISIONS THAT AFFECT OUR INDUSTRY.

NOW, WHEN I REPORT THAT MTA WAS SATISFIED WITH ITS RATE CASE PROCESS, BY NO MEANS AM I TESTIFYING THAT WE GOT ALL WE ASKED FOR OR THAT WE DIDN'T HAVE DISAGREEMENTS WITH THE COMMISSION OVER ISSUES IN THE CASE. BY ITS NATURE THE RATE CASE PROCESS IS A PUBLIC PROCESS WHERE ALL POINTS OF VIEW HAVE THE OPPORTUNITY TO BE HEARD.

AND IN A FAIR PROCESS, ALL OF THOSE POINTS OF VIEW SHOULD BE HEARD. AND WE HAD MAJOR DIFFERENCES OF VIEW, PARTICULARLY FROM THE COMMISSION'S PUBLIC ADVOCACY STAFF. WE ALSO HAD ORDERS FROM THE COMMISSION THAT WE BELIEVED WERE FLAT WRONG.

HOWEVER, WE FOUND THIS COMMISSION, ITS ADVISORY STAFF AND ITS PUBLIC ADVOCACY STAFF CONDUCTED OUR CASE AND ADDRESSED THOSE DIFFERENCES IN A TIMELY AND PROFESSIONAL MANNER. AND EVEN ON THOSE ORDERS THAT WE THOUGHT WERE WRONG, THE COMMISSION ALLOWED US TO BE HEARD.

UPON THE FILING OF A PETITION TO RECONSIDER, THIS COMMISSION IN ALL CASES, TIMELY GRANTED OUR PETITION AND REVIEWED OUR ARGUMENTS. AND, UNDER CURRENT STATE REGULATIONS, IT DOESN'T HAVE TO DO THAT. FURTHERMORE, IN A MAJORITY OF THESE INCIDENTS THEY EVEN REVERSED THEIR ORIGINAL DECISION AFTER THAT REVIEW.

WE BELIEVE THIS IS THE MARK OF A PANEL THAT IS CONCERNED WITH THE FAIRNESS, PROPRIETY, AND TIMELINESS OF ITS DECISIONS AND IS NOT AFRAID TO ADMIT WHEN ITS WRONG. OUR EXPERIENCE WITH THESE PANELISTS SHOW THEM TO BE HONORABLE PERSONS.

MTA DOESN'T ALWAYS AGREE WITH THEIR DECISIONS. BUT WE DO THINK THAT THEY CARE ABOUT ACHIEVING THE RIGHT BALANCE BETWEEN THE COMPETING PARTIES AND INTERESTS IN THE CASES THAT COME BEFORE THEM. MOREOVER, OURS IS A COMPLEX INDUSTRY. THE TIME AND ENERGY IT TAKES TO BRING REGULATORS UP TO SPEED IS ENORMOUS.

WE SAW THAT WITH THIS PANEL WHEN IT COMPLETELY REPLACED THE FORMER APUC JUST THREE YEARS AGO. MTA BELIEVES IT WOULD BE AN UNFORTUNATE WASTE OF TIME AND MONEY TO COMPLETELY REPLACE THE COMMISSION AS WAS DONE IN 1999.

OTHER FOLKS HAVE TESTIFIED TO YOU THAT THE RELATIVE ROLE OF THE COMMISSION'S ADVOCACY AND ADVISORY STAFF SHOULD BE CHANGED. SOME HAVE ADVOCATED THAT SPECIFIC, FINITE TIMELINES AND DISPUTE RESOLUTION PROCEDURES BE INSTITUTED. WE AGREE THAT THESE ARE PROPER THINGS TO BE LOOKED AT.

MTA SUPPORTS A REVIEW AND MODIFICATION OF THE ROLES OF STAFF. WE SUPPORT DEFINITIVE TIMELINES SUCH AS THE ARECA AMENDMENTS THAT WERE DISCUSSED EARLIER. WE ALSO BELIEVE THAT EXPLICIT EX PARTE REGULATIONS SIMILAR TO THOSE THAT GUIDE THE FCC WOULD BE HELPFUL TO BOTH THE COMMISSION AND THE INDUSTRY.

YET, ALTHOUGH WE SUPPORT CHANGES TO SOME OF THE REGULATIONS UNDER WHICH THIS COMMISSION OPERATES, WE BELIEVE THIS COMMISSION IS DOING ITS JOB, AND THAT THE PROCESS IS A FAIR ONE.

THEREFORE WE BELIEVE THIS COMMISSION COINTINUES TO BE NECESSARY TO OUR INDUSTRY AND CANNOT SUPPORT ITS REMOVAL THROUGH SUNSET.

WE HAVE HEARD IT EXPRESSED BY THE COMMITTEE THAT IT IS NOT THE INTENT OF THE LEGISLATURE TO GET RID OF THE AGENCY OR IN FACT TO EVEN REMOVE THE PRESENT COMMISSIONERS. WE ARE ENCOURAGED BY THESE STATEMENTS.

HOWEVER, GIVEN THAT THE LEGISLATURE DOES NOT INTEND TO REMOVE THE AGENCY, WE QUESTION WHY INVOKE THE SUNSET PROVISIONS. WE VIEW SUNSETTING AS A METHOD TO REMOVE AN UNECESSARY GOVERNMENT FUNCTION OR AGENCY, NOT A MEANS TO MODIFY THE REGULATIONS OR RULES UNDER WHICH THAT AGENCY OPERATES.

IT APPEARS TO US THAT, IF IT IS AGREED THAT THE COMMISSION IS NECESSARY, A PREFERRED APPROACH WOULD BE TO RE AUTHORIZE THAT COMMISSION AND ADDRESS SEPARATELY ANY MODIFICATIONS TO THE RULES THAT GOVERN THAT AGENCY. TO DO OTHERWISE SENDS THE WRONG SIGNAL TO CONSUMERS AND TO THE INVESTORS OF REGULATED INDUSTRIES.

CONSUMERS AND INVESTORS WANT STABILITY AND PREDICTABILITY, PARTICULARLY IN THE UTILITY SEGMENT. TO SUNSET THE COMMISSION WHEN IT IS NOT THE INTENT TO GET RID OF THE AGENCY OR ITS COMMISSIONERS INTRODUCES AN UNECESSARY ELEMENT OF RISK AND UNCERTAINTY.

IF MTA COULD VOTE HERE TODAY - WE WOULD FAVOR THE REAUTHORIZATION OF THE COMMISSION. WE LEAVE IT TO THE LEGISLATURE AS TO HOW LONG THAT PERIOD SHOULD BE. WE ALSO COMMIT OUR RESOURCES TO ASSIST IN THE DEVELOPMENT OF TIMELINESS GUIDELINES, STAFF ALLOCATION GUIDELINES, EX PARTE REGULATIONS AND ANY OTHER MODIFICATIONS DEEMED NECESSARY TO THE RULES THAT GOVERN THE AGENCY.

THANK YOU.

UNE PRICING -

TECHNICAL PRICING OF UNES MUST BE WITHIN 10% OF EMBEDDED PRICE UNLESS A CONVINCING EVIDENCE IS PRODUCED TO JUSTIFY A PRICE DIFFERENCE HIGHER OR LOWER THAN 10%.

\*\*\*\*\*

RATE CASE TIMELINE:

Two Phases: Rev Req . COSS/Complete Rate Design. MTA wanted bifurcated and sequential. Commission granted although wasn't required.

First Phase:

Revenue Requirement Filed 1/14/2000

Noticed to Public and Tariff Review: February 28,2000

Interim Rates AND partial rate re design (usually not done – very beneficial to our customers and to the utility) 3/1/2000.

Procedural Schedule Set (mutually agreed between MTA and PAS) 6/29/2000

Rev Req Hearing 10/2/2000

RR Order 11/29/00

PAS Reconsideration denied 1/8/01. Procedural Schedule for COSS/RD set.

**Incremental Interim rates allowed – made NON refundable 1/08/2001**

Second Phase:

COSS/Rate Design Study filed 1/15/01.

Hearing on COSS/RD: 5/22/2001

Approval of MTA COSS, Initial Order for Rate Design: 8/21/2001

MTA Reconsideration and Final Rate Design Granted: 10/9/2001

Joe Griffith M Chugach  
6/20/02

I want to stress again that we appear before you humble but exasperated. There is a Japanese saying: "The peg that sticks up gets hammered down." We would not be here if we were not desperate to do something to alleviate the pain we (and as a result our members) feel as a result of our regulatory experience. We do not know all the answers but we are here to help by giving you information from our perspective.

**Question:** *Is it true that most of the delays in cases are the utilities fault because they ask for extensions of time?*

**Answer:** The answer is generally "no."

- We can speak only to our cases.
- It is true that the participants generally try to offer professional courtesies and so you will find participants not opposing extensions requested but focusing on agreed upon extensions misses the point entirely.
- If the Commission really believes the problem lies in granting agreed upon extensions of time then we've got an even bigger problem than I thought.
- The Commission is in charge of these cases before it. It is the Commission's responsibility to ensure that its adjudications do not go on too long. This is particularly true (and admittedly especially difficult) in a hotly contested case.
- There is no one other than the Commission in a position to make sure the case is properly managed and in tough cases the dockets must be very actively and aggressively managed.
- This is the issue, not requested extensions of time.

The U-96-37 rate proceeding has a lot of good lessons in it.

I won't start back at the beginning but rather at the point that the RCA arrived on the scene.

One of the first things Chugach filed was a request to extend time. But if you look at it what we said was: '*you've ordered us to file a general rate case but we have not finished the expedited reviews of the 96, 97 and 98 test years yet so we cannot file a 1999 test year until we finish the other three years.*' We filed this **June 30, 1999** so it was waiting for the new commissioners when they arrived. The Commission said '*O.k., file the 1999 test year by June of 2000.*'

**Seven months later** (Feb. 8, 2000) we filed a pleading. It was a pleading in more than just the ordinary legal sense. We kind of pleaded with the Commission to just rule on the two remaining issues in the 1996 test year case. We set this out in a very simple, short filing that explained all the different Chugach rate issues that had built up and gave a road map on how to resolve them.

June 26, 2000, in Order No. 4, the Commission rules on the last of the 1996 test year issues. So in our view, we had put the Commission on notice as of their first day on the job that they are pushing a bow wave of 4 test years. **It still took a year to get**

**1996 done** and it did not require a hearing. To be fair, there were masses of pleadings and two months were used with unopposed time extensions.

It is notable that of the issues raised in that Feb. 2000 road map, only the 1996, 97 and 98 test year rates issues are essentially done. The line loss issue we raised is still an open docket and will get active again soon. The so-called "discrimination issue" which was the allegation that started the 1996 docket in the first place (and on which a whole day of testimony was taken) is still alive and rolled into the current 2000 test year rate case.

The "financial management" issue was the subject of its own docket which the Commission dismissed. But this was done in a way that allowed it to be raised again. So, it was raised a second time in the 98 test year case. And now, a third time it's up in the 2000 test year so that issue is still with us too. It is not that we don't want to explain ourselves, it's just that we would prefer to do it just once.

It is not until **September of 2000** that we get a procedural order for the 1997 test year. The discovery wars begin in earnest.

**October 30, 2000** the commission (order No. 29) recognizes that "we must proceed expeditiously. Regrettably, this case is bogged down in a procedural quagmire over discovery disputes that are impeding progress on this case." They appoint a discovery master

Hearing held on 97 test year January 25, 2001. Decision February 26, 2001. In January, Chugach had filed a request to establish discovery guidelines to apply to 1998 test year. The Commission declines and says we should have asked sooner.

**May 10, 2001** set for hearing of 1998 test year.

**In May**, the Commission extends the date to do more discovery on a particular issue. **New date** set for early September 2001 hearing. The hearing was held.

**Decision** March 15, 2002.

**Note:** This delay caused problems in trying to get the 2000 test year filed in a timely fashion.

**Summary:** It is not the extensions of time that are causing the bulk of the delays. Within reason, 6 or 8 weeks of extensions can easily be accommodated. It is the rest of the case that's the problem.

- Uncontrolled discovery
- Slow decisions on motions
- Limited decisions that leave issues to recur later.

**Question:** *Didn't the Commission set limits on discovery?*

**Answer:** Not effective ones, no.

What the Commission did was establish a nominal numerical limit on written discovery requests; 30 Requests for Production and 30 Interrogatories. **But** there is a "good cause" exception. If you want to ask more, you can. And, you don't have to show "good cause" for asking more than your limit of 30, you have to show that each additional question is a good one. So, you go to a hearing and you argue over each one that's more than 30. The result is that lots more than the 30 limit.

But remember, each of the three opposing parties can ask 30 of each type. **AND** they get to ask up to the limit (and beyond if they can show "good cause") in **four separate rounds** of discovery!! That's how we get to hundreds of written requests and over 60,000 pages of discovery disclosed – not to mention lots of depositions. There is no way that any of the lawyers or consultants is going to look at anywhere near 60,000 pages of documents. It is out of control.

What I find most disturbing is the Commission's offering of these defenses.

ALASKA STATE LEGISLATURE

BOX 1441

WRANGELL AK 99929



# FAX

TO: ATT: ROBIN L TAYLOR FROM: SENATOR ROBIN L. TAYLOR

DATE: 6/20/02

PHONE: \_\_\_\_\_ PHONE: 907-874-2318

FAX PHONE: 907-269-0229 FAX : 907-874-3470

NUMBER OF PAGES INCLUDING COVER 6

CC:



REMARKS:

**IMPORTANT**

PLEASE DELIVER TO SENATOR

ROBIN L TAYLOR "IMMEDIATELY"

IN HIS MEETING &

THANK YOU RHONDA DAWSON

Mary Hoyt, Secretary to Senator Taylor

Email: [Mary\\_Hoyt@legis.state.ak.us](mailto:Mary_Hoyt@legis.state.ak.us)



# Homer Electric Association, Inc.

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## TELEFAX COVER SHEET

*From the office of the General Manager  
Fax (907) 235-3323*

DATE: June 20, 2002

TO: Senator ROBIN Taylor, Chairman, Senate Judiciary Committee 874-3470

**Senate Judiciary Committee:**

Senator Dave Donley 269-0238  
Senator John Cowdery 269-0223  
Senator Johnny Ellis 269-0172  
Senator Gene Theriault 488-4271

FROM:  N. L. Story, General Manager  
 Susan Saxton, Executive Assistant

Number of pages (including this page) 5  Hard copy to follow by mail.

We are using a Xerox Pro 745. If you do NOT receive all the pages, please contact the sender at telephone (907) 235-8551 or (907) 235-8167.



## Homer Electric Association, Inc.

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June 20, 2002

Senator Robin Taylor  
Chairman, Senate Judiciary Committee  
PO Box 1441  
Wrangell, AK 99929

Re: Regulatory Commission of Alaska - Sunset Review

Dear Senator Taylor:

Homer Electric Association, Inc., is an electric cooperative serving most of the 50,000 residents of the Kenai Peninsula with electric power. Homer Electric has been closely following the sunset review of the Regulatory Commission of Alaska. Issues have arisen related to the review that have the potential to directly affect the cost of power to the customers of Homer Electric.

Homer Electric purchases practically all of its wholesale power from Chugach Electric Association under the terms of a wholesale power contract. The contract provides that the rate for power will be set by the RCA.

Homer Electric has a concern that Chugach's communications with the committee have created an erroneous impression about a current rate case in which Homer Electric is a significant party. It is totally inappropriate to create pressure on a regulatory body to rule in favor of one litigant over another by tactics such as these. Homer Electric vehemently objects to any attempt by Chugach to use the legislative review process to inappropriately influence a regulatory body in a pending adjudicatory matter.

Homer Electric has supported the ARECA position regarding the continuation of the Commission. HEA believes that the legislature should indicate the issues that need to be addressed and then give the commission up to two years to address those issues. The issues are complex. Thus, if the commission is extended in this manner the RCA should be given clear direction as to the issues to be addressed. HEA believes that such a course of action will avoid placing an additional and complex burden on a number of legislative committees who already are immersed in the multitude of other pressing issues confronting the State.

Attached is Homer Electric's response to the issues raised by Chugach. Chugach asserts they are losing money. However, CEA is not losing anything. They are just recovering less than what they asked for. Additionally, Chugach's filing does not include six years worth of data in it. It is true that their filing is influenced by what decisions the RCA has made over the last six years, but it is also influenced by what the APUC decided back in 1986 and 1987. It would be as inaccurate to claim that their filing includes data going back 15 years (to 1986), as it would be to assert that it includes these six years of data. Their filing includes one year of data.



**Homer Electric Association, Inc.  
Comments on Chugach Electric's Testimony  
June 19, 2002**

Pending before the Commission at this time is a request by Chugach to increase its rates and to significantly alter its rate structure as regards its wholesale customers. One issue of particular interest to Homer Electric has been the testimony of Chugach Electric Association to the committee and the apparent intent of that testimony to influence the rate case pending before the RCA.

Homer Electric has reviewed the prepared testimony of Chugach general manager Joe Griffith and the letter of board president Bruce Davison. Neither witness represents the views of Homer Electric and neither witness is speaking on behalf of the nearly 20,000 members of HEA. Homer Electric was not consulted concerning the testimony, either before or after it was presented. Homer Electric appreciates this opportunity to present a different perspective on some of the issues that we believe were somewhat distorted by the Chugach testimony.

Chugach's main theme was that Chugach is being ill-used by the RCA in a rate proceeding before that quasi-judicial body, and that this body is taking too long to make decisions in its dockets. The three main complaints made by Mr. Griffith are responded to in the paragraphs below in some detail. But first it is important to bring to the judiciary committee's attention a basic distinction between two very different time lines within a docket.

The first time-line involves the proceedings from the time of filing through the hearing process. Please understand that there is typically more than one party to a proceeding involving a request for a rate increase, and in many cases the positions of the parties are diametrically opposed. There is a certain amount of time that is necessary for adverse parties to accumulate the information necessary to understand and verify the data presented by each other. This process can take either more or less time, depending on the degree of cooperation by the utility that is being requested to make the information available. As discussed below, Chugach has been less than cooperative in this matter. It is important that the time for conducting discovery not be truncated. A 'rush to judgment' which sacrifices the ability of the parties to present accurate and sufficient information to the RCA is not in the public interest. It is crucial to the public interest to allow all the parties access to information necessary to validate whether and to what extent the rate increase requested can be supported.

The other time-line involves the time it takes the RCA to make a decision, once all the parties have had a chance to present their views to the Panel. This is usually done at a hearing. If the parties do their jobs, the information put before the RCA should allow the Panel to make its decision on the requested rate increase within three months. It is true that it has taken the RCA up to six months on occasion. Taking this long to make a decision is unnecessary and the practice should be sanctioned or at least discouraged.

Homer Electric Association, Inc.  
Comments on Chugach's Testimony  
June 19, 2002

Page 2

Chugach raises three primary problems in its testimony. Homer Electric will respond to them in the order raised.

First, Chugach complains that the Commission took too long to make a decision in a specific case after the hearing was concluded. Chugach expressed concern that it might experience a similar delay in processing its 2001 rate case. Because of the distinction explained above, Homer Electric doesn't view the two situations as analogous. The first matter alluded to by Chugach was the result of a complicated procedural matter involving the need to address rate issues arising in three separate years. Nevertheless, Homer Electric agrees that the case could have been resolved in a more timely fashion. The Chugach rate case filed in July of 2001 is different. It is the first major litigated rate case involving Chugach since 1987. The Chugach filing presents the RCA and the Chugach customers with significant new and untested issues, affecting potentially 110,000 consumers, including the members of Homer Electric, who is significant party to the case.

On April 15, 2002, CEA made several major changes to its original July, 2001 filing. The changes have required that the proceeding be extended to allow the other the parties time to review and understand these changes. The issues in the case are of such importance and complexity that adequate time for preparation, including discovery, must be afforded all parties to the case:

Next, Chugach argues that the commission does not control its proceedings well. As an example Chugach complains that it has had to produce approximately 57,000 pages of documents to date in its rate case. It is Homer Electric's observation that the volume of documents that Chugach has produced is the result of Chugach's own doing. For example, shortly after making its filing Chugach declined a request by Homer Electric to establish a more informal discovery process which would have provided for meeting between the parties to exchange information related to the docket. Such a process would have avoided the need for the formal request of a large number of the documents. Other examples can be provided. Indeed, one does not have to be too cynical to believe that Chugach has chosen to maximize the amount of pages it has been required to produce, in order to justify complaining to the RCA that it has been abused by the other parties to the docket. As one of the litigants in the process Homer Electric does not want its rights to information restricted. In fact contrary to the complaint of Chugach, from Homer Electric's perspective the commission has in some instances been too restrictive in limiting the discovery process.

Finally, Chugach complains that the commission considers the same issue in multiple proceedings. It is clear to Homer Electric that Chugach can only be referring to a "rate lock" transaction in which Chugach lost over \$ 5.7 million. Chugach is asking all of Chugach's rate payers to pay for these losses in their rates. Homer Electric is investigating the prudence of this transaction and the appropriateness of including its cost in rates. Chugach suggests that the Commission has considered this issue twice before. In fact, the Commission has never made a decision about the prudence of this transaction.

To whom it may concern,

I am a tax paying Alaskan citizen concerned about the rulings done by our RCA. It seems very apparent their rulings are bias and unfair.

In the light of expert testimony they are ruling in favor of unfair competition.

It is real certain that the RCA is being influenced by bribes and kick backs as well as personal favors. Please investigate the RCA for corruption and bribes.

Richard Burton  
P.O. Box 221292  
Anchorage Ak, 99522

From: Joseph W Zimmerman

To: Oversight Board - Regulatory Commission of Alaska

Date: 6-20-02

Subj: Discontinuation of RCA authority

The future of quality phone service for all depends on quality outside plant. Due to the past rulings in GCI favor the RCA has hamstringing ACS and forced a PRIVATE business to provide a livelihood for their competitor. This is wrong.

When ACS goes bankrupt due to subsidization GCI's existence, who will repair the old, rotting, unmaintained copper in our state?

Get a clue on this, investigate the money and the influence!

Sincerely, Joseph W Zimmerman

To Whom It May Concern,

Please investigate the R.C.A. board. Their record speaks for itself. Almost 90% in favor of G.C.I. in their rulings. The board is tainted, bought & paid for by G.C.I., with either cash or fishing trips or favors. We are only asking for fair rulings.

JARETT DUPREE  
18612 South Lowizie loop  
EAGLE RIVER AK  
99577

6/19/82

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

Dear Senator Taylor,

Thank you for challenging the  
State RCA BOARD. Their recent & past  
decisions against Telecommunications &  
Power Companies ARE wrong. PLS.  
LOOK INTO these POAD rulings. My  
job depends on you investigating  
this Board. Again Thank you for  
ALL your time involved.

26 year Resident,  
Ramon R. Martin  
7150 BEAUMONT Cir.  
SAND Lake - Anch 9950.  
243-0400 (Home)

5/19/02

Rep. Andrew Halcro  
716 W 4th Street  
Anch, AK 99501-2133

Pls. Sie investigate the recent a  
part decisions of the State RCA  
Board. Their decisions against  
local Telecommunications & Tower

companies are wrong. My job  
depends on your looking into  
these bad rulings -

Thank you for your  
prompt attention to this  
matter. Karen R. Matti  
1150 Barrumot Cir  
Sand Lake - Anch. 99502

Fax to: Vic Kohring  
Fax # 465-3818  
Subject R.C.A. (Investigating)

I am sending this letter regarding the R.C.A.

In talking to you in the past and supporting you as a voter in all of your past elections, I am asking you to please sunset the R.C.A. for 1-year so an investigation may be conducted on the fairness of the R.C.A. regarding decisions made on rates between G.C.I. and A.C.S.

Once you look at the R.C.A. I believe you will see that what G.C.I. calls competition is actually subsidized phone rates for G.C.I. putting unfair burden on A.C.S.

P.S. I would also like a response on how you view the R.C.A. sunset year. E-mi Harding 4@mtaonline.net

Ross Harding 373-1384  
Ross Harding

Fax to: SCOTT OGAN  
Fax # 465-3265  
Subject R.C.A. (Investigating)

I am sending this letter regarding the R.C.A.

In talking to you in the past and supporting you as a voter in all of your past elections, I am asking you to please sunset the R.C.A. for 1-year so an investigation may be conducted on the fairness of the R.C.A. regarding decisions made on rate's between G.C.I. and A.C.S.

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P.S. I would also like a response on how you view the R.C.A. sunset year. E-mail Harding4@mtaonline.net

Ross Harding 373-1384  
Ross Harding

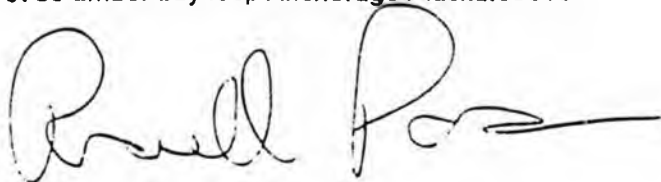
Poor, Randall W. (Randy)

If anyone really cares anymore

I'm am writing this asking for your support in investigating the RCA. I took the time to go to several of there meeting and I see a real problem. They don't seem to even care that they are one sided in front of the public. All we are asking for is for you to look into this board and staff. I believe in competition but what they have done in the last few years is wrong and is so one sided they must be in someone's pocket.

I have been in Alaska since 1956 and I can't believe it takes this long to get someone attention when they have a board that is on the payroll of the tax payers and is running amuck without you doing anything about it.

Randall W Poor  
3700 amber bay loop Anchorage Alaska.99515

A handwritten signature in cursive script that reads "Randall W. Poor". The signature is written in dark ink and is positioned below the typed name and address.

5/19/02

Rep. Rokeberg,  
716 W 4th Avenue  
Anch - 99501-2133

Pls. Sir investigate the recent <sup>4 Part</sup> Decisions  
of the State REA BOARD. <sup>These</sup>  
Decisions Against Local Telecommuni-  
cations & Power Companies ARE WRONG.  
My job depends on you looking  
out <sup>these</sup> ~~the~~ BAD rulings.

A Loyal Resident  
in South West Anch.

Ramon R. Martin  
7150 Beaumont Cir  
Sand Lake - Anch. 995  
212 (Home)

I would like to see someone take a good hard  
look at the RCA and it's practices which always seem  
to be one sided decisions which seem to always favor  
GC I I think something needs to be done to make  
this a fair process.

THANKS FOR YOUR TIME

STEVE HUSTON  
5321 Hendrickson Cir  
Anch. 99507