

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

10809 HOUSE JUDICIARY

1 CHAIR JOHNSON: Okay.

2 MR. MONINSKI: That was our position. Again we want to be
3 careful not to appear to be intractable in those positions, any
4 of the positions that we've articulated, we've begun with basic
5 objectives. On the UNE side we're -- our objective is the one
6 that the Legislature included in principle number 1 of fair
7 compensation, we want to find a way to stay within the
8 boundaries of TELRIC and get to fair compensation. We've
9 proposed a number of things that we think would accomplish
10 that, there may be others. And to the extent the Commission
11 would want to pursue others we'd be happy to go there.

12 The same is true on the deregulatory proposals, if the
13 Commission reaches the conclusion that wireless competition not
14 based on ETC status simply does not yet constitute sufficient
15 competition to trigger these proposals that we've indicated,
16 that probably doesn't trouble ACS all that much because in the
17 markets that we are most concerned about it is really wireline
18 competition that we are facing.

19 CHAIR JOHNSON: Okay. Same section, same -- continuing
20 here. You define in subsection E at -- here's the 75 percent
21 trigger and then it goes all retail and special access product
22 and service offerings, all local service providers will be
23 detariffed. Was there a particular definition that you had in
24 mind for special access product and service offerings or is
25 there -- are you referring -- you're tying to a tariff, what is

1 your definition of a special access?

2 MR. MONINSKI: Subject to clarifying if when I get back to
3 my office I need to, what we had in mind there was all of the
4 special access services are -- or a definition of special
5 access services, that would include all access services that
6 were not switch access services.

7 CHAIR JOHNSON: So that includes transport then?

8 MR. MONINSKI: Yes.

9 CHAIR JOHNSON: Okay.

10 MR. MONINSKI: And for clarification retail transport,
11 we're not talking about transport in the UNE context or
12 transport in any other context.

13 MR. JACKSON: Interexchange?

14 MR. MONINSKI: The -- Mr. Jackson, was -- the question was
15 interexchange transport and I'm -- I'd probably need to go back
16 and reread the regulations which tended to be focused on local
17 exchange service, but we -- as a conceptual matter and we've
18 even indicated in our response to AT&T comments that we believe
19 that the interexchange market in Alaska has achieved the same
20 level of competition as it has in the Lower 48, it's been
21 detariffed there and it probably should be detariffed here.

22 CHAIR JOHNSON: Maybe if I could, Ms. Kenyon, did you have
23 a follow up on this point?

24 MS. KENYON: Perhaps it would help me to understand what
25 you're talking about, when you're talking about special access

1 are you talking about services that ACS sells to interexchange
2 carriers, are you talking about services that are sold to
3 business customers?

4 MR. MONINSKI: We primarily are talking about services
5 being sold to customer, to end users.

6 MS. KENYON: So this is equivalent to private line then?

7 MR. MONINSKI: Yes.

8 MS. KENYON: All right. Thank you.

9 MR. MONINSKI: You're welcome.

10 CHAIR JOHNSON: Okay. My last question, I wanted to
11 follow up a little bit on the question that Commissioner
12 Strandberg posed and he was -- he's concerned about what
13 happens in a detariffed environment, what happens to customers.
14 My primary concern and I think you spoke to it a little bit and
15 I -- other parties discussed it, is in the area of price
16 discrimination.

17 And I'd like for the benefit of everybody here just to
18 give me -- give folks the benefit of what I believe price
19 discrimination is and I -- actually I referred to -- Professor
20 Phillips (ph) spoke on utility regulation and he states that
21 price discrimination occurs when a seller establishes for the
22 same product or service different rates that are not justified
23 entirely by differences in cost or the same rate where
24 differences in cost would justify differences in price. And
25 then it actually further goes on to describe the circumstance

1 where as a result of the possibility of adding to profits
2 through price discrimination (indiscernible) the special rates
3 were given to certain buyers particularly commodities or
4 favored places. That's my concern is in a detariffed
5 environment that a competitive provider would propound and
6 conclude and offer rates to high value, high volume customers
7 at perhaps favored -- I mean, rates that are not justified on
8 the basis of the economics that they would not offer to other
9 consumers.

10 And I'm just wondering if you believe that your proposal
11 is adequate to -- does the Commission have the powers that are
12 appropriate and necessary to enforce and police undue price
13 discrimination, discrimination amongst customers based on your
14 proposal?

15 DR. LEHMAN: I (indiscernible) let me answer the last part
16 of that first because I think that it -- the way the regulation
17 -- the way Mr. Moninski read it just before, the Commission
18 retains the ability of -- whatever the exact wording was, you
19 know, undue price discrimination, to say no to a notice filing.
20 So I think you do retain that ability. But the issue of price
21 discrimination -- this is one I've done a fair amount of work
22 on and it -- I hate to draw examples to other industries
23 because none of them are exactly comparable, but you can't help
24 but think about airlines.

25 And, I mean, airlines the model is price discrimination.

1 As a consumer I don't like it much although the -- everyone's
2 opinion on it is that consumers are better off for it. Not
3 every consumer is better off, that's the nature of price
4 discrimination or schemes where people face different prices.
5 Undue price discrimination, I mean, you'll hear about it
6 because people will say it's not fair the way they're treating
7 me and if you think there's a basis for that you have the
8 prerogative to say no.

9 But I do think you should expect in competitive markets to
10 see an increase in what most people would call price
11 discrimination because that's what happens in competitive
12 markets, they're messy. And you will get some amount of
13 complaints from that, I mean, it's in the incumbent's and the
14 -- all the competitors' interest not to have too many
15 complaints because that can lead to you stepping back in or
16 saying no to the prices that have been set. So I think they
17 have an incentive not to have many of those complaints, but
18 competitive markets are messy and the problem you have is that
19 you can't prevent competitors in these markets from doing that.
20

21 I mean, cell phones are priced the way -- whatever way the
22 cell phone provider wants to provide them, different kinds of
23 contracts to different customers. And in that environment the
24 question is is the incumbent going to have the same ability to
25 match those kind of offers or are you going to tie their hands

1 and say no, you can't do that, but everyone else can in which
2 case sooner or later that's the way the market's going to look.
3 So I think price discrimination is something you should be
4 concerned about, but you -- all you really need is to retain
5 the ability to intervene if you need to.

6 CHAIR JOHNSON: Okay. I understand the theory, if you
7 will, the question to ACS is is it the vision of ACS that what
8 is contained in their proposal, the tools that are contained in
9 the regulations as you've drafted them, is that adequate in
10 your estimation for this Commission to prevent and police price
11 discrimination?

12 MR. MONINSKI: And my answer is yes. There is a timing
13 issue even when you get to notice tariffs where you -- where if
14 you were to adopt our proposal you're operating on a seven day
15 cycle, that cycle becomes even shorter if we go to detariffing,
16 but it relies upon consumers, anybody who may be aggrieved
17 bringing the matter to your attention. That brings it to your
18 attention somewhat after the fact for some period of time, but
19 certainly wouldn't prevent the Commission from immediately
20 stepping in and taking over the issue at that point in time.

21 I agree with Dr. Lehman, what we've seen in particular in
22 local markets since 1997 is a considerable amount of pressure
23 from customers to discriminate. We have customers that come to
24 us and say routinely, GCI's just been into our office, they've
25 offered us this deal, what's your best deal, are you going to

1 be able to beat that. And we -- that's the essence of what's
2 been going on in the competitive market. It -- to -- it is not
3 possible any longer to simply offer the same rate to everybody
4 for the same service, it just doesn't work anymore. But as
5 long as you have a fail safe mechanism which I believe is built
6 into the regs that we have proposed, to the extent that that
7 becomes abused, to the extent that that becomes more than is
8 tolerable from a public policy standpoint, the Commission has
9 the ability to step back in.

10 CHAIR JOHNSON: Yeah, we may have to look at that a little
11 bit. I guess I would pose the same question to the other
12 parties, is it -- from your reading of the ACS proposal on
13 detariffing does the Commission have adequate tools to protect
14 against undue and unfair price discrimination?

15 MR. JACKSON: Maybe I'm missing it, but I don't see where
16 the regulations in the detariffing situation specifically
17 provide any right for the Commission to jump in if it sees
18 something wrong and maybe I'm missing it.

19 CHAIR JOHNSON: I think -- Jimmy, I think they referred to
20 the provisions -- let's see, 220.....

21 COMMISSIONER STRANDBERG: It's the last sentence on A,
22 (indiscernible).....

23 CHAIR JOHNSON: Page 240?

24 COMMISSIONER STRANDBERG: Page 59, last sentence on A.

25 MR. JACKSON: Well, it.....

1 CHAIR JOHNSON: 240A at the end?

2 MR. JACKSON: But that's not in detariffing, that's when
3 you're in the -- still in the seven day notice period. And
4 you --....!

5 CHAIR JOHNSON: Okay.

6 MR. JACKSON:when you're in that seven day notice
7 period the -- you know, if you can figure it out within seven
8 days and anybody has an opportunity to hear about it and you
9 get comments, you know, in that very short window there's an
10 opportunity, but that's at -- that's not at the detariffing
11 stage. And we go -- we will go almost immediately to the
12 detariffing stage in all markets under ACS's proposal,

13 I mean, it's almost illusory I think to look at this seven
14 day notice because I don't think you're going to find yourself
15 in this seven day notice situation for very long in any market.
16 I think you almost immediately go to the detariffing situation
17 where I don't see any provisions for the Commission to get in.

18 CHAIR JOHNSON: Okay. Ms. Tindall?

19 MS. TINDALL: If cellular based -- if cellular providers
20 count as facilities based competition under the detariffing
21 provisions, the only markets -- well, the only markets are
22 markets where there is no cellular, where there is no other --
23 anything else but plain old telephone service provided by the
24 incumbent. All other markets will immediately go to
25 detariffing.

1 MR. JACKSON: There's the cellular reason, but even -- in
2 addition to the cellular reason in the Anchorage, Fairbanks and
3 Juneau markets we were capable of offering service to 75
4 percent of the people.....

5 CHAIR JOHNSON: Okay.

6 MR. JACKSON:pretty shortly after entry.

7 CHAIR JOHNSON: I appreciate that, I'm looking at the
8 tools part. I guess Mister.....

9 MR. JACKSON: I don't see any tools in deregulation.

10 MS. TINDALL: Once you're in detariffing you're done.

11 CHAIR JOHNSON: Okay. Kristi?

12 MS. CATLIN: AT&T Alascom concurs with that, we see no
13 provision for the Commission to continue its review under --
14 after you hit this phase 2.

15 CHAIR JOHNSON: Okay. That's what your -- that's your
16 analysis, do you believe that there ought to be tools,.....

17 MS. CATLIN: If you.....

18 CHAIR JOHNSON:additional tools?

19 MS. CATLIN:were to go with this recommendation, we
20 have absolutely do, yes.

21 CHAIR JOHNSON: Okay. And it -- are you prepared to make
22 recommendations as to what those tools ought to be?

23 MS. CATLIN: We could, I'm not prepared at the moment, but
24 we could. If you were to -- if you -- if we -- if in the --
25 when you release the regulations that you are going to propose

1 and if this is in it, we will make recommendations.

2 CHAIR JOHNSON: Okay. Is that your point?

3 UNIDENTIFIED VOICE: (Indiscernible - away from
4 microphone).....

5 CHAIR JOHNSON: Ms. Grahame?

6 MS. GRAHAME: Yes, we think the Commission ought to retain
7 some sort of residual control or power and maybe the way you do
8 that is you provide some sort of a waiver from existing
9 regulations to AC- -- to the Anchorage market for example which
10 -- and you reserve the power to step back in if you need to.

11 CHAIR JOHNSON: Mr. Ayotte?

12 MR. AYOTTE: Yes.

13 CHAIR JOHNSON: Did you wish to weigh in on this issue?

14 MR. AYOTTE: No, thank you. Other than to, of course,
15 reassert my plug for wireless carriers in 332(c) 3(a).....

16 CHAIR JOHNSON: Your 332(a) objection is noted.

17 MR. AYOTTE: Thank you.

18 MR. MONINSKI: Commissioner, if I could?

19 CHAIR JOHNSON: Sure.

20 MR. MONINSKI: If after we look through these regulations
21 carefully, and perhaps GCI already has, we find that the
22 provision that I believed was there isn't there, that is a
23 provision that would allow a party to come forward and claim
24 unreasonable discrimination, that the Commission would have the
25 authority to step back in and deal with that issue, if we find

1 that it's not there and it may, in fact, not be, then ACS
2 certainly wouldn't have any objection to its inclusion.

3 There was one provision, it's not the one we were looking
4 for, it's under 53.230(d) that talks about the discontinuance
5 of a single product or service that a customer could -- if
6 aggrieved by that could come to the Commission and ask the
7 Commission to not allow the local company to go forward with.
8 Again it -- perhaps it was just my drafting error and for which
9 I apologize, but there's no argument, there's no dispute about
10 the Commission having the ability or the need for that ability,
11 in fact, probably all of the kinds of things that we're talking
12 about in terms of these proposals are grounded in the
13 Commission's ability under 42 05.711(d) to waive application of
14 rules and it was always my understanding and it continues to be
15 that when you make such waiver you always have the opportunity
16 to rescind such waiver if the public interest requires.
17 So.....

18 COMMISSIONER HARBOUR: This -- I'm about at the end like
19 everybody is. I wanted to express my appreciation, this has
20 accomplished for me in this odyssey everything I hoped it would
21 in terms of filling in the cracks and I really appreciate all
22 of the hard work and the testimony.

23 I do have a couple of last questions. Mr. Moninski, when
24 you referred to a party, is it your memory that whatever is
25 either in the regulation or was supposed to be in the

1 regulation, by party you were really referring to citizen so
2 that it would not have to be a party to a proceeding to come
3 forward and complain within a certain time period or otherwise,
4 but rather a consumer, a ratepayer could come --.....

5 MR. MONINSKI: That --.....

6 COMMISSIONER HARBOUR:that's what you meant?

7 MR. MONINSKI:that was our testimony.

8 COMMISSIONER HARBOUR: Thank you. Let me go back to --
9 while we're on -- talk -- while I'm talking with you about the
10 -- back to that actual competition in any form and we -- we've
11 talked that to every detail almost. But I want to go to a
12 McGillicutty type question -- I mean, I don't want to, but I
13 think that when we start looking at fine tuning this whole
14 process it'll come up. What's to prevent -- and realize that
15 you -- you know, your proposal -- I know your -- you have three
16 big markets and then you have interests in other markets, but
17 the rules that are established here -- we're really mindful --
18 try to be mindful of not only of the big places, but the little
19 places and not only the urban, but the far out areas and so
20 forth and a rule -- if it's going to be a rule it really needs
21 to be thoughtfully applied in all those areas.

22 So the question is what if you have an area that has been
23 run by an incumbent for a period of time and there is a new
24 entrant and under a new set of definitions that these
25 regulations could establish that new entrant might have true

1 minimal impact on day one, I mean, there it may be that signal
2 has the capability of covering the area and that's been the
3 focus of a lot of our talk.

4 Now let me apply that in a different direction than we've
5 discussed, in a McGillicutty light. What is to prevent the
6 incumbent -- and I'd ask for you in the Rural Coalition too to
7 respond to this from the perspective of the two regulation
8 approaches, what's to prevent an ILEC from seizing an
9 opportunity to dramatically raise prices for a period of time
10 knowing that once that new entrant starts developing some true
11 penetration of the area a person can always pull back a little
12 bit.

13 2600

14 (Tape change)

15 Tape 5

16 0015

17 COMMISSIONER HARBOUR: Conversely what is to protect the
18 McGillicuttys from the evolution of a predatory pricing
19 capability of the incumbent whereby with the new entrant he --
20 I -- he thinks I can out last him and prices go down with the
21 hope of waiting him out. And the Rural Coalition's thinking
22 the reverse with big companies coming in. But then -- and then
23 what happens is there is no competition and yet we have a
24 quote, competitive service area that was established and no
25 trigger to go back to a regulatory regime.

1 So let me ask you both with respect to the ability of an
2 incumbent with the advent of a new entrant, how do you -- how
3 does the Commission treat the potential for predatory pricing
4 on the one hand or high prices on the other for an interim
5 period?

6 MS. GRAHAME: Okay. Thanks, Ted. From the Rural
7 Coalition's perspective the -- here's how we answer your
8 questions. Number one, our trigger is different than ACS's
9 trigger. Number two, under our regulations we still post
10 tariffs and you still maintain control for approving or
11 disapproving or setting aside anything it is we do so you
12 maintain control of the market. And so I don't think under the
13 scenario you've described you should have any concern because
14 you retain ultimate control.

15 COMMISSIONER HARBOUR: Thank you.

16 DR. LEHMAN: The -- with regard to the price increase, I
17 mean, I have put a lot of faith in the marketplace and I think
18 the question you pose, the entrant has come in, nobody knows
19 they're there, you just save -- the incumbent would save them a
20 fortune in marketing expense if they decided to enact the
21 strategy you did because they've just handed them a bunch of
22 customers and the ad campaign they wanted run.

23 So I actually think that would be an extremely dangerous,
24 foolish strategy for the incumbent. Predatory pricing is
25 protected by antitrust laws, I mean, if the incumbent engages

1 in predatory pricing it is illegal regardless of how this rule
2 has changed.

3 And, finally, I -- I'm not sure whether the rules are
4 adequate in this regard, the proposed rules, but the trigger
5 for reentry, I mean, I think it's perfectly appropriate that
6 the same trigger should work in reverse and if the conditions
7 under which a market was declared fully competitive disappear
8 that it would be reclassified back if those conditions
9 disappear. I don't know if the rules read that way, maybe Mr.
10 Moninski does know if they do read that way, but that's the
11 appropriate course I think.

12 COMMISSIONER HARBOUR: Thank you.

13 MR. MONINSKI: And my response would be similar to
14 Chairman Johnson that the underlying authority for the
15 Commission to adopt any of these proposals is its statutory
16 authority under 711(d) and I would agree with Dr. Lehman that
17 if the conditions that gave rise to the declaration of a
18 competitive market were to change or -- and disappear that the
19 Commission would be fully empowered to reimpose regulation in
20 that market.

21 COMMISSIONER HARBOUR: Thank you. One further -- is Dr.
22 Shelanski still with us?

23 MS. GRAHAME: I think not.

24 COMMISSIONER HARBOUR: Okay. You know, in his -- it may
25 have occurred elsewhere, but it was one of the places in his

1 material where we found the word elasticity. Normally I --
2 I've seen that in discussions that involve the larger markets
3 in the Lower 48 and I've seen less discussion of that in
4 Anchorage, but just let me ask you from a Rural Coalition and
5 an ACS viewpoint if I could and if GCI wants to comment, fine,
6 I'm not asking for a lot on this. Are there elements in the
7 local networks that -- as opposed to what he was saying where
8 there is high elasticity and that's one of the reasons for
9 allowing competition, are there areas of very low elasticity
10 that in the advent of a much lower regulated environment would
11 enable an incumbent to take advantage of the inelasticity of
12 certain increments of that market and business comes to mind,
13 but there may be others?

14 DR. LEHMAN: That -- my quick answer to that is the
15 availability of UNEs -- I haven't thought through other types
16 of competition right now, but that one is pretty obvious. The
17 availability of UNEs nullifies that impact because.....

18 COMMISSIONER HARBOUR: Yeah.

19 DR. LEHMAN:if you significantly raise the price to
20 those inelastic customers you still have the UNEs available for
21 competitors to serve them at a better price and they should be
22 able to do so.

23 COMMISSIONER HARBOUR: Sure. (Indiscernible) okay.

24 MS. GRAHAME: From the Rural Coalition's perspective under
25 our proposal the answer is no again because we still have to

1 post tariffs and you can still set them aside.

2 COMMISSIONER HARBOUR: Okay.

3 MR. JACKSON: I thought the question was whether or not
4 there are services that have a -- that are inelastic and my
5 answer would be although I don't immediately have empirical
6 data would be that POTS service is fairly inelastic certainly
7 in comparison to, you know, the bells and whistles that are
8 generally added to it.

9 MS. TINDALL: I think by definition if the service is
10 inelastic then yeah, someone can take advantage of it. I'd
11 like to say one thing about the predatory pricing question too.
12 The original interexchange carrier regulations that were setup
13 such that a dominant carrier could lower rates but not raise
14 rates were partly setup to protect consumers, but to a large
15 extent setup to protect from predatory pricing.

16 They -- those regulations followed an antitrust case
17 brought by GCI against the old Alascom and there is certainly
18 -- while antitrust violations are -- you know, Justice looks
19 after antitrust, there is certainly a role for the Commission
20 to worry about predatory pricing and there traditionally has
21 been a role. From a small entrant's point of view bringing an
22 antitrust case nearly broke us, we became very, very close to
23 declaring bankruptcy in those days. And so simply writing it
24 off to the antitrust laws will take care of it, you know, is
25 not always a good answer.

1 And there has been a traditional role and when you are --
2 when you are giving the ability to an incumbent carrier to --
3 raise rates without full competitive protections not only are
4 you leaving the consumers without protection, but you're
5 leaving the competitors without protection as well because the
6 key to not being able to predatory price -- you can only
7 predatory price, drop prices below costs and sustain them for a
8 long period of time if you have some hope someday of recouping
9 that money by then later being able to raise rates above costs
10 and getting that money back. If you can't do that, if there's
11 a cap on those prices then you're, in effect, limited in your
12 ability to predatory price as well.

13 COMMISSIONER HARBOUR: Okay.

14 MS. GRAHAME: Commissioner Harbour, I have one quick
15 follow up.

16 COMMISSIONER HARBOUR: Ma'am?

17 MS. GRAHAME: And that is under the Rural Coalition's
18 proposed regulations, our provision under retail rates that
19 allows you to retain control allows you to retain control over
20 any unreasonable preference or advantage not only to a
21 customer, but to a carrier.

22 COMMISSIONER HARBOUR: Thank you very much.

23 COMMISSIONER GIARD: Dr Lehman, in reference to the phase
24 2 strategy of the ACS proposals, when you look at deregulation,
25 it's a transfer of responsibility from -- for protection from

1 the regulator to the free market. So you're making a transfer
2 of responsibility to the free market and in the detariffing
3 regs that -- or under the regs that ACS has proposed, how would
4 a customer who is being discriminated against know that, how is
5 a single customer going to be aware or informed when there's no
6 tariff, there's no notice, how are they going to be informed,
7 how are they going to find out, a single customer in the
8 market?

9 DR. LEHMAN: Well, let.....

10 COMMISSIONER GIARD: That always happens to me.

11 DR. LEHMAN: Let me try a different example than airlines
12 because --.....

13 COMMISSIONER GIARD: It's bought, it's.....

14 DR. LEHMAN:because this actually happened to me. I
15 mean, how do I know that my long distance plan that I'm on is,
16 in fact, not a really bad plan compared to what other people
17 are on. And the answer is I actually don't know very well.
18 And I actually sat around a table of regulatory economists at
19 one point none of whom were convinced they were on the best
20 plan and weren't even aware really what's out there.

21 Yes, you're right the responsibility gets handed to the
22 free market and it gets handed to consumer to look at what's
23 out there and I think if they don't shop around they're
24 indicating that their elasticity's relatively high and they --
25 relatively low and they don't care a great deal about finding

1 out. But we do this in lots of markets where consumers -- I
2 mean, they all have different rate plans for the cell phones
3 and they -- how do they know that they're not getting a bad
4 deal, I mean, this happens all the time. The -- this supposes
5 that it is a competitive market and there is choice available.

6 COMMISSIONER GIARD: Thank you. I don't have any more
7 questions.

8 HEARING EXAMINER OLSON: Pretty close to their word, 3:05.
9 There were a number of requests by Commissioners for
10 information from the parties and there were a number of times
11 that the parties said they would provide the information, I
12 didn't keep a list. I hope each one of you can remember what
13 it is that you said you would provide, but to assist you in
14 doing that if you would provide that information to the
15 Commission within 10 days after the dissemination of the
16 transcript, that will provide you with an opportunity to
17 revisit that -- the context of which the information was
18 requested and that should give -- also give you enough time to
19 provide the information I think.

20 MR. MONINSKI: Clarification, within 10 days of the
21 availability of the transcript you want the parties to submit
22 that which they said they were going to give you, is that the
23 directive?

24 HEARING EXAMINER OLSON: Yes.

25 MR. MONINSKI: Okay.

1 HEARING EXAMINER OLSON: Yes. Okay. That'll work for
2 everybody? Thank you very much for spending the last three
3 days down here and I got educated I hope. That's all I can
4 say, I can't -- I was going to say something (indiscernible) I
5 got educated. Thank you. And we'll stand in recess.

6 (Recessed - 3:07 p.m.)

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HB

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(File 5 of 5)

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STATE OF ALASKA

REGULATORY COMMISSION OF ALASKA

Before Commissioners:

David Harbour, Chair
Kate Giard
Mark Johnson
James S. Strandberg
G. Nanette Thompson

REGULATORY COMMISSION OF ALASKA
701 West Eighth Avenue, Suite 300
Anchorage, Alaska

PUBLIC MEETING

June 9th, 2003
9:00 o'clock a.m.

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1

P R O C E E D I N G S

2 Tape 1

3 0015

4 (On Record - 9:00 a.m.)

5 CHAIR HARBOUR: Good morning, Ladies and Gentlemen. I'm
6 Dave Harbour, Chairman of the Commission. We're on record at a
7 little after 9:00 o'clock this morning on June 9th, 2003. This
8 is a public meeting of the Regulatory Commission of Alaska.

9 Present with me this morning are Commissioners Strandberg,
10 Johnson and Thompson. Kate Giard (ph), our newest Commissioner
11 was unable to attend this particular meeting. She will be in
12 attendance at the June 25th public meeting and we can formally
13 welcome her to our group at that time.

14 The meeting would normally have been scheduled for this
15 Wednesday, but due to some of the Commissioners being unable to
16 attend the public meeting on Wednesday we bumped it to Monday
17 so we could address some important issues. One of those
18 important issues is -- stems from recent legislation. The
19 Committee Substitute for House Bill 111 as amended by the
20 Judiciary Committee in the House of Representatives.

21 Before discussing this item we'd like to invite public
22 participation. Are there any members of the public who would
23 like to participate this morning? Sir, please.....

24 MR. ROWE: May I?

25 CHAIR HARBOUR:come forward.

1 MR. ROWE: Thank you.

2 CHAIR HARBOUR: I see several friendly faces in the room
3 this morning. It's good to see everybody here. Madam
4 Reporter. Do you want to state your full name?

5 MR. ROWE: I will, thank you, Mr. Chairman. I'm James
6 Rowe. I'm the director of the Alaska Telephone Association.
7 It's R-o-w-e. I thank you for the opportunity to provide
8 public comment this morning.

9 Particularly I'm here to speak on behalf of the membership
10 in regard to the review you just mentioned, Mr. Chairman, that
11 of House Bill 111. We've very interested in participating in
12 this docket. It's of significant interest to the customers
13 represented by the members of the Alaska Telephone Association
14 which are rural companies providing telecommunications in the
15 state.

16 We'd like to suggest that there's already a significant
17 amount on the record of commentary over the years. And
18 particularly I'd refer you, at least for some comments, back to
19 Docket R-97-12 which is the market structure rules governing
20 local exchange competition.

21 And in ATA's comments, one of the comments we made was the
22 Commission should develop regulations that will allow fair and
23 sustainable competition to evolve where it is appropriate. And
24 the word fair was very much used in the bill that came out and
25 was handed to you folks and to all of us I'd say.

1 I suggest also in our commentary in R-97-12 we said
2 Section 253(b) of the Act preserves the states' powers to
3 exercise discretion in considering competitive entry to
4 preserve and advance universal service, protect the public
5 safety and welfare, ensure the continued quality of
6 telecommunications services and safeguard the rights of
7 consumers. And though we didn't have it in our text I would
8 suggest that we might want to put in bold print and underline,
9 continued quality.

10 Twin pillars of the Act were competition and universal
11 service. Competition is a tool to provide service and it is
12 the preferred tool. Universal service is the goal. It's the
13 only goal. Universal service in a sustainable environment,
14 whether through regulation or competition, is certainly
15 success. A competitive environment that jeopardizes universal
16 service is failure.

17 We look forward to working with you on this docket. Thank
18 you very much for this opportunity.

19 CHAIR HARBOUR: Thank you, Mr. Rowe. If you'd like to
20 leave a copy of your testimony this morning or your public
21 comment, we'd be delighted to have it.

22 MR. ROWE: I'll give you what I have, sir, thank you. Are
23 there any questions?

24 CHAIR HARBOUR: Thank you, Mr. Rowe.

25 MR. ROWE: Thank you.

1 CHAIR HARBOUR: Yes, sir, please come forward. Welcome to
2 the public meeting. Please state your full name for the
3 record.

4 MR. MONINSKI: Thank you, Mr. Chairman, and Commissioners.
5 Good morning. My name is Ted Moninski. I am the director of
6 regulatory affairs for Alaska Communications Systems.

7 I didn't really plan to speak this morning, although I've
8 had a chance to take a 30 second review of the proposed order
9 that the Commission will be discussing later on this morning.
10 I'd like to express concern about one item and it has to do
11 with efficiency, but it also has to do with ensuring that we
12 have properly addressed all of the issues that need to be
13 addressed in the scope of the Commission's legislative
14 directives.

15 In particular as I take a look at page 4 of 7 of the order
16 -- the draft order suggests that the Legislature did not intend
17 that our policy review should duplicate work already underway
18 in pending regulations dockets. And then the Commission goes
19 on to list the dockets that commentators should hopefully not
20 duplicate efforts in.

21 It seems to me Mr. Rowe mentioned Docket R-97-12 which is
22 a proceeding that the former APUC opened up in 1997. This
23 Commission has also commenced Docket R-02-6 and it seems to me
24 that it's going to be extremely difficult to not address issues
25 that are currently pending in R-02-6 as a matter of not

1 duplicating comments, which in my mind then puts what we are
2 taking about in this new proceeding should one be commenced and
3 R-02-6 on, perhaps separate time lines, separate tracks,
4 separate opportunities for convergence and -- but I would
5 express some concern about that.

6 I actually gave some thought to suggesting to the
7 Commission that R-02-6 become the focal point of these
8 proceedings because so much of what the Legislature has asked
9 the Commission to consider is already being considered in the
10 context of R-02-6.

11 So as you consider this morning's draft order I would
12 certainly urge you to include the question of making sure that
13 we have all of the issues in the right place so that we're
14 addressing them in the right time. Perhaps, even for any
15 interest of efficiency as the order suggests that we not wind
16 up having to comment repeatedly on the same set of issues. And
17 more importantly that we not wind up having those issues on
18 separate time lines. Thank you.

19 CHAIR HARBOUR: Good comments, Mr. Moninski, thank you. I
20 think as we move into a discussion on the next agenda item it
21 may be that you might wish to make a comment or two on that,
22 Commissioner Johnson. Thank you, Mr Moninski.

23 Any other comments, public comments. Okay. I was hopeful
24 of hearing oratory from my friend Mr. Henry, but I guess we can
25 do that later.

1 At this point the first item on our agenda stems from the
2 Committee Substitute for House Bill 111 amended judiciary and
3 it is the subject of review of telecommunications legislation
4 as our second public witness referred to a few minutes ago, as
5 well as Mr. Rowe. Commissioner Johnson to my right has taken
6 the lead on this large and very important project and would ask
7 him to talk to us now about that process.

8 COMMISSIONER JOHNSON: Maybe if I might just for the -- to
9 move things along here, Mr. Chairman, I'd like to move that we
10 release the proposed Notice of Inquiry that's in the packet
11 identified as R-03-XX pertaining to Commission review of rules
12 and regulations governing telecommunications rates and charges
13 between competing telecommunications companies and competition
14 in telecommunications. I would make that motion at this time.

15 CHAIR HARBOUR: Is there a second?

16 COMMISSIONER STRANDBERG I'll second for discussion.

17 CHAIR HARBOUR: Thank you, Commissioner Strandberg.
18 Commissioner Johnson.

19 COMMISSIONER JOHNSON: If I could just speak to it. Thank
20 you, Mr. Chairman. Where do I start here, I think it's safe to
21 say that the proposal of this project is the most important
22 thing that this Commission will do this year.

23 We have already spent, I think, an appropriate amount of
24 Staff time on it. We will spend a great deal more Staff time
25 and Commission time on the matter and we know that there is

1 acute interest in the telecommunications community as to any
2 rules we might develop. We know that issues are contentious.
3 I think that always goes without saying.

4 What we've tried to do in the proposed NOI that you have
5 in front of you is develop a scenario where we can consider
6 issues that have been raised previously and that we have made
7 an effort to link currently opened dockets that address some
8 discrete subject matter areas with the nine elements that the
9 Legislature has asked us to address.

10 I think that if you read carefully we are prepared to look
11 very carefully at efforts by parties to explain how action that
12 we might take in connection with the nine enumerated elements
13 would relate to other open dockets. And we are, I think, upon
14 appropriate showing if this -- if we, in fact, approve this
15 today by the parties, we would -- we do want to save time. We
16 do want to take advantage of effort that's put into other
17 proceedings and I think that we have a platform upon which we
18 can do that.

19 I would surely entertain any thoughts from my colleagues
20 as to how we might improve what's in front of you today so that
21 we can better achieve that and maybe this would be a good time
22 to entertain those thoughts.

23 COMMISSIONER STRANDBERG: Taking into consideration the
24 comment that Mr. Moninski made I thought it was particularly
25 well placed. The need to synchronize and I -- to synchronize

1 the consideration of the issues within the various regs dockets
2 that we have.

3 In looking at R-02-006 that -- you know, I can't pull from
4 memory what our current schedule is on that, but I'm not at
5 this time advocating any change in this order, but I do think
6 that we can certainly recognize that comment and the need for
7 us administratively within the Commission to synchronize these
8 activities. I thought it was a very good comment by him, so
9 I'll make that comment right off the bat.

10 COMMISSIONER THOMPSON: I have a question, if I may, was
11 it your intention in doing this to keep the currently open R
12 dockets on the same schedule they are or to the extent that
13 those current -- currently opened R dockets contain issues that
14 overlap the issues that the Legislature directed us to review
15 to have them completed within the same time frame as the
16 Legislature directed?

17 In other words, if there's an issue in R-02-06, which to
18 my recollection there are, that overlap what the legislative
19 directive was, was it your intention to just keep that going on
20 the same time track it is now or to complete those parts of the
21 docket that would be consistent with what the Legislature did
22 within the same time frame?

23 COMMISSIONER JOHNSON: It's Monday morning, I'm trying to
24 remember what.....

25 COMMISSIONER THOMPSON: Okay.

1 COMMISSIONER JOHNSON: I believe that there is an
2 appropriate time in the schedule that you have here for us to
3 make an effort to synch up other dockets and we're going to
4 look at that down the road. I think that's where we left
5 things last week if I'm correct. Is that correct, Phil, based
6 on your recollection of our discussions last week?

7 MR. TREUER: Yes. Is that directed to me?

8 COMMISSIONER JOHNSON: Yes.

9 MR. TREUER: Okay. Yeah. I'd like to point out that most
10 of the opened R dockets have had a head start on this.....

11 COMMISSIONER THOMPSON: Um-hum.

12 MR. TREUER:omnibus docket.....

13 COMMISSIONER THOMPSON: Right.

14 MR. TREUER:and since we've already issued NOIs and
15 in some cases even proposed rules, but in R-02-6 we haven't
16 issued proposed rules yet, so I think there's time to
17 synchronize things that need to be synchronized.

18 COMMISSIONER JOHNSON: Although I do believe it's
19 appropriate for us to look at these issues comprehensively.....

20 COMMISSIONER THOMPSON: Right.

21 COMMISSIONER JOHNSON:and not in isolation as, you
22 know, it effects the industry.

23 COMMISSIONER THOMPSON: No, I appreciate the fact that
24 they -- a lot of these issues interrelate. My concern is more
25 in slowing things down by having -- in some of these dockets

1 there's already proposed regulations on the table and you may
2 -- I think it's important to look at them in the perspective of
3 the issues raised in all the other dockets as well, but I don't
4 want to see things slowed down or delayed because they're
5 somehow -- because of what the leg- -- and I don't think that
6 was the Legislature's intent to slow us down on any projects,
7 so to the extent that issuing this notice -- as long as this
8 notice -- it's not the intent of this to do that, it's not a
9 problem.

10 COMMISSIONER JOHNSON: Well, I would not, except that I
11 would note that I think we have an obligation to examine the
12 currently opened dockets in light of the legislative policies.
13 That is.....

14 COMMISSIONER THOMPSON: Um-hum.

15 COMMISSIONER JOHNSON:we don't want to do anything
16 that's going to be necessarily adverse or contrary to the
17 policies that have been adopted by the Legislature. I think we
18 need to have a degree of fidelity to the polices as they've
19 (indiscernible - simultaneous speech).....

20 COMMISSIONER THOMPSON: I agree. I also don't want to
21 make -- I mean, on some of these dockets we have extensive
22 comments already filed (ph).....

23 COMMISSIONER JOHNSON: Right.

24 COMMISSIONER THOMPSON:by the parties and it seems
25 an enormous waste of time for.....

1 COMMISSIONER JOHNSON: Right.

2 COMMISSIONER THOMPSON:both the parties to refile
3 and us to reread things they've already said.

4 COMMISSIONER JOHNSON: Precisely.

5 CHAIR HARBOUR: If I might, I might direct our attention
6 to the Bill itself, page 2, it's in your packet. On page 2
7 it's under Section 2(c) the Legislature stipulated that the
8 review required does not apply to current open dockets pending
9 review.

10 And so I think the intent around this table is to embrace
11 as many of the relevant issues as can be embraced within the
12 time limit, but to the extent that we run into clear deadline
13 problems with respect to November 15th, the Legislature has
14 given us guidance that the first priority is to address items
15 not included in the dockets and meet the deadline.

16 With that having been said I agree with the intent that
17 members have expressed of embracing as much of a
18 (indiscernible) approach to this as we can do either directly
19 through this docket or through linking with related dockets.

20 COMMISSIONER STRANDBERG: This is awful new and we're
21 putting things together quite quickly. Obviously there is a
22 fair amount of organizational work that does need to be done,
23 but I view this as some additional horse power to speed things
24 up, not to slow anything down. And, indeed, I think we do have
25 the ability to review issues that are in other dockets and if

1 appropriate to get it together so it's a cohesive fast track
2 process, review where the issues need to be.....

3 COMMISSIONER THOMPSON: Okay.

4 COMMISSIONER STRANDBERG:and I think that's where
5 I'm at.

6 CHAIR HARBOUR: Are we ready for the question? Any
7 further discussion? All in favor say aye?

8 IN UNION: Aye.

9 CHAIR HARBOUR: Opposed? The motion passes.

10 We'll go to the next item on the agenda which are proposed
11 water and sewer regulations. These regulations were last
12 discussed at our public meeting on April 9 and some good ideas
13 came out of the discussion. Commissioner Strandberg.

14 COMMISSIONER STRANDBERG: Thank you, Chair Harbour. I'll
15 wait for a moment to let the hall clear out here.

16 (Off record comments)

17 These are -- before us are draft regulation which had
18 previously been before us in the April 9th public meeting. At
19 that meeting we decided the proposed regulation required
20 additional work to redefine a proposed registration program for
21 one of three classes of utilities into a certification program.
22 And we have accomplished this work through diligent work with
23 -- by the Staff and our regulations attorney and also with a
24 key element of help that was provided us by Commissioner
25 Johnson. I wanted to thank you Commissioner Johnson for the

1 assistance in the rewrite of this.

2 To move the docket along I'd like to pose a motion here.

3 I move that we notice the attached draft regulations for

4 comment subject to Staff editing for form and any edits that

5 are from the dias today for a 90 day period and that we accept

6 one cycle of comments.

7 COMMISSIONER JOHNSON: Second.

8 COMMISSIONER STRANDBERG: I'll just give a short

9 discussion here. The work that has gone into this regulation

10 converts it to a draft regulations which I believe complies

11 with the directions we gave to Staff at the last public

12 meeting. I do support the new approach as protecting the

13 public interest and public health.

14 Without going into extensive detail and the history of the

15 dockets I will summarize the salient changes made in the last

16 meeting and also provide Commissioner Johnson time for

17 discussion of the legal aspects of the change that has been

18 made.

19 Commissioner Johnson participated in the limited rewrite

20 of the regulations and my thanks to him, wherein we converted

21 one class of utilities which we had previous -- or which is

22 defined by annual revenue and governance structure from

23 exemption with conditions to a provisional certification class

24 of utility in response to concerns expressed by our regulations

25 attorney.

1 There were some other changes that we made to the
2 regulation as well, but at this time I'd like to give
3 Commissioner Johnson time to discuss the changes that he helped
4 on.

5 COMMISSIONER JOHNSON: Well, if I could just provide a
6 little (ph) -- thank you, Commissioner Strandberg. And just
7 provide a real brief overview. What we have in front of us
8 today -- and there were problems. One of the problems we moved
9 from -- at one end of the spectrum we have the Commission's
10 statutory authority to exempt utilities from regulation, that's
11 at one end of the spectrum.

12 At the other end we have -- of the spectrum we have a --
13 basically a full array of both economic and quality of service
14 regulation that can be quite intensive when we do our job. And
15 I've always believed that the statutory scheme enacted by the
16 Legislature allowed us to, of course, utilize both extremes as
17 well as anything in the middle. And I -- as I looked -- that
18 was my -- the under -- my -- the point at which I began my
19 analysis.

20 In the course of doing that I think we stumbled upon --
21 and it ought not to be this way, but it's the way it was, we
22 also have to ability to classify utilities under the law. And
23 I believe that what we have here is, I think, a good faith
24 effort to classify utilities in order to meet the needs of the
25 need to regulate to some extent the activities of some small

1 water and sewer utilities.

2 And as that I believe that what we have is a good faith
3 and a valid effort to exercise that power to classify utilities
4 under, I think, it's AS 42.05.690. I think that's the
5 statutory section. She's looking up, I think that's correct.
6 I think that's the correct sec-.....

7 MS. RUSCH: I'm sorry, what is it?

8 COMMISSIONER JOHNSON: 690.

9 UNIDENTIFIED VOICE: 691.

10 COMMISSIONER JOHNSON: 42.05.690.

11 UNIDENTIFIED VOICE: 691.

12 COMMISSIONER JOHNSON: 691, excuse me. And anyway that's
13 primarily my contribution to the regulations. I do believe
14 that if we look at certificates of public convenience and
15 necessity as property rights, my education in the legal basis
16 of property rights suggests that each property right really
17 consists of a bundle of sticks, that there are unique and
18 discrete elements to ownership of property. When we issues a
19 certificate we, in essence, are handing out some small part of
20 that bundle of sticks, that property right to a certificate
21 holder.

22 Because of that the grantor retains the ability to define
23 how many sticks they give away and I think that's consistent
24 with the notion to classify the utilities and to provide for a
25 system of provisional certification in this case.

1 That is the certificate that a party that would apply for
2 and obtain under these proposed regulations, a small water and
3 sewer utility, the certificate that they would obtain is no
4 greater than what we grant. It takes on no greater importance
5 or no greater significance than what we the grantors intend to
6 grant them. So that is the -- sort of the philosophical
7 underpinnings of the proposal we have in front of us here
8 today.

9 And I think it's responsive to the recent legislative
10 audit and I think represents a pretty reasoned and balanced
11 effort to find an appropriate level of regulation for these
12 utilities which has been pointed out to a great extent are
13 operating in a totally unregulated environment. So I favor the
14 packet that's in front of you and I look forward to the
15 comments as they come in.

16 CHAIR HARBOUR: Thank you. Questions?

17 COMMISSIONER THOMPSON: I do, I have several. First for
18 Commissioner Strandberg, you said in your motion one cycle.
19 Was it your intent not to allow reply comments and if so, why?

20 COMMISSIONER STRANDBERG: That was the thought to move the
21 issue along because primarily we have had significant input on
22 this already and, in fact, the draft regulation does comport in
23 large extent to the general direction that our comments have
24 come in on. I'm certainly open if other Commissioners feel
25 like we should have another round of reply on this to consider

1 that, but my initial thought was that we would move forward.

2 COMMISSIONER THOMPSON: I guess my comment would be these
3 specific regulations are different even than the ones we last
4 offered. There's a lot of parties involved and I usually
5 benefit from hearing party's comments on other folks'
6 suggestions. My suggestion would be a brief, perhaps, 30 day
7 reply cycle.

8 COMMISSIONER STRANDBERG: The reason why we set it for 90
9 was because there is indication that the Citizens Advisory
10 Board was going to reconvene to consider this. Admittedly they
11 are but one of a number of commentators, but it does take -- it
12 is a large board and it does take time for them to get together
13 and to get organized.

14 COMMISSIONER THOMPSON: When do you hear that they're
15 going to reconvene?

16 COMMISSIONER STRANDBERG: I don't believe that they've set
17 the date, but we wanted to give enough time so that they would
18 have some scheduling capabilities on that.

19 COMMISSIONER THOMPSON: So was it your intent to
20 coordinate the timing of this case so they could file within
21 the 90 days or.....

22 COMMISSIONER STRANDBERG: Yes.

23 COMMISSIONER THOMPSON: Well, I guess I still don't see
24 why that would preclude a reply comment schedule. I think
25 that's a good idea, but I don't know why that would suggest to

1 you that we shouldn't allow reply comments.

2 COMMISSIONER STRANDBERG: Okay. Comment accepted.

3 COMMISSIONER THOMPSON: The next one is a question
4 probably mostly for Virginia. The last time we discussed these
5 regulations you'd not yet had the opportunity to review them
6 for both drafting standards and consistency with our statutory
7 responsibilities. I know there's been some debate. I imagine
8 by virtue of the fact that they're presented again this morning
9 that your concerns have been resolved, but I just wanted to
10 confirm that and find out what the focus of your review has
11 been.

12 MS. RUSCH: Well, I believe that this concept is
13 consistent with the statutory scheme and the Commission's
14 authority to utilize its discretion here. This particular set
15 of regs has not been reviewed as Rosalie (ph) will for
16 compliance with the drafting manual before it goes out and so
17 that still needs to be done. And there I provided some very
18 big scale editing suggesting, but some fine tooth combing still
19 needs to be done to get this more in compliance with drafting
20 manual style and other rules.

21 COMMISSIONER THOMPSON: Okay. And the last question again
22 for Commissioner Strandberg which is this project is linked to
23 others that other state agencies, most notably DEC, have been
24 engaged in. I know that we've had discussions -- there's been
25 policy discussions between the two different agencies and

1 having been gone for the last two weeks I don't know what
2 coordination this particular proposal -- what opportunity
3 you've had to coordinate with DEC and the other impacted
4 agencies on this particular set of draft regs.

5 COMMISSIONER STRANDBERG: I've had extensive discussions
6 with Mr. Dan Easton (ph) who -- from DEC who is the DEC point
7 of contact. He understands the approach. And, again, because
8 this is a permissive approach wherein people are not
9 necessarily obligated to sit in the particular provisional
10 class which we have established here, we feel that it provides
11 a good basis for going forward on a relationship with DEC for
12 providing sustainable utilities.

13 And there is flexibility built in to it to really be able
14 to exist on whatever that future relationship does developed
15 with respect to sustainable utilities and the potential for
16 subsidies that might be necessary for that, so I believe that
17 the coordination is occurring and there is a considerable
18 amount of future discussion that needs to be had on the
19 subject.

20 CHAIR HARBOUR: Thank you. Other questions. Commissioner
21 Thompson, did you want to phrase an amendment to the motion
22 before we move to the main amendment regarding the reply
23 comments?

24 COMMISSIONER THOMPSON: Yeah, I'd like to make a motion
25 that the underlying motion -- I guess it could be -- if

1 Commissioner Strandberg will accept it as a friendly amendment
2 we don't need to respond to it, but I'd like to allow for 30
3 days reply comment.

4 COMMISSIONER STRANDBERG: I would find that acceptable.

5 CHAIR HARBOUR: Okay. That being accepted we go to the
6 motion itself. Is there any objection to the motion?

7 COMMISSIONER STRANDBERG: There is one other discussion
8 which I would like to bring up for the benefit of the
9 Commissioners. I asked -- just so you understand the amount of
10 coordination that we've worked -- that we've had with Staff.

11 We've talked extensively both with are Tariff Section and
12 with our Consumer Protection Section. There are implications
13 here of the regulation. Currently the way it is written, and
14 this is different from the last time around, is we will require
15 an informational tariff when the second class of utility is
16 brought into the fold, so to speak. And it's probably good to
17 discuss at this point the practical administrative impact of
18 the implementation of this regulation.

19 We have a considerable number of certificated water and
20 sewer utilities that already exist in the state. There is a
21 large group that currently have no relationship with us. A
22 portion of those under this regulation would be exempt, but
23 another portion would need to come in for this provisional
24 certification program that we've embarked on.

25 And so it's good to understand that there will be on the

1 order of 200 utilities that we will have to in some fashion
2 establish a relationship with and we can talk about that at a
3 later public meetings, I believe, but what is important here
4 today is the administrative impact of the tariffing
5 requirements that are currently within this regulation. And
6 currently the way the regulation is written is we would require
7 an informational tariff initially to be filed with each of
8 these small utilities.

9 Once that information tariff is filed and their
10 certificate is received, we really would not have any ongoing
11 relationship with that utility unless there is a consumer
12 complaint. And the way the reg is written right now is once we
13 receive that complaint, the utility would then be obligated to
14 bring its tariff within -- I believe, it's a 10 day period,
15 immediately up to date with us so that our Consumer Protection
16 people could actually handle a complaint.

17 And I'd ask Ms. Pitts to be here to answer any questions
18 and, indeed, to, perhaps, respond on how she felt that
19 something like this would actually work with this particular
20 class of utility. And I think it's probably appropriate for us
21 to talk about that at this meeting. The rest of it I think
22 we're going to need to deal with later on in the
23 implementation, but with your concurrence, Ms. Pitts, do you
24 have comments on this?

25 MS. PITTS: Yes, my initial reaction is that it's probably

1 not going to be helpful to a consumer to -- that's filing a
2 complaint if there's no rules on file right -- you know, right
3 at the time. Either a consumer will have to wait for the
4 utility to file 10 days later or two weeks later or whatever
5 and then that raises a question of does the rules then apply
6 retroactively to a complaint or not. I don't see this as being
7 helpful for a consumer at all in terms of having some set of
8 rules to go by at the time the complaint is being filed.

9 COMMISSIONER THOMPSON: I have a question. So does -- in
10 this provisional certification, and I beg your indulgence
11 because I literally got this, this morning when I walked in the
12 door having been gone, but that's not your fault, it's mine.
13 Does the provisional certification require filing of a model
14 tariff?

15 COMMISSIONER STRANDBERG: Currently the regulation has
16 basic tariff requirements. We've moved away from the model
17 tariff after careful review of the comments, but that the model
18 tariff would be -- we propose at a later date to make that
19 available on line as a resource, but it would not be required
20 as a part of the regulation.

21 CHAIR HARBOUR: Commissioner Strandberg, the -- in
22 tracking one of the confidences that I had in the provisional
23 certification concept was that annually I was a little bit
24 concerned that, perhaps, a utility might fall within the
25 requirements of provisional certification and then grow and

1 grow out of the requirements. And that seems to be taken care
2 of with the annual filing requirements, so they'd have to
3 reaffirm through affidavit and the filing of additional tariff
4 update material that they were still within the provisions of
5 this limited certification.

6 COMMISSIONER STRANDBERG: That is correct.

7 CHAIR HARBOUR: Okay. Other questions? Is there
8 objection to the motion? Seeing no objection, the motion is
9 approved.

10 We move now to other business before the Commission and I
11 thought for my selfish pleasure and benefit if -- and probably
12 for that of others here, I would ask Commissioner Thompson who
13 just returned from a trip during which the United States
14 Government asked for her expertise in a far away land in some
15 of the areas that we regulate and could you give us a brief
16 report on your trip?

17 COMMISSIONER THOMPSON: I'd be happy to. I returned, in
18 fact, last night from Gaborone Botswana which is in southern
19 Africa. It's on the -- if you think of South Africa, Botswana
20 is landlocked. It has between Namibia to the west and Zimbabwe
21 and Mozambique to the right. And I was there participating in
22 a project called Net Tel Africa at the invitation of USAID, the
23 United States Agency for International Development.

24 The purpose of this project is capacity building within
25 African regulators regulatory systems. Most of these countries

1 are new to their own governance and have only recently
2 established regulatory agencies like ours. The specific
3 purpose of this two week program was to develop a curriculum
4 for an African equivalent of what we call boot camp here in the
5 United States which is a program that new regulators and
6 regulatory staff attend soon after they're appointed. In our
7 country it's in Ohio State University and it happens in the
8 summer for two weeks.

9 The purpose of Net Tel Africa was to have the African
10 regulators develop their own curriculum for this program and
11 there were a small number of us Americans that were helping in
12 terms of advising and developing of the curriculum and also in
13 presenting some hot topics in the afternoon.

14 Over the last year by e-mail what they did was divide the
15 entire scope of what an agency would have to know to regulate
16 telecommunications. And I should also say in most of these
17 countries the telecommunications regulatory authority is
18 separate from the authority that regulates the other utilities
19 in the country. It's not true in all, but in most.

20 And the focus of this program was specifically
21 telecommunications regulation, but amongst the topics to be
22 taught, one of them was universal service or universal access
23 as they use the term in Africa because less than five percent
24 of the population on that continent has access to a telephone.
25 And they define access as the ability to walk to a telephone

1 within five kilometers, so their system is completely different
2 or very much different than ours.

3 Anyway, I worked with University of (indiscernible) in
4 Johannesburg on the universal service portion of the curriculum
5 and then in addition was asked to present materials on a couple
6 of different hot topics for discussion in the afternoon. It
7 was a fascinating project to participate in and I really
8 appreciate the support of this agency and the invitation of
9 USAID to participate. I learned things that will be with me
10 for the rest of my life. It's a different world.

11 And specifically in terms of what I bring back to my work
12 here I think there are two things that I learned a lot about in
13 the last two weeks. One is insights into community development
14 or bringing this telecommunication structure to communities
15 that have not currently had it that will help me in reviewing
16 and participating in the administration of the grant program we
17 have from the federal government for rural internet access.

18 Although in Africa the issue is access to basic
19 telecommunication services, I think it's not long before access
20 to internet is the same -- becomes the issue and the issues are
21 much the same when you're bringing to a community something
22 that they haven't had before that allows contact with the
23 outside world.

24 The other is some different insights into the basic
25 regulatory structure for telecommunications that are gained

1 only by perspective. Remember here that most African
2 regulatory agencies have only existed for a few years or at
3 most a few months and so what they're looking at is how the
4 rest of the world has address the issue. And I heard the term
5 leapfrogging a lot.

6 You know, they're spending a lot of time looking at how
7 other countries have done things well or not and trying to
8 bypass some of the problems we've had in our structure. So
9 whenever you're called upon to think anew, gee, if I could
10 start with a clean slate how would I do it, it helps you come
11 back and think about where you are now as opposed to where
12 you'd like to be.

13 So it was a wonderful experience and I look forward to
14 talking to more of you individually about it when I get a
15 chance.

16 CHAIR HARBOUR: Thank you, Commissioner Thompson. I like
17 to do that because it's seldom that we as a group can be
18 together and it's at a public meeting so in addition you get
19 the benefit of that.

20 We now move to Executive Session. If there is reason for
21 one, Assistant Attorney General Rusch.....

22 MS. RUSCH: I don't have --.....

23 CHAIR HARBOUR:any suggestions? No.

24 MS. RUSCH:I don't have any.....

25 CHAIR HARBOUR: Is there any other business to come before

1 the body?

2 COMMISSIONER STRANDBERG: Move to adjourn.

3 COMMISSIONER THOMPSON: Second.

4 CHAIR HARBOUR: It's been moved and seconded. Objection?

5 The meeting's adjourned. Thank you very much for your
6 attendance.

7 (Recessed - 9:45 a.m.)

8 1500

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UNITED STATES OF AMERICA)
) ss.
STATE OF ALASKA)

I, Rebecca Nelms, Notary Public in and for the State of Alaska, residing at Anchorage, Alaska, and Reporter for R & R Court Reporters, Inc., do hereby certify:

THAT the annexed and foregoing Public Meeting held on June 9th, 2003 was taken by Suzan K. Olson, commencing at the hour of 9:00 o'clock a.m, at the Regulatory Commission of Alaska in Anchorage, Alaska;

THAT this Hearing Transcript, as heretofore annexed, is a true and correct transcription of the proceedings taken and transcribed by Suzan K. Olson.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 10th day of June, 2003.

Notary Public in and for Alaska
My Commission Expires: 10/10/06

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STATE OF ALASKA

REGULATORY COMMISSION OF ALASKA

R-03-3-
pp 59.86

Before Commissioners:

Mark Johnson, Chair
David Harbour
Kate Giard
James S. Strandberg
G. Nanette Thompson

REGULATORY COMMISSION OF ALASKA
701 West Eighth Avenue, Suite 300
Anchorage, Alaska

PUBLIC MEETING

October 8, 2003
9:00 o'clock a.m.

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1 COMMISSIONER THOMPSON: Yes, and asking for comments on
2 two things. Comments on the structure of the model itself and
3 which -- what inputs do the commentators feel are appropriate.

4 CHAIR JOHNSON: Okay. That's the question before the
5 body, will the members, please, vote?

6 IN UNISON: Aye.

7 CHAIR JOHNSON: We're all unanimous. So thank you for
8 that. Thank you, Phil (indiscernible - background noise).

9 Do we want to take a very short break before consideration
10 of the next item or do we want to keep on going?

11 COMMISSIONER THOMPSON: Rock and roll.

12 CHAIR JOHNSON: Rock and roll. Without objection I'm
13 going to clear my.....

14 COMMISSIONER THOMPSON: Thank you, Phil.

15 MR. TREUER: Sure. Can we put on the web page before we
16 release the order, the model?

17 COMMISSIONER THOMPSON: It's okay by me. You don't care
18 if the model's on the web page?

19 CHAIR JOHNSON: No, that's fine.

20 COMMISSIONER THOMPSON: Go for it.

21 COMMISSIONER STRANDBERG: Nice job, good model.

22 MR. TREUER: Thank you.

23 CHAIR JOHNSON: The next item on today's agenda --
24 actually it's item number three, it's Docket No. R-03-3 which
25 is the review of our -- a comprehensive review of our

1 telecommunications regulations pursuant to Section 2 of House
2 Bill 111. And we had a -- what I personally consider to be a
3 very productive and informative hearing a number of weeks ago
4 and I know that many of the people that represented industry
5 are here today and I can just tell you that I found it to be
6 very useful and I appreciate your participation and assistance
7 to the Commission in addressing this issue.

8 What I'd like to do today is hear from Staff, primarily
9 Ms. Kenyon, describing from her perspective the status of this
10 matter and sort of setting out a little road map for where we
11 go next. I believe that this matter remains probably the
12 number one item on the Commission's agenda for the remainder of
13 this fiscal year. We are trying to be responsive to the
14 legislative mandate and I think we're going to do it. I'd like
15 to recognize Ms. Kenyon for awhile and then we'll have
16 hopefully some discussion amongst the Commissioners after that.
17 So with that, Ms. Kenyon, would you, please, address us on this
18 subject?

19 MS. KENYON: Yes, this is in regards to Docket R-03-03,
20 and according to the legislative mandate we have a deadline of
21 November 15th of this year to issue proposed regulations. So
22 while you don't have to decide a particular issue, what we're
23 looking for is what should be issued -- what type of regulation
24 changes should be issued to the public to comment on.

25 In preparation to meet that deadline tentatively scheduled

1 as far as I could tell these are -- there are going to be two
2 public meetings, one on October 22nd and one on October 31st so
3 that you can discuss in detail how you would like to proceed.
4 Hopefully we will have all of the answers as to what you want
5 publicly noticed by the end of those two public meetings. We
6 can draft an order, get those out -- the order out and meet the
7 deadline.

8 My goal is to have a staff memorandum or possibly even
9 multiple ones because there are a variety of subjects here,
10 have one to you by October 15th of this year, that means next
11 week so we're pretty busy working on this project even as -- as
12 you can tell we've got most of the common carrier staff here
13 and we've parsed it out between us because it's such a complex
14 task. I've provided you with a rough list of the issues so
15 that you could see who's working on what to give you an idea of
16 what we're concentrating on so that you can tell us if we're
17 looking in the right places and are providing you with the
18 services you want for this project.

19 We've been concentrating on the competitive market
20 structure rules because that's where most of the comments were
21 filed. It's not saying that we aren't going to look at
22 everything, but those are the areas where we've spent most of
23 the time so far to date and we've made a lot of progress there.
24 The places where -- that I wanted to point out to you
25 specifically -- you should be where you have an additional

1 docket out there, R-02-06, that's a docket that you created to
2 consider local market structure issues and when I looked at it
3 it looks like the proposals in the pending docket we're talking
4 about today as well as R-02-06 are very similar. So there's --
5 at times there's at least -- I think it's the ACS proposal,
6 it's virtually identical between the two.

7 So one thing you might want to consider is if you do issue
8 -- when you do issue notice of regulation changes that you
9 issue it in both dockets and perhaps that will take care of
10 both at the same time. There's only a minor -- one or two
11 issues raised in R-02-06 that in my opinion aren't mentioned in
12 R-03-03 in one way or another.

13 Regarding the other issues, at this time, you know, we
14 have had a lot of comments on the unbundled network element
15 issues and the wholesale pricing issues, a lot of comments.
16 I'm anticipating that the staff report on that though, our
17 memo, isn't going to be that long. We've seen a lot of --
18 looked at a lot of those issues and we're probably not going to
19 spend a lot of time on options that we believe are either
20 duplicative of federal rules or contrary to federal rules, but
21 it'll be up to you to decide how you want that done. If you
22 want to spend a lot of time on that you probably should let us
23 know at this meeting.

24 As far as the ETC issues are concerned, memorandum on that
25 is mostly done. One thing I am not planning on providing to

1 you at this time is an alternative for the proposals currently
2 on the table. You'll have the options of everything -- of
3 whatever anyone has proposed on that matter, but -- which is
4 mainly the Rural Coalition's proposal, but unless you direct me
5 otherwise I wasn't planning on providing you a Staff
6 alternative to the Rural Coalition's proposal.

7 Let's see if that's -- what else I had. Oh, as far as the
8 structure of the memo, I've looked at the proposals and I've
9 looked at the issues in the local market structure docket and
10 they're complicated and there's a lot of details there. And
11 when I realized -- but I realize that there are -- some of
12 those complications were created by the fact that some of the
13 proposals are internally consistent -- inconsistent so that
14 they're like almost pulling you in two different directions at
15 one time.

16 So the way the memos are going to be structured to you is
17 rather than saying do you buy the whole proposal that someone
18 has filed, we're asking basic questions. We've T'd (ph) up a
19 basic question like where should the local competition rules
20 apply and then we give you the options that people have
21 proposed so you can pick the option you like, if you don't like
22 those options you can make one up that you think is better or
23 you can select no change. But when you look at the key
24 questions that you need to answer, it seems like a lot of the
25 issues get a lot simpler. So that's the structure that we're

1 -- that we've been using for our memorandum.

2 Let's see if there's anything else I wanted to mention.

3 And I guess unless any of the other staff have any comments to
4 make at this time, that's all I had.

5 CHAIR JOHNSON: Okay. I'd like to -- actually the way to
6 proceed, I was wondering if Commissioners have questions of Ms.
7 Kenyon at this point, maybe we can do it.....

8 COMMISSIONER HARBOUR: I have one for -- it's for
9 either.....

10 CHAIR JOHNSON: Commissioner Harbour.

11 COMMISSIONER HARBOUR:you or Ms. Kenyon. R-03-03
12 specifies areas for inclusion into the draft regulations, but
13 also leaves the door open and we do in our order inviting
14 comment. I'm wondering if that door is wide enough and or is
15 it appropriate to incorporate the 02-06 proceedings with the
16 two additional items you mentioned into 03-03 so that we don't
17 give notice in two separate dockets on the same issues?

18 MS. KENYON: I believe it is when -- to this -- to date
19 I've drafted a lot of the local competition memo and there's
20 only a handful of places where I've actually had to mention the
21 word R-03-06 because a proposal was filed. I need to still
22 incorporate some of the comments from that docket into the memo
23 so that you have a full range of the ideas that have been
24 suggested to you, but I don't think it's going to be that -- I
25 mean, I think there are virtually the same issues on many of

1 these things.

2 The one that was different was the seven day rule issue
3 where -- you may be familiar with that, that GCI and ACS have a
4 difference of opinion as to what should be the regulation
5 change in our local market structure range is that regulations
6 that specify when certain type of customer change over orders
7 have to occur. That's a new issue in R-02-06 that's not raised
8 in R-03-03. However I think with the triennial review order
9 that puts a whole different spin on that issue because that
10 order from the Federal Communications Commission directs you to
11 provide a batch -- hot cut batch processing procedures that may
12 directly affect that and you might want to consider whether or
13 not you want to address that issue now.

14 So another option is you could hand that off to another
15 case or just not deal with it, it's up to you. But I guess to
16 answer your questions I think we can do -- we can combine the
17 two together and there won't be any harm and we can issue one
18 notice and perhaps have all of the comments directed to one or
19 the other docket to make life simpler.

20 COMMISSIONER HARBOUR: Thanks for that answer.

21 Mr. Chairman, just in the sense of efficiency and if you were
22 to consider that appropriate I'd sure be supportive of it.

23 COMMISSIONER STRANDBERG: I would comment that we do have
24 a hard deadline in 03-03 of November 15th. 02-06 is under a
25 different time line so if there were things that we needed to

1 consider for the Legislature we could do that under 03-03 and
2 if there were other things that we needed to take a little more
3 time on that still allowed us to comply with the Legislature we
4 could leave those in 02-06.

5 COMMISSIONER HARBOUR: But I think the main objective,
6 Mr. Chairman, is not to be putting out to notice duplicates
7 and, you know, arranging for additional costs of Commission and
8 industry at the same time. And if we can economize in the way
9 Commissioner Strandberg suggested that might be a good
10 alternative.

11 CHAIR JOHNSON: I certainly appreciate that. I guess
12 where I'm going on this is I do not want to create the
13 impression on the part of the Legislature, on the part of
14 industry that this Commission is failing to act in a timely
15 manner and I guess, folks, where I am is that the train is
16 rolling and as far as I'm concerned the train will continue to
17 roll because I think that's what the Legislature expects of us.
18 Further comment, Commissioner Strandberg?

19 COMMISSIONER STRANDBERG: I would say that in my opinion
20 the most efficient thing to do is to keep the train rolling in
21 03-03, make the decisions and as they fall away in 02-06 they
22 will fall away and indeed that docket may just go away. But it
23 is there in case there is something that we need to do with it.

24 CHAIR JOHNSON: Are there additional questions for Ms.
25 Kenyon relative to.....

1 COMMISSIONER GIARD: Mr. Chairman, if I may? On the UNE
2 pricing issues, Ms. Kenyon, you talked about maybe not doing as
3 much work in that area, is that because of the other docket
4 that we've got going and some of the decisions that may be made
5 there? So are we going to.....

6 MS. KENYON: It's not so much the other dockets that are
7 going, but, you know, we need to -- you know, if you want us to
8 spend the time there we certainly can, but I think our intent
9 was if that -- of those proposals that were in the -- the UNE
10 pricing proposals and the wholesale proposals are not likely to
11 move further because they violate federal law or are
12 inconsistent with federal law, we're not going to spend a lot
13 of time on them.

14 CHAIR JOHNSON: Yeah.

15 MS. KENYON: But that was, I think, the intent that we
16 could put whatever amount of detail you want in that and -- oh,
17 pardon me.

18 CHAIR JOHNSON: If I could just respond to that and I just
19 wanted to perhaps clarify is I don't think we should be putting
20 Ms. Kenyon in the middle of discussions that we need to have as
21 a Commission and I'd -- I guess what I was trying to do was
22 just get questions for her right now and then when we're
23 finished with that I think I'd like to open it up to have some
24 discussion here on the panel.....

25 COMMISSIONER GIARD: Okay.

1 CHAIR JOHNSON:as to.....

2 COMMISSIONER GIARD: Okay.

3 CHAIR JOHNSON:some of these various issues, but
4 don't ask Lori to respond to items -- decisions that really are
5 ours to make. So.....

6 COMMISSIONER GIARD: Okay.

7 CHAIR JOHNSON: Okay.

8 COMMISSIONER GIARD: So you'll let us talk about that in
9 (indiscernible - simultaneous speech).....

10 CHAIR JOHNSON: Absolutely.

11 COMMISSIONER GIARD: Okay. What about -- I look at the
12 schedule that we have in front of us, Lori, with the staff
13 memos, the deadline for the staff memos and then rolling into
14 the public meetings, I wondered if it -- if you thought it
15 would be helpful to have a work session in between there with
16 the Commissioners or how are you -- is -- how do you see that
17 happening?

18 MS. KENYON: Well, any work session with the Commissioners
19 would have to be at a public meeting.....

20 COMMISSIONER GIARD: Right.

21 MS. KENYON:and we could have as many public -- I
22 mean, it's up to you folks how many public meetings you want,
23 but you'd need to have seven days advance notice to the public.
24 So today would be the deadline for the -- next Wednesday's
25 public meeting.

1 COMMISSIONER GIARD: Okay.

2 MS. KENYON: I guess what I'm saying is you're -- you need
3 to start planning now if you want more of them.

4 COMMISSIONER GIARD: Right.

5 MS. KENYON: We're available if you want any type of
6 training on any of these issues or additional explanation,
7 that's what we're here for.

8 COMMISSIONER GIARD: Okay. No more questions,
9 Mr. Chairman.

10 CHAIR JOHNSON: Additional questions for Ms. Kenyon? If
11 -- thank you, Lori.

12 At this time I guess I'd like to throw this open for a
13 more general discussion amongst the panel as to what they
14 perceive the issues in the docket are and as to the direction
15 the Commission ought to go. As you know, I've certainly spoken
16 to I think each of you informally relative to issues presented
17 in the docket and I've received some feedback.

18 And I just want to -- it might be useful just to sort of
19 guide the discussion without -- and my purpose in doing this is
20 not to suggest that any issue's been foreclosed or decided
21 upon, but just to indicate from you collectively what I believe
22 your comments to me reflect so far. I mean, this is kind of --
23 just sort of a starting point for discussion. So with that
24 caveat let me just say that -- well, let me recap from my
25 perspective what I think I've heard back from you to start the

1 discussion once again.

2 I believe that there was substantial support on this
3 Commission as -- and as well as the other participants at the
4 hearing relative to the proposal offered by the Rural Coalition
5 on depreciation. And I believe that that is something that we
6 are probably going to pursue, I think that's a pretty clear
7 result out of the hearing. And I think the Staff is working on
8 appropriate memoranda in that respect and I think we're well
9 situated to handle that issue.

10 Secondly, I think that there was -- and this may be very,
11 very contentious, I'm sure it is, I have not detected on the
12 part of the Commission much consensus on taking specific action
13 in the area of unbundled network elements and UNE pricing in
14 general. Now if I'm wrong on that certainly I'm going to hear
15 from people in a few minutes, but I did not gather any sort of
16 consensus, I don't see where there's a lot of people moving in
17 the same direction on that and I think the issue remains a
18 contentious one in the industry in general.

19 There are other proceedings underway for -- and in
20 particular the FCC has announced a proceeding in which they
21 intend to review TELRIC pricing, I know that that is going to
22 be a lengthy proceeding. Nonetheless, I have not heard from
23 this Commission or amongst the -- all the presentors at our
24 hearing earlier where there is a consensus direction there and
25 anyway that's -- maybe that's what -- all I need to really say

1 about that.

2 I do believe -- and I got a little more detailed as we
3 moved into the area of local market structure and market rules,
4 there does appear to be support for a proposal -- and this is
5 flexible once again, a proposal that would permit a dominant
6 carrier in a competitive service area to reduce rates, offer
7 new or repackaged services or implement special contracts
8 without Commission approval upon 30 days notice.

9 I don't think there's -- we're not locked into 30 days
10 notice, but in rough terms certainly the day -- number of days
11 is adjustable. Certainly there's a need on our behalf to
12 define what a competitive service area is, there is a need on
13 our behalf to define what a dominant carrier is. And then
14 there may be some other aspects of this proposal that we want
15 to flesh out, but I detect in general support for that
16 proposition.

17 Similarly, I have identified in general once again support
18 for a proposal that either carrier in a competitive market may
19 increase or decrease retail rates subject to a notice tariffing
20 approach. Certainly the details of that remain for us to iron
21 out.

22 Anyway I can say with certainty that those two areas, I
23 think, are -- we are looking at and I think Staff is also
24 making some preparations and developing some recommendations
25 for us in that area.

1 Additionally in the interexchange carrier area
2 (indiscernible) issues in general, there appears to be support
3 for a proposal to permit rate reductions in noncompetitive
4 markets upon 45 or 30 days notice to Commission, something of
5 that order. And once again there's matters of definition that
6 we need to look at there.

7 There's a -- in general support for a proposed amendment
8 to add a subsection to eliminate a requirement for supporting
9 information in tariff filings to reduce existing rates and
10 impose a 45 review period on the Commission in these
11 circumstances. That's in the IXC arena.

12 Additionally, there's general support for a proposal to
13 eliminate filing of an annual report by IXCs including outage
14 reports and performance reports in tariff filing requirements
15 for dominant carriers under 3AAC 52.375. That was proposed to
16 us and I think we should take an additional look at that.

17 And finally -- and this is just me making kind of a first
18 cut at all this stuff, there does appear to be support for a
19 proposal to modify the dominant and nondominant and market power
20 rules for the interexchange market. And those are largely
21 matters of definition once again that we are going to have to
22 struggle with.

23 I know this is sort of a dangerous position to be in too,
24 but I'm trying to set these matters forward to the Commission
25 to sort of focus our discussion and debate a little bit and to

1 provide additional direction to Staff. Ultimately we have to
2 work with them to develop the kind of product that will allow
3 us to generate specific regulations, proposals here in a pretty
4 short time frame.

5 So I just -- I'm identifying these issues from the
6 standpoint of just trying to get the discussion started and
7 hearing -- I'd like to hear further from Commissioners at this
8 time as to what they think of these ideas as well as anything
9 else that was discussed in the course of hearing that we ought
10 to take up. I think this is the time for us to provide some
11 direction to Staff. So with that are there comments on the
12 part of Commissioners on these matters? Commissioner
13 Strandberg?

14 COMMISSIONER STRANDBERG: I have one comment and that is
15 that some of the issues, in fact, are tied in with federal law
16 and to the extent that we are going to need to make decisions
17 about our regulations, what sort of legal assistance are we
18 going to empanel or amass to help us make these decisions
19 particularly about the UNE rates?

20 CHAIR JOHNSON: Well, I think -- if I may respond, I think
21 that the Department of Law is -- and our legal advisor in the
22 Department of law is familiar with these issues, you know, we
23 have certainly addressed them in other dockets, other areas.
24 I'm -- I will say that I'm confident and I note that their --
25 this advice does not fall into the category of legal advice,

1 but I do believe that the Staff of the common carrier section
2 is well familiar with the specifics of the FCC rules and is
3 prepared to work with the legal staff to develop the kind of
4 advice and answers we need. But our Staff is knowledgeable in
5 this area, they really are and I'm confident that we're going
6 to get some solid advice from, you know, the -- our Staff
7 working with the Department of Law.

8 COMMISSIONER STRANDBERG: And purely as a positive
9 suggestion, if there are issues that we may need like a written
10 -- short, written legal discussion about where we can go in our
11 decision making on this, on certain of these issues is there
12 any sort of thought from the Commissioners about really getting
13 it organized about some of these key issues that have been --
14 that we've been dealing with for years which really do relate
15 to this particular reg making?

16 COMMISSIONER HARBOUR: Mr. Chairman, yeah, I have a.....

17 CHAIR JOHNSON: Commissioner Harbour.

18 COMMISSIONER HARBOUR:personal response for you.
19 During the legislative session I encountered a number of
20 legislators who, you know, had been talking to various parties
21 and what may appear to one person as a common sense approach to
22 any of these issues in the isolation of our own state is
23 affected as you suggest by federal law and jurisdiction in some
24 other cases. And, therefore, I think part of this is an
25 education process and I think it's a point well taken that

1 perhaps in the order that issues the notice that if there are
2 areas that we wonder about, that we do seek a legal opinion and
3 then perhaps by referencing the order issuing the notice give a
4 little explanation of that particular area, why is that -- and
5 if there are areas determined to be areas that we cannot
6 explore, then it would be good sense to include the rationale
7 and attach the legal opinion by footnote.

8 That's right from the get go, that's from the issuance of
9 the notice of the draft regulation so that it's clear why the
10 direction is taken that is taken. So I appreciate that
11 suggestion and that's a suggestion for a way to handle it.

12 CHAIR JOHNSON: I guess it -- just responding, I believe
13 that ultimately though that legal advice that's rendered from
14 the Department of Law to this Commission is for the benefit of
15 this Commission. And we are certainly free as a Commission to
16 indicate based on advice of counsel and whatever other policy
17 level calls that we want to make as to what we believe that the
18 limits of our -- or the latitude of our ability to act is and
19 I'd just -- reluctant I -- I do believe that once again that
20 the legal opinions that we gather are for our benefit, we're
21 not necessarily shopping that to the world. I don't think that
22 that's.....

23 COMMISSIONER HARBOUR: And.....

24 CHAIR JOHNSON: The point is that if we believe based on
25 their advice that certain areas we ought not to go into, better

1 just say it and offer that up and I'm afraid -- I'm certainly
2 happy to do that, but I just -- I don't want to involve them,
3 they are our counsel and we need to treat and respect them as
4 Staff would, but the decisions in the -- that are made or the
5 policy calls that are made are ours. I have no problem
6 addressing as you suggest in the order, we think that certain
7 areas are off limits we'll just state that.

8 COMMISSIONER THOMPSON: Commissioner Johnson.

9 CHAIR JOHNSON: Commissioner Thompson, do you have a.....

10 COMMISSIONER THOMPSON: I have a comment which is it puts
11 legal counsel in quite an awkward position to be rendering a
12 legal opinion in a vacuum and it's probably more appropriate in
13 the context of specific decisions or suggestions made by -- in
14 the Staff memo that they would be a position to be able to tell
15 us whether we can do that or not which is, I think, what you're
16 really asking.

17 You can't -- it's not a reasonable request to say what can
18 we do, what are we legally allowed to do, it's much more --
19 you're more likely to get an answer that would be useful in
20 guiding the Commission to come up with -- for this agency to
21 devise a policy that it wants to pursue and then ask and then
22 in the course of devising that policy to seek guidance from our
23 legal counsel.

24 Then I imagine that's something that the Staff would be
25 free to do also in the process of drafting their memo, perhaps

1 identifying legal issues then and we can see them, but I'm not
2 sure that you're going to get the answer you need if you try to
3 append something to a public notice.

4 COMMISSIONER HARBOUR: Okay. I think the end result could
5 be the same though.....

6 COMMISSIONER THOMPSON: Right.

7 COMMISSIONER HARBOUR:and that is a careful
8 explanation of why a choice is made.

9 COMMISSIONER THOMPSON: Uh-huh.

10 CHAIR JOHNSON: Okay. Are there further comments?

11 COMMISSIONER GIARD: I have a few.....

12 CHAIR JOHNSON: Commissioner Giard.

13 COMMISSIONER GIARD:comments, if I may, Mr.

14 Commissioner?

15 CHAIR JOHNSON: This is the time and place.

16 COMMISSIONER GIARD: I think from a statewide policy
17 perspective I'd be interested in comments from the
18 Commissioners who have served on the Commission longer than I
19 have as to really where -- if we're going to focus our
20 attention on particular issues and not focus our attention on
21 other issues, it would be helpful for me to help make that
22 decision if I knew really what issues have been driving this
23 Commission for the last four or five years.

24 And that's one of the reasons that I brought up the UNE
25 pricing issues because it seems since I joined the Commission

1 that that's been something that -- the lack of a regulation or
2 in that particular area has caused some considerable concern on
3 behalf of the ability of the utilities to efficiently perform
4 their tasks and for us to be able to maybe efficiently
5 regulate.

6 So I would just be interested in the other Commissioner's
7 opinions as to whether when we put this policy or this
8 regulation out if we are really addressing those issues that
9 not only may be can be quickly and easily dealt with like
10 depreciation which was a darn good suggestion, but are we
11 dealing with the issues that have, you know, caused this
12 Commission and the Legislature and our utilities and the public
13 the most heartache over the last several years?

14 CHAIR JOHNSON: Would anyone like to respond?

15 COMMISSIONER THOMPSON: As a veteran I will. And I'd say
16 that my experience tells me that perhaps the best decisions are
17 not one when you're addressing the problem that they're in
18 front of you screaming about, but when you take a step back and
19 say what's really the issue here and what can I do to solve it.
20 And in that vein I think that there is a need -- I'm
21 comfortable with the approach that Staff is taking in
22 structuring the market.

23 I think that a lot of the local market issues are
24 significant and something this Commission needs to address. It
25 -- we got a memo a couple of weeks ago from somebody else on

1 common carrier staff about how our local market structure
2 regulations differ from every other state in the union. It's
3 something that I think focusing attention on those rules is
4 appropriate.

5 The other comment about the UNE pricing is that we have to
6 be careful in this to understand what it is we have the ability
7 to change and what we don't. We're an administrative agency,
8 we're a creature of law and we have certain responsibilities,
9 we don't have others. And not that we're shying from them, we
10 have important responsibilities with regard to UNE pricing, but
11 I think we need -- our work can be most productive if we focus
12 on what it is we're supposed to be doing and look at things
13 from a broader perspective of what are the real drivers in this
14 market, what are the changes that have occurred in this market
15 over the last five or six years that we have not adjusted to in
16 our regulatory policy.

17 And with that I would concur with the Staff's emphasis on
18 both a look at local structure and IXC market structure
19 regulations and to determine what adjustments should be made to
20 those regulations to reflect markets that have in some cases
21 developed as competitive and markets that have adopted new
22 technologies and will continue to in the future.

23 COMMISSIONER GIARD: I don't have any comments for.....

24 CHAIR JOHNSON: Further discussion? Commissioner
25 Strandberg.

1 COMMISSIONER STRANDBERG: I concur with Commissioner
2 Thompson. I guess the way that I'm seeing this is there's
3 certain aspects of this that do not conflict with the
4 Telecommunications Act of '96, 1996, there are other aspects of
5 it that are directly related to it. And I believe that we have
6 broad -- we have discretion in certain of the issues, in others
7 I believe that they are significantly complex and indeed
8 controversial and a legal interpretation of the area that we
9 can actually maneuver is actually of concern.

10 And so I guess I am concurring generally with the approach
11 that Staff is taking on this and I do believe indeed that they
12 recognize that issue and I -- maybe I can't -- I don't mean to
13 speak for them, but I believe there is two different areas
14 here, one is the federal -- federally constrained and the other
15 is areas where we can actually act and fix something. And that
16 -- I don't know, Ms. Kenyon, if you have any further comment on
17 that, but I'll give you an opportunity here if you'd like to
18 speak?

19 MS. KENYON: Thank you, but actually I have no further
20 comment, but I'd defer to Phil because he's actually the one
21 who'd be working on the UNE and the wholesale issues, if he has
22 any comments.

23 MR. TREUER: No, I think pretty much everything's been
24 said.

25 2700

1 (Tape change)

2 Tape 3

3 0015

4 CHAIR JOHNSON: Is there further discussion and once again
5 our desire this morning is to provide some direction to Staff
6 and to try to keep this process going. And will ultimately
7 lead to our (indiscernible). I should mention -- and obviously
8 there's a certain amount of one on one that has to take place
9 here, but I personally am interested in discussing with
10 Commissioners the approach to the ETC question a little
11 further. I didn't mention that initially, but that is of
12 interest to me and -- as to how we might handle that.

13 I think there's an interplay between that issue and
14 general market structure rules in my mind and I think it might
15 be wise for us to attempt to look at those issues concurrently,
16 but I don't want to suggest that there's a consensus on this
17 issue as yet. As a matter of fact, the Commission may be
18 somewhat sharply divided, I'm not sure exactly, but anyway I
19 think those discussions will continue.

20 Are there further -- is there further discussion on the
21 part of the Commission?

22 COMMISSIONER HARBOUR: Mr. Chairman.

23 CHAIR JOHNSON: Commissioner Harbour?

24 COMMISSIONER HARBOUR: Yes, your earlier briefing was
25 appreciated and I know that you've tried to communicate with us

1 individually to get your own understanding to present today,
2 but I think in the same sense of -- that you presented ETC. No
3 matter what's been said the devil's in the details and in the
4 draft that we work on and I don't -- and I'm sure you don't
5 expect us to necessarily subscribe to the briefing as
6 represented any final decision on any of these issues.....

7 CHAIR JOHNSON: That's right.

8 COMMISSIONER HARBOUR:because based on the way it's
9 finally worded it could be that one who suggested one approach
10 might withdraw and completely oppose that approach based on the
11 final wording.

12 CHAIR JOHNSON: Just -- I understand and we have a
13 complete additional process that we go through relative to
14 noticing of actual regulations and so that's when everybody
15 gets a chance to look at what we might do and comment upon it.
16 And so we are trying to get that process ready, set and go to
17 use the expression T'd up in advance of our deadline in
18 November. So.....

19 COMMISSIONER HARBOUR: Mr. Chairman, what we would
20 expect.....

21 CHAIR JOHNSON: Commissioner Harbour.

22 COMMISSIONER HARBOUR:at next week's meeting if it's
23 on the agenda next week as well, would that be.....

24 CHAIR JOHNSON: What were we expecting, Ms. Kenyon?

25 COMMISSIONER STRANDBERG: Not on that -- next week.

1 UNIDENTIFIED VOICES: (Indiscernible - simultaneous
2 speech).....

3 MS. KENYON: I wasn't aware there was going to be a
4 meeting next week.

5 COMMISSIONER HARBOUR: Oh, you were saying if we desired
6 it to be we'd need to notice it today?

7 MS. KENYON: Yes, that's what I was saying. What we're
8 hoping to give you is a document or multiple documents
9 outlining options and pros and cons on the options by next
10 Wednesday.

11 CHAIR JOHNSON: Okay.

12 COMMISSIONER HARBOUR: Okay.

13 CHAIR JOHNSON: Is there further discussion as we walk
14 gently on the thin ice of telephone regulatory reform?

15 COMMISSIONER STRANDBERG: Thank you.

16 CHAIR JOHNSON: And I'll just be clear, I was not
17 looking.....

18 COMMISSIONER STRANDBERG: Right.

19 CHAIR JOHNSON:for a motion, there's no action.....

20 COMMISSIONER STRANDBERG: Right.

21 CHAIR JOHNSON:to be taken on this other than the
22 discussion we had here today. That brings us to the end of our
23 prepared agenda.

24 As indicated earlier we have a category of other business
25 and then we do have a scheduled executive session. Is there

1 other business to come before the Commission this morning?

2 COMMISSIONER HARBOUR: Mr. Chairman, move executive
3 session.

4 CHAIR JOHNSON: Okay. It's been moved and seconded that
5 the Commission go into executive session to hear from our
6 attorneys as to pending litigation -- two items of pending
7 litigation. Is there a second to that motion?

8 COMMISSIONER THOMPSON: Second.

9 COMMISSIONER STRANDBERG: Second.

10 CHAIR JOHNSON: It's seconded. With that we'll take a
11 moment as we do go into executive session and I'll ask Ms.
12 Rusch to count noses and determine if everybody that she wants
13 present in the room is here and those people that really are
14 not appropriate have left. Let's go off record.

15 (Off record - 11:20 a.m.)

16 (Executive session)

17 (On record - 11:50 a.m.)

18 CHAIR JOHNSON: We've been in executive session to hear
19 from counsel regarding pending litigation. And we have been
20 advised by counsel. We are now back in open session.

21 COMMISSIONER HARBOUR: Move adjournment.

22 CHAIR JOHNSON: There's a motion to adjourn.

23 COMMISSIONER GIARD: Second.

24 CHAIR JOHNSON: Commissioner Harbour moved to adjourn. Is
25 there a second? Commissioner.....

1 COMMISSIONER GIARD: Second.

2 CHAIR JOHNSON:Giard. Is there objection? Without
3 objection we are adjourned.

4 (Recessed - 11:20 a.m.)

5 0215

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