MEMORANDUM

To: Alaska Legislature                                      Date: February 15, 2019

From: Stephen McAlpine, Chairman

Subject: Regulatory Commission of Alaska’s Report to the Legislature

This letter serves as the Regulatory Commission of Alaska’s (RCA) response to the intent language included in the recent budget, specifically:

It is the intent of the legislature that the Regulatory Commission of Alaska recommend adoption of updated telecommunication modernization regulatory standards in AS 42.05, the Alaska Public Utilities Regulatory Act, and deliver recommendations on how best to modernize outdated statutes to the House and Senate Finance Committees and to the Legislative Finance Division by February 19, 2019.

CCS HB 286, Section 1 (Chapter 17 SLA 18).

At the RCA’s February 6, 2019, public meeting the RCA voted four to one to extend its general support for the legislative reforms to the RCA’s enabling statutes with regard to telecommunications service in Alaska that the Alaska Telecom Association (ATA) has advanced. In doing so, the RCA nevertheless has concerns about how the bill might affect service and service quality in parts of rural Alaska. The RCA believes the Legislature will benefit from access to the materials developed during the last several months by ATA and its membership, as well as by RCA staff as it undertakes deliberation on this public policy decision. Those relevant materials are attached, in addition to a transcript of the February 6, 2019, public meeting that includes Commissioners’ discussion of the modernization language cited above.

Respectfully yours,

Stephen McAlpine
Chairman

701 W. 8th Avenue, Suite 300, Anchorage, Alaska 99501-3469
Telephone: (907) 276-6222    Fax: (907) 276-0160    TTY: (907) 276-4533
Website: http://rca.alaska.gov
"An Act relating to the Regulatory Commission of Alaska; relating to the public utility regulatory cost charge; and relating to telecommunications regulations, exemptions, charges, and rates."

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

* Section 1. AS 29.35.070(a) is amended to read:
(a) The assembly acting for the area outside all cities in the borough and the council acting for the area in a city may regulate, fix, establish, and change the rates and charges imposed for a utility service provided to the municipality or its inhabitants by a utility that is not subject to regulation under AS 42.05 unless that utility is exempted from regulation under AS 42.05.711(a), (d) - (k), (o), (p), (r) or (u) [; OR IS EXEMPTED UNDER REGULATIONS ADOPTED UNDER AS 42.05.810 FROM COMPLYING WITH ALL OR PART OF AS 42.05.141 - 42.05.712, 42.05.990, OR 42.05.995].

*Sec. 2. AS 42.05.141 is amended by adding new subsections to read:
(e) The commission may not designate a local exchange carrier or an interexchange carrier as the carrier of last resort.
(f) The commission may designate an eligible telecommunications carrier consistent with 47 U.S.C. 214(e).

* Sec. 3. AS 42.05.254(a) is amended to read:
A regulated public utility or a certificated utility that provides Telecommunications services operating in the state shall pay to the commission an annual regulatory cost charge in an amount not to exceed the maximum percentage of adjusted gross revenue that applies to the utility sector of which the utility is a part. The regulatory cost charges that the commission expects to collect from all regulated utilities and certificated utilities providing telecommunications services may not exceed the sum of the following percentages of the total adjusted gross revenue of all regulated public utilities, and certificated utilities providing telecommunications services derived from operations in the state: (1) not more than .7 percent to fund the operations of the commission, and (2) not more than .17 percent to fund operations of the public advocacy function under AS 42.04.070(c) and AS 44.23.020(e) within the Department of Law. An exempt utility that does not provide telecommunications services shall pay the actual cost of services provided to it by the commission.

Sec. 4. AS 42.05.254(h) is amended to read:

(h) The commission shall by regulation establish a method to determine annually the maximum percentage of adjusted gross revenue that will apply to each regulated public utility sector or the certificated telecommunications utility sector and the maximum percentage of gross revenue that will apply to the regulated pipeline carrier sector. Other than the cost of services provided to exempt utilities that do not provide telecommunications services, the method established shall allocate the commission's costs, and the Department of Law's certified costs of its public advocacy Function under AS 42.04.070(c) and AS 44.23.020(e), among the regulated public utility sectors, the certificated telecommunications utility sector, and the regulated pipeline carrier sector based on the relative amount of the commission’s annual costs and the Department of Law’s certified costs that is attributable to regulating each sector. For purposes of this subsection, the Department of Law shall annually certify to the commission the costs of its public advocacy function under AS 42.04.070(c) and AS 44.23.020(e).

Sec. 5. AS 42.05.254(i)(2) is amended to read:

(2) "exempt utility means a public utility that does not provide telecommunications services and is certificated by the commission under
Sec. 6 AS 42.05.381 is amended by adding a new subsection to read:

(l) The rates and terms and conditions of service of an incumbent local exchange carrier for basic residential local telephone service shall be uniform within its study area, as defined by the Federal Communications Commission. The rates and terms and conditions of service of a competitive local exchange carrier for basic residential local telephone service shall be uniform throughout its service area. The retail rates of an interexchange carrier for message telephone service for residential customers shall be geographically averaged. If rates vary by distance over which calls are placed, the rate for each mileage band must be equal to or greater than the rate for the next shorter mileage band. The Commission shall enforce the requirements of this section upon complaint. The Commission may not require telecommunications carriers to make any tariff filings.

* Sec. 7. AS 42.05.711 is amended by adding a new subsection to read:

(u) A utility that provides telecommunications services is exempt from the provisions of this chapter, other than AS 42.05.141(e)-(f), 42.05.221 - 2.05.281 42.05.296, 42.05.306, AS 42.05.381(l), 42.05.631, 42.05.641, and 42.05.830 - 42.05.860.

Notwithstanding the foregoing, the commission retains the authority to regulate the rates and terms and conditions of telecommunication services provided to inmates in the custody of the department of corrections.

* Sec. 8. AS 42.05.820 is amended to read:

Sec. 42.05.820. No municipal regulation. A long distance telephone company or a local exchange carrier that is exempted in whole or in part from complying with all or a portion of this chapter may not be regulated by a municipality under AS 29.35.060 and 29.35.070.

* Sec. 9. AS 42.06.286(e) is amended to read:

(e) The commission shall by regulation establish a method to determine annually the maximum percentage of gross revenue that will apply to each regulated public utility sector and the telecommunications utility sector and the maximum percentage of gross revenue that will apply to the regulated pipeline carrier sector in accordance with AS 42.05.254(h).

* Sec. 10. AS 42.05.325 and 42.05.810 are repealed.
To: Commissioners
Fr: Common Carrier Staff
Re: Legislative Budget Intent Language: Modernizing Telecommunications Statutes
Date: January 23, 2019

Overview:

The relevant legislative budget intent language regarding telecommunications modernization reads:

It is the intent of the legislature that the Regulatory Commission of Alaska recommend adoption of updated telecommunication modernization regulatory standards in AS 42.05, the Alaska Public Utilities Regulatory Act, and deliver recommendations on how best to modernize outdated statutes to the House and Senate Finance Committees and to the Legislative Finance Division by February 19, 2019.

This memorandum provides Staff recommendations regarding the Commission’s potential response to this budget intent language, including Staff’s proposed response to potential telecommunication deregulation efforts that may be brought forward during the current or future legislative session.

Recommendation:

Staff believes the Commission’s current statutes provide allow the Commission to use existing rulemaking procedures to address many of Staff’s proposals to revamp the Alaska Universal Service Fund (AUSF) as well as the proposals to relieve certificated carriers from economic regulation and Carrier of Last Resort (COLR) designation, where merited. Additionally, Staff contends that retention of robust Commission jurisdiction over intrastate telecommunications service, including otherwise dormant ratemaking authority, remains in the public interest by providing valuable discipline to both monopoly and competitive markets and important information regarding critical network infrastructure located on state lands.

Further, while Staff believes that many of the proposals Staff advanced at the December 12, 2018, public meeting have merit, Staff acknowledges the Commission’s recent decision in R-18-001 to create a window of evaluation of the current AUSF until the summer of 2021 that would be undercut if the Commission voiced support for any proposal to the Legislature. Because the Commission’s telecommunications jurisdiction is intertwined with the AUSF and other funding sources, including the Commission’s obligation to certify the appropriate use of federal high cost support, Staff believes honoring that evaluation window requires the Commission to take a conservative stance on any substantive change to its jurisdiction over telecommunication, at least presently.
In order to preserve the status quo, Staff recommends the Commission decline to provide affirmative support to any statutory change that limits or expands the Commission’s current jurisdiction to regulate telecommunications service in Alaska, aside from the possible removal of cable television subscriber’s statutory opportunity to petition the Commission to assert economic regulation over certificated Cable Television (CATV) service provider currently afforded in AS 42.05.711(k).

Aside from the possible CATV matter, Staff recommends issuing a Commission-authored letter explaining the reasons for declining to advance substantive statutory changes for the Legislature’s consideration in light of the recent R-18-001 regulations adoption. However, should the Legislature adopt changes to the Commission’s jurisdiction in line with the proposal recently advanced by the Alaska Telecom Association (ATA), Staff recommends immediately opening a rulemaking to add back any of the removed statutory protections, including the obligation to set just and reasonable rates, as conditions for ongoing receipt of Alaska Universal Service Fund (AUSF) support.

Cable Television Subscribers Economic Regulation Petition – Possible Action:

The one area with the strongest basis for statutory change is, in Staff’s view, the right under AS 42.05.711(k) to petition the Commission to assert ratemaking authority over a certificated CATV provider. In 2015, the FCC issued the Cable Effective Competition Order, which prohibits economic regulation of a CATV provider unless the relevant franchising authority (here, the Commission) affirmatively demonstrates that the provider has no effective competition. While it is possible that the Commission could be presented with an AS 42.05.711(k) petition that provided the necessary facts to make a “no competition” rebutting the presumptions established by the FCC in its order, Staff believes this possibility is remote. Staff believes that eliminating the subscriber petition clause in AS 42.05.711(k) represents a reasonable statutory housekeeping measure given the inherent difficulty in overcoming the presumption of competition adopted in the FCC order.

On the other hand, to the extent the FCC does not absolutely foreclose economic regulation of a CATV provider, the Commission could reasonably conclude that a possible fact pattern, given Alaska’s unique topography and geography, sufficiently demonstrates that satellite or other video programming alternatives do not exist in a particular market. Thus, there is an increasingly remote chance that a subscriber petition could instigate a viable effort by the Commission, as franchising authority, to overcome the FCC’s presumption of effective competition and thereby establish economic regulatory authority of a CATV provider. This possibility may serve as a reasonable basis not to seek statutory changes to AS 42.05.711(k).

Staff Modernization Proposals Should Be Postponed:

At the December 12, 2018, public meeting, Staff provided a summary power point presentation providing several alternative statutory and regulatory proposals that would “modernize” the Commission’s telecommunications jurisdiction and authority to better reflect the increasing importance placed on

---

broadband Internet access service in Alaska. Specifically, these proposals addressed ways to advance broadband Internet access service, especially in rural Alaska, by leveraging state property rights and other subsidies for both funds and service concessions. The proposals would build back a statutory mandate for state Lifeline subsidies for low-income Alaskans for both voice and broadband service. The proposals also (1) revisited the current definition of "rural" Alaska, to the extent such a definition serves as a gateway to access to scarce state funds, to better ensure state-directed dollars are properly and efficiently targeted to areas with the highest need; (2) created rudimentary certification or registration programs for Internet Service Providers (ISPs) as quasi-public utilities that explicitly foreclose economic regulation of any ISP regardless of market position; and (3) created a state program to empower small cooperatives, towns and villages to construct, operate and interconnect their own broadband capable networks.

However meritorious Staff believes these proposals to be, Staff remains cognizant of the Commission's recent decision in R-18-001 that sets up a period of assessment for the AUSF that does not commence until summer of 2021. Staff believes the Commission intended to evaluate the efficacy of the interim reforms to the AUSF adopted in R-18-001, including a surcharge cap and delineation of areas considered sufficiently competitive to forgo certain AUSF supports. Therefore, Staff concludes that formal advocacy of any of their proposals would undermine the Commission's decision establishing a 2021 review period and withdraws any recommendation, explicit or inferred, to advance those proposals for legislative consideration at the current time unless the Commission decides to accelerate the AUSF review window called for in R-18-001.

Potential ATA Deregulation Legislation Undercuts Rationales for R-18-001 Regulations, Including Rate Parity:

By the same token, the proposal by ATA to curtail the Commission’s statutory jurisdiction over intrastate telecommunications services should not be formally endorsed by the Commission, at least presently. Staff believes the statutory changes proposed by ATA, if substantially similar to those advanced in SB205 during the 2018 legislative session, would similarly impinge on the Commission ability to fairly and accurately assess the efficacy of its recent AUSF reforms before and during the 2021 reassessment of the AUSF built into regulation at 3 AAC 53.300(d). In the order adopting the R-18-001 regulations, the Commission stated that the “adoption of an interim review of agency rules and the AUSF program will allow time to investigate market structure issues and determine what AUSF subsidy level (if any) is appropriate given existing regulatory oversight levels and market structure conditions.”

Staff notes in particular that ATA’s proposal to eliminate COLR protections and designations undercuts the decision to use the COLR concept as the basis for ongoing essential network support, which is pegged at 2016 historical COLR and carrier common line support levels with a few exceptions, and substantially tracks the R-08-003 presumptions and justifications for extending AUSF support to designated COLRs serving nascent competitive markets. Additionally, as will be discussed below, the ATA proposals would remove many of the precision tools, short of certification revocation review under AS 42.05.271, that Staff contends are necessary for appropriately regulating how intrastate telecommunications service is

---

provided in all markets regardless of the level of competition, thereby impairing or obviating the Commission ability to access “market structure issues” relevant to how AUSF support is dispersed.

Finally, ATA’s proposal would eliminate economic regulation of any telecommunication provider, including interexchange providers currently subjected to 3 AAC 52.372’s rate parity requirements, the positive results of which, Staff notes, were that one of the underlying bases cited by Commissioners in R-18-001 for preserving the basic structure of the AUSF. Ostensibly, the blanket ratemaking exemption would preclude the Commission from enforcing reasonable rate parity protections in 3 AAC 53.372, risking the primary gains from R-08-003’s access charge reforms. To the extent the Commission concurs that at least some of ATA’s modernization proposals are not conducive to an independent evaluation of the R-18-001 regulation revisions called for in 3 AAC 53.300(d), or would otherwise risk a stated objective of those reforms, Staff recommends the Commission demur from endorsing ATA’s proposal, at least during the intervening evaluation period.

Further, Staff believes there are public interest concerns regarding the proposed ATA legislation independent from the Commission’s interest in setting its own timeline for review of its recent R-18-001 regulation changes. Some of Staff’s objections are grounded in the fact that the relief sought by ATA can be more efficiently sought through a regulation petition without resort to substantial, permanent reduction to Commission jurisdiction via statutory change. For instance, ATA would eliminate economic regulation for all local and interexchange carriers regardless of whether those carriers are subject to municipal or cooperative ballot review or operate in a market deemed to be competitive pursuant to a finding by the Commission or the FCC.

ATA’s basis for this blanket elimination of ratemaking authority for all telecommunications providers in the state is the fact that intermodal voice competition is increasing throughout Alaska. Staff once again references 3 AAC 53.205, noting that the Commission’s existing regulations provide an opportunity for a carrier to petition and the Commission to find any market to be competitive on the basis of “competition by a competitor that is not certificated”, i.e., a wireless or VoIP provider. Similarly, all carriers are at least nominally (subject to certain Commission reviews, presumably for discrimination, cost-causer concerns) permitted to reduce rates for telecommunication services without cost support pursuant to 3 AAC 48.315. Given the flexibility already afforded in regulations to declare any telecommunications market to be competitive, and the opportunity for a carrier to unilaterally reduce rates to blunt intermodal competition that may be occurring, Staff believes the Commission should not endorse a statutory change permanently exempting all carriers from economic regulation without an individualized showing.

Staff continues to believe the blanket exemption sought by ATA is overbroad, and carries with it a risk of harm to customers in monopoly markets that may have no actual voice substitutes in addition to the damage it would do to the Commission’s IXC rate parity regulations. Staff routinely requests information from wireless eligible telecommunications carriers (ETCs) regarding their progress toward deploying wireless facilities according to commitments made at the time they applied for ETC designation. While the majority of carriers have fully deployed throughout their designated ETC study area, there are certain carriers that have explained their indefinite deployment deferrals on the lack of necessary high cost support. The fact remains that there are scores of communities in Alaska that simply do not enjoy competitive voice alternatives. In the absence of tangible competition from either traditional local
Staff's Alternative Regulations Fix for Economic Regulatory Relief:

If the Commission concludes economic regulatory relief is merited for some or all carriers, Staff believes the Commission can adequately address that relief through regulations under existing statutes. For instance, the Commission could relax ratemaking protections for any local exchange market where a substantial majority (75%) of potential consumers have access to wireless voice service of reasonable quality. Staff believes the new mapping resources mandated by the FCC should make this demonstration relatively easy and low cost, providing the carrier with flexibility to adjust prices to meet competitive pressure while protecting consumers by ensuring viable alternatives exist if price for local exchange services rise too high.

Staff notes that ATA has supported its blanket exemption by noting that the FCC’s reasonable comparability benchmark residential rate ceiling, which ATA noted in its recent presentation is currently set at $45.38/month. So it is true that protections from unwarranted rate increases exist for consumers subscribing to basic residential voice service provided the carrier in question is an ETC and wants to continue receiving federal USF. However, reference to any of the tariffs currently on file from local exchange carriers suggests that carriers offer myriad of business service offerings that in Staff’s view would not be subject to the FCC’s benchmark rate ceiling. Assuming the primary reason that ATA seeks the statutory relief from economic regulation is to avoid the high cost of proving out each rate element with a cost of service study, the Commission could also consider adopting via regulation a system similar to the simplified rate filing system set up for electric utilities in 3 AAC 48.700-.790. Specifically, the Commission could permit any local exchange company to raise rates for any service not subject to an applicable federal rate ceiling under a set of limiters similar to 3 AAC 48.770: no more than an 8% rate increase over a 12-month period, and no more than 20% rate increase over a three-year period. This would provide an appropriate balance between establishing a cost-effective way for carriers to raise rates to better accord with actual costs and consumer protections for services that may not be subjected to intermodal competition, such as private line service, which cannot be provided by a wireless carrier.

COLR Protections and Designation Remain Important:

Staff continues to see value in COLR designations and the protections they afford consumers. The Commission has eliminated COLR protection for areas where current market conditions support a finding that competition will persist. Where market share and facilities ownership is lopsided in favor of one carrier, COLR designation ensures that (1) the designated carrier knows that continued service is expected in the event that a market upset detrimentally affects the conditions necessary for competition; (2) the designated carrier conducts its current operations, including decisions regarding network facilities upgrade and maintenance with that understanding; and (3) the Commission will not serve as a political lightning rod when trying to decide which carrier must continue to provide service during an emergent situation that causes all carriers in the market to seek discontinuance.
Staff believes reforms to the IXC COLR regulations adopted in R-13-001 established an orderly process whereby a carrier could seek to either transfer COLR designation to another carrier, or seek to eliminate the protections based on a showing of changed market conditions. To the extent the LEC COLR designation rules could benefit from revision, Staff believes a similar set of rules could be adopted to provide carriers with additional clarity on which COLR duties and protections should continue and standards for when a carrier can reasonably be released from those obligations. Staff notes that R-18-001 still compensates LEC COLRs for their designations in substantial part by continuing frozen COLR support as a component of essential network support. Again, the ATA-advocated elimination of COLR designation and protections directly undercuts the justification in the ATA consensus plan largely adopted by the Commission in R-18-001 to continue to provide carriers serving marginal markets with network support to ensure continued adequate service availability. For this reason, the Commission should not endorse the ATA modernization proposal regarding COLR elimination during the interim review period.

**Other Statutory Exemptions for Telecommunications Carriers Proposed by ATA are Problematic.**

In addition to generally eliminating telecommunication ratemaking authority (AS 42.05.381 – Rates to be Just and Reasonable; AS 42.05.431 – Power of commission to fix rates), ATA’s deregulation proposal would also exempt otherwise regulated telecommunications carriers from several important statutory protections common to all public utilities – statutory protections that Staff contends should be preserved. Staff believes that ATA’s presentations fail to fully explain the possible implications of their proposed statutory revisions. The following is a list of exempted statutes of particular concern to Staff, along with the probable negative consequences of their implementation:

- **AS 42.05.291 – Standards of Service and Facilities.**

  Presumably the Commission could not directly order a carrier to improve or replace facilities used to provide intrastate telecommunications service, and would be forced to revoke a certificate if the carrier’s facilities degraded or were otherwise obsolete. For instance, if old equipment results in increased service outages, it appears the Commission’s sole resort would be to revoke a certificate; it could not directly order the carrier to replace the equipment as a reasonable interim measure. This seems inefficient and would likely have a chilling effect on Commission enforcement of quality service expectations imbedded in certificate authority.

- **AS 42.05.301 – Discrimination in Services.**

  Presumably the Commission could not require a carrier to provide intrastate telecommunications service to similarly situated customers regardless of fact pattern. The Commission likely could not require a carrier to adhere to any standard line extension policy, nor for other exemptions, require that policy to be contained in a tariff.

- **AS 42.05.311 and AS 42.05.321 – Joint Use and Interconnection of Facilities and associated disputes.**
ATA's statutory proposal includes exemption to both AS 42.05.311 and AS 42.05.321. However, because of a strange drafting anomaly, which apparently builds back in interconnection jurisdiction to any utility otherwise exempt under AS 42.05.711, it appears that carriers would still be obligated to interconnect pursuant to these statutes, and the Commission to force interconnection. The failure to explicitly build into ATA's statutory proposal under the proposed AS 42.05.711 section is a correctable error that would likely avoid unnecessary drafting ambiguity on the role of the Commission as an arbiter of interconnection disputes.

- **AS 42.05.365 – Interest on Deposits.**

  A carrier likely could require deposits as a condition of service and retain interest earned thereon. Currently all utilities must remit interest on deposits of more than $100.

- **AS 42.05.371 – Adherence to Tariffs.**

  This exemption has implications to the ability of the Commission's Consumer Protection section to provide services to customers in dispute with telecommunications carriers. Currently complaints are judged based on the content of the then-in-effect tariff provision in question. Staff has concerns that the Commission will have a more difficult, if not impossible, time arbitrating consumer/carrier disputes without the benefit of a standard tariff that can be reviewed publically.

  Further, as discussed, the lack of a tariff means that critical components of telecommunications service such as line extension policies necessary to prevent discrimination in service would not be publically accessible or enforceable.

- **AS 42.05.391 – Discrimination in Rates.**

  This would mean a carrier could charge similarly situated customers disparate rates for intrastate service and the Commission could not police that conduct or handle a consumer allegation to that effect. For carriers that are cooperatives or that are municipally-owned, customers can take action on discrimination through resort to the ballot box. Private, for-profit carriers would be relatively unfettered to charge rates variably across customer classes without consumer protections from Commission oversight.

  Staff notes wryly that ATA’s contention that federal anti-discrimination consumer protections would persist even if the Commission’s jurisdiction on this issue were voided by statute is severely undercut by the ongoing partial federal government shutdown which has shuttered the FCC indefinitely. Staff contends there is nothing wrong with maintaining dual state and federal consumer protections, and that in light of recent events, is the only reasonable, conservative, and responsible approach to regulating an industry that the 1996 Telecommunications Act specifically accords dual jurisdiction on interstate/intrastate lines.
• AS 42.05.451 through AS 42.05.501 – Statutes related to how utility records, accounts, and reports for both the utility and any subsidiary must be kept and the Commission’s authority to inspect same.

Staff questions how the Commission can assess carrier fitness in a certificate show-cause setting without the right to access and inspect all pertinent utility records. This is another example of the hollow nature of the residual certificate authority that ATA’s statutory reform proposal would have the Commission retain.

• AS 42.05.511 – Unreasonable management practices.

The Commission could no longer (short of certificate revocation) order a carrier to take interim corrective action to correct an unreasonable management practice, including “payment arrangements with affiliated interests”. Yet another example of the hollow nature of the residual certificate authority that ATA’s statutory reform proposal would have the Commission retain.

• AS 42.05.551 – Review and enforcement (of Commission orders) – right to seek an injunction to enforce final Commission order.

Staff will leave it to better legal minds on the practical effect on the Commission’s jurisdiction from this proposed exemption. Presumably there are other sources of law that may allow the Commission to enforce an adjudicatory order against a telecommunications carrier. If those sources exist, this proposed exemption injects unnecessary ambiguity. If those sources do not exist, then final orders of the Commission would be unenforceable.

• AS 42.05.561 – Injunctions and monetary sanctions – right to seek injunction and civil penalties for violations of AS 42.05.291 (Standards of service and facilities) provisions and related regulations.

Staff believes these tools for policing public utility facilities for safety, reliability, and sufficiency are key to ensuring quality of intrastate telecommunications service, and would leave in its place only a direct action on a carrier’s certificate, which has obvious detrimental impacts on customers interested in continuing to receive quality service when the carrier providing it can no longer do so for lack of a certificate. In short, Staff finds the certification review procedure to be a last resort, worst case option for policing carriers, and remains concerned that it is both draconian and politically unwieldy tool to use for any substantive defect in service provision that does not give rise to crisis.

• AS 42.05.571 – Civil penalties – (right to seek civil penalties for any other non-.291 violation).

3 AS 42.05.511(a).
This is yet another example of how limited and ineffectual the Commission’s continued jurisdiction over intrastate telecommunications services would be if the ATA proposal were made law. The Commission’s sole enforcement tool would remain the unwieldy and politically unsavory certificate revocation proceeding that invariably would harm consumers if ever enforced.

- **AS 42.05.651 – Expenses of investigation or hearing.**

  Can the Commission continue to assess costs to parties involved in matter involving telecommunications? This question remains despite the fact that ATA’s RCC proposal that requires all carriers to pay RCCs regardless of exempt status impliedly acknowledges that the Commission will continue to provide limited regulatory oversight with associated costs. If a particular matter bears on a particular party more than the industry as a whole, or if a telecommunications dispute is found to be caused by one carrier’s conduct, presumably the Commission would not be able to assess costs according to benefit or responsibility. This presents an equity issue.

- **AS 42.05.661 – Application fees.**

  Commission presumably would be prohibited from assessing registration fees to registered IXCs or establishing any other application fees regarding telecommunications going forward.

- **AS 42.05.671 – Public records.**

  This exemption would ostensibly end the presumption that anything filed with the Commission by a telecommunications provider is a public records and would possibly result in any filing being automatically deemed confidential without any procedure by an interested party to gain access.

- **AS 42.05.820 – No municipal regulation.**

  IXCs already were exempted from municipal regulation, but the ATA proposal would explicitly add local exchange carriers to the mix. Staff notes many disputes in other states have been cropping up between carriers and local municipalities that seek to impose and enforce regulations over siting, pole attachment, and right-of-way issues regarding network facilities build-out. Staff believes this addition may be used to quash any such disputes initiated by local or municipal regulations.

**Conclusion:**

Staff notes that ATA has routinely touted the deregulation efforts other states have made. What has not been clear is whether those states have taken the approach of completely deregulating even the least competitive markets within their respective jurisdictions. ATA has not indicated that other states have so limited the enforcement tools available to their utility commissions for whatever jurisdiction those
commissions retain to render that jurisdiction de facto unenforceable. Given the list of risks and concerns highlighted above, Staff cannot recommend Commission endorsement of the ATA modernization proposal.

Instead, Staff recommends the Commission draft a letter detailing its objectives for adopting the regulations in R-18-001, stating that the structure of those regulations imbed an active investigation period that would be frustrated by endorsing legislation that either enlarged or reduced the Commission’s jurisdiction, and noting that many of the objectives ATA may have for advancing their own statutory proposal can be largely achieved under current statute through a formal rulemaking proceeding. Any of Staff’s proposals on modernization can be taken up, if at all, as part of the comprehensive review of the AUSF. The Commission should consider whether to advance a CATV deregulation proposal in line with this memorandum.

Finally, should the Legislature adopt changes to the Commission’s jurisdiction in line with the ATA deregulation proposal, Staff recommends immediately opening a rulemaking to add back any of the removed statutory protections, including the obligation to set just and reasonable rates, as conditions for ongoing receipt of AUSF support.
January 31, 2019

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, AK 99501

Dear Commissioners:

As requested by the Commission, the Alaska Telecom Association [ATA] submits these comments addressing the Memorandum submitted to the Commission by Common Carrier Staff ("Staff") regarding "Legislative Budget Intent Language: Modernizing Telecommunications Statutes" dated January 23, 2019 ("Staff Memorandum"). While ATA respects the input of Staff and has no doubt that Staff’s recommendations are well intentioned, ATA respectfully and adamantly disagrees with the recommendations and point of view presented in the Staff Memorandum. The ATA respectfully requests that the Commission instead support the Telecommunications Modernization Legislation as it has been proposed by the ATA ("ATA Legislation").

As ATA stated at the Public Meeting held on January 23, 2019, the disagreement with Staff is largely simply a matter of philosophy. The very job of Common Carrier Staff is to regulate, and not surprisingly the focus of Staff’s recommendations is preservation of regulation. But it is also true that in its zeal to maintain almost 30-year old statutes, Staff is blind to many realities of today’s telecommunications markets while, at the same time, seeing many ghosts lurking in the

---

1 ATA also responds briefly to Staff’s presentation of December 12, 2018.
ATA Comments

distance. Its positions are inconsistent and contradictory, fail to understand current law and basic principles of statutory construction, and in several respects go beyond the proper role of Staff.  

Staff also fails to mention the ample authority the Commission will retain with the ATA Legislation and the benefits to the Commission and Alaskans. For example, the statute which provides the Commission its basis for assessing and managing a state universal service fund, AS 42.05.840, is not changing. Further, the assessment base for the regulatory cost charge would actually expand to include telephone cooperatives. The Commission will also retain authority over large aspects of the telecommunications industry, including ETC designations, the issuance and transfer of certificates of public convenience and necessity, discontinuance of telecommunications service to a location, telecommunications relay service for deaf, hard of hearing and speech impaired subscribers, prison-calling, state Lifeline, disputes regarding interconnection agreements, joint use facilities, access charges and restrictions on resale prohibitions to name a few.

In support of its opposition to the legislation proposed by ATA, Staff has mustered a very long litany of every imaginable argument against the proposal.  

---

2 The overzealous nature of Staff's approach is exemplified by its suggestion that the Commission end run any statutory reform passed by the Legislature. Staff states that “should the Legislature adopt changes in the Commission's jurisdiction in line with the proposal advanced by the Alaska Telephone Association (ATA), Staff recommends immediately opening a rulemaking docket to add back any of the removed statutory protections, including the obligation to set just and reasonable rates, as conditions for ongoing receipt of Alaska Universal Service Fund (AUSF) support.” Staff ignores the fact that if the Legislature adopts the reforms advocated by the ATA, it will do so in light of the status quo as a whole, including the current provisions regarding the AUSF. Nonetheless, Staff suggests that the Commission overrule the Legislature by re-imposing requirements on any recipient of AUSF. Staff's suggestion to substitute its judgement for that of the Legislature is astounding.

3 Even the partial federal government shutdown is, to Staff, a reason to reject the ATA Legislation. Staff Memorandum, p. 7.
ATA Comments

respond to every single argument raised by Staff within the time available and without what would amount to a very lengthy legal brief. ATA will attempt to respond to what seem to be Staff’s major concerns and will address some of the fundamental mistakes underlying Staff’s positions.4

The Alaska Universal Service Fund (AUSF) Statute Will Remain Unchanged

One recurring argument in Staff’s Memorandum is that in Docket R-18-001 the Commission created a “window of evaluation of the current AUSF until the summer of 2021” and that adoption of any reforms would be inconsistent with and would undercut the scheduled review.5 However, Staff fails to mention that the statute authorizing a state universal service fund is not being touched. Further, there is no way in which the ATA Legislation would hinder or undercut the planned review of AUSF. This is amply demonstrated by the fact that a very significant portion of AUSF funding already goes to municipal and cooperative telecommunication carriers that are currently exempt from economic regulation. If an

4 It is ATA’s understanding that Staff itself withdrew the recommendations made on December 12, 2018: “Staff concludes that formal advocacy of any of their [December 12] proposals would undermine the Commission’s decision establishing a 2021 review period and withdraws any recommendation, explicit or implied, to advance those proposals for legislative consideration at the current time unless the Commission decides to accelerate the AUSF review window called for in R-18-001.” Staff Memorandum, p. 3. To the extent that any response to the December 12, 2018 presentation is necessary, ATA points out that much of Staff’s discussion on December 12th centered on how the Commission could regulate broadband internet access service (“BIAS”). The FCC has expressly preempted state regulation of BIAS, so the Commission does not need to investigate these recommendations further. The ATA Legislation will not impede the Commission’s ability to review the AUSF program or for the State to investigate additional sources of funding for additional deployment of BIAS. Staff’s discussion also addressed the Lifeline program, re-litigating a decision already made by the Commission.

5 Staff Memorandum, p. 2. Staff further states that the ATA Legislation, “would similarly impinge on the Commission’s ability to fairly and accurately assess the efficacy of its recent AUSF reforms....” Staff Memorandum, p. 3.
exemption from economic regulation, as proposed in the ATA Legislation, were a hindrance to a review of the AUSF program, then that review is already completely doomed by the existing exemptions for cooperatives. ATA simply does not believe that there is a link between its reform proposals and the AUSF.

Many of Staff’s recommendations are also based on another fundamental misunderstanding of the regulations adopted in R-18-001. Staff contends that continued regulation, including COLR designation, is justified because LECs still receive COLR support, now in the form of Essential Network Support. That contention is incorrect. LEC COLR support no longer exists. LEC COLR support was terminated in Docket R-18-001, and Essential Network Support is not LEC COLR support in disguise. Yes, the prior amount of LEC COLR support was part of a mathematical computation that produced an initial amount of Essential Network Support, but the link was severed going forward. Unlike the previous LEC COLR support, the amount of support that LECs now receive is no longer subject to ongoing increases based on lost revenues. Furthermore, because of the 10% cap now placed on the fund and the exclusion of amounts previously paid to non-remote areas, LECs will receive far less support than the amounts they previously received before the elimination of COLR support. It is simply wrong to justify continued regulation, and continued COLR provisions, based on the premise that COLR support exists. It does not.

ATA’s Legislation Addresses Staff’s Concerns Regarding Economic Regulation:

---

6 “Staff notes that R-18-001 still compensates LEC COLRs for their designations in substantial part by continuing frozen COLR support as a component of essential network support.” Staff Memorandum, p. 6.

7 There has never been support for IXC COLRs.
ATA Comments

Staff also argues generally against the ATA Legislation based on the fact that the Commission could adopt reforms by regulation.\(^8\) Yes, the Commission could do so, but the more important point is that it has not. It would take, at a minimum, 2 years to address such reforms through a rulemaking process, and Staff would likely oppose much meaningful reform.\(^9\) Staff also seems to suggest that burdensome and costly individual adjudicatory proceedings may be required to obtain such relief.\(^10\) The matter should be addressed by the Legislature.

Staff’s greatest specific concern with the ATA Legislation seems to be in regard to elimination of ratemaking authority, particularly in areas that do not have competition. ATA believes that the proposal it submitted at the January 23, 2019, Public Meeting, which was not available to Staff when it prepared its Memorandum, should allay those concerns. As explained at the Public Meeting, if it would satisfy the Commission’s concerns, ATA is willing to include in the proposed legislation specific language that would guarantee that the benefits of competition will be extended even to areas without competition based on a requirement for geographic

---

\(^8\) “Some of Staff’s objections are grounded in the fact that the relief sought by ATA can be more efficiently sought through a regulation petition...” Staff Memorandum, p. 4. Also, “If the Commission concludes that economic regulatory relief is merited for some or all carriers, Staff believes the Commission can adequately address that relief through regulation under existing statutes.” Staff Memorandum, p. 5

\(^9\) Docket R-14-001 addressed tariff filings in competitive markets and stopped far short of tariff elimination. In that case the ATA working group presented a proposal that would have reduced the burden on carriers with “hybrid” study areas, portions of which were competitive and portions of which were not competitive. Staff opposed the proposal to use the simplified filing procedures for the noncompetitive areas even when the tariff changes were the same for noncompetitive areas as the competitive areas. R-14-001 Proposed Regulations Matrix, p. 8 (May 11, 2016). That was less than 3 years ago. As a result, carriers serving such “hybrid” study areas must follow two different sets of filing requirements and maintain separate tariffs for the competitive and noncompetitive area.

\(^10\) “For instance, the Commission could relax ratemaking protections for any local exchange market where a substantial majority (75%) of potential consumers have access to wireless voice service of reasonable quality.” Staff Memorandum, p. 5.
averaging or "postage stamp" rates. This concept was originally developed when long distance competition began, when the Commission required geographic rate averaging. Geographic rate averaging means that a long distance call of a given distance must be charged the same rate, regardless of whether the call is between two urban locations or between two rural locations. This requirement proved to be very successful in ensuring that rural residents in areas without long distance competition received the benefit—in the form of lower rates—from competition in urban areas. ATA’s suggested addition to the ATA Legislation discussed at the January 23, 2019 Public Meeting uses the language now included in regulation to preserve the requirement in statute. See 3 AAC §2.370(a).

ATA’s proposal also takes that concept and extends it to local exchange service. Each incumbent local exchange carrier would be required to charge the same rate, under the same terms and conditions, for basic residential service throughout its study area. Thus, for example, Interior Telephone Company would have to charge the same rate in several rural locations where there is no wireline competition as it charges in Seward, where it faces wireline and wireless competition. Terms and conditions of service would also have to be the same. Similarly, a CLEC like GCI would be required to charge the same rate statewide, extending the same rate it charges in Anchorage to many rural locations such as Barrow or Nuiqsut. Because GCI competes with most of the ILECs in at least some portion of their service area, when you combine the ILEC and CLEC requirements, the result is that the benefits of competitive pressure in areas such as Anchorage, Fairbanks and Juneau will benefit the rural areas.

\[1\] In practice, interexchange carriers have almost entirely eliminated rates based on mileage bands, so the requirement simply means that the same flat rate is applied everywhere in the state, regardless of where the call originates and terminates.
ATA Comments

Service in Rural Areas will Remain Protected:

Another issue of concern to Staff is the possibility of service discontinuance in rural areas. In discussing that concern, Staff perpetuates the fundamental misunderstanding that, under the statutes and regulation governing certification, the Commission’s only remedy against threatened or actual service discontinuation by a carrier is revocation of the carrier’s certificate. That is not accurate. The Commission has and will continue to have the authority to require the utility to continue providing telecommunications service to the location. That authority derives from AS 42.05.261. That remedy would extend to situations where facilities are so obsolete that service is impaired.

Staff Misunderstands the Impacts of the Proposed Legislation:

In its point by point discussion of the impact that the ATA Legislation could have on specific statutory provisions, in several instances Staff misunderstands the operation of the statute and raises concerns that are extremely unlikely or remote. For example, just as it did last year, Staff raises the concern of whether the Commission will maintain jurisdiction over joint use and interconnection disputes. In fact, it is clear that the relevant statutes, AS 42.05.311-.321, would still apply. In fact, AS 42.05.321, which provides for Commission jurisdiction over interconnection disputes, specifically says that “This section and AS 42.05.311 apply to all utilities whether or not they are exempt from other regulation under AS 42.05.711.” Furthermore, the

---

12 The Commission also has power to address issues regarding the provision of service through Eligible Telecommunication Carrier annual certification, which will not be changed by the ATA Legislation. In addition, FCC requirements and oversight will remain so that existing customers in rural areas will continue to have telecommunications service.
ATA Comments

Commission has specifically recognized its jurisdiction over such disputes between otherwise exempt carriers, writing that the Commission has broad powers to regulate joint use and interconnection for "all utilities, whether or not they are exempt from other regulation under AS 42.05.711." Despite Staff's reference to a "correctible error", there is nothing defective or wrong about the manner in which the current statute subjects utilities to the joint use and interconnection statute even if otherwise exempt under AS 42.05.711. The "strange drafting anomaly" referenced by Staff is nothing more than a different way to accomplish the same result. The current statutory construct has not caused any problems in the past 30 years and will not cause any problem now. The current provisions are clear.

Somewhat similarly, Staff argues that statutes regarding such matters as Public Records (AS 42.05.621), appeal procedures and enforcement of orders (AS 42.05.551), injunctions and sanctions (AS 42.05.561), may not apply if the ATA Legislation is adopted. Staff ignores the fact that many cooperatives that are already exempt under AS 42.05.711(h) have been submitting documents to the Commission for years, subject to the statutory provision for public records and for, in appropriate instances, designating such documents as confidential. There has never been any dispute as to the applicability of the public records statute and related regulations to documents submitted by cooperatives that are otherwise exempt, and there is no reason there

---

13 Re: Uniform Pole Rental Agreement Pricing Formulas, Order U-76-81(6), October 3, 1985, p. 1
14 Contrary to Staff's suggestion, any "correctable error" regarding joint use and interconnection exists in the current statute, not in ATA's proposal. Correcting what Staff calls the "error" would require amendments to AS 42.05.321(b) and to the existing exemptions in AS 42.05.711 for electric and telephone cooperatives, for municipal utilities, for utilities smaller than a given size, and other subsections. The subsection in AS 42.05.711 for each of those exemptions would have to be amended to state that the exemption did not cover joint use and interconnection. All of these changes are simply unnecessary.
ATA Comments

will be any dispute if the ATA Legislation is adopted. Similarly, deregulated cooperatives have
followed the appellate procedures set out in statute, just as MTA did when it appealed the
Commission’s decision regarding its COLR status. The simple fact is that although the existing
statute is not drafted perfectly, there are many sections of the statute that continue to apply to
“deregulated” utilities when, and to the extent, such utilities are involved in a proceeding at the
Commission on a matter, such as certification or joint use and interconnection, from which they
are not exempt. The same will be true of other telecommunication carriers if they receive a
partial exemption under the proposed legislation.

Staff also argues that in a certificate show-cause setting it will not be able to obtain
necessary utility records.\textsuperscript{15} That is incorrect. In the context of any specific proceeding that falls
within the Commission’s jurisdiction, such as a certificate proceeding, the Commission will still
be able to require the production of all necessary information. Staff itself admits in its
Memorandum that it routinely requires wireless carriers—which are generally exempt from all
regulation by the Commission—to submit information regarding deployment of facilities.\textsuperscript{16} If it
can require such information from non-certificated, non-regulated carriers, it can certainly
require necessary information from carriers still subject to certification.

The remaining statutory issues discussed by Staff are generally of little consequence.
True, the Commission will not be able to directly assess carriers for the cost of a proceeding—
something that, to the best of ATA’s knowledge, the Commission has not done to any party in

\textsuperscript{15} Staff Memorandum, p. 8.
\textsuperscript{16} Staff Memorandum, p. 4.
ATA Comments

the last 20 years. Nor will the Commission be able to conduct a general management audit—again, something that, as far as ATA knows, the Commission has not done in 20 years. These issues simply do not justify the enormous cost of regulation that is now imposed on telecommunication carriers.

Conclusion

In summary, ATA urges the Commission to take an independent look at the “big picture.”

The current statutory framework includes many outdated provisions which cause enormous cost while producing very little benefit. ATA is proposing statutory reforms that address those aspects of the existing statutes that need to change, while keeping much of the Commission’s authority intact and even adding new requirements to protect consumers.

Respectfully submitted,

By: /s/ Christine O’Connor
Christine O’Connor
Executive Director
201 E 56th Ave., Ste. 114
Anchorage, Alaska 99518
Phone: (907) 563-4000
Fax: (907) 563-4000
Email: oconnor@alaskatel.org

---

17 The ATA Legislation, however, expands the regulatory cost charge to all carriers, including cooperatives.

18 The Commission will, of course, still be able to correct management issues in the context of a proceeding that remains in the Commission’s jurisdiction, for example a failure to provide certificated service.
Dear Commissioners,

As requested at the January 23, 2019 Public Meeting, attached is ATA's response to staff's recommendations regarding modernization of telecommunications statutes.

Sincerely,
Christine O'Connor
907-570-6944 mobile

--
Christine O'Connor
Executive Director
Alaska Telecom Association
(907) 563-4000
January 31, 2019

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, AK 99501

RE: Comments of Alaska Communications in Response to RCA Staff's
January 23, 2019 Memorandum

Introduction

Alaska Communications\(^1\) submits these comments in response to the invitation of
the Regulatory Commission of Alaska ("RCA" or "Commission") made on the record at the
January 23, 2019 Public Meeting. At that meeting, the Commission was briefed by its Common
Carrier Section Staff ("Staff") regarding the upcoming response to legislative intent language.
This intent language instructs the RCA to submit recommendations for telecommunications
modernization standards to be included in AS 42.05 — the RCA's enabling statute. In support of
that briefing, Staff prepared and submitted a 10-page memorandum which is the primary focus of
these comments.

Since there will likely only be one opportunity to comment, Alaska
Communications will take this opportunity to respond to both the Staff's January 23, 2019
memorandum, as well as the anticipated comments of the Alaska Telecom Association ("ATA").\(^2\)

---

\(^1\) For purposes of this filing, Alaska Communications includes, ACS of Alaska, LLC, ACS of
Anchorage, LLC, ACS of Fairbanks, LLC, ACS of the Northland, LLC, and ACS Long Distance, LLC.

\(^2\) As a member of the ATA, Alaska Communications had the opportunity to review the ATA
comments prior to filing.
Summary of Alaska Communications’ Position

Alaska Communications objects to Staff’s efforts to prolong decades old regulatory policies focused on an outdated and quickly disappearing technology – wireline voice telephony. As recognized by the RCA’s counsel in a recent hearing, wireless service is an increasingly effective substitute and competitive alternative for regulated voice service. Further, regulated voice service competes with (and is being replaced by) email, text messaging, voice over the internet, and other new technologies. The Staff’s memorandum fails to provide any showing that the public interest is at risk or will be harmed by the modernization of AS 42.05 as proposed.

Alaska Communications has long advocated relaxed state regulation of legacy wireline telecommunications services that would include detariffing and, ultimately, transition to full deregulation. Although several initiatives have been advanced – both at the Legislature and before the Commission itself – virtually none have been successful. In spite of the fact that the telecommunications industry, markets, technology and federal policy have been completely reinvented, the RCA continues to be governed by substantive statutory provisions that have been on the books since the 1970’s, when telecommunications services consisted only of voice service provided only by monopoly providers. These statutes are now almost fifty years old and are illogically being applied in a highly competitive environment. While some limited procedural changes have occurred, most constitute “forbearance” on the part of the Commission and can be easily re-introduced whenever the RCA chooses to do so.

ACS of Alaska, LLC v. Regulatory Commission of Alaska, Case No. 3AN-17-07893C, Alaska Superior Court, 3rd Judicial District at Anchorage, Oral Argument held January 25, 2019, Tr Excerpt p. 9-10 (pages attached to this filing).

In the interest of a balanced presentation, Alaska Communications notes two changes that have occurred. The Legislature did agree to a statutory change that eliminated the requirement to distribute telephone directories. Also, prior to that, in 2005 the RCA approved relaxed filing regulations for tariffs in competitive markets (Docket R-03-003). Although the procedural process was improved, substantive law remained unchanged and the requirements for filing tariffs and special contracts remain on the books.
As the ATA aptly points out, “The very job of the Common Carrier Staff is to regulate, and not surprisingly the focus of Staff’s recommendations is preservation of regulation”.\footnote{ATA Comments at p.1.} Put another way, regulators regulate. That has been the case since the Commission came into existence. It is the case now. If Staff’s suggested response to the Legislature is adopted, that mindset will continue indefinitely into the future.

Alaska Communications appreciates the box the RCA finds itself in. It is counterintuitive to expect a regulatory body with a mission to regulate, to voluntarily cede jurisdiction. That is the obvious reason why almost all deregulatory efforts to date have failed. Reading Staff’s memo, Alaska Communications’ belief is reinforced and prompts the conclusion that it is unlikely that the RCA will ever embark on a truly deregulatory course of action in the absence of a legislative mandate. It is equally doubtful that the RCA will be willing to make meaningful modernization recommendations in response to the Legislature’s directive. While the Commission is urged to endorse the ATA proposal, failing that, Alaska Communications recommends that the Commission simply offer the Legislature an honest appraisal of its regulatory philosophy and decline to make any specific recommendations for statutory reform or the timeline for consideration of modernization proposals.

ATA Proposal

Alaska Communications endorses the modernization proposal that has been put forth by the ATA as an incomplete step towards deregulation. While maintaining its support, Alaska Communications points out that the ATA recommendations constitute yet another instance of “incremental” improvement to regulatory standards going forward. The ATA plan eliminates the duplicative designation of Carriers of Last Resort (“COLR”) and extends to all providers the
time-tested and proven regulatory approach that has applied historically to telecommunications utilities owned by municipalities and cooperatives exempt from almost all forms of regulation except certification. This latter element along with express language in the ATA proposal implements a long overdue procedural reform by relieving privately-owned telecommunications utilities of the costly and unnecessary practice of tariff filings and maintenance, just as has been done historically for municipal and cooperatively owned providers.\textsuperscript{6}

Even with its beneficial outcome, the ATA modernization proposal is only a step toward deregulation. Alaska Communications loses regulated voice service customers to unregulated competitors every day – wireless voice service, wireless text service, wireless voice over the internet (e.g. Facetime and Skype), internet service providers, email providers, social media providers, etc. Alaska Communications, therefore, believes that it is time for the Legislature to consider a long-term response to the revolution that has taken place and continues to move forward in the telecommunications industry. Like many other states – Florida, Missouri and Tennessee being prime examples\textsuperscript{7} – it is time for Alaska get on the deregulation train and catch up.\textsuperscript{8} Otherwise, we are likely to continue to see these contests play out well into the future as

\textsuperscript{6} To the extent that the Commission is still unpersuaded about the burdens of tariffing, Alaska Communications offers the following for context. Currently, Alaska Communications maintains approximately 2,500 RCA approved tariff pages in both hardcopy and electronic formats. Given existing regulations, if a word is changed – if a comma is added to any of these pages, a tariff filing is required. Tariff filings run the gamut from housekeeping to highly substantive. Cost and resource requirements correspond to the degree of complexity. In any event, each tariff change must meet stringent filing and formatting guidelines. Tariffs that do not cross every “t” and dot every “i” can be and are subject to being rejected often forcing the filing entity to basically start over. Since tariffs are virtually never looked at by customers, their purpose – beyond technical regulatory compliance – is unknown.

\textsuperscript{7} The three states mentioned here have substantially deregulated telecommunications – all companies; all services – including the processing of consumer complaints and the prospective issuance of CPC&Ns. In most cases, these states continue to cooperate with the FCC where joint administration of federal programs and policies have been delegated. The RCA is invited to review the following statutory citations for further detail: 2012 Florida Statutes Ch. 364 – Telecommunications; Revised Statutes of Missouri, RSMo Chapter 392, Tennessee Code Annotated, Section 65-5.

\textsuperscript{8} For a more complete update on deregulation initiatives throughout the country, the RCA is invited to examine the most recent entry in the series of reports issued by the National Regulatory Research Institute. Please see: \textit{Telecommunications Oversight 2017: A State Perspective}, National Regulatory Research Institute, Sherry Lichtenberg, Ph.D., Principal for Telecommunications, Report No 18-03, March 16, 2018.
companies pursue strategies to mitigate the adverse effects of government oversight and regulators continue to do what they do best – regulate.

ATA Comments

Alaska Communications had the opportunity to review the ATA comments in response to the Staff’s January 23, 2019 memorandum and generally supports them. In particular, Alaska Communications agrees with the sectional analysis of Staff’s memo included in the ATA comments. The ATA does a careful job of explaining why the Staff’s attempt at linking modernization efforts with the recent outcome of docket R-18-001 lacks merit.

As it considered the ATA modernization proposal and the implication of eliminating COLR designations, the RCA has suggested that its authority under its certification statute⁹ is “binary”. That is, if the RCA suspects some objectionable provider behavior, the only choices it will have is to do nothing or cancel the provider’s certificate – an extreme remedy in the eyes of the Commission and Staff. The Staff’s position here is inconsistent. Previously Staff has actually relied on other statutory provisions, including the Commission’s certificate authority, to argue that even where the COLR regulations do not apply, the Commission will still have the ability to enforce performance.¹⁰ Yet now, Staff argues that the Commission’s only option under the certificate statute to enforce lawful conduct is to pull the certificate. Staff cannot have it both ways. While Alaska Communications remains concerned about the imposition of “COLR-type” duties, it seems unlikely that the RCA’s certificate authority is limited to only two choices. Based on commissioner comments, abandonment of service seems to be the major concern. This is not

---

⁹ AS 42.05.221 - .281.
¹⁰ See for example, LO# L1500402 rejecting ACS of Anchorage, LLC, ("ACS-ANC") TA545-120 to modify its line extension policy. In this Letter Order, the RCA cites duties to serve as an Eligible Telecommunications Carrier as well as obligations to serve throughout a certificated service area as reasons for rejecting the tariff filing, even though ACS-ANC is not a COLR and not subject to the RCA’s COLR regulations.
an issue that need concern the RCA as service cannot be abandoned under federal law absent FCC approval. Further, under the ATA proposal, certificated entities must still bring their plans to modify or relinquish their certificate the Commission for approval and may not exit service areas until that approval is secured. The RCA should also be comforted by the existence of competitive alternatives and technologies even if it is called upon to consider a proposed market exit request.

Finally, Alaska Communications joins ATA in expressing shock at the Staff’s suggestion that if the Legislature adopts the ATA proposal or some other modernization framework that impacts the RCA’s jurisdiction, the Commission should immediately open a rulemaking with the intent of reinstating the rules that the Legislature just rescinded. Alaska Communications suspects that the Legislature would be surprised to learn that the RCA has the authority to nullify legislative action simply by promulgating new regulations. The RCA should clearly and emphatically reject any such recommendation both now and in the future.

Staff’s “Modernization” Memorandum

As pointed out above, Alaska Communications agrees with much of the sectional analysis offered by the ATA. Alaska Communications observes that Staff’s memo not only proposes kicking the can down the road again, but the substance of the Staff’s memo leads to

---

11 Pursuant to Section 214(a) of the federal Communications Act of 1934, as amended, and the rules of the FCC, no carrier providing any interstate telecommunications service (including interstate local access service) may discontinue, reduce or impair service to any community or part of any community without first obtaining permission from the Federal Communications Commission. 47 U.S.C. §214(a). “Interstate telecommunications services” subject to this requirement include the interstate exchange access services provided by Alaska Communications’ incumbent local exchange subsidiaries. See 47 C.F.R. §63.61.

12 Staff Memorandum at p. 2, and again at p. 10.

13 Giving Staff the benefit of the doubt, it might be that Staff’s recommendation can simply be viewed as “grandstanding”. However, Alaska Communications is reminded that Staff made a similar recommendation — and acted on it — shortly after the Legislature removed the requirement for telephone directories. In Docket R-15-003, In the Matter of the Consideration of Changes to Regulations Related to the Production and Distribution of Telephone Directories, the Commission was asked to modify its regulations and reinstate the mandatory distribution of telephone directories, albeit in alternative formats, after the Legislature removed the obligation from statute. Industry strenuously objected and the Commission opted to not add new regulations.

14 Staff recommends that the RCA encourage the Legislature to delay any further consideration of modernization until after a new rulemaking scheduled to commence in 2021 has concluded (see Staff Memorandum
Staff is unable to demonstrate that: after twenty-two years of local exchange competition and an even longer period of interexchange competition; after the extensive deployment of increasingly more popular wireless service; after multiple technological overlays that are bringing Voice over Internet Protocol ("VoIP") service options to consumers; it is still in the public interest to regulate rapidly disappearing wireline telecommunications. If these paradigm-shifting changes are insufficient to prompt the Staff to seek to "modernize" its charter, nothing ever will.

Staff’s memo says it best. The main reason Staff recommends no change to the Commission’s statutory mandate is not because of an identifiable need for public protection. Rather Staff opines that some entity may at some time in the future and in some unpredictable way consider doing something objectionable. In that case, the mere threat of regulation (including "dormant rate regulation") will act to "discipline" providers’ behavior. And if that is not successful, the RCA will need its legacy authority to enforce corrective action. Considering the ongoing cost of regulatory compliance, that seems to be an extraordinarily high price to pay for an event that may never happen. Regulation is a sub-optimal substitute for competition. Where competition exists, it is unquestionably the more efficient and effective mechanism to foster desired outcomes and discipline market behavior.

One other item in Staff’s memo that must be given a response is the notion that the Legislature really does not need to get involved in modernization. The RCA can deal with these

---

at p.1). Given procedural timelines, the Legislature is being asked to wait until at least January, 2024 before even thinking about changes to the Commission’s enabling statute. Even then, the Commission may – and likely will – continue to advocate for a continuation of the status quo.

Staff Memorandum at p.1
issues via rulemaking. First, it is useful to point out that the vast majority of telecommunications regulatory reforms throughout the country have been accomplished by way of legislative action. It is telling that across the country, regulators are unwilling or unable to advance deregulatory initiatives.

Beyond that, the industry, and Alaska Communications in particular, tried repeatedly to seek relief directly from the RCA. As the Commission may recall, the issue of detariffing surfaced at legislative committee hearings during the last RCA “sunset” review. Alaska Communications recommended consideration of detariffing as part of the “sunset” process. The RCA objected to that suggestion, advising the Legislature that the more appropriate course of action was for Alaska Communications to submit a Petition for Rulemaking directly to the Commission. The Legislature declined to take up the issue and Alaska Communications subsequently filed a petition with the RCA. In the end, no detariffing proceeding was commenced and, despite numerous subsequent attempts to revitalize the discussion, nothing further has happened. It is clear to Alaska Communications that the only viable route to meaningful modernization of telecommunications policy in Alaska is via legislative action.

Staff December 12, 2018 Public Meeting “Modernization” Presentation

---

16 Staff Memorandum at p. 4 and 5.
18 Alaska Communications points out again that tariffs are virtually never accessed by customers. In docket U-14-088, In the Matter of ACS’s Petition for Waiver of Unnecessary Tariff Rules Still Governing the ACS LEC’s Competitive Study Areas, Alaska Communications submitted the affidavit of Heather Rhodes which attested to the fact that, using a 12-month website study, tariff page visits constituted “an extremely inconsequential number”. Ms. Rhodes points out that, based on this analysis, “ACS Local Exchange Tariff pages comprise a 100th of a percent of the total monthly Alaska Communications site traffic.” In addition to the Rhodes affidavit, Alaska Communications also provided an affidavit from Lisa Phillips, Manager of Regulatory Affairs, that attests to the complexity and resource intensive nature of the tariffing process. That affidavit remains accurate and relevant to the current discussion. A copy of the affidavit is attached to these comments.
In its January 23, 2019 memo, Staff indicates that it is withdrawing the recommendations made in its December 12, 2018 Public Meeting presentation. The ATA acknowledges this and notes that it does not plan to offer detailed comments on those recommendations. Given the scope, complexity and controversial nature of Staff's December recommendations, it would be almost impossible to offer useful comments by the January 31, 2019 deadline for this filing. Beyond making a high-level observation, Alaska Communications will similarly withhold detailed comment at this time.

In its December 2018 recommendations, Staff does not simply seek to preserve the status quo, but to substantially increase the breadth and depth of the RCA's regulatory authority. In December, Staff sought to convince the Commission that – all facts and the current state of the law nationally notwithstanding – the RCA should assert oversight over vast swaths of telecommunications activities that have heretofore not been regulated. The primary focus of this new regulatory incursion is broadband Internet access and VoIP service. Even though the FCC and more recently, the federal courts have concluded otherwise, Staff sought to convince the RCA that it has the authority to engage in these regulatory activities at the state level – even to the extent of imposing CPC&N obligations on Internet Service Providers ("ISPs"). Setting aside legal issues, the underlying theories for Staff's recommendations are dubious and are likely to prompt lengthy litigation were the State to assert jurisdiction over interstate services. The RCA is urged to not consider the Staff's December recommendations, but if it does so, to create a complete record, including legal briefing, before it reaches any conclusions.
Conclusion

Alaska Communications believes that the time for meaningful deregulation of telecommunications in Alaska has arrived. As such, it will continue to argue in favor of deregulatory models found in other states, the consideration of which are long overdue in Alaska. In the meantime, the ATA proposal is a useful step in the right direction.

Alaska Communications strongly objects to the conclusions and recommendations found in the Staff’s January 23, 2019 memorandum. Alaska Communications opposes any suggestion that the RCA attempt to delay legislative consideration of the modernization of AS 42.05 until after the anticipated 2021 rulemaking concludes. In fact, Alaska Communications believes that the Commission is inherently limited by its instinct to safeguard its jurisdiction and protect the existing regulatory framework. Unless the RCA is willing to endorse the ATA proposal, it is urged to avoid making affirmative recommendations that seek to maintain the status quo. The Legislature, as the State’s primary policy making body, is in the best position to consider the actions of other states and the facts and circumstances in Alaska and determine the best course of action for modernizing telecommunications regulatory policy.

Respectfully submitted this 31st day of January 2019.

ALASKA COMMUNICATIONS

/s/ Leonard Steinberg
Leonard Steinberg
Senior Vice President, General Counsel
and Corporate Secretary
Alaska Communications Systems
600 Telephone Avenue
Anchorage, Alaska 99503
Tel: (907) 297-3000
Fax: (907) 297-3153
leonard.stienberg@acsalaska.com
In the Matter Of:

ACS ALASKA v RCA

EXCERPT OF TRIAL - ORAL ARGUMENT

January 25, 2019
IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ACS OF ALASKA, LLC, d/b/a ALASKA COMMUNICATIONS SYSTEMS, ALASKA COMMUNICATIONS, ACS LOCAL SERVICE, AND ACS, Appellants,

VS.

REGULATORY COMMISSION OF ALASKA,

Appellee. Case No. 3AN-17-07893 CI / RCA Docket No. U-16-071

MATANUSKA TELEPHONE ASSOCIATION, INC., Appellant,

VS.

REGULATORY COMMISSION OF ALASKA,

Appellee. Case No. 3AN-17-08403 CI / RCA Docket No. U-16-069

EXCERPT OF TRIAL

ORAL ARGUMENT

BEFORE THE HONORABLE DANI CROSBY
Superior Court Judge

Anchorage, Alaska
January 25, 2019

PACIFIC RIM REPORTING
907-272-4383
Mr. Goering.

ORAL ARGUMENT

MR. GOERING: Thank you, Your Honor.

May it please the Court: My name is Stuart Goering. I'm the Assistant Attorney General assigned to represent and advise the Regulatory Commission of Alaska.

And just as an initial matter, both Ms. Orlansky and Mr. Grisham referred to participation by the Attorney General. That actually is a section of the Attorney General's Office which I am walled off from. They are the advocacy -- the Regulatory Affairs & Public Advocacy section. They have a statutory right to intervene in any case that they want to when they believe it's in the public interest.

So it's not a unilateral decision on the part of the RCA to keep them out of a case. If they have chosen to come into these cases, they could have done so. That's not -- I mean, the fact the Attorney General didn't -- didn't -- wasn't involved doesn't
And MTA has provided, on page 11 of their brief, four points that they particularly think are probative of their -- their case, I guess, is the best way to put it. And I guess I'd like to explain, in a little bit of detail, why those aren't really as compelling as MTA would have you believe.

For example, the testimony of Ms. Tankersley about little residential competition is wireline competition. But the Commission was looking at competition and telephone service as a whole. Clearly, based on the demographic and line count data that the Commission told the carriers about up front, the population in the areas that they serve is growing. Their line counts are diminishing; both their line counts and the other wireline carrier's line counts were diminishing.

That's not because people are terminating their -- they're just stopping using telephones. This is meaning that they're switching to wireless service. So ignoring the fact that there's wireless service and that many households choose to use wireless phones instead of wireline phones does not mean that there's little residential competition. It actually means there's lots of retail competition. So what Ms. Tankersley testified to is probably literally
true, but it's not probative of the question of
whether or not there's adequate competition.

Mr. Anderson's testimony about GCI's
 provision of service in only a small geographic area
suffers from an even more unusual defect, because,
again, it -- it identifies only the wireline part of
GCI's service and ignores the fact that there are
multiple wireless carriers who provide service not
just on the footprint of MTA's wireline network, but
far beyond it throughout their -- in many areas of
their study area where MTA does not currently provide,
and probably never will provide, wireline service.

And Mr. Burke's testimony about competing
network infrastructure is interesting because it's
comparing the amount of network infrastructure that
the competitive wireline carrier has, says it's
9 percent, but he compares that to the size of MTA's
entire service territory.

The relevant comparison that would have been
probative of the point if -- even if we were only
looking at wireline competition, which we weren't, is
the comparison of how much the competitor does
compared to what the incumbent does.

So if, for example, Mr. Burke had said the
competitor covers 9 percent of the area that the MTA
EXHIBIT A

AFFIDAVIT OF LISA PHILLIPS
STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: Robert M. Pickett, Chairman
                               Paul F. Lisankie
                               T.W. Patch
                               Norman Rokeberg
                               Janis W. Wilson

In the Matter of ACS’s Petition for Waiver of
Unnecessary Tariff Rules Governing the ACS LECs’ Competitive Study Areas U-14-

AFFIDAVIT OF LISA PHILLIPS

Lisa Phillips, being first duly sworn, deposes and states:

1. I have personal knowledge of the facts set forth in this affidavit.

2. The purpose of this affidavit is to verify certain factual assertions made in ACS’s Petition for Waiver of Unnecessary Tariff Rules Governing the ACS LECs’ Competitive Study Areas which is being filed simultaneously with this affidavit.

3. I am employed by Alaska Communications as a Manager, Regulatory Affairs.

4. I have been employed with Alaska Communications over 14 years in its Regulatory Department.

5. I am responsible for the company’s compliance with both the Regulatory Commission of Alaska’s and the Federal Communication Commission’s rules and regulations, including the administration and filing of the company’s twelve tariffs at the RCA and FCC.

Exhibit A
Alaska Communications
6. At ACS, I worked on implementing the RCA’s competitive regulations found at 3 AAC 53.200 – 3 AAC 53.299 for local exchange carriers. I am considered the subject matter expert on ACS’s tariffs, and the RCA’s procedures for filing tariffs for new rates and revised terms and conditions.

7. I was a member of the RCA user committee for redesign of its website and subsequently a beta tester for electronic filings for dockets and tariffs. After the electronic filing docket concluded, I continued to be a beta tester for electronic tariff filing.

8. Electronic tariff filing is an improvement over paper filing and saves some filing time, paper, gasoline and postage. It does not alleviate the need to understand the myriad regulations that apply to a telecommunications service. It also does not mitigate the complexity of tariff and special contract preparation, format compliance and interactions with Commission staff who enforce the regulations.

9. Filing tariffs with the RCA requires knowledge of the Alaska Statutes, the Alaska Administrative Code as it relates to general tariff filings found in chapter 48, telephone utility regulations found in chapter 52, and telecommunications regulations in chapter 53.

10. When ACS wants to make a telecommunications service or rate change, it must analyze a number of regulations to answer many complicated and confusing questions. Among other things, it must determine which regulation applies, what length of notice period applies, whether the change requires approval of the RCA or can be handled as an informational filing, what type of notice is required, i.e. web posting, legal advertisement, and whether the Commission is responsible for providing the notice to the newspaper or whether ACS must submit it to the newspaper.

Exhibit A
Alaska Communications
11. I understand that RCA Tariff staff no longer processes telecommunications tariffs due to the complexity of issues arising from these tariffs, and that they are routinely transferred to the Common Carrier Staff who have specialized expertise in telecommunications matters including the myriad tariff procedural regulations. Application of the tariff rules is complicated, regardless of whether the tariff revision reflects a simple rule change, new product or discontinuance of a service.

12. Recently, I have worked with the Common Carrier Staff to make very minor changes to our rules and regulations sections of our tariffs, including removing “time and temperature”, a non-telecommunications service, from two of our local exchange tariffs. The time and temperature service was offered by four of our companies but only two of ACS’s predecessors chose to tariff it. The service is basically a sponsorship of the time and temperature service when 844 is dialed. The sponsorship is not limited to a telephone company and can be assumed by anyone with whom the vendor chooses to contract, i.e., a bank, car dealership, or another telephone company, etc. I participated in a number of exchanges with Common Carrier Staff to answer questions on this non-telecommunications service so that ACS could discontinue its sponsorship in two of its four company study areas. The discontinuance required RCA approval. This experience illustrates how the RCA’s archaic tariff rules cause carriers and RCA Staff to waste considerable time and effort in the tariff review process.

13. In today’s competitive telecommunications environment, ACS and its competitors must act as nimbly as possible and deliver what the customer wants and needs. The RCA’s tariff rules, which were intended to protect customers in a monopoly environment, now hamper competition and are no longer needed to serve the public interest.
14. This completes my affidavit.

Dated this 17th day of July, 2014 at Anchorage, Alaska.

Lisa Phillips
Manager, Regulatory Affairs
600 Telephone Avenue, MS #60
Anchorage, AK 99503
Tel: (907) 297-3130
Fax: (907) 297-3156
Lisa.Phillips@acsalaska.com
REGULATORY COMMISSION OF ALASKA

Public Meeting

February 6, 2019

STATE OF ALASKA
 REGULATORY COMMISSION OF ALASKA

Before Commissioners: Stephen A. McAlpine, Chairman
 Paul F. Lisankie
 Robert M. Pickett
 Antony G. Scott
 Janis W. Wilson

REGULATORY COMMISSION OF ALASKA
 701 West 8th Avenue, Suite 300
 Anchorage, Alaska 99501

PUBLIC MEETING
 February 6, 2019
 9:00 a.m.

Northern Lights Realtime & Reporting, Inc.
(907) 337-2221
<table>
<thead>
<tr>
<th>ITEM</th>
<th>ISSUE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Public Participation</td>
<td>3</td>
</tr>
<tr>
<td>3</td>
<td>Discussion: Recommendation to the Legislature -- Modernizing Telecommunications Statutes</td>
<td>4</td>
</tr>
<tr>
<td>5</td>
<td>Other Business</td>
<td>83</td>
</tr>
<tr>
<td>6</td>
<td>Executive Session as Required</td>
<td>85</td>
</tr>
</tbody>
</table>
CHAIRMAN MCALPINE: Good morning.

This is the time set for the public meeting of the Regulatory Committee of Alaska. For the record, I'm Stephen McAlpine, the Chair of the Commission. Joining me on the dais today are Commissioners Scott, Pickett, and Lisankie.

Madam, is -- has Commissioner Wilson called in, by any chance?

THE COURT REPORTER: Yes.

CHAIRMAN MCALPINE: She is.

Good morning, Janis.

COMMISSIONER WILSON: Good morning.

CHAIRMAN MCALPINE: Maybe she's muted her phone.

In any event, the first item on the agenda is public participation.

Are there any members of the Anchorage audience who wish to address the Commission under this section of the agenda today?

Seeing none, is there anyone appearing telephonically who would like to address the Commission?

Hearing none, I'll turn finally to the Anchorage audience. Is there anyone?
Seeing none, I'll close out public participation and move to Item No. 2 on the agenda which is the discussion of the recommendation to the legislature.

For the benefit of the audience, you will recall that the legislature has asked us to provide certain information by the -- I believe it's the 19th of February; is that correct? But the NARUC conference begins on Sunday and some of the Commissioners will be out. So, it's necessary that we take up this item today.

And I finalized other matters telephonically thanks to your industry from wherever the -- from Washington, D.C. and otherwise. So, we're going to finalize the participation today; and we'll get the recommendation to the legislature between now and the 19th.

Mr. Parrish, go ahead.

MR. PARRISH: This is David Parrish for the Common Carrier staff. I -- I don't know really how to start.

I guess -- I -- we had the benefit of -- of some comments on Staff's memorandum from the prior public meeting, and I -- I guess -- Staff, I
mean -- the bottom line is Staff stands by its recommendation.

Staff continues to believe that there is a benefit to having State regulation of telecommunication that is robust and that can be -- can spring into action when needed.

When you take away statutory jurisdiction, it's very difficult to get it back even when there are clear issues that may arise. And I don't know whether the Commission wants to get into a recent issue, but I think there are some definite holes in the current -- or the proposed legislation that will leave some gaps for rural Alaska.

And so Staff continues to believe that the better course would be to, for lack of a better word, punt currently, allow the process that the Commission's put in place with regard to the AUSF reformation which, I believe, has some underpinnings that would be removed with the current legislation.

CHAIRMAN MCALPINE: Okay. And just for the record, then, if I understand correctly, Staff is recommending that we parallel the reformed legislation with the AUSF study that we've indicated is going to be undertaken over the
next couple of years.

MR. PARRISH: That's correct.

CHAIRMAN McALPINE: Okay. I'll turn then to industry.

Who would like to speak first? Don't everybody jump at once.

Go ahead. If you would, for the record, identify yourself, please.

MS. WAYMAN: Sure. Good morning.

Thank you. Is this picking me up okay?

CHAIRMAN McALPINE: Is your -- is your microphone on? The little green light --

MS. WAYMAN: It is on. I might have to scooch over here this one. I could scooch there. There we go. My microphone's short.

CHAIRMAN McALPINE: Would you like music to go along with that dance?

MS. WAYMAN: That'd be great, thank you.

First of all, my I ask if Christine O'Connor is on the phone?

CHAIRMAN McALPINE: Christine, are you on the phone?

TELEPHONIC PARTICIPANT: (Indiscernible.)
CHAIRMAN MCALPINE: She is not.

MS. WAYMAN: Okay. We are all here on behalf of ATA.

My name is Juliana Wayman. I'm with United Utilities, United KUC, United Yukon Telephone --

THE COURT REPORTER: One second.

Somebody did answer. She's not on our call-in sheet, but somebody did answer.

Ms. O'Connor, are you on the call?

COMMISSIONER LISANKIE: Sorry. I thought I heard someone --

THE COURT REPORTER: Okay.

Thanks.

CHAIRMAN MCALPINE: Is there someone pretending to be Ms. O'Connor on the phone?

COMMISSIONER LISANKIE: Who was that?

CHAIRMAN MCALPINE: One more time.

If -- Christine, if you're on the phone, could you please say so so that -- evidently not.

MS. WAYMAN: Yeah. No?

CHAIRMAN MCALPINE: Go ahead,
ma'am.

MS. WAYMAN: Okay. Thank you. My name is Juliana Wayman. I'm here on behalf of the United Utilities, United KUC, and Yukon Telephone, all of the ILEC affiliates of GCI.

We serve 65 locations throughout Alaska, mostly Western and Interior Alaska. And since 2008 we have seen a decrease in our landline services by 50 percent. I'm going to let that sink in for just a moment because that is 50 percent of the POTS lines out in -- in Alaska that have gone away.

I say this not to elicit pity, but to let you know the actual landscape of what we are seeing in services. Customers are no longer ordering a landline every time they move. They're no longer ordering a teen line, and they're no longer paying extra for those features like call forwarding or call waiting that used to be standard and desired.

And yet, we are still required to maintain tariffs that have these services in them. We are tar -- we are regulated as if the landline service is still an only option for the customers, and as if we have the ability to raise prices on these
customers and they will continue purchasing our services. They have so many alternatives like cell phones and Skype and e-mail, and yet we are treating this service as if it is their only option out in rural Alaska.

In the case of GCI's ILEC providers, we must keep three tariffs for the ILEC and one for our CLEC. Each tariff has distinct rates and services, and these tariffs not only create expense training our customer care on three separate sets of rates and three separate sets of rules, but they are not used by our customers. When our customers desire service, they call in to our customer care team; and the customer care team walks them through what each -- what each service is. We would do this whether we had a tariff on file or not.

The difference is we wouldn't have to do it for three separate sets of rates and three separate sets of rules. Instead we could have one uniform set of rules between all of our service areas, making it much more simple for our customers and much more administratively simple for our customer service reps.

The other thing we see with tariffs and
what causes administrative difficulty is that we cannot respond to customer needs in a timely manner. It takes a minimum of 45 days to change any service, whether it's providing a new service or rearranging an old service. And, in addition, we need cost basis for each one of these.

This delays our implementation and often makes us decide that the timing and expense of rearranging a tariff is more expensive than what it is worth to our customers.

For these reasons, we urge you to forward the ATA modernization legislation. This is not the main focus of our customers anymore, and we would love to be able to provide service to them in a way that is more in tune with their needs.

Thank you.

CHAIRMAN McALPINE: Commissioner questions or comments, please.

Commissioner Pickett?

COMMISSIONER PICKETT: So, just so I'm perfectly clear about what Staff is recommending for the Commission to forward to Juneau by the 19th of February, is basically don't do anything. We need some more time to figure some more things out, and attach your memo; is
that correct?

MR. PARRISH: No. I don't think the Commission necessarily has to make a decision on whether or not it's going to support ATA's --

COMMISSIONER PICKETT: That wasn't my question.

The legislature specifically told the Commission in budget-intent language: We want your recommendation on modernization of the telecommunication statutes.

Now, I think it stinks when the legislature does it this way through budget-intent language or some other nebulous fashion rather than be more direct about it, but it is what it is.

And we've got a deadline coming up, and so is the recommendation of Staff for this Commission to tell the legislature we're unable to make recommendations at this point time? And then attach your memo as the backup?

MR. PARRISH: I -- yeah. I think that the -- the rec -- my recommendation is that the Commission's taken a pretty weighty step in R-18-001 to -- to -- to reevaluate the support aspect of its function and --
COMMISSIONER PICKETT: Okay.

MR. PARRISH: -- oversight of telecommunication.

COMMISSIONER PICKETT: But would you agree with the statement that the telecommunication industry today is very different than it was at the time the statutes were enacted, plus the R-18-001 -- which I firmly supported, and I had to hold my nose at the end of the day because I probably would have pushed for something quite a bit more extreme.

But in an effort to get consensus -- and I know the industry had to do their own internal stuff -- the Commission did -- it is what it is.

At the height of the AUSF program, there was probably a maximum of 30 to $35 million a year in subsidy towards the industry. Today, the industry -- and I just did a quick look at some SEC filings with ACS and GCI -- it's at least -- and extrapolating at what AT&T probably is -- it's probably a billion-and-a-half- to a $2-billion-a-year industry.

And so we're going to say to the legislature because we haven't figured everything out with a quantum, which today, given the reform
is probably more in the 15- to $20-million range, and hold everything else sort of hostage for a period of time? Is that what I'm hearing?

MR. PARRISH: Well, I think what -- to go back to your earlier point, I think, yes, I do agree that telecommunication for 90 percent of the state is different. It's the 10 percent --

COMMISSIONER PICKETT: Uh-huh.

MR. PARRISH: -- that they -- is the baby in the bath water --

COMMISSIONER PICKETT: Now --

MR. PARRISH: -- that's going to get tossed out. And that is my problem is that you have statutes, you have regulations that allow the Commission broad powers to grant --

COMMISSIONER PICKETT: Okay.

MR. PARRISH: -- relief that they're asking for, and it may be well justified, but what they're doing is taking an eraser to your statute and your jurisdiction --

COMMISSIONER PICKETT: Now, I --

MR. PARRISH: -- that I frankly think is -- is too broad and -- and does not serve the public interest well.

So, would I recommend the Commission
wholeheartedly support their -- their proposed legislation?

COMMISSIONER PICKETT: Uh-huh.

MR. PARRISH: No.

COMMISSIONER PICKETT: No. And would you stand by your statement on the last paragraph of your memo where you said: Should the legislature adopt changes to our jurisdiction in line with what ATA is asking, we would immediately -- you would recommend we immediately open a rulemaking to back in anything the legislature says to back out?

MR. PARRISH: To the extent that they believe that competition does not exist for support purposes, yes.

If they're willing -- I think there is a difference and a distinction between what obligations flow through your certificate and which obligations --

COMMISSIONER PICKETT: No, I --

MR. PARRISH: -- flow through your support. Your acceptance of support -- and they're admitting it in their own briefing to the Commission -- that the AUSF is still preliminary power for the Commission, that nothing changes for
the AUSF, and there -- I think there are justifications where you can say -- and reasonable justifications -- for putting in public interest obligations that attach and flow with support that the State gets.

If -- if they suggest -- if ATA suggests the competition is robust enough throughout the state to relieve them of any kind of obligations to provide nondiscriminatory service, nondiscriminatory rates, to basically owe no obligations for -- from an audit standpoint, I --

I think --

COMMISSIONER PICKETT: Yeah.

MR. PARRISH: -- then they have to go the further step and say we don't need support from the State either because what are we supporting?

If anything, you're -- you're protecting them from competition when you give them subsidy.

COMMISSIONER PICKETT: Again, I --

I carve out the subsidy because if the subsidy would have been handled the way it should have been handled -- quite frankly, this Commission was asleep at the switch with the industry for a number of years. And, unfortunately,
telecommunication is one of those arenas that policy is driven by disaster and catastrophe, you know?

But having said that, the industry is -- in terms of the technology and services -- is much more robust than it has been.

But I agree with your concerns about rural Alaska. I'm just trying to figure out: What are the appropriate tools? And I absolutely do not believe it's a good idea to throw a hand grenade in the lap of the legislature and say -- come off like we're some kind of an arrogant set of bureaucrats, and -- you know, we know more than you do which, in some arenas maybe we do, maybe we don't.

But given the environment today in this state, and nationally, really, to start waiving that flag around is not a great idea. Seriously.

Having spent a lot of time in Juneau in the aftermath of -- you know, the APUC getting blown up and this commission being in the gunsights for a number of years, it's -- we've got to seriously think about what tools are realistic; and that's why I quizzed the industry.

I mean, I hear about certificate power and...
abandonment power, and the questions I have with that are: Okay. We get a complaint. Service is out in a community. What does that mean? Does that mean we initiate -- we haul the utility in, go through the complaint process here, haul them in, and then if they fail to respond to that complaint or do anything to resolve the issue, then we open a show cause on the certificate?

And if we do that, we take whatever's covered by that certificate down? Or start mailing crap off to the SEC saying, "Are you aware of this?" Or to the legislature?

I mean -- so, I hear your frustration; but what I ask you, too, is since I've been on this Commission, how many audits have we actually done of a telecommunications company? How many rate cases in terms of cost of service?

And all I know is we get this blizzard of paper flying in this place, and I go, how much actual information is there? How many decisions have I actually made based on what's been filed?

And I'll tell you what, I'm having a hard time coming up with a -- a reasonable answer to that.

Go ahead.
MR. PARRISH: If I may, I think those are problems.
If you have only a certificate to yank, it's on the Commission to find a replacement carrier. That's a tough -- a tough sell.

COMMISSIONER PICKETT: Oh --

MR. PARRISH: But -- but in the case of an outage, and -- and I will tell you, right now, I would suggest that there's a fair bit of -- I believe that industry in some ways already considers themselves to be deregulated. There is an obligation under 52.3.20 to report an outage.

There was an outage -- that I'm aware of only through a CP complaint -- of 43 days. 43 days someone went without --

COMMISSIONER PICKETT: Uh-huh.

MR. PARRISH: -- a telephone in this state. Now, where was the competition?

CHAIRMAN McALPINE: If I may correct you, Mr. Parrish.
It wasn't someone. It was an entire community that was without service for 43 days.

COMMISSIONER PICKETT: Okay. So --

CHAIRMAN McALPINE: And that went unreported.
MR. PARRISH: Well --

COMMISSIONER PICKETT: Okay. So, now we're aware of this.

MR. PARRISH: Okay.

COMMISSIONER PICKETT: We have these existing statutes. We have these existing regulations. What is the hammer? I mean, what do you do? What does the Commission do?

See, I --

MR. PARRISH: There's an investigation --

COMMISSIONER PICKETT: I --

MR. PARRISH: There's an investigative rule. You can ask them a question. What was the cause of the problem? Why didn't you report this to us, one; two, what's the cause of the problem?

You, right now, have a statute that says fix it. After this legislation, that's gone. You can't order them, that I'm aware of, to -- to fix.

COMMISSIONER LISANKIE: And in the absence of the order, they're not going to fix it. That's their business model is: Don't supply service to their customers. That's -- you're certain of this?
MR. PARRISH: No. No. I don't believe that that's their -- I think it affects their priority, though. To -- to the extent that they don't believe they can lose a customer because of a 43-day outage? I -- I think that impacts the swiftness with which they respond to an issue. And I don't see how this legislation's going to improve that --

COMMISSIONER PICKETT: Okay.

MR. PARRISH: -- for the small, very small subset of folks that don't have a competitive alternative.

COMMISSIONER PICKETT: Okay. So, let me -- let me play off this 43 community [sic] outage.

Our existing statute, our existing regulations, and whatever entity is implicated in this, they refuse to fix it. And you're aware that they're doing something else in some other part of their service area. It's your belief that we could order them to stop doing some activities and direct them to fix this now or...

MR. PARRISH: Civil penalties.

COMMISSIONER PICKETT: Jerk their -- or what?
MR. PARRISH: Civil penalties. Those exist now currently. They would not after this --

COMMISSIONER PICKETT: And how much are those --

MR. PARRISH: So, your tools --

COMMISSIONER PICKETT: How much are those a day?

MR. PARRISH: Your toolbox is limited.

COMMISSIONER PICKETT: Is it per incident, or what's your --

MR. PARRISH: I -- I can look it up. But it's -- I think it would mount. I think it would be per customer, per day, yes. I think there are -- I think that would mount. That would get someone's attention.

If I put a scatter plot of -- of the Commission's decisions since probably R-14-001, the trajectory is towards deregulation. This is not something out of the blue. I mean, industry isn't saying something that's -- that's not already been -- I mean, we're on that path anyway.

My concern is for those areas where we can't -- even with -- with -- with a commitment
from -- from an ETC to deploy wireless service,
they're not doing it.

Now, I get it. I get the federal
government has changed it's -- it's -- it's tune.
It's -- it's changed all this that's upended a lot
of -- of the deployment plans that ETC's have had;
but there are, frankly, pockets in this state that
are not going to have competitive alternatives.

And unless there is some local control,
which is something I think that Alaska has
generally fought hard to maintain --

COMMISSIONER PICKETT: Uh-huh.

MR. PARRISH: -- to -- to
voluntarily lay down jurisdiction, I think, is
problematic. And the Commission -- I mean, it may
well happen. You know?

I -- there -- what -- what I saw from --
from the briefing that -- that was requested at
the last public meeting was -- was an attempt, I
think, to paint Staff in a -- was to erode the
trust, I think, between the Commission and Staff.
I -- I -- maybe they succeed, maybe they didn't.

COMMISSIONER PICKETT: Uh-huh.

MR. PARRISH: I don't know. I know
that they spoke -- I think their primary audience
1 with that is -- is legislature, and I think that
2 plays. Deregulation plays.
3 But I think we're missing the -- the
4 greater, I think, goal which is to -- to maintain
5 local control. And if that is something that can
6 be advanced by the Commission or at least
7 reminded, I think that's -- that's to the public's
8 benefit.

9 COMMISSIONER PICKETT: Uh-huh.
10 This is one of those proceedings like I sort of
11 feel like we're all participating in an
12 inward-facing firing squad because there is no
13 clear, clean, "make everybody happy" answer.
14 I think the Commission missed
15 opportunities over the last five or six years.
16 Personally, I think the railbelt should have been
17 deregulated a long time ago. It's not that much
18 different than a lot of areas outside, and it was
19 foolish to try to hang on to a construct that had
20 long since passed.
21 Because in reality, competition is the
22 best form of regulation. If AT&T pisses me off,
23 I'll go to GCI. If GCI pisses me off, I'll go
24 to -- you know, it's just -- that's how the game
25 is played. And when consumers have opportunities,
that's how it should be played. And I think the
companies are not stupid. They'll -- you know, if
they realize there's something going on, they'll
try to pick it up.

But I do share your concerns about rural
Alaska and some of the legacy systems that have
been established and -- and set up.

I don't think we did a particularly good
job with the COLR when there was COLR subsidy. I
think that was just sort of put because we're all
sick of the access charge thing. And R-08-003, we
just sort of all washed our hands of it until that
ran off the tracks a couple of years ago.

And so -- the danger I see with your
proposal is: You're right. It will not play well
in Juneau. And they may dream some crap up that
makes the ATA proposal look good. Because we
still have people down there that are on the
broadband no matter -- don't look at the reality
of the economics, do this, do that.

And, frankly, the FCC does not care about
voice. That's the message I take away. I don't
even know what ETC means anymore. I don't even
know what a study area is or if that's relevant to
anything.
But you've got broadband metrics for them to continue to get their funding, and that's what's driving the show right now.

So, I'm going to shut up for a minute.

CHAIRMAN McALPINE:

Commissioner Scott?

COMMISSIONER SCOTT: No, I don't --

CHAIRMAN McALPINE: Oh.

COMMISSIONER SCOTT: One -- one small thing.

Civil penalties. I've -- I've been focused on civil penalties in a different subject matter, but they're pretty small. It's $100 a day for each violation. I think it might be a stretch to suggest that that applies to every customer that -- that realizes an outage.

MR. PARRISH: Uh-huh.

COMMISSIONER SCOTT: I don't think that's a reasonable reading of the statute.

What I've heard from my colleagues on the dais multiple times is: We've got a problem. Because we can yank people's certificate, and that's a radioactive hand grenade. I can't throw it far enough. It's just not feasible.

Meanwhile, I've got $100 a day. It's a
pinprick. It's not going to get anybody's attention. I mean, it's just not.

I mean, if -- if there is a problem such that on a cost-of-doing-business basis it makes more sense to get to an outage when it makes sense to get to it such that I leave it out there for 40-something days, $100 a day is not going to move the needle.

Meanwhile, I'm new here. My experience anyway in terms of the stuff that I've overseen is, like Commissioner Pickett, I'm not seeing where we're adding value. Now, I say that reluctantly. It would be nice if we added value.

The problem is in our current statute framework we're trying to oversee radical changes that are happening and that continue to happen. Last public meeting I asked you: Do you suggest we wait for two years? What is the information that we would gather to help drive a decision? You actually didn't have an answer for me. That's my problem.

If we're going to set up tests where we're going to gather information to then inform something else -- I mean, I asked, like, under what circumstances do you see that we would learn
something which would say we should change our
current statutory authorities or reduce them? I'm
pretty sure you would, in two years, be back here
saying, "Don't reduce your statutory authorities.
Keep them all."

We got to recognize -- just -- just a sec.
We got to recognize that this is a very hard
policy call. The policy call's what do we do
about small communities that don't make sense to
serve from a business case? And I think the --
the latest version of the bill that we saw helps
with that some.

Your concern about discrimination in rates
in terms of service basically takes care of that.
The -- the concern that remains for me is,
well, what do we do about this example that we're
all aware of in terms of going-forward quality of
service? Stuff breaks. How do you ensure that
people -- companies, who are driven by profit
motive, have incentive to timely run out and serve
a very small community with no other competitive
alternative to provide them good service?

And they may not have it. I don't blame
them. I think they're in a heck of a pickle.
It's not exactly their fault.
The thing that makes me very uncomfortable is to suggest that the RCA should be in a position of making a fundamental policy call about small rural communities' ongoing access to various goods and services. I actually think that that's a decision that belongs scarily in the legislature. I don't think -- I certainly don't think it belongs for us to try to make policy through AUSF regulations.

I -- I'll just say for the record, I find your recommendation about passing regulations at the end of your memo, frankly -- I'm just going to -- for the record, appalling. That's not our job. You can disagree with that, but until the day you get to sit here...

MR. PARRISH: Fair enough.

COMMISSIONER SCOTT: You know?

I -- I appreciate your views. I appreciate that you're trying to ensure that everybody has equal access to everything. Unfortunately, it's not the world we live in.

So, as -- as a general matter, I am in favor of detariffing because I don't think we're adding any value in that process.

I am really concerned, though, about
ongoing quality of service metrics and what we do about that.

Again, I'm not sure that that's up to us to address. I think that's something that needs to really squarely belong in the legislature with the following recognition.

So, we order a company which is in business to take actions that are, frankly, profit negative. There's no sort of backdoor subsidy to make them whole to do that. There -- there can be a rationale that that's okay. You want to do business here and otherwise make money? You know, there's some losses you're going to have to take. That's fine.

That's a super-duper big policy call in my view. And I -- I am unaware of circumstances in which we have actually ordered people to make investments in a timely fashion to maintain their quality of service, which is essentially the dynamic that we've -- that's been raised in front of us.

So, I'm not exactly sure what to do about that problem, but I'm uncomfortable making a positive recommendation that we should. I will -- I will say in -- in terms on the
bill that's been put forward, I don't think the
tariffing process adds any value. I just don't
see it. I don't see value in most of the other
so-called protections that our statutory framework
offers.

And it's a difficult balancing act of how
much drag do we put on a continuing -- on an
industry which does an okay job serving most of
the customers in the state, providing them goods
and services that they like. How much sand do we
throw in the gears to make sure that the least
among us are adequately served by a technology
which is rapidly going away?

And I don't know how to manage that
transition. I'm not comfortable saying that what
we have right now is the right answer.

So, thanks for letting me blow the egg,
Commissioners.

CHAIRMAN MCALPINE: As a general
rule, I don't like the idea of the person running
the meeting to take over the microphone; but I
would like it to be in the record because I think
this discussion vindicates the position that I
took years ago. The day I walked on this
Commission, I said, "I don't understand why we
continue to regulate telephone."

In the documents that were provided to us by ATA, there was a statement that regulators will always want to continue to regulate. Well, I'll tell you what, companies that receive subsidies will always continue to want subsidies. And the problem that I have, as -- actually Mr. Parrish stated it, but briefly I want to highlight it -- is that it's intellectually dishonest to take the position that has been taken by ATA and others, that somehow the definition of "rural" as provided by the FCC is, in fact, a true definition of "rural." It is not.

We are -- as he stated; and again just briefly -- that we are subsidizing competition -- or we're subsidizing utilities that are engaged in claiming to be in a noncompetitive market. We're blocking out competition. And I think competition, as Commissioner Pickett has said many times, is the ultimate form of regulation. And if you can't live without the subsidy, that's capitalism, baby. You're gone. So what?

I, for one, have never said that I want to eliminate AUSF in its entirety. I want to redirect it. I want to redirect it to where it's
needed, to where there is not competition, to
those areas of the state that are being provided
by a single company who is in need of the subsidy
in order to maintain the service.

That's what universal service was all
about. Back in the '30s, universal service was
provided to an electric. And, ultimately, every
home had electricity. It was advanced to
telephone. Now every home should have telephone.

Well, as a matter of fact, that's not the
case here in the state of Alaska. And ultimately,
I would like to see every home have wireless
service. They're not going to get it as long as
the subsidy is directed in the way that it's being
directed now.

I will go back to my position earlier and
say we should have eliminated AUSF in the form
that we provide it, and we should have redirected
it to those companies that are providing the
service in those areas of the state where it's
needed to bring down the costs so that people do
have telephone service; and it is not to a
company's advantage to simply ignore the provision
of service.

I, for one, would say if you don't provide
the service, you don't get the subsidy. It's very simple. And we do have the authority to direct AUSF, an albeit minimal authority.

I've said it before and I'll say it again, I think Commissioner Pai in his dissent on the Alaska Plan was correct. I think that ten years out, we're going to find ourselves with essentially nothing. And companies will have walked away with millions of dollars, hundreds of millions of dollars, and not provided what they are supposed to provide, or if they do, to avoid the penalties in a -- in a minimalist sense.

So, I think that the discussion here today takes me back to the position I had at the outset, a position that was shared by at least one other Commissioner and we couldn't get to three. It essentially was 2-to-2-to-1, and now it's -- it's 4-to-1, and I appreciate that. And I appreciate Commissioner Lisankie's position when I said, "I don't intend to be an obstructionist" and he said, "You'll never make it in government, McAlpine."

And perhaps that is the case.

But I don't intend to be an obstructionist on this, but I want the record to clearly reflect that we have defined rural in a way that it's not
rural, that we continue to subsidize competition
in a way that blocks competition, and I -- I guess
I -- I've -- we got to two here. And I would
certainly appreciate it.

I'm going to take a moment to digress if I
haven't already. There is sitting at the end of
the table an individual who literally came out of
retirement to provide a necessary service to the
State of Alaska, and I want to say in this meeting
my sincere thanks to Commissioner Lisankie.

I doubt that he's making a whole lot more
money working actively than what he drew at
retirement. I last week calculated my own, and I
can tell you it's not very much; and I know that
Commissioner Pickett would make a lot more money
in retirement than he's being paid today.

So, Commissioner Lisankie, I -- I just
want to express -- it's not just my thanks, but
I'm certain it's the entire Commission's thanks
for your willingness to come back in and serve the
one-year penalty -- sentence -- that you have
served. We -- we deeply appreciate it.

Now, if you would chime in on this because
I see it's 2-to-1 at this point, and you should
have your say.
COMMISSIONER LISANKIE: Well,

thanks very much. That's very kind of you. I'm
glad you thanked me before I started speaking
because you might not want to. No.

Actually, I spent a fair amount of time
down in Juneau as the Division Director and -- and
part of that was listening through the overhead to
testimony. And I want to assure you that it's
more difficult than I -- well, people on the dais,
we understand that because we ask for comment over
the phone. And it's just -- it's more difficult
to follow.

So, we have had a -- a wonderful
discussion here, and I think we can have a lot
more. But I'm worried that if anybody's listening
at the legislative level, or staff, or somebody,
I -- I'm afraid that we're a little bit confusing
them because the -- the question really is before
us, and I -- I believe in their view or someone's
view that read the language that's quoted in Staff
about why we're supposedly here -- that it was
their intent that we recommend updated
telecommunication modernization regulatory
standards.

So, if we don't intend to support SB205 or
whatever it's called right now, that's okay. I mean, it happens all the time. But what is concerning to me is today, for the first time, I've heard staff say, quite eloquently, that their concern is 10 percent of the universe of regulated telecom services -- or people. I mean -- you know, you can -- you can fill it in. I mean, I'm sure David could do it more eloquently than I do.

And so if I'm down in Juneau listening to this, or sitting anywhere, I'm saying: Okay. So what are their recommendations vis-a-vis the 90 percent or the 10 percent?

So, I agree with my -- with my colleague, Commissioner Scott, that the policy of exactly who supports and what is supported in a rural area is -- is -- is really a deep, deep policy question and is probably beyond our ken and might well be in the unique province of the legislature. And I think most of the government people would say that's the best way to do it.

But recommendations about how we regulate in these areas, I don't think, is outside our ken at all. And what I've never seen, to this point, is any kind of comparative, well, we don't need to do that here; but we need to do it there. So,
perhaps we could put a division of regulation in there.

I mean, there's lots of regulatory schema that say if you're a certain size, you get regulated; and if you're not, you don't. If you provide service of this type, you get regulated; and if you're that type, you don't. And what I've never really heard in this context is something along those lines.

And so it's a little bit frustrating to me in the twilight of my second career that I still haven't heard it. And I'm just saying since I'm 16 days away from being on the other side of the dais, that my comment when I'm on that other side of the dais is: Okay, I heard a lot of concerns and frustration. Somebody asked you for your opinion, and you said, "I'll get back to you in three years."

You know, I don't even want to get into that. If I'm a legislator, I'm thinking that might be a little bit inflammatory. I'm just talking about, geez, they -- they sat on it for a while, and I know internally there's been discussions and there's been some things put forward. But we don't have anything to show for
And just like the kid that shows up Monday -- Monday afternoon. A teacher says turn in your assignment.

And he starts saying, "Well, I talked to my dad about it, and I went on Google" -- well, Google didn't exist when I didn't hand in my homework -- but you know what I'm getting to.

I mean, at some point, somebody just says, "I'm sorry, Paul, but I gave you an assignment; and you're not turning anything in."

So, I'm reluctantly saying I -- I don't see at this point where we can be responsive in a reasonable way to what we've been tasked to do. And it seems to me that that's driving us a little bit into, well, let's just focus on this bill and say yea or nay on the bill.

On the bill I -- I am disposed differently on it now than I -- I was -- when I first got here and I was one of the three people that said I'm not in favor of it. I may not be in favor of every bit of it, but there's no bill that is ever like that except the one that says double the Permanent Fund. I -- I support that with every fiber of my soul.
But -- so, anyway, I'm not really helping, I don't think. I mean, I'm not trying to diffuse my own feelings on this. I -- I get pretty heated myself when as you noted I interjected kind of a comment that wasn't helpful.

I know that staff legitimately -- as we all do -- care about the services that are being rendered to everybody, whether it's in a small village or whether it's on the Susitna Landing or all of the places that we've touched on in the year and couple of days since I've been back.

But we do, I think, need to recognize that these statutory provisions are very old, and this is a new business enterprise which changes with great rapidity. And it would, I think, be difficult for anyone not in the business to appreciate that we don't think that any jot or tittle of this old statute should be changed or that we have some thoughts but we haven't been able to collect them and report back.

So, I don't know that that helps anybody here. It's a very noncommittal kind of, you know, thanks for underlining a problem and not giving us a solution. I hate to do that. But I -- I would really not favor the response being take -- take
just kind of this overview memorandum.

And then my final point, just because it's come up, I say this with all due respect, but I would personally expressly repudiate the suggestion of re-regulating something because it had been deregulated with a statutory basis.

COMMISSIONER PICKETT: As would I.

COMMISSIONER LISANKIE: I don't know if it would be legal, but I would not try it. I would not suggest it. And, you know, I have not gone into great depth about the thinking behind it, but just -- I mean --

As a final coda, I can't remember what senator asked me, but when I was doing confirmation this second time and they asked me kind of for my philosophy, and I said, "Well, I have one bit of my philosophy that's going to be good for me and not so good for you. And it's I'm a regulator. I believe that I'm supposed to implement the statutory guidance that you give me, and not invent things so that you don't have to think about it. And that puts more work on your shoulders but makes me sleep better at night."

And part of my frustration with telecom is we do not have in any way, shape, or form, as far
as I'm concerned, a statutory edict that I know
what I'm supposed to be trying to accomplish.

Universal service is something I
understand. It's something that was accepted, and
it's something that appears to have gone the way
of certain birds --

COMMISSIONER PICKETT: Uh-huh.
COMMISSIONER LISANKIE: -- that I
haven't seen in a while because of, as what
Commissioner Scott was saying, up until now, the
way to implement universal service was to find
money from somebody else and transfer those funds.
And that is no longer being done, as far as I can
see it, at the federal level. And it's not really
ever been done at our level.

So, with that, I thank you for saying so
many nice things, Stephen, because I know your
mother did not name you Chairman.

CHAIRMAN MCALPINE: Thank you
kindly for that. I'll turn --

Commissioner Wilson, everyone on the dais
has had an opportunity to address the subject. If
you choose to do so, this is your opportunity.

COMMISSIONER WILSON: Thank you. I
would prefer not to comment until we hear from the
rest of the industry commentors. However, I just have to say that I have the privilege of being -- coming directly after Commissioner Lisankie's cogent comments; and I would like to say that I agree absolutely with everything he said. And further, I think the record reflects that I'm the only Commissioner that voted in favor of last year's modernization bill; and this year I am in favor of a modernization bill in substantially the form of what's been proposed. However, there are some issues with it. So, that's where I'd like to leave it right now.

CHAIRMAN MCALPINE: Thank you for that.

Any additional Commissioner comments or Commissioner questions?

COMMISSIONER PICKETT: I think it is a given the industry is going to introduce a bill in Juneau this spring; and the Commission, at some point if we do not say something today, will be asked what they think about it. So -- you know, it's not like we're going to have the ability to punt for very long, given
all of the other things that are -- are going on.

As I indicated at the last public meeting, I struggled with the COLR issue, the IXE COLR, the LEC COLR, a lot of these things. And the industry answered some of my -- my concerns. I think it's still an open question on rural Alaska.

But because of the fact the Commission did not take it upon itself over the last eight years to clearly de-- delineate market structure in a railbelt, larger communities, and say you hit this threshold, that's the way it is. And so sort of on a case-by-case basis of competition, you sort of know it when you see it if you're technology neutral.

But we did not, in our regulatory framework, directly address that. And really that's sort of allowed other things to go off the track including the whole AUSF program which should have been focused on real rural and not phony rural stuff all along.

We may have that opportunity going down the road, but the fact is we've got to get through this today. I think with the -- the requirement of reporting by the 19th and since the Commission -- the Chairman has thrown me under the
bus as far as being the point person for the
Commission in Juneau this year, I would have a
hard time talking to any legislator if we punt on
this thing and say: It's too hard. We can't do.
We know you asked us to do some stuff. Therefore,
we'll get back to you. That's not going to fly.
So --

CHAIRMAN MCALPINE: Further
Commissioner comments or questions?

Seeing none, I'll turn back to industry.

Is there further input?

MS. WAYMAN: Yes, thank you. I
believe Christine O'Connor has joined us on the
phone and --

CHAIRMAN MCALPINE: Okay.

MS. WAYMAN: -- I want to give her
the opportunity to speak.

CHAIRMAN MCALPINE: I would just
provide you with some Sam Rayburn knowledge and
that is: When you got the vote, the vote don't
talk; and when you ain't got the votes, keep
talking.

Go ahead, Ms. O'Connor.

MS. O'CONNOR: Thank you,

Chairman McAlpine. Apologies for my late log-on
here this morning.

I'd just like to thank the Commission for wrestling with this. It's been our intent to just be clear in our approach, and I think that was reflected in our comments -- in our written comments and in our previous verbal comments -- that we're simply just trying to be very upfront with our philosophy, recognizing that that may be different from Staff, but in no way impugning those -- those views. So, I wanted to put that out there right away.

And then as I've said before, our -- our package is we feel like it's a whole, it works together, and with the addition of the amendment which we discussed two weeks ago, that adds actually an extra layer of protection for those very remote areas that we've been talking about this morning.

So, with that I just thank you again for your time. We're here with industry and myself. If you had detailed questions on some of the tariffing or other issues, we wanted to be available, here for you this morning.

CHAIRMAN McALPINE: Additional input from industry?
Any additional comments or questions from the Commission?

Commissioner Scott.

COMMISSIONER SCOTT: Ms. O'Connor, you asked, so I have a question.

MS. O'CONNOR: Yes.

COMMISSIONER SCOTT: Assuming some version -- assuming the -- the bill that you -- the draft bill that you provided us were to become law, in the event that a small community's service declined in quality and it had no reasonable competitive alternative, what would happen? Would we, in fact, be able to make decisions to -- I'm going to put air quotes around it -- "force" the company that's serving that community to spend the money to upgrade the service or to restore the service?

MS. O'CONNOR: Yes, Commissioner Scott. Thank you for the question.

I believe that in that case, the Commission has authority over both the State -- definitely the State Universal Service Fund and then also an oversight authority which, over ETC (inaudible) and federal universal service funding which, granted, as Commissioner Pickett has
expressed, the FCC has put limits on (inaudible) participation. But you definitely have strong laurels here, as it's been pointed out, where there is subsidy, there -- there are requirements around that subsidy. And you, the RCA, have strong input through -- through those subsidies. Also there is federal discontinuance of service regulations tied to, specifically, the copper. And those regulations expressly address, kind of, discontinuance through neglect. Again, there are multiple layers and you, the RCA, have a role in them.

COMMISSIONER PICKETT: Yes, Christine, this is Commissioner Pickett. And you have referred to the certificate power which some of us have questioned, I guess, in how that would exactly work.

Given the historic framework for telecommunications and the rather odd study area construct, which to me, in Alaska has never been a particularly great mechanism, I guess. But you can see from an administrative standpoint sort of how it rolled out.

So, if you've got a carrier serving a number of different communities in a study area
under their certificate and there's a problem in one of the communities with service and it's not resolved to our satisfaction, does that mean we do a show cause on the entire certificate impacting a bunch of other communities?

MS. O'CONNOR:

Commissioner Pickett, thank you.

That's a good question. It may be a little --

COMMISSIONER PICKETT: I think it's a terrible question.

MS. O'CONNOR: So, how -- well, I think -- those study areas are just a construct we've had for decades, right? As -- as I've come up through industry, that's just how we think about our sections where we serve.

Conceivably within study areas, there are exchanges. There are other breakdowns. The FCC is looking at different -- they -- they talk very little about study areas. They talk about service blocks. So -- I -- I guess those could be explored.

We do have -- the attorneys that within industry are available. So, they could go into detail more if you want more of a legal -- legal
COMMISSIONER PICKETT: Okay. What I'm thinking of is more of a political definition because that's where this thing is going. And if, in fact -- you know, the Commission indicates some level of support for moving this bill forward, but we still have questions, I guess, or concerns that we believe the legislature need to be aware of that -- yeah, in a competitive area, all of this stuff makes a lot of sense. But in rural Alaska there may be some unintended consequences that we're just not quite sure how it may ultimately play out.

I'm not sure how --

MS. O'CONNOR: Uh-huh.

COMMISSIONER PICKETT: -- a legal opinion is necessarily going to get any of us --

MS. O'CONNOR: Okay.

COMMISSIONER PICKETT: -- out of the box.

MS. O'CONNOR: Right. I follow you. I follow you just very clearly. And what I would just like to highlight is the amendment that we proposed two weeks ago.

That is a strong commitment and -- and
when you're thinking in political terms or those kinds of conversations, you're -- that would be in statute that you will provide identical rates, terms, and conditions throughout -- you know, we have conceived a study area just because that's something we can define. But that means rural hub areas have exactly the same rates, which is not actually a requirement today.

COMMISSIONER PICKETT: Well --

MS. O'CONNOR: So, we're actually strengthening protection.

COMMISSIONER PICKETT: And I -- you know -- and I -- I understand that and appreciate that. I'm looking more at the other side of the quality of service.

And as I said with the aggregation of a bunch of rural communities under one certificate and you've got serious issues to where you -- service is not being provided, does that mean we pull out the guillotine form of regulation and have to deal with the whole thing? That's the question I have.

MS. O'CONNOR: I -- I would say as the Commission you could open a proceeding and discuss whichever areas were of concern and call
the company to the Commission which -- which has
been done multiple times in the past.

CHAIRMAN McALPINE: I think, if I
may, Ms. O'Connor.

What Commissioner Pickett is asking, we
bring them before the Commission, what is our
ultimate authority? Do we have only the authority
over their certificate if one community -- and as
you know, in rural Alaska, you have, many times,
hundreds of miles between communities.

One standalone community isn't being
adequately served or is not being served at all
for a period of time. Do we bring in that company
and threaten to jerk their certificate for failing
to provide service to that single community?

And I -- I'm asking --

Commissioner Pickett, is that reflective,
Commissioner Pickett, of what you're inquiring
about?

COMMISSIONER PICKETT: Yeah,

unfortunately, I think it is.

CHAIRMAN McALPINE: Go ahead,

Christine.

MS. O'CONNOR: Thank you, Chairman.

CHAIRMAN McALPINE: Stephen.
MS. O'CONNOR: I think you have
two -- sorry?

CHAIRMAN McALPINE: Go ahead.

MS. O'CONNOR: You do have the
certificate authority. I'm not aware of how you
can break that down.

I think -- you also have the more detailed
review that can be done through the ETC process,
and that's an annual process and doesn't even
require opening a docket.

CHAIRMAN McALPINE: Okay. So, if I
understand --

MS. MANHEIM: And -- and this is
Cindy Manheim with AT&T.

If I may jump in, Christine --

CHAIRMAN McALPINE: Certainly. Go
ahead, Cindy.

MS. MANHEIM: -- and give a little
more answer to that.

So, I mean, today the Commission has
jurisdiction, right? If a carrier wants to
discontinue service in a location or if it, you
know, does discontinue service effectively by not
providing the quality of service needed, the
Commission today has statute authority to, you
know, bring action against that carrier.
And that statutory authority will remain
after that legislation goes into effect, if it
were to go into effect.
So -- I mean, the tools the Commission has
today to remedy that situation are the same tools
the Commission would have after this legislation
passed.

CHAIRMAN MCALPINE: I -- I don't
read it the same way you do, Cindy, but maybe I
can ask the ultimate question. It's the question
I asked Ms. O'Connor. Is that authority to bring
in the company and threaten to jerk their
certificate after the -- if assuming the statute
passes?

MS. MANHEIM: You could either -- I
mean, if you wanted to, you could remedy it that
way. There are other op -- you know, other
avenues available to you.
I know Commissioner Scott talked about the
fining authority which isn't great, but that --
that is another tool that -- an option that you
have. As Christine talked about, there's also the
ETC ability that you have as well.
So, I mean, the tools you have today, if
1 you wanted to call into -- a carrier into question
2 for not serving a particular area is the same tool
3 as you would have in the future.

CHAIRMAN McALPINE: Okay. So, just
clarification on one aspect of that. We -- we
talked a little bit about jerking a certificate;
and you agree, I assume, from what you just said,
that that is a -- a remedy available to the
Commission after the passage of this statute. And
the second thing you said is we have authority
over the ETC.

So, what that indicates to me is that the
Commission can go to the FCC and tell them to cut
off Alaska Plan funding as a result of a
violation.

Am I interpreting your remarks correctly?

MS. MANHEIM: That -- and -- and

I -- AT&T is an ETC for the --

CHAIRMAN McALPINE: Correct.

MS. MANHEIM: -- mobility.

Christine -- and I am not as familiar with the
Alaska Plan, so I would be overstepping my bounds.

I would let Christine respond to that question
specifically.

CHAIRMAN McALPINE: Go ahead.
MS. O'CONNOR: Yes.

CHAIRMAN MCALPINE: Go ahead, Christine.

MS. O'CONNOR: Thank you. Yes, thank you.

The ETC certifications apply to all high-cost funding, not simply Alaska Plan funding. So, that is one oversight rule that the RCA has today and will retain after the bill should a bill pass. As we have constructed it, that authority is not changed. And again, it's over all high-cost funding, not simply Alaska Plan.

CHAIRMAN MCALPINE: Should I -- should I send the transcript of this proceeding to Commissioner Pai?

MS. O'CONNOR: I think Commissioner Pai -- we've had these conversations with him as well. And the Alaska Plan and all high-cost funding is deploying broadband --

COMMISSIONER PICKETT: Uh-huh.

MS. O'CONNOR: -- very quickly today. There are still areas that will need more support to complete the job, but I would say with confidence that my members are proud of the work...
we're doing with high-cost funding.

CHAIRMAN MCALPINE: Further

Commissioner comments or questions?

Go ahead, Commissioner Scott.

COMMISSIONER SCOTT: Thank you, Stephen.

CHAIRMAN MCALPINE: Thank you.

COMMISSIONER SCOTT: I think the comments -- Cindy's comments were well-taken.

One of the problems that we have is our ability to so-called force corrective action is pretty minimal.

We have a radioactive hand grenade which we really can't throw far enough. And we have a pinprick that doesn't pay -- no one's going to pay any attention to, I don't believe. We've got ETCism, okay. Same problem. It doesn't fit. There's a lack of proportionality.

COMMISSIONER PICKETT: Right.

COMMISSIONER SCOTT: But I also wonder -- and this is a legal question -- whether -- if the industry is no longer subject to the provisions of 291 in terms of standards of service, whether the radioactive hand grenade, in the theoretical world in which I wanted to throw
it, could even be tossed on the grounds that service was -- to a particular remote unprofitable community was no longer being -- was -- was no longer really adequate. That -- that service had declined in terms of quality. Is that something that we could actually do, in your considered view?

MS. MANHEIM: So, I think -- and if that was directed towards me, Commissioner Scott, this is Cindy Manheim again.

So, I think -- you know, the Commission has the -- it's more clear cut, obviously, in a situation where there is no service to a location, right? Because then you -- if, in effect, suspended, discontinued, or abandoned service in an area, and that -- you know, the Commission would clearly still have statutory authority.

I think -- you know, there would be -- you would probably get into more of a discussion if there is a debate about whether the service is, you know, still adequate or something where the -- where folks are getting service but maybe not to the same level as they wanted or something like that.

CHAIRMAN MCALPINE: And that --
that actually begs the question, Cindy, what is the definition of abandonment of service? If a community goes 30 days without service, is that to be considered an abandonment?

And I'm asking for -- I guess, for your personal opinion on that as opposed to something that we would hold you to.

MS. MANHEIM: So, I -- you know, I think, again, that would be a situation where you'd have to look at all of the facts, and -- you know, were there things preventing the company from getting there, such as bad weather, equipment unavailability, that sort of thing. And so I think that would come down to a fact determination.

The Commission would have to consider in a proceeding that it could bring under the statutory authority that it would continue to have.

CHAIRMAN MCALPINE: If I understand correctly, the proposed legislation would eliminate the reporting responsibility of a -- of a -- a provider.

Is that correct, Ms. O'Connor?

MS. O'CONNOR: Chairman McAlpine, I'm sorry. Could you restate that?
CHAIRMAN McALPINE: I can.

MS. O'CONNOR: You -- your connection broke up.

CHAIRMAN McALPINE: Okay. Just to back up a little bit.

Cindy indicated, and I think quite correctly, that the facts would -- would indicate whether or not there's an abandonment.

I had asked the question of her whether she considered -- as a personal opinion, whether 30 days would be considered to be an abandonment if a community wasn't provided service. And she responded that that would depend on the facts surrounding the abandonment or -- or nonprovision of service.

And my question is: Under -- and we're going to refer to it as SB205 because it's an unnamed version at this point in time. Under the proposed legislation, does the provider have an obligation to report to the RCA an outage?

MS. O'CONNOR: I -- the Commission will retain the sections that talk about continuance of service, of discontinuance of service. And so any regulations related to that, I think, would still be in effect including --
just kind of back up to personal opinion here because I'm getting into legal details -- but it would seem reasonable to me that reporting interruptions of service would fall under, you know, the Commission's authority to ensure service was continuing.

CHAIRMAN McALPINE: Does anyone in industry dispute that?

I interpret her remarks to mean that you still have an obligation to report an outage and that the RCA then would act or react accordingly to the failure to provide service, and also the possibility of -- of the failure to report the outage.

Does anyone disagree with that under the legislation that's being proposed? I'd like there to be because ultimately Courts interpret these, and intent language sometimes is all that the Court has to fall back on. And so, for the record -- probably ought to have you all stand and raise your right hand.

So that, for the record, I want to be sure that everyone is on the same page as the remarks that were just made, that you still, under this legislation, have an obligation to report an
outage, and that the Commission, in turn, could respond accordingly. Because as Cindy, I think quite correctly indicated, it would depend on the facts. Because if there's been an earthquake, we can understand why there would be a delay in reporting. We can also understand why an outage might have occurred. And under those facts, I trust the commission would be much more sympathetic than jerking a certificate might otherwise indicate.

Does anyone believe that the -- the obligation to report an outage is not maintained? Does anyone believe that?

I don't see anyone rushing. Your silence is deafening.

So, we're all on the same page, that you still have an obligation to report an outage and that the Commission can take action based on the facts of why that outage may or -- why that outage may have occurred.

MS. WAYMAN: Commissioner McAlpine, if I may, this is Juliana Wayman again.

And my statement to that is that this sounds like a legal interpretation and giving that I am not a -- a lawyer, I am -- I am not able to
answer that question.

Given the legal interpretation of the results of the legislation, I would be happy to comply with whatever the legal interpretation is.

CHAIRMAN McALPINE: Okay. And I don't -- I -- unfortunately, I'm a lawyer; and I don't think it does require a legal interpretation, but Courts go there. They would look to why -- why did -- what position did industry take in convincing the RCA to support this piece of legislation?

And I'm much more comfortable -- although I'm not there -- I'm -- I'm moved a little closer by the maintenance of the obligation to report service or lack thereof to the Commission, and that a factual basis for the outage would be what the -- the Commission would look to in determining whether some form of punishment is incurred.

That requirement to report is very important because we've lost the ability for the consumer -- if I understand what you're -- what you're pushing here -- the consumer will no longer have the ability to come in and bring a complaint to the Commission about a telephone outage, albeit lasting for 30 days.
Maybe their wife, sister, brother, whatever died as a result of not being able to get an ambulance. They would have to -- if I understand what you're supporting here, they would have to go to Superior Court, I guess, rather than come to the Commission and have us try to remedy the situation.

MR. JACKSON: Commissioners, Chairman McAlpine, if I might --

COMMISSIONER PICKETT: Jimmy.

MR. JACKSON: This is Jimmy Jackson; and as Julie's lawyer, I will -- I will say that I do believe the Commissioners still have the authority to require the outage report based on the certificate authority.

And the question -- I agree with everything Cindy said earlier, that the tools that the Commission has today will -- will still be the same tools that it has to require a failure to provide service. And the obligation to provide the service that -- that goes with every certificate is an obligation to provide service of some reasonable quality.

And I know "reasonable" is somewhat of a -- of a weasel word; but I think that is what
you would have to rely on, is if the service fell
below some reasonable level, then that is a
violation of the obligation to serve under the
certificate which would prompt your authority.

CHAIRMAN McALPINE: And the
reasonable man standard has served us well, Jimmy.
Thank you for that.
And I am much more comfortable knowing
that you still have an obligation to report and
that based on the facts and circumstances of the
outage, we would make a decision as to what type
of punishment we would bring to bear.

Shawn, go ahead.

MR. USCHMANN: Chairman McAlpine, I
think AT&T would also echo Jimmy's sentiment that
we're going to have -- even with this legislation
passing -- a requirement to go ahead and report
outages, which we -- we do now. We take very
seriously.

CHAIRMAN McALPINE: Additional
comments?

MR. DUNN: Yes, just -- this is
Bob Dunn from TelAlaska.
One of the things I was just looking at is
under the CPCN rules 3 AAC 52.270 service
interruptions; 52.280 customer reports; and 52.320
information to be furnished, they all talk about
providing this type of information to the
Commission.

MS. PHILLIPS: Yes.
CHAIRMAN McALPINE: Lisa?
MS. PHILLIPS: Yes. Uh-huh.
Excuse me.
Yes. We make every effort to report
outages.
COMMISSIONER PICKETT: Do you have
something you want to say?
MS. WAYMAN: I concur. This is
Juliana.
And I concur with my legal interpretation
that we will also comply with the outage
reporting.

CHAIRMAN McALPINE: Did you hear
that, Jimmy?
MS. WAYMAN: Thank you, Jimmy.
CHAIRMAN McALPINE: Okay.
So, at least as to everyone present, we
are all in concurrence that the obligation to
report an outage is still in effect and that -- I
think the facts and circumstances of the outage is
something that the Commission would -- would measure when -- when making a decision.

Are there additional Commissioner questions or comments?

Okay. The Chair will entertain a motion as to what to do.

And I will say that last year, on a 4-to-1 vote, the Commission made its intention clear to kill your bill. If I interpret what's about to happen correctly, the Commission's stand would be to support the bill.

The Chair will entertain the form of motion that one of you -- the member chooses to bring to bear.

COMMISSIONER PICKETT: And I will make such a motion to support moving the bill forward to the process but have the industry also realize that -- you know, there are still questions about how it will play out in noncompetitive areas of the state. But I'm not sure what we're doing today with our existing structure.

So, I will make a motion to support moving the bill forward.

CHAIRMAN McALPINE: Is there a
Second?

Come on, guys.

COMMISSIONER SCOTT: Second.

CHAIRMAN MCALPINE: Thank you.

Okay. The motion on the floor is to support the proposed legislation that's been brought forward by the telephone industry.

All in favor signify by saying "Aye."

COMMISSIONER LISANKIE: Do we have discussion on that?

CHAIRMAN MCALPINE: Oh, discussion.

COMMISSIONER PICKETT: Discussion.

CHAIRMAN MCALPINE: Oh, I'm sorry. I thought -- by all means.

COMMISSIONER LISANKIE: Commissioner Wilson or anybody?

COMMISSIONER PICKETT:

Commissioner Wilson?

COMMISSIONER WILSON: Aye.

CHAIRMAN MCALPINE: You don't -- you don't care to engage?

COMMISSIONER LISANKIE: Nobody listens to me. Nobody listens to me.

CHAIRMAN MCALPINE: Is there further discussion?
COMMISSIONER LISANKIE: So, I take it, then, that the motion stands in lieu of any further response to the legislative request for information? This will be --

COMMISSIONER PICKETT: By the 19th, I'm not sure what additional information we would have.

COMMISSIONER LISANKIE: So -- so, essentially we -- we would be saying, if we support this, that our view of what would be reasonable renewal of the statutory language is essentially what's in this soon-to-be or proposed bill?

CHAIRMAN MCALPINE: I believe your understanding is correct.

COMMISSIONER PICKETT: But I would add to that there are still many unresolved issues in rural Alaska and the AUSF fund if it's going to continue to exist -- but that's another whole separate process that I just don't see what we're going to be able to say by the 19th. And I certainly don't want to include any language that we're going to do anything to blunt whatever bill ends up passing.

CHAIRMAN MCALPINE: And I -- I
probably should add that the proposed bill as amended because, as Christine O'Connor indicated, she did provide an important amendment at one of our prior meetings.

Further discussion?

COMMISSIONER LISANKIE: Okay.

Well --

CHAIRMAN MCALPINE: Go ahead, Commissioner Lisankie.

COMMISSIONER LISANKIE: On my part, then, then I'd just like to, I guess, explain my impending vote. And this would be an advisory to anybody reacting to this action which is -- my sense is that this proposed bill has a lot in favor of it, and I probably will vote in favor of it.

But I am cognizant in that there are concerns about any possible -- that it should be reviewed in terms of any possible ramifications that would be unfortunate, in particular, for the rural areas. The telecom that's being supplied in rural areas of this state and that legislators should be aware when they consider this bill --

COMMISSIONER PICKETT: Uh-huh.

COMMISSIONER LISANKIE: -- that if
they have concerns or their staff have any concerns in that area, that they should feel free to ask them of the bill's sponsors.

CHAIRMAN MCALPINE: And at least the members of the Commission are aware, and I'd make the audience aware, too, that the Chairman is generally the -- the person who is the point person on legislation; and being the delegator that I am, I have delegated that to Commissioner Pickett.

So, if there are further discussions with respect to the legislation that anyone in this room or legislators might otherwise have, they will be addressed to -- to him.

Other discussion?

Commissioner Pick -- or, sorry.

Commissioner Scott.

COMMISSIONER SCOTT: So, as it usually is the case, I tend to agree with pretty much everything Commissioner Lisankie said.

I -- for me, I would add the following proviso. I think our civil penalties statute needs to be looked at. And I think it might go some way toward solving some of our discomfort if the civil penalties statute that we have, 571,
where updated as part of this legislation.

Because it would then enable a means --

and I'm not suggesting it's the best means or the

only means. There are other ways of trying to

slice and dice this with a better definition of

rural or effective competition or what have you.

But it would at least provide a "know it when I

see it" opportunity for proportionality of

response.

I think, in general, our civil penalties

statute is completely outmoded. It's -- $100 a
day doesn't cut it. It's not proportional and

adequate to get people's attention. It's not just

in the telecommunications sector. I think it's

across the board.

So, if I had the opportunity to advise

legislators in Juneau, I think that is one

possible mechanism or means for trying to

reasonably rightsize concerns that people have

about ongoing management of the changes that are

occurring in this industry.

CHAIRMAN McALPINE: And to give

that a little context, it brings to mind when the

Permanent Fund Dividend was being originally

proposed. Jay Hammond testified in front of the
House Committee and Representative Randolph said,
"If a thousand dollars is good, why isn't $10,000 better?" To which Governor Hammond responded,
"It's a lot like castor oil. You reach a point of diminishing returns."

So, if industry -- if industry feels threatened by what Commissioner Scott just said, we understand that there -- there should be also a -- a reasonableness standard on -- on penalties. I might go $10,000 a day. He might have a different view of it.

Further discussion?

MR. PARRISH: Do -- do you mind if I just interject really quick?

CHAIRMAN MCALPINE: Please do.

MR. PARRISH: Because I -- I just wanted to clarify.

My read of the bill exempts all telecommunications carriers from any civil penalties provisions. So, I -- I didn't know -- I -- I thought I had heard Cindy Manheim say that those tools still exist or would exist after. I just want to clarify that my read is that those are exempted. They would be gone. They would not be -- and I think then you may run
into some of the concerns that the Commission's
expressed about Staff's --

COMMISSIONER PICKETT: Uh-huh.

MR. PARRISH: -- or I guess the
blind spots when you have legislation that doesn't
necessarily cover everything and that we read back
in --

COMMISSIONER PICKETT: Uh-huh.

MR. PARRISH: -- tools that have
been explicitly exempted as -- as possible
remedies for -- I guess you wouldn't necessarily
be able to order them, but you could fall back to
them as -- as opposed to yanking a certificate all
the way.

So, that was the one point. The other
point is, is -- is there any objection to adding
some competitive language to the 711(u) that's
proposed? That would -- I think that would
probably solve a lot of the heartache for the
Commission is if they inserted some notion of the
exemption being tied to a determination that they
are serving a competitive market, either
intermodal or otherwise.

That probably leaves a lot of the
statutory reasons for keeping the -- the statutory
protections in place and lets prior Commission
decisions that this is a competitive area -- lets
them out of having the tariff and whatever else.
So, those were just -- you know, to the
extent that the Commission has been -- expressed
concern that Staff hasn't provided a meaningful
alternative, although, I think, we did try to at
least probe some ideas, but they obviously were
not --

CHAIRMAN MCALPINE: Okay.

MR. PARRISH: -- favorable, but --

CHAIRMAN McALPINE: And I -- I
think it would be helpful, since I have allowed
staff comments, if someone in industry would like
to address Mr. Parrish's remarks. If you disagree
with them or even if you agree with them.
Lisa?

MS. O'CONNOR: I --

MS. PHILLIPS: I'll let Christine
go first.

CHAIRMAN McALPINE: Go ahead.

Ms. O'Connor?

MS. O'CONNOR: Oh. Thank you,
Chairman McAlpine.
We would not support adding that language.
we have constructed the bill so that we don't have
to continue the analysis of competitive and
noncompetitive, that we have preserved strong
protection as we discussed. Not wanting to open
that again -- but that's how we've constructed the
bill. It's not -- it's not specifically tied to
analysis of competitive status.

MR. JACKSON: And -- and this is
Jimmy Jackson.

MS. O'CONNOR: Okay.

MR. JACKSON: If I can respond to
the civil penalties question.
This gets into a fairly complex and
difficult question of statutory construction.

As in our memo -- or I'm sorry, in the
letter that we submitted, we pointed that -- that
regarding quite a few of the statutes, such as
public records, that even though it doesn't for
cooperatives explicitly say that they're still
subject to public records or appeal procedures,
that to the extent that they're at the Commission
in a proceeding where the Commission still has
authority, those sections still apply. And I
think civil penalties will be the exact same.

Now, Mr. Parrish might respond by saying
why don't we go and put in the 711(u) exemption that the civil penalties can still apply? The problem is if we did that, it would then imply that in all the other sections of the existing 711 -- for instance, municipal electrics, municipal cooperatives -- that you didn't have the civil penalty authority.

So, we can't put that in our exemption without affecting all of the other exemptions.

So, I -- I hope that made at least some sense because it is a fairly difficult statutory construction.

But -- but my bottom line is that if you were dealing with the certificate authority where you still have jurisdiction and it was a violation of that, you would still have the civil penalty authority.

CHAIRMAN McALPINE: Well, and if I may, I -- I understand the desire to insulate one from a form of punishment. And I also understand that -- that a com -- a Commission -- that I'm saying a future Commission, the RCA -- would be reluctant to pull a certificate where there's no one else coming on board.

If you're serving Tuntutuliak and you fail
to provide the service, who's going to come in behind? Probably no one. So, the reluctance on the part of the Commission would be to not invoke the most severe penalty.

And what this does, as I see it, Jimmy, is to -- is to say that there really is no form of punishment. You can treat your -- your customers in any fashion you choose. And you're -- you're insulated from -- from any punishment for failure to provide service.

If you'd like to respond to that, please do.

MR. JACKSON: Well, maybe I wasn't clear.

I think -- I'm saying that you would still have civil penalty authority. You'd still have certificate authority, as nearly as I can tell -- I agree with Cindy Manheim. You'd still have the same authorities after this passes that you have today.

And -- and I think you have -- you know; I agree that it is not a simple problem for you even today, but I don't think the problem will be any different after the legislation passes.

CHAIRMAN MCALPINE: And -- and I
I don't necessarily disagree with that. But I do concur with Commissioner Scott that $100 a day, it's -- it's probably cheaper to not provide service in many areas than it is to provide service.

However, the -- the provision of service is currently based on the fact that you're getting subsidies. In fact, in some areas of this state, there are huge subsidies where it -- it doesn't matter. The -- it's a -- a shield against competition as opposed to a -- a promotion of the -- of the service.

In fact, I -- I am of the understanding that at least one utility has said that they would go bankrupt without the -- without the subsidy. If that's the case -- if that's truly the case, then they're -- they're not really -- they're -- they're looking at competition is going to put them out of business.

And that's the bottom line. If you can't compete, you go out of business. That -- that happens all the time in our capitalist society. But, anyway. I've probably gone way overboard for the person running the meeting. Any further discussion?
Seeing none, I'll --

Chairman McAlpine.

CHAIRMAN MCALPINE: Go ahead.

COMMISSIONER WILSON: I have already indicated --

CHAIRMAN MCALPINE: Is this --

COMMISSIONER WILSON: -- that I was going to vote yes.

This is Commissioner Wilson.

CHAIRMAN MCALPINE: Thank you for that.

COMMISSIONER WILSON: I've already indicated that I was going to vote yes. My decision to vote yes was based on the fact that this is support -- general support for the concept of the proposed legislation and not that that general support for the proposed legislation would be the only response to the budget language.

I -- I believe that we should send the staff memo and send the transcript of this proceeding as well as our general support.

CHAIRMAN MCALPINE: Okay.

The Chair will treat that as the form of an amendment.
So, the amendment would be to attach the Staff memo as well as the transcript to the proposed legislation and forward that to the legislature by our February 19th deadline.

Is that a correct statement of your --

COMMISSIONER WILSON: As well as the -- the -- as industry comments to the Staff's memo.

CHAIRMAN McALPINE: Okay. And I think we've got ACS as well as ATA.

Do we have any other comments that you're aware of Mr. Parrish?

Okay. So, Jan, if I may, the industry comments are contained in the ACS response and the Alaska Telephone Association response that was provided to us last week.

Any discussion as --

COMMISSIONER WILSON: I just think it's important to send the Staff thoughts on this.

CHAIRMAN McALPINE: Any discussion with respect to the amendment?

COMMISSIONER PICKETT: I think my only concern, as I indicated early in this proceeding, is that last paragraph.

And given the environment in Juneau,
that -- even if we come out and we vote and support this bill, that's sort of a -- an explosive item.

CHAIRMAN McALPINE: If it's removed, everybody in Juneau's going to wonder what did it say?

I hear you.

Commissioner -- or, Mr. Parrish, did you want to address that?

MR. PARRISH: I'm happy to retract it.

CHAIRMAN McALPINE: Okay. Well, we'll see.

COMMISSIONER PICKETT: It's beyond retraction, quite frankly, at this point.

CHAIRMAN McALPINE: Yeah.

Any further discussion with respect to the amendment?

Hearing none, all in favor of the amendment signify by saying "Aye."

COMMISSIONER PICKETT: Aye.

COMMISSIONER SCOTT: Aye.

CHAIRMAN McALPINE: Aye.

COMMISSIONER WILSON: Aye.

MR. GOERING: Chairman McAlpine,
this is Stuart Goering here, Assistant Attorney General.

We don't do this very often; but when we have a Commissioner on the telephone, we have to do -- under the Open Meetings Act, we have to do all of our votes by roll call vote.

So, just to make clear, all of our votes on substantive matters --

CHAIR McALPINE: Including the amendment?

MR. GOERING: Yes, that's correct.

CHAIRMAN McALPINE: Okay. Then the Chair will undertake a roll call.

Commissioner Wilson, I assume you heard Stuart's point --

COMMISSIONER WILSON: I did.

CHAIRMAN McALPINE: -- that we're going to conduct a roll call vote? How did you vote on your own amendment?

COMMISSIONER WILSON: Aye.

CHAIRMAN McALPINE:

Commissioner Lisankie?

COMMISSIONER LISANKIE: Aye.

CHAIRMAN McALPINE:

Commissioner Pickett?
COMMISSIONER PICKETT: Aye.

CHAIRMAN McALPINE:

Commissioner Scott?

COMMISSIONER SCOTT: Aye.

CHAIRMAN McALPINE: And as to the amendment I will vote aye.

Any further discussion on the main motion?

Hearing none, Commissioner Wilson, how do you vote on the main motion?

COMMISSIONER WILSON: Aye.

CHAIRMAN McALPINE:

Commissioner Lisankie?

COMMISSIONER LISANKIE: Aye.

CHAIRMAN McALPINE:

Commissioner Pickett?

COMMISSIONER PICKETT: Aye.

CHAIRMAN McALPINE:

Commissioner Scott?

COMMISSIONER SCOTT: Aye.

CHAIRMAN McALPINE: For the reasons stated before, I'm voting no.

Is there anything further with respect to Item No. 2 on the agenda?

Hearing none, Item No. 2 is closed out; and we'll move to Item No. 3.
Is there any other business to come before
the Commission today?

Seeing none, is the attorney general in
need of an executive session?

MR. GOERING: Yes.

Actually, I need the Commission's guidance
on two matters that are currently before the
courts on appeal. In no particular order, I
wouldn't read anything into the -- which goes
first.

The Commission's -- excuse me. The case
number is 3-AN-1807459 civil, which is the
Providence Health and Services appeal of U-16-94
and U-17-008, specifically the refund order. And
I would like to get guidance on the Commission --
from the Commission on that matter.

The second one is 3-AN-1707893 civil,
which is the consolidated appeal of ACS and MTA of
dockets U-16-69 and U-16-71.

So, that -- with that, I would request an
executive session on those two matters.

COMMISSIONER PICKETT: So moved.

COMMISSIONER LISANKIE: Second.

CHAIRMAN McALPINE: Hearing none,
all in favor signify by vote -- excuse me.
Commissioner Wilson, did you hear Mr. Goering's remarks with respect to --

COMMISSIONER WILSON: I did.

CHAIRMAN McALPINE: Okay. What is your --

COMMISSIONER WILSON: Aye. I vote --

CHAIRMAN McALPINE: -- vote on the executive session?

COMMISSIONER WILSON: Aye.

CHAIRMAN McALPINE: She said "Aye," right?

COMMISSIONER PICKETT: Uh-huh.

CHAIRMAN McALPINE: Commissioner Lisankie?

COMMISSIONER LISANKIE: Aye.

CHAIRMAN McALPINE: Commissioner Pickett?

COMMISSIONER PICKETT: Aye.

CHAIRMAN McALPINE: Commissioner Scott?

COMMISSIONER SCOTT: Aye.

CHAIRMAN McALPINE: And I vote aye, too.

So, we will go into executive session.
Before you leave, ladies and gentlemen, thank you very much for your participation today. As you can see, we aren't always in agreement; and this goes on every day. So, thank you again for -- for your assistance in this matter.

(Executive session began at approximately 10:36 a.m.)

(Executive session ended at approximately 11:59 a.m.)

CHAIRMAN McALPINE: On record.

Entertain a motion to go back into regular session?

COMMISSIONER PICKETT: So moved.

CHAIRMAN McALPINE: Is there objection?

Hearing none -- do I have to do that roll call, also?

MR. GOERING: I think you just come out of executive session. That doesn't -- yeah.

CHAIRMAN McALPINE: Okay.

MR. GOERING: So, I think you just come out of executive session and then we --

CHAIRMAN McALPINE: Okay.

Did the attorney general get sufficient

Northern Lights Realtime & Reporting, Inc. (907) 337-2221
MR. GOERING: Yes, thank you.

CHAIRMAN McALPINE: Okay. The Chair will entertain a motion to adjourn.

COMMISSIONER PICKETT: So moved.

CHAIRMAN McALPINE: Is there objection?

Hearing none, we're adjourned.

(The proceeding concluded at 12:00 p.m.)
TRANSCRIBER'S CERTIFICATE

I, Carrie Johnson, hereby certify

that the foregoing pages numbered 2 through 87 are
a true, accurate, and complete transcript of the
Public Meeting, held at the Regulatory Commission
of Alaska on February 6, 2019, transcribed by me
from a copy of the electronic sound recording to
the best of my knowledge and ability.

Date    Carrie Johnson, Transcriber