

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

10814 HOUSE JUDICIARY

1 CHAIR JOHNSON: And we are back on record. Commissioner
2 Giard, you had a proposal that you were.....

3 COMMISSIONER GIARD: Okay.

4 CHAIR JOHNSON:putting in front of us.

5 COMMISSIONER GIARD: I went back to the Rural Coalition
6 because they had proposed some rules of depreciation and so I
7 kind of pieced together the outline of what I hoped we could
8 work a little further on and then put into the regs. So
9 backing up and looking at it I thought it might be helpful as
10 long as we're going to go through the time to develop a
11 simplified depreciation table that we put an adoption period
12 and this simplified depreciation table becomes the required
13 depreciation table for all LECs for the entire state of Alaska
14 as of a date certain such that everybody will be using it. Now
15 no one has to use it because they can still come in and spend a
16 couple years doing depreciation analyses before us. So it --
17 the door's not closed however at a date certain I think that it
18 would be helpful for adoption.

19 CHAIR JOHNSON: I'm sorry was there a motion sort of
20 informally, did you make a motion?

21 COMMISSIONER GIARD: No,.....

22 CHAIR JOHNSON: Okay.

23 COMMISSIONER GIARD:am I supposed to make a motion?

24 CHAIR JOHNSON: You don't have to, I think we've been
25 trying to avoid some of that. Is there discussion --.....

1 COMMISSIONER GIARD: Commissioner Thompson nodded.

2 CHAIR JOHNSON:is there discussion on the.....

3 COMMISSIONER THOMPSON: I was just doing a -- like the
4 motion for deem (ph), Commissioner Johnson noted that the word
5 deemed is here and so.....

6 CHAIR JOHNSON: I have to admit that -- I'll just comment
7 that I believe that subsection (b) in my estimation probably
8 goes farther, indeed much further, than we ought to go.....

9 COMMISSIONER GIARD: Okay. Well, we'll step back and.....

10 CHAIR JOHNSON:in these proposed.....

11 COMMISSIONER GIARD:we'll talk about (b) then.

12 Because I was going to give you.....

13 CHAIR JOHNSON: I was.....

14 COMMISSIONER GIARD:an overall strategy. But I
15 think if we're going to go into a simplified depreciation table
16 and the Commission is going to have the option and we're going
17 through a -- either a regulation or a docket to get there, it
18 would be efficient and effective for both the Commission and
19 the carriers to have a date certain when they -- when everybody
20 uses the same table so you have consistency. The other piece
21 the Rural Coalition put in that I thought was interesting was
22 they had a paragraph where it talked about for purposes of this
23 section depreciation rates in use already prior to a date
24 certain would be in effect until the Commission had modified
25 it. That was taken out of the Staff's recommendation so I put

1 it in and I changed it a bit. And my feeling was that if this
2 Commission had approved depreciation lives and net salvage
3 values in the past two years prior to December 31 those rates,
4 those lives are appropriate unless subsequently modified by the
5 Commission or until the utility adopts simplified depreciation
6 table. So what that says is in essence, I hope, that if
7 they've gone through a depreciation study and they -- we have
8 approved their rates in the last two years prior to December
9 31, 2003 they don't have to come in again if they decide to
10 adopt the table, the depreciation table. So they're not going
11 to have to do every 3 years, they're not going to have to come
12 in.

13 COMMISSIONER HARBOUR: Mr. Chairman, a question?

14 CHAIR JOHNSON: Commissioner Harbour.

15 COMMISSIONER HARBOUR: Under -- maybe you're not wanting
16 to get it -- get into (c). In -- on C (b), the second sentence
17 we talk about the increase could be substantial.....

18 COMMISSIONER GIARD: Right.

19 COMMISSIONER HARBOUR:and should be amortized over 3
20 years. Could you explain why you think it's necessary to force
21 a 3 year phase-in?

22 COMMISSIONER GIARD: Well, as I was thinking about this, I
23 do believe that there is some chance that a utility will adopt
24 the simplified depreciation table and that there would be a
25 substantial change between the rates that may have been used in

1 the past and the rates under the simplified table. So that
2 change needs -- not go into the rate base all at once, that's
3 kind of a potentially big number that would go into the rates
4 immediately. So my thought was that we would amortize whatever
5 that change is because -- over a transition period. So because
6 if you have the opportunity to adopt this or you do adopt it as
7 of a specific date there's going to be a change in your
8 depreciation expense. Now it may be that the depreciation
9 expense goes down, that's.....

10 COMMISSIONER HARBOUR: Right.

11 COMMISSIONER GIARD:not likely, it's likely to go up
12 because the utilities broken free of regulatory restraint will
13 run to the, you know, most aggressive depreciation that we
14 allow in the table. So their depreciation is expense is likely
15 to go up and so there should be for prudence sake an
16 implementation period whereby this goes into effect. So that's
17 what that is about.

18 COMMISSIONER HARBOUR: Could I ask staff a follow up to
19 that?

20 COMMISSIONER GIARD: Uh-hum.

21 COMMISSIONER HARBOUR: I'm a little uncomfortable in
22 setting rules based on theories that are not very well
23 quantified based on fears of a certain thing happening. The
24 problem with this -- with this provision is that it applies on
25 a case by case basis and in every different case it could have

1 a different affect, it could be a benign affect in one case and
2 a substantial affect the next I assume. I'm wondering if it
3 wouldn't be more appropriate to require the 3 year period if
4 some threshold in change were reached in a given situation
5 rather than just force all into the 3 year rule?

6 MS. KENYON: I have to admit I'm not sure how this works
7 so it's hard for me to answer your question. I think the
8 threshold idea is -- well, can we get clarification, can I give
9 you an example, you tell me how this works? Let's say I have a
10 carrier and its existing depreciation expense is \$100,000 per
11 year. And if they implement this their next depreciation
12 expense -- if you implement it immediately would be \$300,000
13 per year. And it's \$300,000 per year from then on. So what
14 are -- what could we -- what would we phase-in given that it's
15 300,000 per year?

16 COMMISSIONER GIARD: Right. I had thought about that just
17 before I came down and I wondered if there shouldn't be an
18 earlier implementation where they gradually get to the
19 depreciation table. In that instance that would be a more
20 prudent exercise for the ratepayers to adopt the depreciation
21 table over a period of years where you come up to the 300,000
22 which is why I think -- one reason that this section needs to
23 be fleshed out, you know, a little bit more than it was in the
24 Staff's memo and certainly a little bit more here. My
25 preference in regulation is to -- I guess number one, establish

1 a depreciation table for all LECs that they can adopt by a date
2 certain so all LECs are using the same table. If they want to
3 come in and use a different number there's an opportunity for
4 them to do that in regulation, but generally speaking all LECs
5 are going to be on the same page for depreciation by January 1,
6 2008. Okay. That was the first premise. The second was then
7 how are you going to deal with the change that's likely to
8 occur in depreciation expense without going and putting your
9 ratepayers into rate shock. And my initial thought on that was
10 there would be a big change in the first year and you are
11 correct, there could be a big change which I thought we'd defer
12 and we would amortize over time. But that doesn't deal with
13 what -- the successive big changes that occur. And so then as
14 I was walking down the stairs I thought well, perhaps the
15 better thing to do then is to allow the -- an earlier adoption
16 date and then move up to whatever the rate table is over --
17 step it up over a period of time such that if the change to the
18 depreciation table increases your depreciation expense by more
19 than \$100,000 a year you have a 4 year implementation or a 3
20 year implementation period. And that way they can still
21 implement the depreciation table, there's some barriers we put
22 up to making significant changes immediately, but yet there
23 still is the potential for depreciation to be standardized as
24 it can be throughout the LECs in this state.

25 CHAIR JOHNSON: Additional comments?

1 COMMISSIONER GIARD: Those are my thoughts.

2 CHAIR JOHNSON: Commissioner Strandberg.

3 COMMISSIONER STRANDBERG: Maybe we can just get this down
4 to the lowest common denominators about how the depreciation
5 rates actually show up in a rate and maybe I'm not
6 understanding what you're saying, Commissioner Giard, but from
7 the standpoint of adopting depreciation study, you know, we
8 have a -- we set the rates at the time of a rate case and then
9 we wait to change those rates until we come to the next rate
10 case. And what happens on an interim basis between those rate
11 cases is that the utility goes along and takes care of its
12 books. So what I'm -- I guess what I'm not understanding is
13 how we would actually have the rate shock that you speak of
14 because during the rate case the Commission would render
15 decisions and typically at the time of that rate case we take
16 into consideration the concept of -- or the possibility of rate
17 shock and oftentimes we will not allow new rates -- we require
18 the utility to phase-in the rates at that time. I'll make that
19 comment and I'm not sure that that's helpful, but.....

20 COMMISSIONER THOMPSON: I appreciate the thought and
21 intent of this, but I have a question for Virginia that may
22 help us decide about whether we want to change the proposed
23 regulation that's in here. Which is -- it seems like what
24 Commissioner Giard's proposing lays out a procedure for how
25 we're going to implement or how we're going to -- how these

1 depreciation standards will be put into effect. Is this
2 something that should be appropriately done in the regulation
3 or is this something we could do in the order at the conclusion
4 of the -- whatever proceeding we hold to set those new rates?
5 In other words these are implementation details. What she's
6 thinking about which I agree is a good thing to think about is
7 how we're going to transition these companies from where they
8 are not into these tables and I'm wondering if this is
9 something that we need to put in the regulations or is this
10 something that we could do in the context of an order adopting
11 whatever depreciation rates we -- not rates, lives, we decide
12 are the appropriate standard?

13 MS. RUSCH: Well, I don't have a ready answer to that I'm
14 afraid. The issue is also always that under the definition of
15 regulations, you know, policy should be in regulations. There
16 is an exception of course for utility rate making. And I guess
17 I'm just not prepared right off the bat to give you an opinion
18 about whether that would be rate making or whether it should be
19 something that should be in the regulations.

20 COMMISSIONER THOMPSON: Okay.

21 COMMISSIONER HARBOUR: Mr. Chairman, in light of that
22 comment I like the creativity that Commissioner Giard
23 suggested, I think that there have arisen a couple of
24 unanswered questions and I propose we go for the time being
25 with the language that's before us in the document. And that

1 in the event that we can -- that Commissioner Giard to her
2 satisfaction with Virginia's help and maybe some input from
3 Staff could be comfortable then that could be suggested at --
4 when we draft the -- issue the final draft and amend it at that
5 time.

6 MS. KENYON: I'm sorry, I couldn't hear what you said,
7 there was coughing going on. Are you -- could you -- are we --
8 are you suggesting that we go with Commissioner Giard's draft?

9 COMMISSIONER HARBOUR: No.

10 COMMISSIONER GIARD: I wouldn't either.

11 COMMISSIONER HARBOUR: I'm suggesting that we go with the
12 original draft before us.

13 MS. KENYON: Okay.

14 COMMISSIONER HARBOUR: And that -- but I expressed
15 appreciation for the creativity of this and some of the issues
16 addressed and maybe after working on it with the -- Assistant
17 Attorney General Rusch and yourself we may come up with
18 language that Commissioner Giard might want to use as an
19 amendment when we discuss the final issuance.

20 MS. KENYON: There is another option as well in the order
21 that releases these regulations we could have a section on
22 depreciation that says we release a certain set of regs, but we
23 also want you to comment on how we can improve them by
24 including a cap perhaps on which you could use them.

25 CHAIR JOHNSON: Yeah, I think that the approach that Staff

1 has suggested would allow us to preserve all those options,
2 Commissioner Giard.

3 COMMISSIONER GIARD: I think that's a fine idea, really
4 the purpose was the discussion and not to adopt whatever I had
5 down here.

6 CHAIR JOHNSON: If I might and I know we may be about at
7 the end of this, I'm concerned that your proposal -- and I
8 don't think this is intentional, but one of the casualties from
9 the Giard proposal if I might call it that does appear to be
10 the subsection (d) of the Staff draft which is in my estimation
11 essential for us fulfilling the mandates of House Bill 111,
12 that is to provide a check -- that depreciation also to some
13 extent reflect actual lives. So.....

14 COMMISSIONER GIARD: Well, in the Staff's version I think
15 that when we put this simplified rate table together that
16 really -- that process that you initiate, Mr. Chairman, should
17 have some statement in it that it has to consider actual useful
18 life depreciation.....

19 CHAIR JOHNSON: Yeah.

20 COMMISSIONER GIARD:for the facilities. I don't
21 think there's, you know, anything wrong with leaving that in
22 here. I would assume that when we go through and develop the
23 table with the industry that would be one of requirements that
24 you want in there. Now keep in mind that that may lead to a
25 more aggressive depreciation than what we've done in the past,

1 but I think that's really kind of where the Legislature was
2 pointing.

3 COMMISSIONER HARBOUR: Mr. Chairman?

4 CHAIR JOHNSON: Commissioner Harbour.

5 COMMISSIONER HARBOUR: Yeah, on paragraph (d) I appreciate
6 your reference to that important paragraph and I wanted to ask
7 Staff -- frequently in the record the subject of the effect of
8 technological -- rapid technological change affecting
9 depreciation has come up. In your mind does the term actual
10 useful life consider rapid technological change?

11 MS. KENYON: I think it does because it's how long you
12 expect the plant will be useful and that estimate is based on
13 technological changes as well as other factors.

14 COMMISSIONER HARBOUR: Okay. Well, I agree with that and
15 I'm wondering if the Commission would agree that actual useful
16 life probably deserves a place in the definition section along
17 with that intent language embracing rapid technological change
18 as a number of the parties suggested in their comments?

19 COMMISSIONER GIARD: I will caution the Commissioners and
20 the industry that actual, the word actual useful life, could
21 either -- you know, it could be a double edge sword because the
22 actual useful life means how long does it actually -- how long
23 is that cable actually going to be in the ground rather than an
24 economic useful life or just useful life, it may imply that we
25 need to look at the 50 years that a cable has been in the

1 ground instead of the 20 years that it's going to have an
2 economic life. The word actual is very challenging and it
3 could -- it doesn't leave us a whole lot of room and I would
4 think that the industry would want that word, you know, taken
5 out or that we would want to not use the word actual. I
6 understand what the Legislature was trying to do, but boy, that
7 could be difficult, that word actual.

8 COMMISSIONER STRANDBERG: Well, I -- if I might make the
9 comment actual in this term -- I mean, that means what is.....

10 COMMISSIONER GIARD: But depreciation isn't.....

11 COMMISSIONER STRANDBERG:happening, but.....

12 COMMISSIONER GIARD:real.

13 COMMISSIONER STRANDBERG:it's -- it's really more of
14 a predictive term, the -- you know, the usual life is something
15 that we predict and so the term actual is somewhat of a
16 different application, I think, in this particular -- and we're
17 kind of struggling with that to a certain extent because we're
18 always going to be predicting useful life and that's what
19 depreciation is, predicting how long this equipment will last.
20 So.....

21 MS. KENYON: Yeah, if I might add I agree pretty much with
22 what's last been said and it's going to be very difficult to
23 identify all of the factors that you might want to consider in
24 a depreciation case because there's the technology involved,
25 there's the nature of the plant, there's a variety of other

1 things that if you try to define them you will restrict
2 yourself. And depreciation, I think, as someone has once said
3 is more of an art than a science in some cases. So you --
4 you're more flexible if you don't define it and you go with
5 exactly what the Legislature said.

6 COMMISSIONER STRANDBERG: I really don't think we have any
7 option but to just leave it as it because it's what the
8 Legislature told us we had to do.

9 COMMISSIONER GIARD: And for the record they're just
10 definitely not a wacky group of people.

11 MS. KENYON: And you -- previously you had asked me -- or
12 the Chair had asked me about the rates, did we mean to say
13 rates when we talking about our draft here, and it was brought
14 to my attention we probably have errors in paragraph (a) that
15 it says rates too many times. Rather than trying to fix
16 paragraph (a) I propose we just delete it because I'm not sure
17 we need it. And then we would just reorder all the rest of the
18 sections.

19 COMMISSIONER GIARD: Okay. The other -- one comment I
20 have is under the simplified rate development. I think I went
21 back to the FCC's statement and really they just need to file a
22 letter, are you anticipating that we would need to -- what kind
23 of approval submitted -- what kind of approval were you
24 anticipating, Lori?

25 MS. KENYON: They would file a application to change their

1 depreciation rates. It would identify the lives they selected,
2 the net salvage they've selected, the methodology that they
3 used to develop the rate, if they're using remaining life
4 they'll have to tell us what remaining life rate they want
5 because the table right here that we're talking about is a
6 projection life, they still would have to come up with the
7 remaining life and explain to us how they did that. It
8 simplifies what they have to do, but they still have to explain
9 and that explanation in rationale terms is what I'd expect to
10 see.

11 COMMISSIONER GIARD: Okay. I'm just going to read you the
12 paragraph from the FCC which says in order to simplify this
13 process the Commission has prescribed ranges of acceptable
14 values for projected lives and future net salvage percentages.
15 The ranges are treated as safe harbors such that carriers
16 incorporate values within ranges into their depreciation
17 filings will not be challenged by the Commission. Carriers
18 that submit life and salvage values outside the prescribed
19 range must justify their submissions with additional
20 documentation and support. Are we following -- or is our
21 intention to follow that process?

22 MS. KENYON: Yes, I believe so because they didn't -- the
23 paragraph that you read to me didn't explain how they filed
24 their rates and we would do exactly what they said. At least
25 that's the intent from the.....

1 COMMISSIONER GIARD: Right.

2 MS. KENYON:language before you that if they're
3 within the lives table or the net salvage table, were not going
4 to contest it.

5 COMMISSIONER HARBOUR: Mr. Chairman, in the case of a
6 cable that might be a 20 year cable or a 50 year cable or a 70
7 year cable, if a new technology makes that cable irrelevant
8 then, you know, it's -- logically its useful life terminates a
9 lot earlier than its physical life in the ground or its
10 capability to do what it was designed to do. So as long as the
11 record shows that we have -- we kind of acknowledge that actual
12 useful life even though we don't define it can embrace areas
13 outside of an accounting definition or in addition to, I'll be
14 comfortable. I'll give you one other example is that maybe
15 I'll ask your opinion on, Ms. Kenyon, and that's stranded
16 investments. Some parties during the course of this were quite
17 concerned that new technology could strand investment that
18 regulatory processes would require that they invest in. And
19 I'm wondering if actual useful life would further be defined to
20 embrace a situation where stranded investment became in essence
21 obsolete?

22 MS. KENYON: There -- it's almost like there are two
23 separate concepts. I understand that they're interrelated, but
24 normally when you look at the depreciation rates you try to
25 predict how long that life will last for that plant taking into

1 consideration that it may become obsolete quicker than
2 originally planned. That's where you -- the concept of maybe
3 it gets stranded before I thought it would come into play, but
4 if you actually end up with stranded investment my
5 understanding is if a plant is no longer used and useful you
6 take it -- it's not employed in the rate making process unless
7 they can get special amortization from you for that expense.
8 An example might be they had a fire at the central office and
9 the entire plant was destroyed. You -- in the past you
10 probably would have allowed them to recover that investment
11 over time because it's a catastrophic failure that was not
12 planned for. However stranded investment is a very tricky
13 thing, there could be -- it could be stranded due to imprudent
14 business decisions and -- so you don't want to make a
15 commitment on how you're going to treat it.

16 COMMISSIONER HARBOUR: Right. I don't think the record
17 that we've experienced to date in this docket has addressed a
18 situation where stranded investment resulted from imprudent
19 business decisions, it's focused on the subject of stranded
20 investment that results from acts that occur outside of the
21 control of the person making the investment.

22 MS. KENYON: That's true, a lot of the comments were in
23 that area, but when you set regulations they apply to all cases
24 and if you open a wide door you let a lot in. All I'm
25 suggesting is I think that you get where you want to go by this

1 -- by the language that's here, that says actual useful life.
2 It -- to me it seems there's -- you should be able to make a
3 rationale decision about what the depreciation rate should be
4 under (d) actual useful life and you are also allowed to waive
5 any of your own regulations for due cause. If -- for ever --
6 if I'm wrong you can waive it. I don't think that that's going
7 to likely happen that somebody's going to argue that
8 technological obsolescence should not be considered, they may
9 disagree as to how long the plant's going to last, but I don't
10 know that anybody would argue that technological obsolescence
11 is a factor you should ignore.

12 COMMISSIONER HARBOUR: Thank you.

13 CHAIR JOHNSON: Additional questions?

14 COMMISSIONER GIARD: I'm good, we can work on it a little
15 bit later.

16 CHAIR JOHNSON: Okay. So we're going to work on it in the
17 context of the actual comments we put out to industry for
18 comment when we notice language, is that where we are?

19 COMMISSIONER THOMPSON: And in the proceeding just set
20 these rates I'm sure as well.

21 CHAIR JOHNSON: Sure, yeah. Moving on -- is that -- let's
22 move on to page 4, I think we've got obviously some discussions
23 in front of us. Maybe since we are getting to some pretty
24 meaty stuff here, Ms. Kenyon -- well, it's -- let's just
25 continue, are there questions on page 4 as to the -- and just

1 some -- I'm working off the highlighted version and am I to
2 assume that the -- we are being asked to proceed as if the --
3 all the language that's underlined would be adopted? What
4 about the.....

5 MS. KENYON: Right.

6 CHAIR JOHNSON:the gray line stuff,.....

7 MS. KENYON: It.....

8 CHAIR JOHNSON:the just and reasonable requirement
9 in the middle of page 4?

10 MS. KENYON: For purposes -- I'm sorry, for purposes of
11 your review if you just ignore the gray line stuff, totally
12 ignore it. As a matter of fact all copies that are distributed
13 to the public don't have the gray line stuff, the page numbers
14 are identical. The gray line stuff is just more of a hint to
15 me and to you that there are questions there.

16 CHAIR JOHNSON: Okay. So maybe using this document's not
17 the best way to go then?

18 MS. KENYON: It's up to you.

19 CHAIR JOHNSON: Okay. But I'll -- thank you. Given that
20 we'll just proceed. Commissioner Strandberg.

21 COMMISSIONER STRANDBERG: I would comment that on item (a)
22 it looks like the changes have been made along the lines of
23 what we talked about from my notes. So I was satisfied with
24 that.

25 CHAIR JOHNSON: Anything else on page 4, folks?

1 COMMISSIONER GIARD: Well, what's just and reasonable
2 treatment of competitors?

3 COMMISSIONER STRANDBERG: Well, I was just looking at
4 that.

5 MS. KENYON: In the original draft it said fair treatment
6 of competitors and consumers and there was discussion at the
7 public meeting that fair wasn't defined, maybe we should use
8 just and reasonable instead of fair.....

9 COMMISSIONER STRANDBERG: Right.

10 MS. KENYON:because just and reasonable is a
11 standard that the Commission has used in the past and is fairly
12 well understood and that's why that change was made.

13 COMMISSIONER GIARD: Uh-hum.

14 MS. KENYON: But it wasn't clear to me if you all had
15 agreed to that, that's why I have it shaded. I wanted to make
16 sure before -- that you knew that that was there.

17 CHAIR JOHNSON: Okay.

18 COMMISSIONER STRANDBERG: I believe that this one is --
19 I'll just say I believe this one is good enough for us to issue
20 for comment and we probably will get comment. And I would just
21 say we're going to have to move through here in order to get
22 done.....

23 CHAIR JOHNSON: Okay.

24 COMMISSIONER STRANDBERG:today.

25 CHAIR JOHNSON: Yeah, that's right.

1 COMMISSIONER STRANDBERG: Not rushing, but I believe what
2 I'm doing is trying to go to my notes and to see if what she's
3 done is actually representative of what we had decided.

4 CHAIR JOHNSON: Okay.

5 COMMISSIONER GIARD: It's just all about love.

6 CHAIR JOHNSON: Did you want to put that in the form of a
7 motion, Commissioner Giard?

8 COMMISSIONER GIARD: No, just and reasonable, it's just
9 about love, that's all.

10 CHAIR JOHNSON: Okay. I just turned the page to page 5.
11 I would note for the benefit that there's proposal to repeal an
12 readopt 53.220 and that means that there's probably significant
13 content in all what -- that appears on pages 5 and 6. Are
14 there questions or comments or concerns about what appears on
15 page 5?

16 MS. KENYON: While you're thinking about that, the two
17 substantive changes that I made from your last -- what you last
18 saw on Wednesday was to provide a definition for the lines
19 issues, remember there was a lot of discussion what's a line.
20 Replaced the term line with customer connections and defined it
21 in the definitions section. And the only other what I would
22 call substantive change is to add the paragraph (g) to explain
23 what happens in the interim while you're trying to determine
24 your proceedings on -- that you may have on dominant carrier
25 status, (g) just says things stay the same until you change

1 them.

2 COMMISSIONER STRANDBERG: And you added (g) just to make
3 the regulation work?

4 MS. KENYON: Yes.

5 COMMISSIONER STRANDBERG: So it's set -- okay.

6 CHAIR JOHNSON: I had a question here, you'll have to
7 pardon me. I'd like to ask and I probably could do this
8 myself, are the factors that are set out in subsection (f) on
9 page 6 -- to what extent do those parallel the factors that are
10 set out, dominant carrier determination in the IXC context on
11 page 17, are they the same?

12 MS. KENYON: I'll confirm one way or the other in a
13 minute.

14 CHAIR JOHNSON: I can see that if we're talking about some
15 sort of parity between markets where -- it might be useful to
16 kind of maintain that.

17 MS. KENYON: I think there's a difference -- one
18 difference in that the IXC version refers to geographic rate
19 averaging which is not.....

20 CHAIR JOHNSON: Okay.

21 MS. KENYON:you would consider under the IXC --
22 under the LEC market. And that was excluded. But.....

23 CHAIR JOHNSON: Oh, and certainly it's got -- we've
24 got.....

25 MS. KENYON: Oh, yeah, and number 7 under the LEC version

1 it talks about the number of customers transferred to a
2 competitor. That point is not in the IXC issue because it's
3 not as material a factor in the IXC market, there doesn't
4 appear to be as definitive an issue that you may have a
5 competitor that's in the market, but that it doesn't really
6 affect the number of incumbent carrier's customers because it
7 might not be a pure substitutable service. So 7 seemed to be
8 -- the number of customers transferred seemed to be a more
9 important issue to consider in the local market than the IXC
10 and that's why we've listed it. And otherwise I believe
11 they're identical.

12 CHAIR JOHNSON: My question is it not -- and I probably
13 should get it in front of me here, but it appeared to me as I
14 went through here that the proposed subsection (g) was
15 inconsistent with one of the precepts of House Bill 111?

16 COMMISSIONER THOMPSON: I'm confused, what are you
17 suggesting explained?

18 CHAIR JOHNSON: (G) says that until changed by the
19 Commission the incumbent carrier in any service area is a
20 dominant carrier. But I thought that House Bill 111 had a
21 different statement on that point.

22 COMMISSIONER GIARD: It's on page 7 of the Staff book if
23 you want to take a look.

24 CHAIR JOHNSON: In determining whether a carrier's a
25 dominant carrier for purposes of setting rates, it's not

1 relevant that carrier in a competitive market is the incumbent
2 carrier.

3 COMMISSIONER GIARD: Is that what you're looking for?

4 CHAIR JOHNSON: That's the text I was trying to compare.

5 MS. KENYON: That may be, but how do we get around that
6 you need to explain who's.....

7 CHAIR JOHNSON: Just posing a question.

8 MS. KENYON:do we need to say then that all existing
9 carriers stay their current status, does that solve that
10 problem?

11 CHAIR JOHNSON: Okay. I just wanted to highlight that it
12 was -- we know what we're doing here.

13 MS. KENYON: Well, is it something that you want me to
14 change, I guess, I need to know?

15 CHAIR JOHNSON: I was asking the questions, I'm not.....

16 MS. KENYON: Yeah.

17 CHAIR JOHNSON:really advocating a position here.

18 COMMISSIONER HARBOUR: It's not inconsistent.

19 COMMISSIONER STRANDBERG: I would comment that the policy
20 says in determining whether a carrier is the dominant carrier
21 which would mean that what they would like us to do is that
22 when we actually have a proceeding to make that determination.

23 CHAIR JOHNSON: Yeah.

24 COMMISSIONER STRANDBERG: So it seems like it is
25 consistent.

1 CHAIR JOHNSON: Okay. I just -- I was just asking a
2 question is all I wasn't --.....

3 COMMISSIONER STRANDBERG: It's a good question.

4 CHAIR JOHNSON:I'm not advocating a particular
5 approach.

6 COMMISSIONER GIARD: I was wondering on item (g) it says
7 until changed by the Commission, does that mean that this
8 automatic trigger which goes in under (a) and that automatic
9 trigger goes into effect is that a change by the Commission, do
10 we have to do something?

11 MS. KENYON: You get to evaluate whether (a) happened.
12 You -- what I was trying to forestall was a carrier coming to
13 you and saying well, we looked at it under your regulations, we
14 believe that we are no longer dominant and they don't really --
15 I mean, and you may not agree. So I believed that it was
16 necessary for you to make the decision that that condition was
17 met.

18 COMMISSIONER STRANDBERG: So -- go ahead.

19 COMMISSIONER THOMPSON: I was going to say, Commissioner
20 Giard, I think what it contemplates is an order.

21 COMMISSIONER GIARD: Right.

22 COMMISSIONER THOMPSON: That the utility makes some kind
23 of filing that says we think we met all the conditions, we look
24 at it, we adjudicate it and issue an order saying yes or no.

25 MS. KENYON: It can be very simple, yes.

1 COMMISSIONER STRANDBERG: And what that forestalls is them
2 just starting to do business that way as opposed to actually
3 coming to us and getting the approval.

4 CHAIR JOHNSON: Any additional comments or questions on
5 page 6?

6 COMMISSIONER GIARD: Are we going to put a time limit in
7 to when we can consider whether that change is made? I mean,
8 you have a trigger and then you say well, you have to come in
9 for -- I mean, you have a trigger that's really not a trigger,
10 it doesn't actually shoot the gun, we shoot the gun. So I'm
11 concerned that for example in this market ACS comes in and says
12 hey, you know, we fall under (a) and then, you know, we have
13 this elongated hearing and then in the end a year later or two
14 years later they do fall under (a).

15 CHAIR JOHNSON: No.

16 COMMISSIONER GIARD: No?

17 CHAIR JOHNSON: We -- well, you know, that's the backdrop,
18 we do have our existing statutory time lines, certain --.....

19 COMMISSIONER GIARD: Okay.

20 CHAIR JOHNSON:I can tell you from my experience
21 those are pretty aggressive.

22 COMMISSIONER GIARD: Okay.

23 CHAIR JOHNSON: It certainly -- though they may be as
24 aggressive as some of the parties want as various times, but I
25 think it puts a lot of pressure on this Commission to act in a

1 timely manner.

2 COMMISSIONER STRANDBERG: I was going to say that I
3 believe that that may be a subject of some discussion.

4 CHAIR JOHNSON: Yeah. I know.

5 COMMISSIONER STRANDBERG: And if I could make this
6 comment, during this hearing.....

7 CHAIR JOHNSON: You can please some of the people some of
8 the time.

9 COMMISSIONER STRANDBERG: Yes.

10 CHAIR JOHNSON: It's very difficult to please all the
11 people all the time.

12 (Off record comments - costumes)

13 CHAIR JOHNSON: Page 7 and once again this is a repeal and
14 readoption of a section on discontinuance, suspension and
15 abandonment of service. Any questions here?

16 COMMISSIONER THOMPSON: Yes, I have a question about the
17 deletion in (a), and I couldn't find it -- I'm confused about
18 --.....

19 MS. KENYON: All right. This is why I did.....

20 COMMISSIONER THOMPSON:and I can remember the
21 discussion.

22 MS. KENYON: There was no discussion.....

23 COMMISSIONER THOMPSON: Okay.

24 MS. KENYON:particular to this deletion, but we --
25 Staff was asked to clarify what lines meant and to make them

1 consistent. So what we did is we made -- took out all of the
2 line references, made them all customer connections, defined it
3 at the back end and because the sentence that's deleted said
4 for purpose of this section only and that's just not right any
5 more because we're not.....

6 COMMISSIONER THOMPSON: Right.

7 MS. KENYON:consistent.

8 COMMISSIONER THOMPSON: Okay.

9 MS. KENYON: It's gone.

10 COMMISSIONER THOMPSON: Okay.

11 COMMISSIONER HARBOUR: Mr. Chairman?

12 CHAIR JOHNSON: Commissioner Harbour.

13 COMMISSIONER HARBOUR: On that subject could I direct our
14 attention to page 16, please, on the definition of customer
15 connections? Just a couple points while we're on that subject.
16 A couple of points on that subject, this is paragraph 11, going
17 down to the last sentence, lines capable of service. I believe
18 we would want to insert the word to?

19 MS. KENYON: Yes.

20 COMMISSIONER HARBOUR: In the sentence -- in the first
21 sentence, I wondered whether you would agree that we should end
22 that sentence with the phrase whether or not -- after the words
23 local exchange service end with the phrase whether or not the
24 Commission regulates the provider to make it clear that for
25 purposes of counting customer connections it's not necessary

1 that a company whose connections are counted be a regulated
2 entity? Because I think clearly we're referring here to
3 customer connections as -- you defined as -- or we are defining
4 here as a cable television provider line is one type of a
5 customer connection, would that clarification be helpful?

6 COMMISSIONER STRANDBERG: You know, I wasn't sure that we
7 were talking about cable television, I thought we might be
8 talking about cable telephony which as far as I know if they're
9 providing the phone service we're still regulating them.

10 COMMISSIONER HARBOUR: That led me in my third point. I
11 wanted to suggest we consider whether or not cable television
12 should be replaced with the term VIOP or something similar?

13 COMMISSIONER STRANDBERG: Telephony.

14 COMMISSIONER THOMPSON: Well, actually what I was going to
15 suggest since we're skipped to page 16 with the Chairman's
16 indulgence if we can keep -- do you want to keep talking about
17 his now?

18 CHAIR JOHNSON: Let's do it.

19 COMMISSIONER THOMPSON: Okay. I was going to suggest
20 deleting everything from means to use in that sentence so that
21 it instead reads a customer connection means any connection
22 used to provide local exchange service. Because as it is now
23 it talks about a couple of technologies, it doesn't talk about
24 some that might later be used and I'm not sure the television
25 reference is correct either. And if what we really mean is

1 anything -- any technology that's used to provide local
2 exchange service we ought to just say that.

3 COMMISSIONER HARBOUR: Good. The only question -- could I
4 ask you a question? Would -- in your opinion would an
5 unregulated type of technology still fit within that
6 definition?

7 COMMISSIONER THOMPSON: I'm not sure why if it's
8 unregulated it needs to. I mean, it isn't -- here the
9 definition's not based on whether something's regulated or not,
10 it's just based on what it does, the utility of the service.
11 If it's used to provide local exchange service then it's a
12 customer connection under the definition here. When you use
13 the term regulated I'm not sure whether you mean economically
14 regulated, regulated in the sense it has to be certificated,
15 there's a lot of different words -- meanings of that word and
16 it's not clear to me from the way you're inserting that or
17 proposing to insert language in the sentence what you mean or
18 why it's important.

19 COMMISSIONER HARBOUR: I think your suggestion is cleaner
20 and shorter and we ought to adopt it.

21 CHAIR JOHNSON: Is.....

22 COMMISSIONER THOMPSON: Did you get it?

23 MS. KENYON: I've got it. The only question I had is you
24 eliminated the term -- the phrase under control of the
25 telecommunications provider and that was a concept that we

1 needed somehow to fit in there, not necessarily in that first
2 sentence, but the idea is when you're counting which ones are
3 you counting, you're not counting the market as a whole, you're
4 counting the ones that are only controlled by the company. So
5 that phrase perhaps needs -- maybe needs to be put in the
6 second sentence?

7 COMMISSIONER THOMPSON: I understand the concept, but the
8 reason I took it out was a different one.....

9 MS. KENYON: Uh-hum.

10 COMMISSIONER THOMPSON:because I was thinking about
11 voice over IP which is in legal never never land these days.
12 And arguably there it's a connection that's not under the
13 control of the provider, it's under the customer's control.

14 MS. KENYON: True.

15 COMMISSIONER STRANDBERG: And indeed that context, Ms.
16 Kenyon, that you speak of, that would -- you know, I believe
17 that that context would be brought in when this definition's
18 actually used in a specific question,.....

19 MS. KENYON: Okay.

20 COMMISSIONER STRANDBERG:if that makes sense to you.
21 I believe this is a definition.

22 MS. KENYON: Uh-hum.

23 COMMISSIONER HARBOUR: Thanks, Mr. Chairman, for letting
24 me go out of turn,.....

25 CHAIR JOHNSON: That's okay.

1 COMMISSIONER HARBOUR:but I think it's important to
2 get the definition down.....

3 CHAIR JOHNSON: Okay.

4 COMMISSIONER HARBOUR:early so that in our further
5 discussion of that matter we'll have more clarity of the
6 definition.

7 CHAIR JOHNSON: Okay. Additional questions on page --
8 returning to page 7, are there additional questions as to page
9 7? If not, I just turned over to page 8.

10 MS. KENYON: Oh, excuse me. Could we make a minor change
11 to that last -- bullet 11 we were talking about on page 16?

12 COMMISSIONER THOMPSON: Uh-hum.

13 MS. KENYON: The very last sentence, it says lines cable
14 of, can we change that to lines used to provide or to -- pardon
15 me, lines used to serve multiple because there may be lines
16 capable of doing it, but you want to count the lines that are
17 actually used.

18 COMMISSIONER THOMPSON: I think that's a good change, I
19 understand.

20 MS. KENYON: So it's lines used to serve multiple
21 customers.

22 CHAIR JOHNSON: At page 8 a proposed new 3 AAC 53.235 rate
23 deregulation and I believe this embraces the option 4 that we
24 discussed extensively on Wednesday. I had one item, is that
25 there a long list here of conditions that we would have to

1 investigate and satisfy and I think this may have been a --
2 inadvertently omitted, but when we have a long list of things
3 like this we need to determine if these are a composite list
4 and I have and whether or not we wanted to make this an and at
5 the end there between 8 and 9?

6 COMMISSIONER THOMPSON: And I guess, Virginia, tell us
7 whether you do it, I agree with the concept and it's probably
8 my fault it got dropped because I -- when I worked on it we
9 talked about it. You're right, the question is whether you
10 want to satisfy all the following conditions or whether you
11 want to make -- do the semicolon, semicolon on each of them and
12 then and at the end? But I think the concept that we want to
13 describe in whatever appropriate manner is that you have to
14 meet everything on the list.

15 MS. RUSCH: All? Okay. So then there should be an and in
16 there.

17 CHAIR JOHNSON: I guess the problem when you start having
18 a -- like I say a comprehensive list is when you get to
19 paragraph 1 it starts out with a few exceptions and that gets
20 pretty elastic right off the -- right from the get go.

21 COMMISSIONER THOMPSON: Okay.

22 CHAIR JOHNSON: I certainly believe that this -- these are
23 the sort of factors we ought to be looking at, the question is
24 to me is whether or not we bind ourselves to a consideration of
25 these factors and requiring us to go through a checklist for

1 (indiscernible) approach. Actually I'm comfortable with all
2 the factors,.....

3 COMMISSIONER THOMPSON: Okay.

4 CHAIR JOHNSON:I would prefer not to be constrained
5 as to make affirmative findings as to each one to get to where
6 we need to go. I think we need to have some flexibility
7 somewhere in this process and.....

8 COMMISSIONER THOMPSON: Okay. Well, I think and is
9 probably the better.....

10 MS. KENYON: And I think that (b) solves your -- resolves
11 -- addresses your concern because it says notwithstanding (a)
12 you can deregulate or rate regulate any service you desire.

13 CHAIR JOHNSON: And that's -- and I agree with that
14 that.....

15 MS. KENYON: Okay.

16 CHAIR JOHNSON:(b) probably does that. My intent if
17 I was sitting on a matter that would involve the application of
18 these factors I would like to get to the point where we could
19 look at all of them and if we had, you know, eight really sure
20 winners and one we're just a little bit questionable that we
21 need to have the ability to make those decisions. And so I
22 think (b) probably is a sufficient saving thing, but I think we
23 ought to note from the outset that this is not a straightjacket
24 for us. That's just what concerns me, other than that I think
25 it's good.

1 COMMISSIONER GIARD: Next question on number 9?

2 CHAIR JOHNSON: Okay. On page 9, we just turned the page
3 folks, I hope that's good.

4 COMMISSIONER GIARD: Number 9 on (a) 9. I don't know
5 that that really fits in there, Commission approved system must
6 exist for the prompt transfer of customers between carriers,
7 isn't that more like in the -- shouldn't that be in the
8 competition area rather than rate deregulation?

9 MS. KENYON: Well, it.....

10 COMMISSIONER GIARD: How does that really fit with rate
11 deregulation?

12 MS. KENYON: I see it as a condition. If the rate
13 deregulation is based on the theory that there is enough
14 competition in the market that customers can be adequately
15 protected by having an easy opportunity to go somewhere else if
16 they don't like the service they're getting so I.....

17 COMMISSIONER GIARD: Right.

18 MS. KENYON:the reason it's here is because it's
19 important to have a system for transferring customers. And the
20 reason it says Commission approved is because we -- it's been
21 something that this agency has had experience with not being
22 handled smoothly from carrier to carrier.

23 CHAIR JOHNSON: May I -- could I make a proposal on that?
24 Would it be possible to delete Commission approved and simply
25 put an adequate system must exist and so we would be in a

1 position to determine the adequacy of any system?

2 COMMISSIONER THOMPSON: That's fine.

3 COMMISSIONER HARBOUR: Good.

4 COMMISSIONER STRANDBERG: Uh-hum.

5 CHAIR JOHNSON: Does that solve your concern, Commissioner
6 Giard?

7 COMMISSIONER GIARD: Yeah, I just wasn't really where sure
8 where that fit into rate deregulation, I was thinking that that
9 particular piece of it should go into competition area, but
10 it's fine if we just put an adequate system.

11 CHAIR JOHNSON: Okay. Additional questions on this
12 section? Comments?

13 COMMISSIONER STRANDBERG: I'm finding the item (5) with
14 respect to the Universal Service Funds, that language there are
15 adequate provisions of filing of whatever information is
16 necessary for the Commission to insure appropriate use of
17 Universal Service Funds, we might be able to get a little more
18 artful there.

19 COMMISSIONER THOMPSON: Okay. Filing of.....

20 COMMISSIONER STRANDBERG: To insure.....

21 COMMISSIONER THOMPSON:the would probably work
22 instead of whatever.

23 MS. KENYON: I'm sorry, I can't hear you folks very well.

24 COMMISSIONER THOMPSON: I'm sorry, we can probably just --
25 he's talking about the first line on page 9,.....

1 MS. KENYON: Uh-hum.

2 MR. ROBINSON:where -- he wants to get rid of
3 whatever and I'm -- I suggested that the word the would
4 probably be sufficient.

5 CHAIR JOHNSON: Whatever.

6 MS. KENYON: Of the information necessary for

7 COMMISSIONER THOMPSON: Yeah.

8 MS. KENYON:get rid of is as well?

9 COMMISSIONER THOMPSON: Right.

10 COMMISSIONER GIARD: Oh, get rid of two words.

11 CHAIR JOHNSON: Okay. Any other comments, questions as to
12 -- I assume we're on pages 8, 9 and 10?

13 2700

14 (Tape change)

15 Tape 2

16 0015

17 COMMISSIONER HARBOUR: Mr. Chairman, on page 10, item 3, I
18 think we ought to really think about the imposition of this
19 obligation of a monthly report. You know, I think there's some
20 sense -- some good sense in requiring that figures be
21 maintained but here's the problem. This goes back to
22 experience that may not be comparable, but in a prior life I
23 was involved with some activities that required people to do
24 certain things and then when they didn't there was an
25 enforcement obligation. So seems to me whenever you make a

1 requirement you have to link that with enforcement. And if you
2 don't then it remains very arguable and contentious. And then
3 if a filing does occur on a monthly basis but it's not quite in
4 the format that may please a particular staff person that
5 month, then does that become contentious. So I don't know. I
6 just urge us to think about imposing filing requirements that
7 are not critical.

8 CHAIR JOHNSON: I could -- I guess, Commissioner Harbour,
9 I guess from my standpoint I think it's important to keep in
10 mind that this whole section represents a substantial letting
11 go, if you will, of some of the authority this Commission has.
12 And to ask carriers in exchange for that substantial new
13 freedom to provide a report that -- you're right, it may be
14 onerous from the standpoint that it's a monthly report, but I
15 believe that these are complaints that are filed with them.
16 It's the kind of data that would ordinarily be part of their
17 management system. And I think it's a worthwhile data base for
18 folks to be aware of.

19 COMMISSIONER HARBOUR: I think you're logical. And I
20 understand that. Here's the problem. What if a supervisor in
21 a company says uh oh, we've got -- looks like we're going to
22 get 12 complaints, it's not that any management person or
23 corporate culture would condone it, but it's awfully easy to
24 lose a few of those so that you don't get beyond six. Now, my
25 point is if you're going to be it as an obligation, do we not

1 -- does the Commission not have an obligation to enforce that
2 it be done right? And if we put in an obligation to enforce,
3 how is that done? And does that involve a lot of investigation
4 and hassle that the industry doesn't want and we don't want. I
5 just say if we put it in, fine. But it ought to be enforceable
6 if you put it in.

7 CHAIR JOHNSON: Comments on.....

8 COMMISSIONER GIARD: Yeah. If you don't mind I'd like to
9 chime in a little bit. A little bit -- a few drafting changes.
10 Under item number 2, an establishment periodically notify their
11 customers of consumer complaint process, I think that in that
12 consumer complaint process you can just insert a line that says
13 including the right to contact the Commission and you could
14 eliminate the last sentence of that. Because if you're going
15 to require them to establish (sic) their customers of the
16 computer complaint process, you can just have them notify them
17 about the Commission's role the same -- in the same sentence.

18 Then item number 3, I wonder if there's any consensus to
19 having them file on the internet a monthly report of consumer
20 complaints rather than filing with the Commission. I was
21 looking at it from a different angle in that it's a lot of
22 responsibility for our Staff to receive those monthly reports.
23 It probably would be helpful for the telephone company to put
24 that summary on their internet and we could also go look at on
25 the internet and monitor it that way. That way it's out there

1 for the general public to see as well, and it is not as
2 transparent frequently when it's filed with the Commission. So
3 then you would want to remove the requirement that they file
4 the customer's name and contact information, but if the
5 Commission wants that information based on what we look at on
6 the internet, we can require them to get it. So I would see if
7 anyone was interested in making an amendment to that.

8 COMMISSIONER THOMPSON: I think -- as to your first
9 change, I think that's a good one to 2. As to the discussion
10 about number 3, I would also file monthly -- rather file with
11 the Commission on a monthly basis, those editorial. As to
12 approaching the web site, customer name and contact
13 information, the purpose of customer name and contact
14 information is to allow Staff to verify. It gets to the point
15 that they've raised that, you know, we need to be able to
16 enforce it. The -- and Commissioner Giard correctly noted -- I
17 apologize for Commissioner Harbour, Dave, that it should be --
18 we shouldn't have customer name and contact information posted
19 on the internet. Although I do think having that summary
20 information on the company's web site is good, although then I
21 can imagine all kinds of ways to put it on there differently.
22 And probably if a customer was -- wanted to look up a
23 particular company's track record, having a single source where
24 the data is prepared in a way that could be easily compared,
25 like on the Commission's web site, might be more useful. So I

1 think that's not a bad idea. But I'm -- then you're going to
2 require the utility to file the two versions of the same
3 information, some with customer name and contact information,
4 some without.

5 COMMISSIONER STRANDBERG: I would like to chime in and
6 support it. I think that Commissioner Giard's -- I think it's
7 very well taken that what would seem, when we start having
8 trouble, is we do have these customers come to us. There is a
9 rather direct line to us if there is a difficulty and so I
10 think notifying them that we are available for individual
11 complaints, that we can handle them on an individual basis, is
12 important.

13 With that being said, we do have a significant problem
14 here with the amount of paper that does come in here. And I
15 would think that the web base reporting with the names of the
16 individual customers removed, of course, you know, that may be
17 a package that we can deal with.

18 CHAIR JOHNSON: Can I make a proposal to the Commission.
19 I'd like to suggest that what we do is single out for mention
20 in the order that parties are asked to comment on the best way
21 to disseminate this sort of information to the Commission and
22 to the public. And that way we can get the benefit of the
23 people that may actually be charged to do this, what they think
24 might be the best way to approach it.

25 COMMISSIONER THOMPSON: The other purpose of having that

1 contact information available is to give Staff something to
2 work with. So, for example, if they get a call they can first
3 check whatever information they've got from the company or
4 maybe go back to the company's -- if it's on the web site
5 they're not going to be able to verify it to figure out whether
6 this is a customer that's already dealt with the company or
7 not, and what problem was addressed by the company before. I
8 just think it'd be useful to Staff because they may get some of
9 these calls on a secondary basis to have the track record that
10 this information would provide. But I support Commissioner
11 Johnson's suggestion to note in the new order that this is
12 something we would like some help from industry on figuring out
13 the best way to do.

14 CHAIR JOHNSON: Ms. Kenyon?

15 MS. KENYON: If we -- I think that Staff would likely want
16 to see that information filed on paper anyway even if it was on
17 the internet web site. And the reason I say that is if you
18 just have them do it on the internet, chances are they'll say
19 during the month of May we had so many complaints. We'd like
20 to also know what they had in previous months but the internet
21 web site probably won't have that information or have a limited
22 retention schedule. This way the retention schedule is within
23 our control. If you just have it on the internet we may end up
24 printing it out, causing us to have more time devoted to this.
25 That's just something that I thought you might want to consider

1 if you really want us to keep tabs on the history of what's
2 happened to complaints over time. We may need to keep the
3 paper anyway.

4 CHAIR JOHNSON: Yeah. I think from my standpoint I like
5 the notion that we're compiling a data base, you know.

6 COMMISSIONER GIARD: It's just a question, Mr. Chairman,
7 of whether we compile the data base or we tell the companies to
8 compile the data base and what kind of information to put out
9 there.

10 CHAIR JOHNSON: Do you need further definition.....

11 MS. KENYON: Yeah. I think I understand what you've done
12 for bullet 2. What I'm not sure is what changes you want to
13 bullet 3. I certainly -- I think the order part is clear. We
14 can ask them the questions in the order, but I don't know what
15 your desires are for bullet 2 as far as changes.

16 COMMISSIONER THOMPSON: So are you asking -- I think the
17 easy one was the editorial one which is filed monthly with the
18 Commission rather than on a monthly basis. The other one is
19 whether we want to add language that requires them to file and
20 post on their utility web site. And then you'd have to do
21 something with the customer name and contact information. You
22 may have to make it a separate sentence.

23 COMMISSIONER HARBOUR: Mr. Chairman, hold it. Originally
24 we had discussed the internet as a substitute for to make it
25 easier. So, you know, if we're going to also have to require

1 written, then actually posting on the internet becomes another
2 expense for the.....

3 COMMISSIONER THOMPSON: Except some day companies will be
4 able to file thing electronically with this agency too. It's
5 not too far from now.

6 COMMISSIONER GIARD: I guess I'd chime in on Commissioner
7 Harbour's. I think monthly is too frequent and I don't believe
8 that we would really look at it that frequently. So if we're
9 going to have to file paper, I would be a proponent of filing a
10 quarterly report. And I don't think -- we have a whole section
11 dedicated to taking consumer complaints and we are telling
12 people in item number 2 where they can go if they don't get
13 their complaint dealt with.

14 COMMISSIONER STRANDBERG: I would suggest that we include
15 in the order elements of this discussion and ask for comment on
16 the best way to approach that and then we can make the decision
17 on the basis of those comments.

18 CHAIR JOHNSON: Well, as to the media of filing
19 information the -- that period that it would be filed and any
20 other relevant considerations.

21 COMMISSIONER STRANDBERG: I'm sure there'll be plenty of
22 opinions on the best way to do that.

23 MS. KENYON: But we still need to know what you want us to
24 put in the appendix.

25 COMMISSIONER GIARD: I'm fine with you putting it out the

1 way that it's written now. We've had enough discussion on the
2 record. So.....

3 MS. KENYON: Okay.

4 COMMISSIONER GIARD:I'm comfortable with the way it
5 is.

6 CHAIR JOHNSON: And I believe the parties are well
7 represented here today. So -- I'm sure they've made extensive
8 notes. Mr. Jackson has been making intensive notes the whole
9 time. With that can we move on? And we're going to make some
10 real time here. There's nothing proposed that's -- oh, there
11 is a change on page 11, which is the repeal of the wholesale
12 rate -- the service and rate provision. Let's talk about that
13 a little bit. Maybe you could tell us.....

14 MS. KENYON: I'll try, but I.....

15 CHAIR JOHNSON: You're responsible.

16 MS. KENYON: Yeah. Sorry. The reason we took it out is
17 we didn't feel that we used this provision. The wholesale
18 provisions that are normally applied fall under the Federal
19 Telecommunications Act and federal policies. And that the
20 state provision under 250 actually generated confusion on the
21 part of carriers. They didn't know if they needed to file the
22 tariff with us or if their interconnection agreement was
23 enough, or if their interconnection agreement should be filed
24 under tariff. So we felt it wasn't -- it was doing more harm
25 than good.

1 CHAIR JOHNSON: Any -- go ahead.

2 COMMISSIONER STRANDBERG: We had a rather discussion on
3 this. We've been.....

4 COMMISSIONER GIARD: We did.

5 COMMISSIONER STRANDBERG: I think we generally agreed that
6 it should.....

7 CHAIR JOHNSON: All right. With that we'll move on.
8 Page 12, we have miscellaneous amendments to miscellaneous
9 provisions.

10 MS. KENYON: And this section looks more complicated than
11 what it is. Section A is an attempt to format all of the
12 decisions you made and still keep the A notation instead of
13 having to create a new paragraph later down the section that
14 didn't fit in. So it essentially does three things. It talks
15 about -- it preserves what you have in your original
16 regulations about 48.275, because you didn't suggest any
17 changes there. It provided that 230, which has to do with
18 billing and collection forms, have to be filed by the larger
19 carriers even if they are not dominant. And then section 3
20 identifies those carriers that you believe should be providing
21 the accounting, that's 277. And the uniform -- and the
22 jurisdictional separations, which is 430, those accounting
23 roles. And then you'll see the bullets that we talked about on
24 Wednesday.

25 CHAIR JOHNSON: Could I just pose a question. In

1 paragraph 2 there's the 20 percent market share requirement.
2 And the question that I had is I know we have a 30 percent
3 market share requirements in one of the prior sections and that
4 there is a 10 percent market share as to another element. Is
5 -- does the 20 percent match up with anything else?

6 MS. KENYON: Not really. And.....

7 CHAIR JOHNSON: So -- but the question is wouldn't be
8 simpler if we just had a simpler regime whereas if you exceeded
9 a 10 percent market share you certain things and if -- or if
10 you want to make that 30. I'd just -- if you got a variety of
11 levels we're going to have a little bit more complex regulatory
12 regime.

13 MS. KENYON: The 10 percent for abandonment of service we
14 suggest that you maintain, because the higher standard should
15 be applied to that restriction. For everything else, it's
16 almost like it doesn't matter because the -- well, I guess I
17 shouldn't say that. There's.....

18 CHAIR JOHNSON: Well, it's changing, the O&S.

19 MS. KENYON: It is changing. And I was under the -- I
20 spoke incorrectly. I was thinking about the IXC market. For
21 the local market it gradually increases. For the IXC market
22 there's a big gap between 10 and 50 percent. But for the local
23 market all I can say is that there's -- 20 percent is about
24 where the -- it's still a fairly high level of market share.
25 Thirty percent, to me, would be too high because at that point

1 in time you're talking about deregulation. And we're still
2 maintaining this really would apply to regulated carriers. So
3 I'd say either change it to 10 or keep at 20.

4 CHAIR JOHNSON: My request would be that we consider
5 changing it to 10 to provide just a little bit more uniformity
6 in regulatory pattern. But -- I appreciate input from the
7 other members of the Commission on that.

8 COMMISSIONER THOMPSON: Now I'm confused about which one
9 you're going to change. You're talking about A2?

10 CHAIR JOHNSON: I would suggest change.....

11 MS. KENYON: Page 12.

12 CHAIR JOHNSON:ing A to instead of a 20 percent
13 market share, to make that a 10 percent market share for the
14 filing of the billing forms.

15 COMMISSIONER THOMPSON: I got you.

16 CHAIR JOHNSON: And that does -- you know, I suppose we're
17 increasing the regulatory burden I guess on some carriers. I
18 don't know how many -- if there's anybody out there that's in a
19 10 to 20 percent range, but.....

20 MS. KENYON: I think you're adding one, at least at this
21 point maybe. Maybe. Well, for.....

22 CHAIR JOHNSON: I would argue that that ensures a little
23 bit more regulatory parity.

24 COMMISSIONER THOMPSON: Yeah. I think that's a good idea.
25 Yeah.

1 CHAIR JOHNSON: I don't have any further comments on 12.
2 Anything else on page 12? Page 13.

3 COMMISSIONER HARBOUR: Mr. Chairman, earlier I didn't know
4 if a couple of my colleagues were laughing at my costume or at
5 my suggestions. Don't make me laugh, I lose my costume.

6 CHAIR JOHNSON: Please continue, Commissioner Harbour.

7 COMMISSIONER HARBOUR: Or at my suggestions for the
8 editorial changes. But with the Chair's permission I have
9 about seven or eight changes that are non-substantive. And if
10 there's general agreement I'll just discuss those with you as
11 docket manager and if you agree with those you can implement
12 those without taking up the time of the group.

13 CHAIR JOHNSON: I guess -- are you saying that some of
14 those are on like page 13? Is that right?

15 COMMISSIONER HARBOUR: Yes. And successive pages.

16 CHAIR JOHNSON: I guess what I'd like to do, why don't you
17 just go ahead and go through those since we're here and we
18 might as well get it resolved.

19 COMMISSIONER GIARD: It was the costume, Commission
20 Harbour.

21 COMMISSIONER HARBOUR: Thank you. Okay. Where are we
22 now? What page?

23 CHAIR JOHNSON: We are on page 13.

24 COMMISSIONER GIARD: Now we're laughing at you.

25 CHAIR JOHNSON: Lucky 13.

1 COMMISSIONER HARBOUR: I'm laughing at myself.

2 COMMISSIONER GIARD: We're all waiting and hoping your
3 mustache falls off.

4 COMMISSIONER HARBOUR: I guess. Well, I already passed by
5 a couple in earlier pages, thinking.....

6 COMMISSIONER THOMPSON: Well, maybe Commissioner Harbour
7 had a good idea, which was to talk them over with the CDM.

8 CHAIR JOHNSON: Well, I'm watching the clock here a little
9 bit.

10 COMMISSIONER HARBOUR: They're not that substantive. No,
11 I -- I'm not going to.....

12 COMMISSIONER GIARD: Okay. Whatever.

13 COMMISSIONER THOMPSON: You've been overruled, Mr.
14 Chairman.

15 CHAIR JOHNSON: We will -- I'll overrule myself.

16 COMMISSIONER GIARD: It can happen. It can happen.

17 COMMISSIONER HARBOUR: I knew that couldn't last. Mr.
18 Chairman, I want to ask the clerk, does that show up as
19 indistinguishable? I'm sorry. Never mind. Withdrawn.

20 CHAIR JOHNSON: May I pose a question to Staff, and I --
21 if I zoned out. I'm going -- I'm at page 14 with the
22 subsection H, and I just don't recall us ever discussing this
23 provision. And maybe -- and if we did, I apologize. But maybe
24 you could explain where this is coming from.

25 MS. KENYON: We had discussed it and in summary what it --

1 what this is about is there are certain mandatory requirements
2 that carriers file with their tariff filings. And it has to do
3 with estimated number of customers and effected revenues. A
4 lot of the times we don't use that information at all. It's
5 file. It adds a complexity because when a carrier doesn't
6 submit it we reject the tariff filing and that just is
7 burdensome. But we still need it for things like discontinuing
8 service and for rate increases when you really do want to know
9 in detail how many customers are going to be potentially harmed
10 by a discontinuance or a rate increase. Maybe harmed isn't
11 exactly the right term, but effected is probably a better term.
12 And the revenues involved give us also a better idea of the
13 impact of the change. So that's why we're saying we're adding
14 this section H and it's in response to an ACS concern that they
15 had originally raised that this information was necessary for
16 many of the filings.

17 CHAIR JOHNSON: Questions or comments on this?

18 COMMISSIONER THOMPSON: Maybe it's a philosophical
19 questions, why does the number of customers matter for rate
20 increases? I mean I've seen some go through that effect one
21 that troubled me as much as those that effect 500.

22 MS. KENYON: It gives us a better idea of the nature of
23 the rate increase. Like if you know that it's one customer and
24 it's a \$30,000 change, that gives you more information about
25 how much it's going to impact the customer. But if it's like

1 30,000 customers and a \$10,000 change, you get a better feel.

2 COMMISSIONER STRANDBERG: You were saying you were
3 addressing an ACS comment with us?

4 MS. KENYON: ACS had originally proposed a total where you
5 eliminate the tariff advise letter filing requirement and at
6 hearing they clarified that they really didn't mean to quite go
7 that far but their concern were these two issues about the
8 revenues and tex customer counts that they felt they didn't
9 really want to have file all the time. And I think rightly so,
10 because a lot of times we don't use that information. But I
11 think that there are still limited case when we do. And that's
12 what this is intended to do.

13 COMMISSIONER STRANDBERG: So this really lessens the
14 filing requirements, is that correct?

15 MS. KENYON: That is correct.

16 COMMISSIONER STRANDBERG: So that we are only going to get
17 the filings when they propose to discontinue or when they
18 propose to increase the rates?

19 MS. KENYON: That's right.

20 COMMISSIONER STRANDBERG: Okay.

21 CHAIR JOHNSON: Page 15, definitions under chapter 53. Is
22 there a need to further tweak any of these definitions that are
23 set out on page 15? If not, I'm going to turn the page and go
24 to page 16. And we had partly made some modifications to the
25 customer connection, definition number 11. Is there anything

1 else under the definition sections that the Commissioners want
2 to discuss?

3 COMMISSIONER THOMPSON: I want to talk about bundling, but
4 we can do that at the end, so it sort of isn't a Staff's
5 problem.

6 CHAIR JOHNSON: Just to note, on these definitions, these
7 were the definitions that would apply within this particular
8 chapter, the regulations chapter 53. So they would not have an
9 application outside of that. Okay.

10 COURT REPORTER: Who said that is correct?

11 CHAIR JOHNSON: Ms. Kenyon said that is correct.

12 COURT REPORTER: Thank you.

13 CHAIR JOHNSON: Page 17. Is that all right? Are we on
14 17? Okay.

15 MS. KENYON: And on this page you see some deleted text.
16 We wanted to show you what we deleted. Staff talked about this
17 section. We realized amongst ourselves that we didn't know why
18 we needed the language that was deleted. We thought it was
19 clearer without it.

20 CHAIR JOHNSON: Could I just ask, since this is a repeal
21 and readoption, is that -- I mean is that correct? Do we have
22 the existing language in front of us with deletions proposed,
23 or what do we have here?

24 MS. KENYON: No. What you have here is basically a whole
25 new text. The deletions are only to show you changes from

1 Wednesday. My understanding, this is the version that you
2 liked or preferred for public notice on Wednesday, but I wanted
3 to show you what we changed from.....

4 CHAIR JOHNSON: Thank you.

5 MS. KENYON:instructions you gave us.

6 CHAIR JOHNSON: Okay. Are there questions on this matter,
7 the dominant status, termination of the Act (ph) in market?

8 COMMISSIONER GIARD: Is item number B required? I mean if
9 it's more than 60 percent, then they're dominant. Do we need
10 to say less than 60 percent, they're not dominant? I mean
11 that's kind of -- what are they if they're not dominant?

12 MS. KENYON: You may be right. I'd like to defer to my
13 other Staff members who are present if they have a suggestion
14 here.

15 MR. GAZAWAY: This somewhat echoes what we have in
16 existing regulations where we do the same thing. We -- it
17 basically provides that -- it designates a dominant carrier,
18 then it basically defaults others to the non-dominant status.
19 The question is, is it necessary? Well, I'll leave that to
20 your discretion. I would assume it doesn't harm to leave it
21 in.

22 CHAIR JOHNSON: What is the pleasure of the Commission?

23 COMMISSIONER STRANDBERG: I like it in.

24 CHAIR JOHNSON: Commissioner Giard, did you want it out?

25 COMMISSIONER GIARD: That's fine. It's just not

1 necessary.

2 COMMISSIONER STRANDBERG: Looking to the law on regulation
3 in some views. Let the regulations writers deal with it to
4 make sure it's clear, I suppose.

5 CHAIR JOHNSON: Okay. Page 18 does not set forth amended
6 material as provided for background as to retail rates and
7 wholesale rates in the IXC market. And then on page 19 begins
8 a section on carrier of last resort. Mr. Gazaway, did you want
9 to discuss this a little further?

10 MR. GAZAWAY: Well, this was subject to a significant
11 amount of discussion at our last public meeting. Part of the
12 process was the Commission had a couple of concerns, as I
13 recall, and there was a discussion of comparative hearing
14 process. Basically we have a -- when you have competing
15 applications for local exchange service in certain areas you
16 have a way of dealing with those and it's comparing the two
17 applications -- well, it's dealing with both the applications
18 at the same time. I believe the concept of a comparative
19 hearing was somewhat the converse of that, where you're trying
20 to impose a burden on two carriers at the same time and having
21 a hearing with both of their interests being represented.

22 CHAIR JOHNSON: And I'll -- just go ahead. I'll comment
23 on that a little further. Go on, Eric.

24 MR. GAZAWAY: We basically left the incumbent as a carrier
25 of last resort pending such a determination. And then at that

1 time you had wanted to have the opportunity to invite comment
2 on the issue of shared carrier of last resort responsibilities.
3 So that's what this was attempting to achieve. The only thing
4 I believe I would add other than that is it has pursuant to
5 petition or unrezoned motion, which would allow the Commission
6 to react to a filing by a company or take action under its own
7 volition. And then also I guess the other thing I'd add is
8 that it has -- it's imposed -- possibly imposes carrier of last
9 resort responsibilities on the facilities based carriers.

10 CHAIR JOHNSON: Further comments on the -- maybe I'll just
11 start by this -- I know I'm sort of the genesis of this
12 proposal. I think it's important when we look at this entire
13 process to keep in mind that although we would be dealing with
14 requests for new service in an area, in a particular instance,
15 that what we'd have before us at that time is, in my
16 estimation, a -- and a more complete description, is what you
17 have is the carriers determine to do business in the state and
18 they do business in the state in the IXC markets in a variety
19 of places. I think what you're really looking at is that there
20 is an overall benefit from a carrier doing business in the
21 state. The carrier of last resort obviously shifts the terrain
22 because then we're talking about things that they might not
23 ordinarily want to do based on the pure economics. But in my
24 mind, given that that terrain has shifted, it's appropriate for
25 us to look at carriers that are facilities based, that are

1 serving broad areas of the state, to look at those requests for
2 new services and match them up to the carriers in the state
3 that do provide -- I'm not being articulate here, but I don't
4 think it's appropriate just to isolate on the fact that we're
5 imposing a burden because it's clear that the carrier also
6 obtains significant benefits from this state wide service. And
7 I think that is the best approach to take to these applications
8 is that yes, carriers are serving the state, we are looking at
9 potentially increasing at some marginal level the burden that
10 would be borne by those carriers, but at the same time the
11 Commission needs to recognize that those same certificated
12 carriers also have and attain benefit from providing that
13 service. So certainly it's a stretch. It's a new approach to
14 all this. I believe it's appropriate for us to examine this.
15 I've been doing some work since Wednesday and I know that there
16 is -- there have been proceedings in the states of Nebraska and
17 Colorado that I want to take a further look at. But I do
18 believe that it is possible for us to design a process that
19 will effectively result in the sharing of this burden and I
20 think it will make sense. And I would urge the Commission to
21 stay the course and -- with the plan that is suggested and
22 outlined, albeit somewhat general terms, what's before you here
23 today.

24 MR. GAZAWAY: If I could add one thing to that. I think
25 the AT&T's position on this was that they are overly burdened

1 and it's somewhat of an unequal competitor treatment for them
2 to be the only carrier of last resort and the other carrier be
3 allowed to pick the locations that it serves. And I think
4 that's their genesis behind proposing this.

5 CHAIR JOHNSON: I would -- I guess I do encourage
6 additional comments from the Commission. This is a big step.

7 COMMISSIONER THOMPSON: I thought I was clear about what
8 we were doing.....

9 CHAIR JOHNSON: I know you were.

10 COMMISSIONER THOMPSON:until very recently. And so
11 I guess I want to make.....

12 CHAIR JOHNSON: Please do.

13 COMMISSIONER THOMPSON:sure I understand. I thought
14 when we talked about this before we were talking about having
15 some kind of initial proceeding to review all carrier of last
16 resort assignments, or whatever we want to call it, and then on
17 a periodic basis or when we got a petition, we would then make
18 a decision on a new circ area or do that.

19 CHAIR JOHNSON: Right.

20 COMMISSIONER THOMPSON: Is that still your idea?

21 CHAIR JOHNSON: Yes.

22 COMMISSIONER THOMPSON: Okay.

23 CHAIR JOHNSON: Yes. And I -- and that is consistent with
24 the notion that it's important for us to look at this, not just
25 in the isolated circumstance of an application for new.....

1 COMMISSIONER THOMPSON: Okay.

2 CHAIR JOHNSON:service, but in the totality of
3 what's going on in the market place.

4 COMMISSIONER THOMPSON: Okay.

5 COMMISSIONER STRANDBERG: So I guess what I'm working with
6 in my mind right now is how that particular approach
7 practically responds to the concerns of not only AT&T, but the
8 market place. Is it saying that yes, we recognize that there's
9 a -- there are new conditions, there are market conditions that
10 we have to react to. But are we looking for, under this
11 approach, carriers to petition us to make changes or are we
12 looking for.....

13 CHAIR JOHNSON: That could be the case. But the other
14 thing that could happen is potential consumers could be
15 petitioning for service. Communities, if you will. And that's
16 and appropriate thing for this Commission to deal with.

17 COMMISSIONER STRANDBERG: So there's really two different
18 areas. One is unserved customers who may come to us and say we
19 need service and then we would have to look in that area and
20 name a carrier of last resort, or the other situation is where
21 there are existing communities and a carrier says -- may
22 petition us and say this is not fair, we'd like you to
23 redistribute the carrier of last resort responsibility. And I
24 support that approach, that we need to get the ball rolling
25 upon this. And again, under our Commission processes I want to

1 make sure that these rules will allow us in fact to get the
2 ball rolling and to get us to recognize the market conditions
3 that is there right now so that we can comply with the
4 legislature. And that's where I'm at.

5 CHAIR JOHNSON: Pages 20 -- bundling, page.....

6 COMMISSIONER HARBOUR: Mr. Chairman?

7 CHAIR JOHNSON: Mr. Harbour?

8 COMMISSIONER HARBOUR: I agree with what has been said.
9 Personally I'm -- I don't want to send a signal that this one
10 person declines to consider an inter-exchange carrier subsidy.
11 You know, we can talk about that or I'll just shut up. But,
12 you know, I'd be more inclined if we did include something
13 about that to say the Commission declines to consider inter-
14 exchange carrier subsidy at this time.

15 CHAIR JOHNSON: Yeah. I had understood where this
16 discussion trailed off previously is that we were decided,
17 although that issue might come up in some other context,
18 particularly the state Universal Service Fund issues, that we
19 were not going to deal with it in this docket at this time. Is
20 that an accurate statement?

21 COMMISSIONER HARBOUR: That's the way I recall it.

22 CHAIR JOHNSON: Is that inaccurate?

23 COMMISSIONER THOMPSON: No, I think that's correct. And I
24 don't know why you have to give notice of that unless it was
25 everybody's intent to throw it out again for further

1 discussion. I mean if what we're doing is giving notice of
2 proposed regulations, that isn't a regulation.

3 COMMISSIONER HARBOUR: Right.

4 CHAIR JOHNSON: Right.

5 COMMISSIONER THOMPSON: And so it seems like silence might
6 be appropriate.

7 MR. GAZAWAY: What this is, it's basically showing you
8 what you've done on any step of the process.....

9 COMMISSIONER THOMPSON: Okay.

10 MR. GAZAWAY:.....from what the outline is. This isn't to
11 be something you would submit for comment.

12 CHAIR JOHNSON: Okay. I apologize. I sort of jumped
13 ahead. We still have the reporting requirements section,
14 middle of page 19. Any questions on that?

15 COMMISSIONER HARBOUR: If I could, I'd like to ask Staff
16 again along the lines of the earlier comments that some of us
17 made about reporting requirements. In light of those comments
18 any -- do you have any different view of the way this was
19 approached, or other Commissioner's do? I'm a little troubled
20 by requirements that you have a hard time validating or
21 enforcing.

22 MS. KENYON: The difference between the reports here and
23 the ones previously discussed is that the previous reports were
24 for a market that you would have largely regulated. Here these
25 reports would apply to what may continue to be a regulated

1 market and you may even want more reports available to you if
2 you start sharing carrier of last resort responsibilities.
3 Because that's relatively new ground for us and it may be new
4 ground for whoever becomes a new carrier of last resort. So
5 while I think it does increase the burden that may be there for
6 some existing non-dominant carriers, it may be a burden well
7 spent, especially when you look at how difficult it is to serve
8 some of our rural areas of the state. High levels -- I mean
9 just the arctic conditions, the special construction that you
10 need, the difficult costs involved. Rich, is there anything
11 you would like to add?

12 MR. GAZAWAY: I'm sorry. I was.....

13 CHAIR JOHNSON: Kind of distracted.

14 MS. KENYON: Oh, okay.

15 COMMISSIONER HARBOUR: That has a logical ring to it but I
16 just wanted to ask the people more experienced in drafting
17 regulatory language than I am whether or not that's more
18 properly -- a volition more properly vested in the outcome of a
19 given order than it is in the regulation.

20 MS. KENYON: If you want them to do it and you want a
21 general rule, my understanding is it has to be in the
22 regulation.

23 MR. GAZAWAY: If you impose it without getting the chance
24 to comment on the obligation, I think you're walking a much
25 more Draconian.....

1 COMMISSIONER HARBOUR: Wait. Now I'm not.....

2 MR. GAZAWAY:line.

3 COMMISSIONER HARBOUR:suggesting that in a given
4 docket it may be that certain requirements could be imposed in
5 order to provide protections desired. That may be too broad in
6 regulation as applying to all. But -- what do you think?

7 COMMISSIONER STRANDBERG: Commissioner Harbour, we talked
8 about this, as I recall -- happen to have a selected
9 remembrance of this discussion and I think that -- at least
10 where I stand on it, is that I support the reporting
11 requirement. I have been cognizant of the burden and the
12 amount of paper coming through the place, but in this case we
13 have remote customers and they're -- and sometimes it's hard to
14 know what's going on. And I think these reports are going to
15 help.

16 MS. KENYON: Perhaps to assist in the long distance market
17 this requirement would apply to facilities based carriers that
18 have more than 25 percent market share. There aren't very many
19 of those. It's -- there's Alascom and GCI right now.

20 COMMISSIONER THOMPSON: Well, they'll probably comment.

21 CHAIR JOHNSON: They're discussing their comments right
22 now.

23 COMMISSIONER GIARD: They're not yawning though.

24 CHAIR JOHNSON: Anything further on this section? Page 20
25 -- page 21, bundling.

1 COMMISSIONER THOMPSON: I've got a question about what is
2 the second sentence of both 52.378 and 53.275, where you
3 require the carriers to specify rates for the services included
4 in the bundle. It seems like that defeats the purpose of
5 bundling. And isn't what you really want, and this also -- my
6 question also gets to the bundling/tying distinction that I
7 think Mr. Treuer tried to call to our attention at the last
8 meeting, isn't what you really want to prevent the type of
9 arrangement where a customer has to buy services they don't
10 want to buy in order to receive services that they do. And so
11 don't you really want the carriers to offer everything that
12 they offer in a bundle separately and individually?

13 MR. GAZAWAY: I think that you guys shot that proposal
14 down at the last meeting. Basically.....

15 COMMISSIONER HARBOUR: Yeah.

16 MS. KENYON: Done.

17 MR. GAZAWAY:what this is doing is this is part of
18 the Unicom -- or United Utilities proposal to make sure that
19 the carriers make their rates available state wide, and by
20 specifying the rates, especially the inter-exchange rate.

21 MS. KENYON: We have to clarify what they have to file
22 under tariff essentially.

23 COMMISSIONER HARBOUR: I agree with Commissioner Thompson,
24 Mr. Chairman. I cannot imagine if this were promulgated,
25 anybody proposing a bundle.

1 COMMISSIONER THOMPSON: Um-hum.

2 COMMISSIONER HARBOUR: It would be useless.

3 COMMISSIONER THOMPSON: Um-hum.

4 CHAIR JOHNSON: Well, we do have the ability to get
5 further comments on this if we're going to put specific
6 language out in front of us. So.....

7 MR. GAZAWAY: It appears you're going back to the ACS
8 proposal on at least the two.....

9 COMMISSIONER THOMPSON: I'm not going to either party's
10 proposal. I'm just thinking about the concept of a bundle.
11 And I guess I don't -- if -- as a regulator, if they want to
12 offer services together as a package, local, long distance
13 together, for a price that might be attractive to a customer
14 because it's cheaper than buying the two services individually,
15 that's great. What I want to avoid is a customer being put in
16 the position where they have to buy something they don't want
17 in order to get something they do want. So what I want to
18 require them to do is if they're going to put a service in a
19 bundle, they have to offer it individually.

20 MR. GAZAWAY: Well, that was Staff proposal in the initial
21 Wednesday public meeting that was rejected. We instead went to
22 what was the UUI variation, United Utilities proposal, and that
23 was -- so that the language drafted is based on that decision.

24 COMMISSIONER THOMPSON: Well, I guess I wasn't
25 understanding the discussion the first time then, cause that's

1 not what.....

2 MR. GAZAWAY: Well, we.....

3 COMMISSIONER THOMPSON:it could have been late in
4 the day but that's not what I thought the discussion was.
5 But.....

6 MR. GAZAWAY: The Staff discussed that issue and had a
7 concern as well. I don't think I speak out of turn for anyone
8 here that we agree with your concern.

9 COMMISSIONER GIARD: The UII variations has allowed
10 bundling of local exchange and long distance services, required
11 carriers to make long distance services included in the bundle,
12 available state wide at rates specified in the bundle. And
13 I've got that circled. So that's the UII version. The
14 important part of that was, in my mind, that if you're going to
15 have long distance services it has to be available state wide.

16 MS. KENYON: Would it help if we just quoted the language
17 that's on page 54 under the UII variation and stuck that in the
18 regulation? Because if it's a matter of semantics, and you all
19 agree to the language that was in the Staff memo, then maybe
20 that's what we should put in the regulation. Or paraphrasing
21 it. I think we tried to do that and maybe it's a matter of
22 clarity.

23 COMMISSIONER HARBOUR: Excuse me. Just -- I'm just trying
24 to think along. If we have local service A at a given price,
25 and long distance service B at a given price, offered

1 independently, those are approved rates in the market served,
2 it's to the customer's benefit to allow -- I think I'm hearing
3 us say, it's to the customer's benefit to allow a company to
4 offer a bundling of the two which represents a price that's
5 less than the sum of A and B. Now if you force that company
6 then to make the price of A and B within the bundle equal to A
7 and B sold separately, there is no bundle. So what I hear
8 Commissioner Thompson saying is -- is not that we don't -- here
9 I don't want to use double negatives, is that bundling is okay,
10 but we don't want to force the local customer to swallow long
11 distance in a bundle and not have the option of just the local
12 option.

13 MS. KENYON: Maybe -- I think I'd phrase it differently.
14 And I'm not trying to.....

15 COMMISSIONER HARBOUR: I'm sure you could do a better job.

16 MS. KENYON:dis -- I think I understand your concern
17 but let's say you've got option A, local service, option B,
18 long distance service. They want to price those at a bundle.
19 What I think the UUI proposal says is the option B, long
20 distance service, has to be available state wide. It doesn't
21 say what happens to option A, local service. That doesn't have
22 to be state wide. Okay. So they could price this wherever
23 they want. The long distance service, they've got to explain
24 to you how that meets the rate averaging requirement.

25 COMMISSIONER THOMPSON: Right.

1 MS. KENYON: Now there might -- let's say we one step
2 further and I'm a customer and I don't want option A and option
3 B. I want option C which is just long distance service. Would
4 you be willing to let -- are you going to require a carrier to
5 offer a single option C which is long distance service, a
6 stand-alone long distance service. Doesn't have to be the same
7 rate as the bundle. And the same is true for local. Do you
8 want them to have a stand-along local rate that's outside the
9 bundle so that a customer isn't forced to buy what they don't
10 want.

11 COMMISSIONER STRANDBERG: If I might comment, under --
12 let's assume hypothetically that we have a regulated local
13 exchange carrier and it has a long distance side of its
14 business that is in a competitive market. I think the problem
15 comes up where someone, in order to get their long distance
16 service, must take the local exchange service. And what I'm
17 trying to work through is the matrix of situations that a
18 customer might actually reside in where they could be deprived
19 of some regulated service. I believe that's the thinking.

20 COMMISSIONER GIARD: Mr. Strandberg, why would we be in a
21 position of not allowing the LEC to do exactly what you just
22 suggested? If you want our long distance service you take our
23 local service.

24 COMMISSIONER STRANDBERG: I am not -- in fact, I'm trying
25 to argue the converse. That I'm not seeing any matrix

1 situation here where a customer would be negatively impacted by
2 the free allowance of bundling under these circumstances.

3 COMMISSIONER THOMPSON: I think it's real simple. That --
4 and -- that a customer might be in a position where they have
5 to buy something, pay for something they don't want.

6 COMMISSIONER GIARD: Well.....

7 COMMISSIONER THOMPSON: And they may get something they do
8 want.

9 COMMISSIONER GIARD:then they go to the other
10 company and they get long distance and local service from the
11 other one. Why are we.....

12 COMMISSIONER STRANDBERG: Right. See, the point is that
13 they're always going to be able to get the local service
14 because that's regulated. But what they may not be able to get
15 is the long distance service that the regulate company is
16 offering in a bundle. But it's the market. The question is
17 how are they hurt.

18 COMMISSIONER THOMPSON: Well, I was asleep when this was
19 discussed the first time and I'm out voted. I'll be quiet and
20 we'll see what the comments say.

21 COMMISSIONER STRANDBERG: All right.

22 CHAIR JOHNSON: Well, I guess I'll try again. I believe
23 that when this issue came up previously I stated my preference
24 that we continue to address this in a currently open docket
25 that exists on bundling, and address it there. Addressing

1 bundling is not a requirement of the House Bill 111 process.
2 And so it remains my preference that we continue to deal with
3 that in the other docket. But.....

4 COMMISSIONER GIARD: Okay.

5 CHAIR JOHNSON:whatever the Commission would --
6 deems most appropriate. Keep in mind that's an open docket, we
7 can bring that up next week and put it on a parallel path. But
8 I just -- I'm concerned that we haven't thought through the
9 implications thoroughly, nor have we a consensus as a body as
10 to how this matter ought to be approached.

11 COMMISSIONER THOMPSON: I would concur that there's a lot
12 of implications to this policy that have not been discussed.
13 So I think that's a good idea.

14 COMMISSIONER STRANDBERG: And I think it's a good idea
15 too.

16 CHAIR JOHNSON: Good. And I just want to add by saying
17 that. Commissioner Giard has said that I -- I think there are
18 some things that are worth looking at in greater detail. This
19 is -- I don't want -- I'm not putting this issue aside. I'm
20 just saying that there's no requirement that we address it in
21 this docket. We have another docket that's already open,
22 that's ready to go. As a matter of fact, we could take this
23 item up if the Commission deemed appropriate at the next public
24 meeting. I'm not necessarily suggesting we do that, but I just
25 don't think -- and I'm -- I was concerned previously and I'm

1 also interested in exploring the time concerns that have been
2 raised by Mr. Treuer, and that's of particular concern to me.
3 So I'm just -- whatever.....

4 COMMISSIONER GIARD: My silence wasn't opposition.

5 CHAIR JOHNSON: Okay.

6 COMMISSIONER GIARD: I wasn't opposed.

7 CHAIR JOHNSON: Okay.

8 COMMISSIONER GIARD: I just.....

9 CHAIR JOHNSON: I just think it will.....

10 COMMISSIONER GIARD:think it's in another.....

11 CHAIR JOHNSON:simplify our task here and we will
12 not get bogged down and we will not make a mistake if we decide
13 not to take this up today and simply move on and address it
14 just the next breath down the road.

15 COMMISSIONER GIARD: As long as we have some assurance
16 that we are going to -- I mean is it a 03 Docket or a.....

17 CHAIR JOHNSON: I'm the docket manager of the
18 bundling.....

19 COMMISSIONER GIARD: You're the bundling man.

20 CHAIR JOHNSON:issue. I guess, yeah.

21 COMMISSIONER GIARD: Okay.

22 CHAIR JOHNSON: And I'll commit to you that you'll see
23 that maybe sooner than you want to see it.

24 COMMISSIONER GIARD: Okay. I just wonder is there
25 bundling unfairness going on right now? Is there unfair

1 bundling?

2 MR. GAZAWAY: You know, I think that was address in
3 comments. And it was addressed in a couple ways. ACS's
4 position was that they were the only car -- well, I shouldn't
5 put it that way. I think it was GCI's position was that the
6 only restriction on bundling was that the incumbent local
7 exchange carrier could not bundle their package, local exchange
8 service and intrastate inner exchange service. Staff's
9 position was that GCI also was subjected to that restriction
10 but through a different mechanism. That is, through the
11 wholesale rate of geographical rate averaging requirement.

12 MS. KENYON: And I think they supported -- GCI stated that
13 at hearing as well.

14 COMMISSIONER THOMPSON: There's more to the story.
15 But.....

16 MS. KENYON: Yeah, I know. I don't know but I'm getting
17 from all of the more experienced commissioners that there is
18 more to the story. So I'll go with whatever it is that the
19 more experienced body desires.

20 CHAIR JOHNSON: That brings us to the end of this prepared
21 document. The question that I posed to the Commissioners are
22 there other issues related to this -- substantive issues that
23 need to be addressed before we sort of turn this over to Staff
24 to craft an order for dissemination prior to November 15th.

25 COMMISSIONER THOMPSON: Do you need a motion, Mr. Chair?

1 CHAIR JOHNSON: Actually I would. But I would like to
2 just put this in proper context. And actually I just invited
3 the Commissioners on the substantive question. No more
4 substantive questions? Ms. Kenyon, is there anything that you
5 would like to bring up that's additional on substantive issues?

6 MS. KENYON: Thank you, but no.

7 CHAIR JOHNSON: Okay. Ms. Kenyon and I had discussed -- I
8 think I'll just put this out now -- a schedule for the
9 dissemination of these proposed regulations for comment. And
10 she'd given me several scenarios. One -- actually there are
11 about five or six different versions. Some call for a very,
12 very short comment period and then an equally short reply
13 period. Some involved a much more lengthy period. And I was
14 looking at the calendar and started seeing how it impacted. My
15 current thinking -- my thinking, and actually before I announce
16 my thinking maybe I should ask Ms. Kenyon what her
17 recommendation is to the Commission in terms of the comment
18 noticing periods.

19 MS. KENYON: I just wanted to mention I revised my
20 recommendation to you and I would make it the second option I
21 gave to you earlier, the longest cycle I have offered to you.
22 That's all I wanted to mention.

23 CHAIR JOHNSON: Could you state that.....

24 MS. KENYON: The 60 days, 45 days, what I'd recommend. I
25 just go to thinking there'd be -- we're going to get quite a

1 lot of comments and response. The first round of comments and
2 30 days reply opportunity might be a little short.

3 CHAIR JOHNSON: I would say that -- I guess where I was
4 was to try to go with the 45/45 approach, which -- but.....

5 COMMISSIONER THOMPSON: I think more time is better,
6 especially this time of the year and these are really -- there
7 were very substantive changes. There would be a lot of parties
8 to comment. I think it would be helpful to give them more
9 time.

10 CHAIR JOHNSON: Other thoughts from the Commission?

11 COMMISSIONER GIARD: So what's your proposal? That we
12 send this out for 45 days?

13 CHAIR JOHNSON: Yeah. I guess -- and I know that -- Mr.
14 Strandberg, did you have something?

15 COMMISSIONER STRANDBERG: Well, I believe the 60 to 45 --
16 I would comment that we are October 31st right now and 60 days
17 from now is going to be essentially January 1st.

18 CHAIR JOHNSON: Well, actually by the time we get the
19 order issued, 13 January would be the.....

20 COMMISSIONER STRANDBERG: All right. So January 15th
21 would be the time for the first set of comments. And I guess
22 my concern is that we have enough time. This is a particularly
23 bad time of the year.

24 COMMISSIONER THOMPSON: That's right.

25 COMMISSIONER STRANDBERG: So 60 may not be enough.

1 COMMISSIONER GIARD: Give them 30. Why do they need 60
2 days? You tell them to get to work. They want these things
3 passed more than we do. I mean I don't understand 60 days. It
4 seems like a tremendous amount of time.

5 CHAIR JOHNSON: I would, just in defense of my 45/45
6 approach, my interest is in trying to show some very, very
7 significant progress to the legislature while the legislature
8 is in session and they're going to realize that we have done a
9 pretty good job on -- a pretty aggressive job and a timely job
10 of addressing their concerns. So that's where I'm going with
11 my 45/45 recommendation. But having said that.....

12 COMMISSIONER THOMPSON: Well, some of the parties who will
13 be -- who have a significant interest in these regulations are
14 going to be in this hearing room doing various proceedings over
15 the next couple of months. And they're going to need some time
16 -- I want to get good comments. They're going to need some
17 time to think about. So while 60 days may seem like a long
18 time, it's not like they have nothing else to do in the next
19 two months.

20 COMMISSIONER GIARD: Boy, I really would hate for these
21 comments to come back in. January 15th, you have no time to
22 react to it. The Legislature is getting into session and all
23 you have are comments and you don't even have reply. So all
24 you have laying before you in front of the legislature is
25 comments on the work that you've done. That's not where I

1 think we want to be, with comments. Comments are not something
2 you want to finish with or enter the legislative session with.

3 COMMISSIONER THOMPSON: We're not -- no matter what we do
4 not we're not going to have a record in order to make a
5 decision before the legislature because.....

6 CHAIR JOHNSON: What I'd like to do is maybe we're at the
7 point -- and I think it's appropriate to get this discussion
8 out here before, I'd like -- the Chair would like to entertain
9 a motion to adopt the Staff recommendation and then whoever
10 makes the motion can include a -- as part of that, a
11 recommendation that we noticed this at a given cycle and we can
12 vote this up or down.

13 COMMISSIONER THOMPSON: Then Mr. Chairman, I would move
14 that we put the staff draft regulations as amended in the
15 meeting today out for comment to the public. To get the order
16 out hopefully by the middle of November and allow 60 days for
17 initial comments and 45 for reply.

18 COMMISSIONER STRANDBERG: Second, for the purposes of
19 discussion.

20 CHAIR JOHNSON: Is there discussion on the motion by
21 Commissioner Thompson?

22 COMMISSIONER GIARD: I believe that 60 days is not --
23 given the amount of testimony already in the record and that
24 we've already had a hearing, and that we've had a public
25 meeting -- this is our third public meeting, I think that the

1 industry would -- has participated significantly and probably
2 is already involved in preparing to submit comments. I think
3 30 days and then 45 days are -- an abbreviated period is more
4 reasonable given what the legislature wanted us to accomplish.

5 CHAIR JOHNSON: Could we --.....

6 COMMISSIONER HARBOUR: Mr. Chairman.....

7 CHAIR JOHNSON:could we just take a brief at ease
8 and -- I think it's worthwhile for us to at least converse a
9 little bit about what some of our options are here. Can we
10 just go off record for a moment?

11 (Off record - 3:44 p.m.)

12 (On record - 3:47 p.m.)

13 CHAIR JOHNSON: We're on record.

14 COMMISSIONER THOMPSON: I would like to, with the Chair's
15 permission, amend my previous motion to have a 60/30 day
16 comment cycle.

17 CHAIR JOHNSON: I think we'll need permission of the
18 second. So.....

19 COMMISSIONER THOMPSON: He's granting permission.

20 CHAIR JOHNSON: Commissioner Strandberg?

21 COMMISSIONER STRANDBERG: Okay.

22 CHAIR JOHNSON: Did you hear the motion to amend.....

23 COMMISSIONER THOMPSON: I amended my motion to 60/30 day
24 cycle.

25 COMMISSIONER STRANDBERG: Okay.

1 COMMISSIONER THOMPSON: That was the second.

2 CHAIR JOHNSON: Is there objection?

3 COMMISSIONER GIARD: No.

4 CHAIR JOHNSON: No objection. With that we are adopted on
5 that subject. That brings us to the end of consideration of --
6 Ms. Kenyon, are there other procedural aspects that relate to
7 this matter, to RO-3-03 that we should be aware of?

8 MS. KENYON: Not that I'm aware of.

9 CHAIR JOHNSON: Is there a need for us to meet again prior
10 to the dissemination of a order to comply with the legislative
11 deadline?

12 MS. KENYON: I don't believe so. And what I would -- if
13 this is acceptable procedure to you, Staff will develop a draft
14 order for you to circulate amongst yourselves and there may be
15 optional paragraphs in there that, you know, you may or may not
16 want to have. That's the only question I would have and I
17 think you could probably strike them out if you see it come by
18 your desk and you don't want a paragraph to be there. But if
19 you want to discuss the order, that's the only thing I could
20 see perhaps having a public meeting for.

21 CHAIR JOHNSON: Okay. Could I just maybe put this
22 question to Ms. Rusch. I know she's not the regulation
23 attorney but she is our riser. Is it appropriate for us to
24 encompass all the proposed regulatory changes that we have
25 outlined here in a single order or is there -- would it be

1 appropriate for us to look at this in a variety of projects --
2 more than one project?

3 MS. RUSCH: Well.....

4 CHAIR JOHNSON: Are getting into any trouble there by
5 bundling too much stuff together?

6 MS. RUSCH: Uh oh, bundling?

7 COMMISSIONER GIARD: Oh, wrong word.

8 CHAIR JOHNSON: Grouping.

9 COMMISSIONER GIARD: Thank you.

10 MS. RUSCH: I think this is all related to the
11 telecommunications issues that the Legislature did tell you to
12 address. And I might just go back and review whether there's
13 any -- there isn't a single subject quite in the same way that
14 it applies to legislation. So I don't think that's a problem.
15 But I will review the manual a little bit and see.....

16 CHAIR JOHNSON: Okay.

17 MS. RUSCH:if I can.....

18 2700

19 Tape change

20 Tape 3

21 0015

22 CHAIR JOHNSON: Could we just -- with the Commission's
23 permission should we receive advice from the Department of Law
24 for the need to bifurcate some part of this at some later stage
25 that it will not be deemed a procedural problem with the

1 Commission?

2 COMMISSIONER THOMPSON: We always do what our attorney
3 tells us.

4 CHAIR JOHNSON: Okay. So with that if we do receive
5 contrary advice we will -- that's implicit in the action we
6 take today and we will make that appropriate modification.

7 That is all that we have before us as to this item on our
8 agenda. We do have a request for an executive and then any
9 other business that the Commission wants to take up. Maybe for
10 clarity, let's -- is there other business that the Commission
11 would like to address this afternoon?

12 COMMISSIONER HARBOUR: Mr. Chairman, I was honored when
13 you asked me to head up our Share campaign for United Way
14 within the Regulatory Commission. I think we're about at the
15 end of our process and it's appropriate to report that over a
16 third of our Commission employees have joined the Share program
17 which is about three times the 2002 State statistics for
18 involvement. Our employees have given from five to \$600 a
19 piece with the average contribution being about \$200.

20 And in the course of doing that the reason I told you I
21 was honored to serve as the volunteer coordinator is that in
22 the course of that employees shared privately with me some of
23 their own rationale for why they have participated, what effect
24 Share and United Way have had on their own families and their
25 friends over the years during times of trial. And it meant a

1 lot to me to hear some of those stories. Consequently, the
2 Share program that the State undertakes officially that's
3 utilities, private companies throughout the state undertake
4 through United Way is much more meaningful to me personally.
5 And I wanted to express my appreciate to the employees and to
6 you for that honor. Thank you.

7 CHAIR JOHNSON: Thank you. Is there any additional other
8 business to come before the Commission. With that the Chair
9 would like to entertain a motion to go into executive
10 session.....

11 COMMISSIONER STRANDBERG: I move.

12 CHAIR JOHNSON:for the purposes of hearing from our
13 attorney.

14 COMMISSIONER HARBOUR: Second.

15 COMMISSIONER STRANDBERG: I move that we go into executive
16 session. And we do not anticipate taking any action further
17 for the members of the public after the executive session so
18 you are free to go. And let's go off record.

19 (Off record - 3:53 p.m.)

20 (Executive session)

21 (On record - 4:06 p.m.)

22 CHAIR JOHNSON: We are back on record. And we've been off
23 record hearing a report from our attorney on pending
24 litigation. That report is not concluded. Is there a motion?

25 COMMISSIONER THOMPSON: Motion to adjourn.

1 COMMISSIONER STRANDBERG: Second.

2 CHAIR JOHNSON: Is there objection? If not we are
3 adjourned and the time is 4:06. Thank you.

4 (Recessed - 4:06 p.m.)

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

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

THAT the annexed and foregoing Special Public Meeting held on October 31st, 2003, was taken by Suzan K. Olson, commencing at the hour of 1:30 o'clock p.m, at the Regulatory Commission of Alaska in Anchorage, Alaska;

THAT this Hearing Transcript, as heretofore annexed, is a true and correct transcription of the proceedings taken and transcribed by Wanda Ventres, Lynn Hall and myself.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this November 3rd, 2003.

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

32

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Review of the Commission's Rules Regarding)
the Pricing of Unbundled Network Elements) WC Docket No. 03-173
and the Resale of Service by Incumbent Local)
Exchange Carriers)
)
)
)

NOTICE OF PROPOSED RULEMAKING

Adopted: September 10, 2003

Released: September 15, 2003

Comment Date: 60 days after Federal Register publication of this Notice

Reply Comment Date: 105 days after Federal Register publication of this Notice

By the Commission: Chairman Powell, Commissioners Abernathy, Martin, and Adelstein issuing separate statements; Commissioner Copps approving in part, dissenting in part, and issuing a separate statement.

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), the Commission begins its first comprehensive review of the rules applicable to the pricing of unbundled network elements (UNEs) pursuant to section 252(d)(1) of the Communications Act of 1934 (the "Act"), as amended by the Telecommunications Act of 1996 (the "1996 Act"). The Commission adopted