MINUTES OF THE MEETING
OF THE
ASSEMBLY SUBCOMMITTEE ON COMMERCE AND LABOR

Seventy-Fourth Session
April 5, 2007

The Subcommittee on Commerce and Labor was called to order by Chair Marcus Conklin at 7:45 p.m., on Thursday, April 5, 2007, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Marcus Conklin, Chair
Assemblywoman Francis Allen
Assemblywoman Marilyn Kirkpatrick

STAFF MEMBERS PRESENT:

Kevin Powers, Committee Counsel
Dave Ziegler, Committee Policy Analyst
Patricia Blackburn, Committee Secretary
Earlene Miller, Committee Secretary

OTHERS PRESENT:

Eric Witkoski, Chief Deputy Attorney General, Consumer's Advocate
Kristin McMillan, Vice President and General Manager, Embarq
Howard Lenox, President, AT&T Nevada
Mark Fiorentino, representing Focus Property Group and General Growth Properties
Barry Gold, Director, Government Relations, AARP, Nevada
Janie Brisameister, representing American Association of Retired Persons (AARP)

Don Soderberg, Chair, Public Utilities Commission
Dan Jacobsen, Executive Director, Regulatory, AT&T Nevada
Dan Reaser, representing AT&T Nevada
Ann Pongracz, Director, Government Affairs, Sprint/Nextel
Helen Foley, representing T-Mobile
Misty Grimmer, representing Cox Communications
Marsha Berkbigler, Vice President, Government Relations, Charter Communications
Marvin Leavitt, representing the Urban Consortium
Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State
Nick Anthony, representing City of Reno
Liz Sorenson, representing Communications Workers of America, Local Union No. 9413
John Doran, Communications Workers of America Representative
Fred Schmidt, representing Embarq
Bob Ostrovsky, representing Cox Communications

Chair Conklin:
We will open the hearing on Assembly Bill 518.

Assembly Bill 518: Revises provisions governing the regulation of telecommunication service. (BDR 58-1128)

At the direction of the Chair during the full Committee hearing he instructed certain parties to get together. There seemed to be a variety of issues that needed to be dealt with and I would like to call those parties to the table at this time to discuss if there has been any movement on the issues that were of concern to the Committee.

We would like to know if you have met, and what, if any, types of amendments we have to offer for this bill at this time.

Eric Witkoski, Chief Deputy Attorney General, Consumer's Advocate:
As you know, there were some issues that I raised at the Committee hearing when we first heard the bill and there was some dialogue about rate caps and various things. We were directed by the Chairman that we had five days to see what we could do. We have been putting together some issues, maybe some bullet points that we could agree to conceptually, and that we could later put into a bill.

The first issue was a rate cap. The proposed bill had a transition with a rate cap that would stay in place until July 1, 2008. We have been looking at other

states and looking at a cap out to the end of December 2010, which would also correlate with the Embarq stipulation that we did back in December, 2005 that would keep the basic rate. We had a concern about what would happen in 2010. We needed a bit of a shock absorber so we looked at perhaps a soft cap of a $1 increase for another year until December 2011.

Chair Conklin:
One of the concerns that I heard from the Committee was the need to protect the people for a period of time as we begin to deregulate this market so that there is an understanding that there is a baseline rate for basic users that is protected. What I am hearing you say, there is already something in place because of the change in the market for Embarq that extends out to December 2010. Is that correct?

Eric Witkoski:
That is correct.

Chair Conklin:
What you are suggesting is that we extend that cap to all parties in this bill and beyond that an additional step. You mentioned $1, has it been done anywhere else?

Eric Witkoski:
Yes. In other states there have been various ways. Indiana used $1 each year and actually this is a better deal because we would not see the $1 increase until 2011 under what we are looking at here. Technology would continue to develop and hopefully it would advance to the point where people would be sure to have service, but this is a way to bridge that time gap and then have a soft cap. We looked at various ways that states use. For simplicity purposes the dollar cap is something that everyone could understand.

Chair Conklin:
Ms. McMillan, do you have any thoughts on this? Is this acceptable?

Kristin McMillan, Vice President and General Manager, Embarq:
Yes, we have had an opportunity to think about this issue and discuss it. We would be agreeable to this.

Chair Conklin:
Mr. Lenox?

Howard Lenox, President, AT&T Nevada:
Yes, we have had many discussions with Mr. Witkoski and we agree with this.

Chair Conklin:
How is a base rate determined? Is there an amalgamated base rate or does everyone have a different base rate?

Eric Witkoski:
Whatever rate was effective January 1, 2007, would be the base rate and it would be continued until December 31, 2010.

Chair Conklin:
Are there any questions from the Subcommittee? I see none. Are there additional items relating to a base cap?

Eric Witkoski:
There is also increasing awareness of the lifeline, which is assistance for those who have a difficulty paying for a telephone. Currently, there is a disparity between the different utilities and we were looking at increasing AT&T's rate up to 175 percent of the poverty level, and that would be equivalent to what Embarq's is. Also, we are looking to enhance the awareness and outreach of that program.

Chair Conklin:
My interpretation from the Committee hearing was that there was one group, Embarq, that has eligibility for lifeline of 175 percent. Is that correct?

Kristin McMillan:
That is correct.

Chair Conklin:
I see no reason why we do not extend that to all parties.

Howard Lenox:
We agree. We are willing and ready to go to 175 percent of the poverty level.

Chair Conklin:
I want to make sure that we are all on the same page. If we free up the market, who is to say that no one wants the baseline rate anymore, as far as businesses go? The person who had the base rate will not have the advantage of knowing it is still available to them. What I am hearing here is that there will be some way to assure that there is continued outreach for potential customers at the baseline rate. Is that what I am hearing?

Howard Lenox:
Yes.

Chair Conklin:
Are there any questions? Do you have any of these proposals in writing? We are getting down to the wire and these are things that are just being agreed upon.

Kristin McMillan:
We have been working right up until this Subcommittee meeting. While we have the conceptual details of these amendments down, we have not reduced them to language form. We understand that we will have to do that very quickly.

Chair Conklin:
We have a very short period of time to deal with a complex issue and the Chairman of the full Committee has set the deadline for this evening so that Legal has an opportunity to get the language right. We have put you under the clock, but that is the nature of what happens here in 120 days. Our drafters need time to get the language right. If we can find some agreement tonight, we will put pen to paper, then it depends on how it comes back from Legal drafting.

There were other issues. Lifeline was a concern of the full Committee. What other issues have you worked on?

Eric Witkoski:
We talked about some oversight from the Public Utilities Commission (PUC) or at least some reporting requirements. We are looking at having companies file a yearly report outlining the competitive issues, the availability, market share, and price of comparable alternatives. That would also be available to the Legislative Commission to get an idea of how the market is developing and how it is doing. In December 2010, we looked at whether the PUC could review that information and do some kind of report or assessment. That would be before the hard rate cap ended. This would give the Legislature more information.

Assemblywoman Allen:
There were some questions on how you deal with this in rural areas, because there is no competitive environment there.

Eric Witkoski:
Under the current draft, there is a section called small provider. That would be a telephone company with less than 60,000 access lines. I think that covers

the rural areas and most of the rural telephone companies. Under this legislation they would not be deemed a competitive supplier, but would still be under the regulation of the PUC and whatever plan they have in the current situation. Under the current bill, they could come to the Commission and ask to be declared a competitive supplier, but it would be up to the Commission and I think the standard of public interest is what is currently in the draft.

Chair Conklin:
Ms. Allen, does that answer your question?

Assemblywoman Allen:
Yes, it does.

Chair Conklin:
Does the baseline rate extend to the rurals? Is that a protection for the rural communities, as well?

Howard Lenox:
Yes, the standard rate for the basic residence line is the same regardless of whether it is rural or metropolitan.

Chair Conklin:
Is there any risk that the rural market would be vacated or do they have the same protection such as Provider of Last Resort?

Howard Lenox:
The bulk of the rural lines in this State are handled by small providers and therefore not covered under this bill. As it relates to those covered by my company, there is no risk of us vacating that market.

Chair Conklin:
Are you saying that the rural communities are not being regulated and they are being serviced?

Howard Lenox:
They are regulated and would continue to be regulated if this bill were to pass under the current scheme, whereas the large competitive suppliers would be subject to the provisions of this bill. Nothing would change for the small providers.

Chair Conklin:
Okay. So, the rural conditions would continue. I would like to go back to the rate cap for a second, because I thought I had heard during some Committee

discussion that there might be an idea of a sunset provision in this bill. I think a sunset provision could be onerous because it does not send the right message to the free market. Did you people discuss sunsetting?

Eric Witkoski:
Yes. Sunset was discussed and we looked at that. We decided on a soft cap, but then we were looking at some language addressing benchmarks. If it were deemed that the market was not competitive, then the Legislature would come back to look at it. We have not nailed down that language to date.

Howard Lenox:
We have had numerous discussions with the Consumer Advocate on this. We believe that the report which we will present to the PUC each year will provide them with adequate data which they will then communicate to you, giving this Body an opportunity to assess whether the current market conditions were satisfactory or not.

Chair Conklin:
What happens in the third year when the rate cap is gone and market conditions change?

Howard Lenox:
There are adequate safeguards because we have the 2009 and 2011 sessions. As Mr. Witkoski pointed out, the hard cap remains in place until December 31, 2010, with an additional year of soft cap, giving the Legislature two full sessions in order to review and satisfy itself that the conditions are as we intended.

Chair Conklin:
I just want to go back, since we have nothing in writing, to be sure we all understand. What you have agreed to so far is a hard cap until 2010, which extends the current condition from Embarq to all who are obligated under this bill. Is that correct?

Howard Lenox:
That is correct.

Chair Conklin:
Am I sensing there is some agreement between you for a soft cap of $1 for an additional year? That would be an increase over the hard cap of $1.

Kristin McMillan:
Yes, that is correct.

Chair Conklin:
You have all agreed that you should extend the lifeline to 175 percent of the federal poverty level, and that the outreach will continue, and you have some conceptual ideas for that issue that you can hammer out and present to Legal tomorrow?

Kristin McMillan:
Yes.

Assemblywoman Kirkpatrick:
When is all of this going to take effect? When would you have your regulations in place and when would we start moving forward?

Howard Lenox:
It would become effective on the effective date of the bill.

Assemblywoman Kirkpatrick:
The bill says effective upon passage, so would you have to put regulations in place to keep everything in line?

Howard Lenox:
The Commission would have to conform its rules to the bill.

Assemblywoman Kirkpatrick:
Mr. Witkoski, who is going to be sure we have everything in place and what is that time frame?

Eric Witkoski:
A lot of the details are worked out in the statute. There are some rule-making issues that need to be addressed. Those usually would take about six months.

Assemblywoman Kirkpatrick:
So, I could say that by the end of the year, when we saw the first report we would have a full year?

Eric Witkoski:
Yes, I believe the regulations would be in place by then.

Chair Conklin:
You have mentioned that conceptually everyone has agreed to file an annual report. Would that annual report go to the PUC?

Eric Witkoski:
Yes, that is correct.

Chair Conklin:
Is the idea here that the PUC would make some reporting to the Legislature?

Eric Witkoski:
At least that is what is envisioned, and at the end of 2010 there would be a report from the PUC. In the interim period the reports from the companies would be sent to the Commission and forwarded to the Legislature.

Chair Conklin:
The reports would be forwarded to the Legislature or the Legislative Commission?

Eric Witkoski:
They would be forwarded to the Legislative Commission.

Chair Conklin:
I know there were a lot of questions about Provider of Last Resort, Sections 15, 16, and 17. Has there been any consensus here? I think I understand part of the problem. There is a concern here that once you free up the market and everyone is playing, the Provider of Last Resort has a certain obligation, regardless of whether they own infrastructure or not, to provide service. One of the issues I had was to make certain that the consumer is whole. Have you discussed any of this?

Eric Witkoski:
We have been looking at that issue. The telephone lines are different than the gas and electric distribution lines. A lot of developers may put in their own facilities or other providers may put in facilities, and that causes a concern for the company if they have to put in duplicate facilities and then not have any customers; it is difficult to recover your costs. We also have a concern from the ratepayer's standpoint if, two or three years down the road, the provider would discontinue service or leave service. The Provider of Last Resort, which would be the utility that offers telecommunications, would have to come in and provide service. One of the problems that has occurred is that there needs to be some lead time; because, if the provider is going to leave, the incumbent utility needs some kind of notice so that they can come in and make whatever retrofits they need to make. We are looking at a notification period, such as 150 or 180 days, to the PUC and they could notify the Provider of Last Resort.

The other issue we have from a ratepayer standpoint is the cost. How does the Provider of Last Resort recover the cost of putting the facilities in? Are the consumers going to be stuck with several thousand dollars in bills because the Provider of Last Resort needs to go in after the units are built and put in the infrastructure to provide basic service? We have tried to come up with some surety requirement that there is something to cover the cost of that transition, if upgrades or retrofits are necessary.

Chair Conklin:
There are two issues. One, if someone leaves the market, what time frame or notification is given to the Provider of Last Resort so that there is enough time to change infrastructure to make sure the consumer has access? The second issue is the concept of making certain that the cost is not borne by ratepayers who were not involved in the transactions.

Eric Witkoski:
That is correct.

Chair Conklin:
Is there some time frame?

Eric Witkoski:
We have been looking at 180 days, which would be six months.

Chair Conklin:
Is that an acceptable time frame?

Kristin McMillan:
The time could vary depending on the size of the project. We are in agreement that 180 days is probably an appropriate notification period for the alternative provider to have to give. In some instances it may take us additional time.

Chair Conklin:
Are there any questions from the Subcommittee on this? I see none.

The second item of cost, did you have an idea on that issue?

Eric Witkoski:
We have looked at various ways, but the people who are going to initially assume responsibility of the line would provide some surety or some guarantee to avoid problems later. Our biggest concern is three or four years from now I might get a call from a consumer saying it would cost $4,000 or $5,000 for the

Provider of Last Resort to come in and put the infrastructure in place. That is not fair to the consumer.

Chair Conklin:
When you say surety, I am assuming you mean a bond. So, if I am going to lay groundwork and I am not the Provider of Last Resort, I have a surety bond so that if I vacate the market two years from now and someone has to come in and fix it so that it is usable, there is insurance money to take care of it.

Eric Witkoski:
That is correct.

Chair Conklin:
Mr. Fiorentino, do you have any thoughts on this concept?

Mark Fiorentino, representing Focus Property Group and General Growth Properties:
I represent two developers of large-scale master-planned communities. Not to completely repeat our testimony, but it might be helpful to repeat, in layman's terms, what our concerns were. They are only with Sections 15, 16, and 17. They are very troublesome to us. The way they would operate is that if we, as a master developer, reached an agreement with one provider for any service or for the installation of facilities, then the telephone Provider of Last Resort could get out of its obligation to provide basic phone service. That is troublesome because the Provider of Last Resort may not be willing to use technology that we are seeking, or they may not be able to, or they may not provide a particular service. That puts us in a difficult position. Our original suggestion was to delete these three sections from the bill because as we read the bill and understood it, it would not impact any of the other things that you are trying to accomplish. It does not even trigger the issues you are now talking about.

We did meet with AT&T and Embarq and tried to reach a compromise. They are unwilling to delete the three sections in their entirety. We suggested that we would be okay with language that said if we reach an agreement with somebody to provide basic phone services you should be relieved of your obligation. That makes good sense to us. If I contract with someone else to provide the exact services that you would be obligated to provide and therefore you do not have an opportunity to provide them, you should not put in the infrastructure, or bear those costs. We agree on that concept. We have not been able to reach agreement on the language on that point or even the concept.

There are two issues that you have just discussed. One is the notice; I do not think we object at all to reasonable notice, whatever you determine would be acceptable to us. The second issue is the surety bond. I am not sure, in concept, we would disagree with the surety bond. I would need to bring in some technical assistance.

Chair Conklin:
I want to be sure I understand the concept myself. The concept is to do away with Sections 15, 16, and 17 and have some language concerning the Provider of Last Resort needing 180 days notice, and whoever originally does the work would need to post a surety bond so that in the off chance they vacate the cost would be covered?

Kristin McMillan:
No. The concept is not to delete Sections 15, 16, and 17, at least from our perspective. We know that Mr. Fiorentino's clients would like that. Here is what the concept is: we are the Provider of Last Resort and there are certain scenarios where we are saying, for example, the developer enters into an exclusive arrangement with an alternative provider which excludes us from providing service to the property. If we extend our facilities we are not going to get any recovery for those facilities. We are saying under those circumstances, we should be excused from our obligations as the Provider of Last Resort. That could take a number of different forms and scenarios and those scenarios are outlined in Section 15.

We have had some discussions and we are willing to narrow and tighten some of the provisions of Section 15, because there were some suggestions to us that maybe some of those provisions were too subjective. We have had some discussions with Mr. Witkoski indicating that we would be willing to do that. We had some discussions with Mr. Fiorentino and others yesterday, but we did not come to an agreement.

The concept that was discussed by Mr. Fiorentino is embodied in Section 15. That is where you have an exclusive arrangement and we are denied access to property or somebody has an arrangement where they are going to exclusively serve the occupants of that property, then it really does not make any sense for us to extend our facilities into that area. We would not receive recovery for that.

Section 16 we think should remain. That is a situation where we do not have the clear, definitive scenario in Section 15. We have a scenario where we say we do not believe that it would be economical for us to build facilities to an area. For example, we would go to the PUC, lay out the facts and

circumstances, say there is good cause for us to be excused from our obligations as Provider of Last Resort, other parties would come in, we would have a hearing, and the PUC would make the decision. There is a safeguard there in terms of something that cannot be clearly defined. If the developers have some problems with Section 15, we are willing to give them notice. If a scenario in Section 15 occurs, we are willing to go to the developer and give them notice and if we fall under these provisions, we are excused from our obligations. That is something that is not written in there today, but we are willing to agree to. We do think that Sections 15, 16, and 17 should remain. We do not have objections to the other provisions that you and Mr. Witkoski were discussing, the notification provisions and the surety provisions. We have no objection to including those provisions in Section 17. We think there are a lot of other good consumer protections in Section 17 that should remain as is.

Chair Conklin:
There is someone wishing to testify by phone. We are only discussing Sections 15, 16, and 17 at this time. I see Mr. Gold in Las Vegas, do you have something to add to this discussion?

Barry Gold, Director, Government Relations, American Association of Retired Persons (AARP), Nevada:
We have a technical expert with AARP who is on the telephone now. She was involved in negotiations with Eric Witkoski and the telephone companies so she is well-versed on this subject.

Janie Brisameister, representing AARP:
I have been following along with the discussion. I have seen the bill. I have been involved in several discussions. I would like to make some additional comments on the rate cap at the appropriate time. I understand you want to focus on Sections 15, 16, and 17 at this point.

Chair Conklin:
We can go ahead and take the testimony now, while the parties here can sit and think about Sections 15, 16, and 17.

Janie Brisameister:
I would like to emphasize the issue of what happens after the hard rate cap expires. Our concern is because basic service is essential to keeping people connected to the communications network. There are no competitive alternatives to basic service. We want to make sure that it remains affordable and that is why we disagree, strongly, with throwing the doors open, so to speak, to any kind of pricing after the rate cap period. Mr. Witkoski had mentioned looking at benchmarks or something else to determine whether the

service was ready for the competitive market. We would support that concept which would combine with a soft rate cap, which is what many other states are doing. For example, after the hard rate cap period, rate increases would be permitted with limitations, such as $1 per year or tied to the Consumer Price Index (CPI). That would continue until the companies could prove that stand-alone basic service was, indeed, competitive. This is what New York, Mississippi, and Wyoming have done. We saw a good example in Florida in the last few years about what happens when you do not try to control the price of stand-alone basic service in the absence of competition. The Florida Legislature allowed companies to increase rates by 20 percent a year and the first time the companies tried to do that, there was so much protest from consumers that the Legislature repealed that and went back to a rate increase limited to the CPI.

Chair Conklin:
Are there any questions from the Subcommittee at this time? I see none. Is there any additional testimony you would like to give?

Janie Brisameister:
We are in sync with everything Mr. Witkoski has discussed. We have talked about the conceptual agreement and we are fine with that, with the exception of the issue on basic rates. We would like to see stronger oversight continuing after the hard cap period.

Chair Conklin:
The proposal was to have the hard cap for three years, and then a soft cap for an additional year that had a step increase of $1.

Janie Brisameister:
That is right, after that basic local service could be priced at any level at all regardless of whether there was competition or not. Prices could go up and there would be no competitive check and balance to ensure that rates would not go up too high. That is our concern.

Chair Conklin:
The way I understand the proposal that they have made so far is they will put the soft cap in place and then the companies are going to report annually to the Public Utilities Commission and biannually to the Legislature for the next two sessions on rates and where we are in the market.

Janie Brisameister:
But, the report will only tell you where you are, it will not give the Commission any ability to keep prices in check and it would require the Legislature to come in and change the law and reimpose some type of rate regulation. That would

be backwards from the position that we are taking that the soft cap remain in place until the companies can prove to the Legislature or the Commission that there is, indeed, competition for the service.

Chair Conklin:
So, you are against deregulation?

Janie Brisameister:
We are against deregulation when there is no effective competition to keep prices in check.

Chair Conklin:
Are there questions from the Subcommittee? I see none. Is there additional testimony, Ms. Brisameister?

Janie Brisameister:
There is not at this time.

Chair Conklin:
Any concerns about the conditions, so far, on the lifeline?

Janie Brisameister:
We are supporting increasing the eligibility of lifeline.

Chair Conklin:
I just wanted to make sure that we got you on the record. Thank you for your testimony. Mr. Gold, do you have anything to add?

Barry Gold:
I would like to concur with what she said. We need some ongoing protections after the cap is lifted.

Chair Conklin:
Mr. Soderberg, do you have anything to add?

Don Soderberg, Chair, Public Utilities Commission:
I am not here to testify on any portion. I am here to answer questions, if you have any.

Chair Conklin:
Do you have anything to add so far?

Don Soderberg:
I do not have anything to add. There are a lot of provisions in the bill that were worked out over a long period of time that mechanically work well. Some of the issues that have been brought up by the Consumer Advocate are things that are valid concerns and the parties, in a short period of time, have gone relatively far to move them along. This issue of how an incumbent phone company gets in or out of a development where they have been excluded is one that may not be fixed tonight. It is a serious issue where residents of a certain development have been precluded from participating in the competitive market because their developer made that decision for them and pocketed the cash. We have had a situation like that in Dayton, Nevada, where we had to ask AT&T to come to the rescue of the residents there. I believe that of all the things that Mr. Witkoski has brought up, that is the one that is going to take more than a couple of hours to work through.

Chair Conklin:
I would like to continue through this since if it does not get done tonight, it probably will not get done at all. I would like to get through any and all agreed upon items. I will table Sections 15, 16, and 17 for the moment.

There is some work to be done on Sections 15, 16, and 17 and, Ms. McMillan, you have agreed that there is some tweaking that can be done, is that correct?

Kristin McMillan:
Correct. We think there is some tweaking that can be done to Section 15, and there are items that have been discussed about provisions that need to be added to Section 17.

Chair Conklin:
So, the items that Mr. Witkoski provided us with are the need for notification, the general agreement was 180 days, and that the original developer has to post surety so that if they are no longer there, the Provider of Last Resort's costs would be covered. Is that correct?

Eric Witkoski:
Yes.

Chair Conklin:
Are there additional items that you have come to agreement on that this Subcommittee needs to be aware of?

Eric Witkoski:
I would defer to the companies for the cleanup items.

Dan Jacobsen, Executive Director, Regulatory, AT&T Nevada:
Let me describe some of the technical changes that we have worked out between Embarq, AT&T, and Eric Witkoski, the Consumer Advocate. In Section 26, there is a provision that would have allowed us to use an existing process at the Commission to ask the Commission to reclassify basic service and essentially deregulate it through that existing process. We have agreed to modify Section 26 so that we would not have that option during the rate cap. In other words, during the period of time we have talked about, neither Embarq nor AT&T would be allowed to go through an existing process at the Commission and ask the Commission to deregulate basic service. We would wait until the end of the transition period, 2011, and then there would be no need to go through that process.

In Section 28, regarding billing, there is some new language in this section, subsection 1, that would have precluded the Commission from dictating what shows up in a customer's bill. We are willing to delete subsection 1. The wording in subsection 2 is existing wording that allows us to put prices on bundles of service and we are seeing that cable companies are doing that, the wireless companies are doing it. We have agreed that language can remain.

Moving to Section 39, subsection 1, there were some changes to that wording. We have agreed that we would go back to the original wording for Section 39, subsection 1 and leave the language in place. In subsection 2 of Section 39, we would keep the amendment that we have put in there that would exempt the competitive suppliers from the provisions of Section 39.

Chair Conklin:
On Section 39, are you talking about lines 23 through 28? Is that the deletion?

Dan Jacobsen:
In Section 39, on page 22, looking at the various amendments that are in that section, what we have agreed to is that we would not make all those amendments. We would leave this provision the way it was before we proposed the amendments. If you turn to page 23, subsection 2 at the bottom of the page, we would add that amendment because it is necessary to get to the pricing flexibility that we ultimately will get to.

Chair Conklin:
Mr. Witkoski, is that acceptable from a consumer standpoint?

Eric Witkoski:
Yes, it is.

Chair Conklin:
This is just for the Subcommittee, because we are looking at multicolored sheets. I think you are saying that Section 39, which is currently *Nevada Revised Statutes* (NRS) Chapter 704.120, will read as it currently reads in statute, so that everything that is in red and blue is stricken. Everything that you see in black or red with a line through it, no longer has a line through it. On page 23, subsection 2 of Section 39 will read "the provisions of subsection 1 do not apply to a competitive supplier. . . ."

Dan Jacobsen:
What that means is NRS 704.120 is the provision that lays out the Commission's ability to review price reasonableness and review terms and conditions. The Consumer Advocate felt that ought to remain, because it applies to all the utilities, energy, water, and so forth. By leaving that as is, there will be no impact on the regulation of other utilities. Subsection 2, on page 23, would say that the competitive suppliers who are incumbent carriers, AT&T and Embarq, would be given pricing flexibility the same as our competitors.

I do have one more section to talk about when you are ready.

Assemblywoman Kirkpatrick:
If I am reading Section 39 correctly, you want to leave the first words in subsection 1 and subsection 2? One says "determine" and the other says "do investigation," is that correct?

Dan Reaser, representing AT&T Nevada:
There are two subsections to this statute. Subsection 1 has a number of amendments that were made to it. All of those amendments, under this agreement, will go away and the statute as it exists today will be reinstated. The reason for that is this statute relates to all public utilities, to a water company or a power company. The concern, correctly voiced by the Consumer Advocate, was we might be changing jurisprudence, the law that was developed in front of the Commission and the courts as to what these words mean. The only thing that needs to be done to guarantee the pricing flexibility that is intended by the bill is to keep the new language in subsection 2 that takes the two large, incumbent telephone companies out of those provisions with regard to rates, terms, and conditions. That is all that is going to be done by the agreement.

Assemblywoman Kirkpatrick:
When we were in Section 21, the smaller-scale provider of the Provider of Last Resort may apply to the Commission to be regulated—does that then qualify them or does it leave them out?

Dan Reaser:
The small-scale provider provision in this bill is not being changed by any of the agreed upon amendments.

Assemblywoman Kirkpatrick:
I know, and that is not what I am asking. What that provision tells me is that they could, at some time, ask to be a competitive supplier. You said on subsection 2 of Section 39 that this takes out the two larger companies. I am asking where does that smaller-scale provider fall, if they should be regulated by the Commission?

Dan Reaser:
I understand the clarification. If a small-scale provider files an application with the Public Utilities Commission under Section 21, and proves through the public interest standard, which is the highest standard of the Commission, that it now has the type of competition that exists in Las Vegas and should be treated the same as the incumbent in Las Vegas, then yes, they would fall into subsection 2 of Section 39. I am sorry I misunderstood your question in the first instance.

Chair Conklin:
Are there additional questions? I see none.

Assemblywoman Allen:
I just wanted to confirm that we are talking about subsection 2, not parenthesis 2.

Chair Conklin:
You are in Section 39, correct? That is my understanding.

We have talked about Section 26, 27, 28, and 39. Are there more? I am concerned that there is a provision still out there that was of some concern.

Dan Jacobsen:
Section 44 is the provision that addresses what happens when a utility is going to merge with another company. It starts on page 24. We had a lot of discussion about this. Ultimately, AT&T, Embarq, and the Consumer Advocate have agreed that we will go back to the existing wording regarding jurisdiction

to review proposed mergers. We will not make any changes to the existing rules regarding the Commission's ability to review a proposed merger that the PUC is involved in. That was a compromise.

Chair Conklin:
I like it the way you have now stated it. We will take a five-minute recess. When we come back I want to discuss Sections 15, 16, and 17, because I do not understand and if there are parties that are concerned, I suggest that you talk out in the hall before I come back. We will resume at 9:00 sharp.

[The meeting was called back to order at 9:16 p.m.]

Chair Conklin:
We will reopen the hearing on Assembly Bill 518. I have asked for compromises between the Consumer Advocate and the industry. This is everything we have discussed, the hard cap and the soft cap. It was my concern that with the baseline being established, the PUC will provide a report to the Legislature on the conditions of the market and the lifeline would be 175 percent of the poverty level as it currently is for Embarq. Is it limited to the Providers of Last Resort, or does everyone have to abide by the lifeline?

Kristin McMillan:
It would only apply to the Providers of Last Resort.

Chair Conklin:
And we are certain that there will still be outreach and marketing efforts to be sure the consumers know that the service is available to those who qualify. The parties involved will provide a report on the status of lifeline and other consumer issues to the PUC annually. The PUC will forward such reports to the Legislative Commission and a final report to the Legislative Commission in 2010 as to the conditions of the market for review of the Legislature in the following legislative session. I felt that Section 44 was unacceptable, so that issue has been deleted. That leaves us with the final issue of being the Provider of Last Resort and Sections 15, 16, and 17. This is a difficult issue. We have dealt with Section 17 effectively by putting in the surety bond and 180-day notification. I believe I understand the reason for this, Mr. Witkoski, and please correct me if I am wrong; it is an effort to protect consumers should a provider, who is chosen and has exclusivity, leave the market, to make certain that there is money available for the Provider of Last Resort to go in and provide a competitive rate. It simply keeps the consumer whole.

Eric Witkoski:
That is correct. It would provide two things. One is notice. The 180-day period allows for the incumbent provider to go in and do the retrofit or whatever would be necessary. The second part is to have some funds available to pay for the retrofit.

Chair Conklin:
Ms. McMillan had mentioned previously that there was some narrowing to be done in Section 15. Anytime you are going to consider legislation of this kind, it is our job that the consumer is made whole. What was the discussion on Section 15 and where are we with that?

Kristin McMillan:
The amendments that we have been talking to Mr. Witkoski about, the narrowing language, would occur in Section 15. The first change would be in subsection 3, to delete the word "unreasonable." Some of these changes are to make these provisions less subjective in nature. Subsection 4 of Section 15 would be deleted altogether. In subsection 5 the word "unreasonable" would be deleted.

Chair Conklin:
Okay, you have deleted the term "unreasonable" in Section 15, subsection 3 and Section 15, subsection 5. Then strike completely Section 15, subsection 4. What is the effect of that on Section 15?

Kristin McMillan:
The effect is to narrow the circumstances, tighten this provision up so it is less subjective. There would be a more clear idea of the circumstance that would exist for a Provider of Last Resort to be relieved from its responsibilities.

Chair Conklin:
Mr. Witkoski, I am going back to my statement earlier, I believe there is some agreement here on this particular provision. Is it your opinion that this would be a fair, or best practice for the consumer?

Eric Witkoski:
Yes. Also, we were trying to get rid of some of the duplication here and make that language a little more understandable. That was the reason for the suggested changes on Section 15.

Mark Fiorentino:
This is the first time that I have heard those specific changes. For us, they do not go far enough. I would like to go back and explain why that is. What we

have said all along is that if you are the Provider of Last Resort, you have an obligation; the obligation is to provide basic phone service. If we contract that right out to somebody else, you should be relieved of your obligation. Under those circumstances, there has to be some protection to the consumer if you have to come back in later. We are willing to work on all of those things. The problem with Section 15, even with those changes, is it goes beyond that. It creates enumerable circumstances, way beyond us contracting just for basic phone service, in which they could get out of their obligation as the Provider of Last Resort. In lines 20 through 26 on page 4, the way the language is written now, if I grant the right of someone to put the facilities in the ground, they can get out of the obligation to be the Provider of Last Resort. It is too broad and taking some of the subjectiveness out of it does not solve the problem. They are saying that there are services beyond basic services that, if given to someone else, can get us out of our obligation to provide basic service. The way this is currently written, those circumstances are enumerable. What we suggested was language that said if we contract away the basic service, you are no longer obligated to provide the service.

Chair Conklin:
Okay, but what if you put technology in the ground that the Provider of Last Resort does not use? Are you asking them to come in and put in a secondary track for only basic service and have no right to other services?

Mark Fiorentino:
No. We agree with some bonding so they would not get stuck with the cost and to be sure that the facilities we put into the ground are adequate. It makes sense, for example, to let us set some minimum specifications that they would need if they had to come in. If we meet those specifications, we would only be bonding what it would cost to bring it up to those. If we put in fiber optics, which can handle their basic service needs, we should not have to bond the cost if they want to put copper wire in the ground. We understand that concern. It is the ability to get out, under circumstances that are either broadly listed in the bill or left to some later PUC decision, that is troublesome.

Kristin McMillan:
First of all, in Section 15, subsection 1, we are talking about exclusive arrangements. We are talking about developers who have entered into exclusive contracts or arrangements with other providers. We are effectively precluded access to the property or we are effectively precluded from serving the occupants of that property. If that happens, there is no rationale for us to go in and build facilities for that area. We may have a request from one or two customers to provide our service and why would we need to overbuild our

facilities only to serve one or two customers. That seriously impacts the financial condition of our company.

Chair Conklin:
As I read this, it is specific to telecommunications, is that correct?

Dan Jacobsen:
Right. What we are saying is if there is an exclusive arrangement for a broadband service and I am going to be the only provider of broadband for this community, that creates a problem for us because anyone who has access to broadband has access to Voice over Internet Protocol (VoIP). If the only provider of broadband is going to be somebody other than us, we are saying, fine, let there be somebody else as the provider, but to require us to go in and run our facilities when no one will be buying from us means that our facilities will sit there idle. None of our competitors put in facilities that just provide basic telephone service. They put fiber in and the fiber provides video, voice, and Internet access. We need the protection that if we cannot provide service because of an exclusive arrangement, we should not have to run our facilities. That is what we are asking for.

Chair Conklin:
Okay, I understand. We are going to free up the market and make everybody free. You are not willing to give up exclusive deals because you like them, as well. If we are going to have a market that allows exclusive deals, then there has to be some protection where somebody does not have to be the Provider of Last Resort in the case of an exclusive deal.

Dan Jacobsen:
You have articulated better than I did.

Mark Fiorentino:
Our precise problem with the bill is the definition of telecommunications. It is the transmission of things from one point to another. It is everything, it is not just basic service. If we enter into an agreement with somebody for everything, including putting the fiber in the ground, they should not be relieved of their obligation. That is not good for the consumer and it is not good for us.

Kristin McMillan:
Telecommunication service is not broadband service. I just wanted to make that clarification for the record.

Chair Conklin:
Is that illustrated somewhere?

Mark Fiorentino:
If broadband service is not telecommunication service, then why do we need to protect them on broadband service and give them that option to get out of the Provider of Last Resort obligations?

Dan Jacobsen:
I described this earlier; when somebody puts broadband in, it is not just used for Internet access anymore. It is used for Internet access and voice and if it is an exclusive broadband deal, it is, by default, an exclusive voice deal as well. Therefore, it does not make sense for us to be forced to put our facilities in.

Chair Conklin:
For fear of beating a dead horse, I have testimony for, I have testimony against, and I have testimony from the Consumer Advocate that says this is the way it needs to read to be right for the consumer. This is a Subcommittee to take the recommendations of all those parties and make a recommendation to the full Committee, which by no means has to be accepted. I think I have had enough testimony on Section 15 to last me a lifetime. So, let us move to Section 16 and see where we are with that.

Eric Witkoski:
Section 16 is basically a process where the company could file with the PUC and the Commission could make a determination of whether they need to provide the service. There was some discussion in subsection 4 about the time period. Right now it is 90 days and there was some concern that was too long. I would think the Commission would like to be consulted on that.

Chair Conklin:
Mr. Soderberg, specifically on subsection 4 of Section 16, it says the Commission shall act upon a petition for waiver not later than 90 days. Ninety days is a long time to wait.

Don Soderberg:
We think 90 days would be the minimum amount of time. It seems like a long time to wait, but it is a very short time to have a hearing where people could weigh in and publicly be involved. If we were to go under 90 days, we would be fast-tracking things and then maybe someone would be left out.

Chair Conklin:
Are there questions from the Subcommittee? I see none. Ms. McMillan, and I know this will be disputed, so I will ask both sides, what does Section 16 do in your opinion?

Kristin McMillan:
Section 16 captures scenarios that are not outlined in Section 15. The situations in Section 15 state that the Provider of Last Resort would be automatically excused from its obligations. Section 16 is not an automatic relief provision. If there is a circumstance where a Provider of Last Resort believes there is good cause to be excused from its obligations, then they could file a petition with the Public Utilities Commission and set forth facts and circumstances to show good cause; other interested parties could come in and participate in that proceeding; and based on the facts and circumstances of record, the Commission ultimately would make a decision.

Assemblywoman Kirkpatrick:
I keep hearing ways to get out of the obligation of being the Provider of Last Resort. If you get the option to go back before the PUC, then who would be the Provider of Last Resort?

Kristin McMillan:
In that circumstance, there would not be a Provider of Last Resort.

Assemblywoman Kirkpatrick:
But, is it not the point to make sure we have a Provider of Last Resort?

Kristin McMillan:
Not necessarily. If there is an arrangement where there is an alternative provider in a subdivision and they are going to effectively provide basic service to customers, then there is one Provider of Last Resort designated in a service territory. That is the way the Commission has established it by regulation. If there were a problem, then we would be reinstated as the Provider of Last Resort, but it was not necessary to designate an alternative provider.

Assemblywoman Kirkpatrick:
How does it work in other states? Are we consistent with other states by the language that is in this bill?

Kristin McMillan:
I know this is consistent with Florida. There are some provisions of Provider of Last Resort in Indiana and I do not recall if the situation is similar. All the statutes are written differently.

Assemblywoman Kirkpatrick:
I am worried that in 20 years there is not going to be a Provider of Last Resort, because you have excused yourself from that; and what is the time frame to

come back in? I would never want a situation where service would not be available.

Kristin McMillan:
I think that is where the protections of Section 17 come into play. If occupants of a subdivision are not getting the service that they need from the alternative provider, there is an opportunity for them to file a petition with the PUC and ask them to make the appropriate relief under the circumstances. At that point in time we, the incumbent providers, may be asked to come in and reinstate our responsibilities as the Provider of Last Resort.

Assemblywoman Kirkpatrick:
I just have one more question. I think I heard you say before that you would not have access to the facilities, because they are not yours. How does that fall within the right-of-ways that are set aside within statutes that say you do have that access?

Kristin McMillan:
If we do not have access to the property to build our facilities, that is where we have the issue.

Assemblywoman Kirkpatrick:
But, currently in statute you are guaranteed the right-of-ways to access those facilities. So, do we need to change the other statutes? I thought I heard you say it now becomes a private access as opposed to a public utilities easement.

Dan Jacobsen:
I might be able to help with an example. Earlier there was a reference made to a situation in Dayton, Nevada. We do have a right to be in a public right-of-way as a utility. However, if the builder calls us and says the trenches are going to be open but, AT&T, I do not want your lines because I have made an exclusive deal with someone else, even though we have a right to be in the public right-of-way, we would not force our facilities in if they do not want us.

Chair Conklin:
I want to be sure that I am understanding this correctly. This is exclusively for Mr. Witkoski and Mr. Soderberg. Sections 15, 16, and 17 go together. Sections 15 and 16 address scenarios where the Provider of Last Resort is relieved from their obligation. Section 17 says, should the PUC find that the Provider of Last Resort is needed, they may reinstate their obligation under Provider of Last Resort and with the addition of the surety bond, the consumer is made whole. I want the two of you to make certain I understand this. We free up the market. There is no money there to provide for the Provider of Last

Resort. If somebody relieves them of that responsibility through their actions, they are relieved of that obligation, but the consumer still has a fallback should someone fail to follow their obligations. That Provider of Last Resort can be reinstated and the money is available to make that happen. Is that how, as amended, I am to read Sections 15, 16, and 17?

Don Soderberg:
That is how I read these three provisions.

Eric Witkoski:
That is also how I read these provisions. With the addition, in Section 17, of the notification requirement and some kind of surety bond, that would be okay.

Chair Conklin:
And, I made the assumption that is how the funds would be available to make the customer whole.

Mark Fiorentino:
It was the 90-day provision that cleared this up for me. If you will permit me another minute I think I can explain to you why, if you read Sections 15 and 16 together, you are not freeing up the market. What you are doing is forcing us to have a deal with the Provider of Last Resort. I should have given you a better example of why Section 15 is extremely broad. On page 4, lines 33 through 36, which is subsection 3, it says they can get out if we interfere or impose a restriction on where they can put their facility. They come to me and I say I do not want the facility underneath our landscaping, but I want it over there. It is an imposition of where they can put their facility and they would be relieved of their obligation as Provider of Last Resort. Now we are into Section 16. They get to go to the PUC and say, even though we did not fall into any of these very broad categories, we want out. My community, where I have open trenches and I have to put in roads, is held up at least 90 days. We have to finance these projects. That is why these provisions are not good for us and they are not good for the consumer. As a practical matter, we are only going to have one choice if you adopt these the way they are written.

Chair Conklin:
Are there any questions? I see none. I am not sure I understand what you just said.

Dan Jacobsen:
What you just heard was a description that we might be difficult and refuse to put facilities in if the developer asks us to put them in a certain trench. We would be willing to add wording here to make it clear that we are not talking

about trenching here. We will follow standard trenching and standard construction practices. What we are talking about is when we are excluded from ever providing service over those facilities because someone else has a special deal.

Chair Conklin:
When you say excluded, are you saying excluded for any service that is considered telecommunication?

Dan Jacobsen:
What I tried to describe earlier was if there is an exclusive deal on broadband, by default, given today's technology, that means that we will be excluded from providing voice, as well. It is just the way that technology has married the two services together.

Chair Conklin:
I understand. We are not going to come to agreement on Sections 15, 16, and 17, so unless the Subcommittee has questions, I am going to stop on these sections. We have a proposal in front of us that we will have to consider and let this ride.

I believe we have covered every point on where the negotiations are so far. Are there any questions from the Subcommittee?

Assemblywoman Allen:
When we were going through the sections, we spoke of removing the word "unreasonable." I am not sure how that is significant negotiation because "prevents or interferes with or imposes restrictions" seems like "unreasonable" restrictions affords them more safety, not less.

Kristin McMillan:
We do not have a problem adding that back in, it just presented some issues of possible subjectivity in interpreting what is reasonable or unreasonable. That is why we took out both references to "unreasonable," in subsections 3 and 5.

Chair Conklin:
Mr. Witkoski, do you have any additional comments on Sections 15, 16 and 17?

Eric Witkoski:
No, I do not.

Chair Conklin:
Are there additional people who wish to testify in support of A.B. 518? Are there any in opposition to this bill?

Ann Pongracz, Director, Government Affairs, Sprint/Nextel:
I am here to give you an update. We were able to conduct discussions with AT&T and Embarq that wrapped up immediately before the commencement of this Subcommittee meeting. During those discussions we did come to agreement, in concept, on two of our major concerns that were raised in my testimony on Monday. The first is that we believe it is very important that the Commission continue to apply the same type of regulatory scrutiny and special access that it does today. Second, we believe it is very important to ensure that the general terms of the bill would not increase regulation of wireless carriers. We have reached agreement, in concept, with Embarq and AT&T regarding the approach to be taken to resolving these issues. We have drafted amendments (Exhibit C) and have circulated them to Embarq, and AT&T, and we will also circulate them to the people from the cable groups as well as the Commission. We hope to receive all of their blessings on these amendments in the very near future. We will also supply a copy to the Legislative Counsel Bureau (LCB) so we can move ahead quickly.

Helen Foley, representing T-Mobile:
We concur with Ann and Sprint's position. There was one other issue and that had to do with the universal service fund. We all pay into the fund and under the provisions of this bill, we will not be able to ever benefit from that fund. We were willing to put that aside for these amendments, but we do reserve the right to think about it a little more and maybe make some potential changes on the Senate side. For now, this is what we have come up with. I do not want anyone to be surprised if T-Mobile pushes me on this.

Chair Conklin:
Are there any questions from the Subcommittee? I see none.

Dan Reaser:
We have reviewed these proposed amendments and after they are socialized with a few other stakeholders, at a conceptual level we can get these amendments processed through the LCB, provided the PUC does not have any concerns. We will reserve the ability to discuss the universal service fund if it comes up.

Chair Conklin:
Are there any questions from the Subcommittee? I see none. Are there any others wishing to testify as neutral?

Misty Grimmer, representing Cox Communications:
We want to put on the record that we have not had the opportunity to run these amendments through our regulatory and legal people, so we also need to reserve the right to make further comments.

Chair Conklin:
Are there any questions from the Subcommittee?

Marsha Berkbigler, Vice President, Government Relations, Charter Communications:
We have not had the opportunity to run these amendments past our regulatory people and we would like that opportunity.

Chair Conklin:
Are there any questions? Are there any additional people who wish to get on the record on A.B. 518 at this time? I see none. I need a second to review my notes.

We are under a tight deadline. At least to keep the bill moving forward in the process, and to get Legal started on a draft, if someone is willing to make a motion, I would be willing to accept the agreed upon items. Those would be the rate cap item, the lifeline item, the PUC oversight, and the Provider of Last Resort (POLR), which includes a surety bonding and 180-day notice. Those are the consumer protection pieces necessary to make this bill go forward. There are also miscellaneous technical amendments to Section 26, 27, 28, and 39, and the deletion of the bill changes in Section 44.

Assemblywoman Kirkpatrick:
I would make the motion to move it out of Subcommittee, but I do want to reserve my right to vote against it in Committee, because I am uncomfortable with the Provider of Last Resort. I want to have the opportunity to research it.

Assemblywoman Allen:
We have significant amendments from the wireless people. What is the motion?

Chair Conklin:
It is an Amend and Do Pass with the conceptual amendments between the Bureau of Consumer Protection (Consumer Advocate) and the industry. My reservation on the Sprint and T-Mobile amendments is that there are a significant amount of people who have not had the opportunity to see these amendments. It is probably okay, but I would rather send it out of Subcommittee conceptually, so that it can be changed and brought forward in a

much cleaner version. By then other people would have had a chance to see it. If you want to add the wireless amendments, it would be all right with me.

Assemblywoman Allen:
I understand it has not been fully vetted. I will not prevent the bill from moving forward, I realize we are under significant time pressure at this point, but I do have reservations. I will second the motion, but I am not happy with it at this point.

Chair Conklin:
The Subcommittee has decided to accept the proposed amendments, those being:

- the rate cap amendments provided by the industry coalition and the Consumer Advocate,
- the lifeline,
- the consumer protections items,
- the PUC oversight, at least through 2010 and report back to the Legislature,
- the POLR, which seems to be an area of concern with the Subcommittee, but we will move it forward, and
- the technical amendments.

The Subcommittee agreed to pass it on to the full Committee.

We will close the hearing on Assembly Bill 518.

[There was a 10-minute recess.]

Chair Conklin:
We will reconvene and open the hearing on Assembly Bill 526.

Assembly Bill 526: Revises provisions governing the regulation of community antenna television, cable television and other video service. (BDR 58-1129)

Dan Reaser, representing AT&T Nevada:
[Distributed conceptual agreement statement (Exhibit D).] There were discussions about conceptual agreements between local governments, AT&T, Embarq, Cox, and Charter with regard to changes on this bill. We will not review these line by line or page by page; but I will represent to you that all of the parties have met, all their lawyers have met, and everyone is in agreement that this document addresses all of the issues that those parties had.

I would be happy to review them in detail if you would like me to, but we are all ready to move forward with the drafting of these changes.

Chair Conklin:
I know it is late, and I do not want you to be super specific, but can you give us an executive summary of exactly what was agreed to?

Dan Reaser:
I certainly can. In amendment 1, there were issues whether or not the local governments would be kept whole with regard to their gross revenues. This amendment addresses the definition of gross revenue regarding the concerns that the local governments had relative to being kept whole.

Amendments 2 and 3 relate to the local governments' concerns whether or not they would continue to have control over their right-of-way. These are just cross-referencing changes that we made to Sections 45 and 46 which take care of guaranteeing their control over the right-of-way.

Amendment 4 takes care of the issue that the local governments had with whether or not they were going to receive adequate information about build-out by competitive providers. This will take care of that particular issue and also clarify which Division within the Office of the Attorney General would have jurisdiction to entertain consumer complaints and issues the local governments might bring to them.

Amendment 5 clarifies a concern that there might have been a conflict with local franchises for telephone companies. We have taken care of that with a very simple one-liner.

Amendments 2 and 3 talk about right-of-way control; Amendments 6 and 7 are cinching up the concerns that the local governments had that they might lose control of how they deal with their right-of-ways; Amendment 8 clarifies and works out the issues that local governments had with their auditing powers and how disputes from audits would proceed if they had to go to court; and Amendment 9 is several concepts related to Public, Educational and Governmental (PEG) channels, that the local governments wanted clarified and nailed down. We have done that.

You may recall that during the Committee hearing [April 2, 2007] I came up with an amendment from Churchill County and that is Amendment 10.

Chair Conklin:
We appreciate your briefness and the specificity with which you delivered the summary. Are there any questions from the Subcommittee on any of the amendments? I will give them a minute.

Marvin Leavitt, representing the Urban Consortium:
I would like to confirm the statements made by Mr. Reaser concerning our review and agreement as to these amendments to the bill. I would like to add that Cox and Charter have provided me revenue numbers for 2006 based on what the revenue would be under this new formula, which appears in this amendment. In the Clark County area, those numbers would show a slight revenue loss of $40,000. In the northern area that would be $230,000. We believe that both of those are within the area where our revenue approximates what it has been in the past. We recognize that under different provisions and different years those revenues could change, but it seems to us that they have satisfied that criteria.

Chair Conklin:
Are there any questions of the Subcommittee so far?

Assemblywoman Kirkpatrick:
Could you please clarify for me, amendment 6, subsection 5? What does that mean?

Dan Reaser:
Previously, subsection 5 prohibited the local governments from imposing permit and inspection fees. The industry's position was that it was covered within the gross revenue that was paid on the franchise fee. Through the negotiation process we have agreed to reverse that and now we will pay permit and inspection fees. As a part of that, local governments have agreed that the fees will be cost based, it will not be another way of generating property tax.

The next amendment is the one-page document (Exhibit E). This concerns Secretary of State funding. One of the other issues that was discussed, both with local governments and the Secretary of State was the need for a funding mechanism for the Secretary of State, based on the agreement of the industry to pay those fees and costs. We have drafted an amendment and the Secretary of State may have some "tweaks" to make to this and we are amenable to those. We have provided for a funding source. There are two types of funding. First is an upfront funding source for implementation costs. We understand from the fiscal note that there is some computer rework that needs to be done and this provides for an upfront funding source that is divided among the initial applicants that receive a certificate. The second funding source is an ongoing

revenue-generating provision in subsection 2 that provides for fees for all applications, notices, et cetera. Each time a filing is made with the Secretary of State, those fees would be generated. There is a blank for the Secretary of State to tell us what number needs to be there.

Chair Conklin:
In your attempt to avoid a fiscal note, and to make the Secretary of State complete, you still have a fiscal note and the bill now requires a two-thirds majority. Mr. Anderson, have you seen this amendment?

Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State:
We asked for a fee structure in this bill as all other entities that file with the Secretary of State's Office are required to pay a fee and to exclude a fee would set a precedent which we would not want to start. We appreciate the efforts of the telecom industry in providing us this information. The blank that is in the amendment is an estimate. I believe we provided a fiscal note to this bill initially in the amount of $90,000 for the changes to our systems, changes to forms, and the costs that would be necessary for us to implement these services. Again, that is an estimate that was given to the Legislative Counsel Bureau (LCB) as a fiscal note. It may be somewhat after the fact when we know exactly how much the cost would be to implement the system.

Chair Conklin:
I think that is always the case with fiscal notes. We recognize that is an approximation and in this case where you are adding something totally different, it would be impossible to be exact.

Just so I can understand, have you seen the amendment and is it acceptable to the Secretary of State's Office?

Scott Anderson:
Yes, it is.

Chair Conklin:
This makes a change to Section 39A and subsection 1(a) with a total amount that still needs to be filled in, right?

Scott Anderson:
That is correct.

Chair Conklin:
And, currently you estimate that amount to be $90,000.

Scott Anderson:
Approximately, yes. I do not have the fiscal note.

Chair Conklin:
Do you have anything additional to add?

Scott Anderson:
I do not at this time.

Chair Conklin:
Are there any questions from the Subcommittee? I see none.

Dan Reaser:
There is one final item. We have reviewed the conceptual language that Chairman Oceguera's Internet parental controls legislation (Exhibit F) contained and we are prepared to move forward with LCB to take those concepts and put them into statutory language that would be included in this bill.

Chair Conklin:
For the Subcommittee, that is the last amendment provided in your binder. It is language that deals with sexual predators on the Internet. Any questions for Mr. Reaser about this? I see none.

Mr. Reaser, we have three amendments that, so far, look okay.

Dan Reaser:
For clarity, on Chairman Oceguera's amendment, we have to work on the language.

Chair Conklin:
I understand, we are trying to get something out tonight so that Legal can begin drafting what will probably be a monumental task.

Do you have anything additional to add? [They had none.]

Assemblywoman Kirkpatrick:
Mr. Leavitt, I just want to make sure, because I attended two of the four meetings and one of the big concerns was making sure that local governments were whole. Are you comfortable that their concerns have been met?

Marvin Leavitt:
We made a change that essentially uses the revenue base, which is subscriber revenue, and appears to make us reasonably whole. Also, that change makes it easier for us to compute charges and easier for the subscribers because it will work with their billing. We believe that it will be much less complicated in an audit situation. I think the changes have several advantages to what we currently have and we did reach agreement.

Assemblywoman Kirkpatrick:
Thank you, I just wanted to make sure.

Chair Conklin:
I am going to ask that you stay, since there are additional amendments to be considered. The Subcommittee also has in its binder, an amendment proposed by the City of Reno (Exhibit G).

Nick Anthony, representing City of Reno:
I believe that was the amendment that was submitted during the hearing on April 2, 2007.

Chair Conklin:
I need to understand your issue. Currently you have Public, Educational, and Governmental (PEG) channels, just like every other city, but in addition to that you want some additional money, at customer expense, that no other city gets. Is that correct?

Nick Anthony:
As I stated the other day, in our current franchise agreements with both Charter and AT&T, we do have PEG revenues built into those agreements. We would just ask that they go forward as agreed upon. We have met with industry people and there has not been agreement on this issue.

Chair Conklin:
That is not what I am asking. Right now, we have made the PEG issue whole for every city. No other city gets the additional revenue that Reno gets. To the best of my knowledge this is true. What I am asking you is do you think in an open market the citizens of Reno should have to pay extra money, because it is going to be a pass-through that no other city gets, and that no other consumer has to pay?

Nick Anthony:
As I presented the amendment, our counsel's position was we want to remain fiscally whole. That is the position that I have brought forward for the policy makers to consider.

Chair Conklin:
I realize I am putting you in a tough position, and I apologize. Mr. Reaser?

Dan Reaser:
You have pointed out what the issue is, and the whole purpose of this bill is to put everyone on parity. We want all of the cities to be on parity and all the competitors on parity, so that no particular competitor and no particular city has a better deal or different leverage. We believe that is the appropriate public policy balance that the Subcommittee and the Committee should strike in this case.

Chair Conklin:
Are there any questions from the Subcommittee?

Assemblywoman Kirkpatrick:
What does this give you extra that the regular PEG conditions did not have? I know from meetings that I did attend that you wanted to make sure that you were able to keep your local PEG channels, and they could play during a certain time, et cetera. What additional service does this actually provide?

Nick Anthony:
I was not present when these agreements were negotiated, but it is my understanding that these were negotiated on the basis of those fees going for PEG contributions for our channels, equipment, upgrades, et cetera. They do go for equipment and the use of the studio for Reno, Channel 13.

Chair Conklin:
That brings up another question, Mr. Anthony. If this amendment does not pass, you still will have those channels, correct?

Nick Anthony:
That is correct.

Chair Conklin:
Are there any additional questions? I see none. Do you have testimony that needs to be provided?

Marsha Berkbigler, Vice President, Government Relations, Charter Communications:
This amendment has no impact on the existing equipment that has already been installed. All of that is going to stay the same, it is all state of the art. This is additional money that no one else in the State gets. To the citizens of Reno who are Charter customers, it is over $2.5 million.

Chair Conklin:
There is a disparity here, because they say they only get $200,000. Is that because it is per year and it is over 12 years?

Marsha Berkbigler:
It is over 12 years.

Assemblywoman Allen:
Ms. Berkbigler, you testified earlier that the City of Reno gets funds that no one else does. For the consumers who purchase your service, if this amendment is not added, will there be a rate reduction?

Marsha Berkbigler:
Yes, there would be.

Chair Conklin:
I want to make sure that this is certain, so that we can have it on the record. Is that a rate reduction or a bill reduction because this is currently passed through as a tax?

Marsha Berkbigler:
It is a bill reduction because it is currently passed through as a fee. It is not considered a tax. That fee would go away. Currently that fee is 25 cents a month per subscriber and when the next franchise payment is due (there are two $100,000 payments due) those fees would be added to it. Additionally, there is a Consumer Price Index (CPI) valuation that is added. The 25 cents could become 35 cents plus the $200,000. It could be considerably higher. If you add it all together and calculate it out with just this number of subscribers, just Charter subscribers for the next 12 years, they would pay a little more than $2.5 million.

Chair Conklin:
Are there any additional questions from the Subcommittee? I see none. Mr. Jacobsen, did you want to get on the record on this? [Mr. Jacobsen had no further testimony.] I believe we have covered all the amendments but one.

Mr. Ziegler, can you refresh my memory on the amendment from Les Smith? I thought that was completely taken care of in the testimony when he found out that everything was being dealt with.

Dave Ziegler, Committee Policy Analyst:
As I recall Mr. Smith's testimony, he said with the agreements reached conceptually between the local governments and the proponents, he was going to be okay with it.

Chair Conklin:
That leaves us with the final amendment (Exhibit H) proposed by the Communications Workers of America (CWA). Ms. Sorenson will you please come forward?

Liz Sorenson, representing Communications Workers of America, Local Union No. 9413:
We did meet with the cable companies. Yesterday we met with Cox Cable, Charter, and Embarq as well as a representative from AT&T. We were trying to get to a happy place with the amendments that I presented at the last Committee hearing we had. We agreed on number 2 of our proposed amendment, where it says to amend subsection 1 of Section 38, page 11, line 7, "subject to the requirements of subsection 3, a certificate of authority is fully transferable to...." And we agreed on number 3, adding a new subsection to Section 38, page 11, line 21:

> A transfer of a certificate of authority pursuant to subsection 1 is void unless the successor-in-interest agrees that any collective bargaining agreement entered into by the transferor video service provider shall continue to be honored, paid, or performed to the same extent as would be required if such video service provider continued to operate under its certificate unless the duration of that agreement is limited by its terms or by federal or state law.

Obviously, what we are trying to do in the case of a transfer, is to be sure our collective bargaining agreement continues to be honored. I believe that the people we met with were okay with that.

Chair Conklin:
What about number 4? That is the part where the Secretary of State may not condition or limit a ... Was there any agreement on that?

Liz Sorenson:
There was no agreement.

Chair Conklin:
The fact that you said you thought we had an agreement brought more people to the table. Are there questions from the Subcommittee for Ms. Sorenson? I see none.

Kristin McMillan, Vice President and General Manager, Embarq:
Embarq is not in agreement with this section. I need to go on the record opposing subsection 3. This is a concept we believe should be part of the contracting process and it may have the effect of detrimentally impacting a business transaction that may otherwise be in the public interest.

Howard Lenox, President, AT&T Nevada:
We accept this amendment.

Chair Conklin:
Are there questions from the Subcommittee?

Assemblywoman Kirkpatrick:
So, how can one provider agree to it and the other not? What do you agree to on Ms. Sorenson's amendments? None?

Kristin McMillan:
We do not agree to any of the amendments.

Chair Conklin:
As I view this, I do not see a problem with any of these amendments with the exception of number 5. If you are a business entity and you make a contract with somebody, and if you then choose to make another agreement to be bought out, I think it is a reasonable expectation for the people who are employed to have their contract continue. Now, someone might decide not to purchase that company, because of that labor contract, and that is certainly within their right, but I do not see how this is a detriment to a business.

Kristin McMillan:
I think it does put a possible chilling effect on a business transaction that otherwise might be in the public's best interest. I am not a labor lawyer, but I believe the National Labor Relations Act does indicate that when there is a transfer, you have to transfer the bargaining unit, but not the agreement itself.

Chair Conklin:
Mr. Powers our Committee Counsel is here and might be able to address that. I want to run down these amendments. The first amendment simply replaces the Secretary of State with the Public Utilities Commission (PUC). Since you are

already going to be reporting to the PUC, assuming A.B. 518 passes, why would you not have all reporting to the same place? Why do you need to go to two different places?

Howard Lenox:
Assembly Bill 526 is the product, as you know, of a coalition of four companies; Embarq, AT&T, Charter, and Cox Communications. As part of the instructions from the leadership of this Body to work on this bill, we were instructed to get together and create a collective agreement to the many provisions that are embodied in the bill. In this particular case, the coalition agreed that the Secretary of State was the appropriate place for governing the video franchise.

Chair Conklin:
Currently, that is handled by the municipality, correct?

Howard Lenox:
That is correct.

Chair Conklin:
And, the video franchise has no oversight through the PUC?

Howard Lenox:
That is my understanding.

Chair Conklin:
Mr. Soderberg, can you answer this?

Don Soderberg, Chair, Public Utilities Commission:
I am here to answer any questions you might have.

Chair Conklin:
I would like your input here. If telephones are a utility, and the market is changing such that telephones, broadband, cable, and anything else is really the same—delivers the same service, maybe a different product but the same service—they are complements in the economy together. Why should they not all be regulated by one body, or at least have some oversight by one body?

Don Soderberg:
This bill does not purport to have state regulations on the video industry. That is why we are not involved in it. We are a regulatory agency and we issue discretionary certificates, we regulate practices, we regulate price. That is not what is being proposed here. What is being proposed here is essentially a state version of what the local entities are doing now, that is to collect the franchise

fees and disburse those back to the local entities so there is a level field. What we would essentially be doing in this bill, if we were inserted in there, would be a tax-collecting function. With regard to "plain old" telephone service, we do currently regulate that. If the Legislature passes Assembly Bill 518, we will regulate it a lot less. Clearly the trend across the country is to have less state regulation on basic telephone service. All of the other things you discussed are not regulated by the PUC and that is why I do not believe we should be inserted here as a tax collector when, in reality, only some of the people involved in this bill are currently under PUC regulations.

Chair Conklin:
Are there questions from the Subcommittee?

Assemblywoman Kirkpatrick:
I remember this discussion when we talked about this bill and we talked about different places where it could go. I do not remember why we decided on the Secretary of State. Is there a function that office does that I am not remembering?

Howard Lenox:
During our discussions it was determined that the function of the Secretary of State was to administer business licenses and franchising and to collect fees as a result of that. We also felt that this was more of an administrative function as opposed to a full regulatory function. That is how we got there.

Assemblywoman Kirkpatrick:
I also remember talking about where the consumer would be able to go and complain and I do not recall what we said about that.

Dan Jacobsen, Executive Director, Regulatory, AT&T Nevada:
One of the agreements we reached with the local governments is that consumers would, as they do today when they have an issue with video service and cannot resolve it directly with the company, go first to the local governments. That process would not change.

Assemblywoman Allen:
I have a question for Scott Anderson. Have you reviewed the bill and do you have a feeling one way or another?

Scott Anderson:
The industry approached us as being a repository of this information. Our processes in the Commercial Recordings Division are strictly ministerial. We have little, if any, regulatory authority and it is basically putting statutory

information on the record and making that available to the public. If it is this Body's decision to put oversight in the Office of the Secretary of State, we can comply with that. We have the ability to do that. Whether or not it belongs there, I do not have an opinion at this time.

Liz Sorenson:
I would like to make a comment on why we had put this forth in the first place. Obviously, I testified that our intent behind this was because we were concerned about the consumer. When we met with the parties yesterday I addressed that again. At the time we brought forth the amendment to you earlier, we were told that there was going to be an amendment that might be satisfactory to us because our main concern was that the consumer would fall into a black hole when it came to making complaints. I looked at this amendment early today and by reading the steps that are involved for a consumer to file a complaint, I still believe that they are falling into a black hole. The purpose, for us, in wanting this to go before the PUC was because we felt there were checks and balances there.

Chair Conklin:
Under current statute with the current situation, where does the consumer go?

Liz Sorenson:
Are we talking about phone service complaints?

Chair Conklin:
No, this is the video franchise bill, where does the consumer go currently? The testimony, so far, concerns how to collect a franchise fee and, as far as I can see, the consumer goes back to the company and if the company cannot deal with the issue and it is deemed that recourse is needed, they can go to the Consumer Advocate or some other body. I am sure there is something out there if a person feels they have been completely wronged.

John Doran, Communications Workers of America Representative:
The other process they have is to write a letter to the Federal Communications Commission (FCC). You may or may not get an answer from them. We think it should be regulated through the PUC. That is where results would happen for the consumer.

Chair Conklin:
But this does not regulate anyone. It simply says the PUC will collect the tax by taking it out of the Secretary of State's Office and putting that tax into the PUC does not allow them to do any regulation.

Liz Sorenson:
I asked that question before they put forth the amendment. Where were the complaints actually going to go? I do not believe I ever got an answer on that. We had been dealing with AT&T at that time, so I believe they thought it would be the Secretary of State. I am just as confused and have no answer for you.

Marsha Berkbigler:
The process is not going to change in any respect. One of the amendments that we reached agreement on with the local governments is, if a customer cannot get their problem resolved at the company level, they go back to the local government. If they cannot get it resolved there, that is when it would go to the Consumer Advocate. Customers always have the right to go to the FCC, because cable and video services are controlled by the FCC. The reason they were deregulated from the PUC some years back is because that put us under two identical regulatory agencies. We are regulated at the FCC level, we will continue to be regulated at the FCC level, nothing changes in that respect. By reaching the agreement that we reached with the local governments, where they are still the repository for complaints and customers can still go to them, nothing changes with regard to how a video customer places a complaint today.

Chair Conklin:
Are there any questions from the Subcommittee? I see none.

John Doran:
I would like to address the transferability issue if I could.

Chair Conklin:
Do you have anything to add to this point? [Mr. Doran gave no response.] Transferability is line 3 and I would like to go to number 2 first.

John Doran:
Those lines, 2 and 3, go together. The issue is the collective bargaining agreement. Once we have a collective bargaining agreement in place, if the company were to transfer or sell that company, once sold that new company would not have to honor that agreement, the wages, the benefits, or the working conditions established under the collective bargaining agreement. This is bible to us to have this protection. If AT&T was to sell off—and we have seen this company go from Nevada Bell, to SBC, to AT&T—our workers would look to their union to protect their jobs. We have to have that ability because the industry is changing constantly.

Chair Conklin:
I certainly understand that. Are there questions from the Subcommittee?

Assemblywoman Allen:
On Section 3, would this affect, at all, the State's right-to-work provisions? Perhaps Mr. Powers can touch on that.

Kevin Powers, Committee Counsel:
This is a situation where the company has already entered into a collective bargaining agreement and that agreement has to comply with state law, so the right-to-work issue has already been addressed in that agreement. To the extent that the National Labor Relations Act comes into play here, that is a fairly extensive federal law that preempts, to a certain degree, a lot of state regulation, so the issue that would arise here is whether this sort of provision would even be valid under federal law. I think that is an open issue that would need to be looked into in order to evaluate it.

Chair Conklin:
For my purposes, if it is in the bill and it violates federal law, it is null and void. If it is not in there and does not violate federal law, then we have not adequately protected the workers.

Fred Schmidt, representing Embarq:
I want to explain the type of business transaction example that my client was referring to. I have dealt with a number of mergers both as Commissioner and Consumer Advocate and I can tell you there is no requirement today, in the way those mergers occur with regard to utilities, for the collective bargaining agreement to be adopted in whole. It does not mean it cannot. Sometimes it is in the public interest and it is better because the provider that comes in may have different terms or conditions related either to its health care plan or to its retirement system. If it is required, as a specific state obligation, that it has to pick up all of the provisions in the existing contract and they cannot be changed, you face the possibility that an entity that could come in may not come. Although the intent of this provision is laudable because it protects workers with their existing contract, it can also act in the form that it does not protect all of those workers in the best way, because they could get a better deal. It does not mean that all employees would not get a better deal, because if there are circumstances better for an older employee or a younger employee in the new company, that would all have to be taken into consideration. The PUC has handled a number of these cases where they have evaluated those types of mergers and transactions when they go forward and they have made conditions in some instances to preserve those rights. I just wanted to explain that it is not always going to be in the best interests of the workers or the customers of the company.

John Doran:
I would like to point out that this is the same language as in the California bill.

Assemblywoman Kirkpatrick:
I will tell you what makes me nervous. In southern Nevada we had all these hotel mergers. When they testified before the Gaming Control Board they were going to keep all these vendors, it was going to be so much better; they were going to keep the extra employees, et cetera. At the end of the day, they consolidated their services and got rid of half the vendors and one-third of the employees. What is to say this will not happen, as well?

I also wonder how one entity can agree to Section 3 and another entity not agree. Where is everyone coming together at the table to benefit the consumer, the worker, and the business?

John Doran:
If you were AT&T and you had just merged with the SBC group of companies, I do not know if I, in their shoes, would assume that this is as big a concern. Embarq, on the other hand, is a carrier that only has local service provisions and only has it in a number of states. It is not the mega corporation that AT&T is. I suspect that is why there is a difference in Embarq's interests in this, where there still may be acquisitions and mergers that can occur. I personally do not think that is likely with AT&T in the future.

Assemblywoman Kirkpatrick:
Then we can agree to disagree because at the end of the day there is something to be said about numbers. It is late; I will let Mr. Conklin go on with this.

Chair Conklin:
We will move to Section 4.

Liz Sorenson:
I wanted to point out again with regard to Section 1, in California the PUC has oversight in the bill they passed.

Chair Conklin:
I understand and I think we have covered that issue. I think the PUC in California serves a different purpose than here in Nevada. I follow you from a labor rights and protection point of view, because that law is fairly standard, but in terms of who gets to govern what on the business practice, we are all a little different.

Liz Sorenson:
Section 4 would only apply if the Secretary of State section changes. This basically amends Section 34, page 10, at line 22: "except as provided in subsection 4, the Secretary of State may not condition or limit a...." The reason for that is because we are adding in a subsection 4.

Number 5 is adding a new subsection to Section 34, at page 10, line 31:

> 4. Every certificate of authority is conditioned on the requirement that employees of video service providers who have direct contact with customers, including technicians performing services inside a customer's premise, customer service and sales employees must be employed in this state directly by the holder of the certificate and may not be an employee of an independent contractor.

Again, as I testified during the Committee hearing, the reason for this particular amendment was obviously to protect the workers that we represent. If new technology is going to be provided and we enter this market, we want to be the workers who are going to be providing that service. That is the reason for this particular amendment.

Chair Conklin:
I am not sure I follow the logic on this one. Oh, I see, Number 4 and Number 5 go together, is that correct?

Liz Sorenson:
Correct. We are adding a new subsection so we had to combine those.

Chair Conklin:
Basically, what you are trying to do with these amendments is to say that the Secretary of State may not condition or limit, but that it is also implied that he may condition or limit subsection 4, but he does not have to.

Liz Sorenson:
I do not have the answer to that question. We put that in as "except as provided in subsection 4," just because we are adding in a new subsection, so it had to go in front.

Kevin Powers:
I might be able to clarify. The existing subsection that they are amending in item number 4 establishes that the Secretary of State cannot put any conditions on the issuance of the certificate of authority; however, in the new subsection 4, they are requiring a condition to be included in the certificate of authority.

This would be a required condition in the certificate. That is why it has to be "excepting" from the existing subsection.

Chair Conklin:
If I may paraphrase for the Subcommittee, if you put in Sections 4 and 5, every certificate of authority will require that employees of video service providers who have direct contact with customers, including technicians, performing services inside a customer's premises, customer service employees, and sales employees, must be employed in this State directly by the holder of the certificate and may not be employees of independent contractors.

Marsha Berkbigler:
Currently we have a large staff of technicians who work directly for the company; they handle 100 percent of our service issues. We use two separate contractors who contract cable services and they do 100 percent of our line extensions and upgrades. So we do not have an in-house construction team. We contract with a company that builds cable systems and they may build them around the country. We live in Nevada, the workers are Nevada residents, they may even be union, I have no idea, and we simply contract with the contract company. If this language went into effect, we would not be allowed to employ contractors to build our systems. We would have to have an in-house construction team. The downside of that is we do not do the same level of construction all of the time. We may be in a market where we are servicing lots of new housing developments or we may be in a market that is getting depressed. It is very cyclical. One of the upsides of using a contracting firm is we are not constantly having to hire staff and then let them go. We use a number of contractors to do a number of things. We also have in-house employees. If this language went into effect, Charter would have no call center. Our current call centers are tied together all around the country. The construction and the service time would go from same-day service to approximately 14 to 30 days before we could provide service to a customer, because we would not have the staff.

Chair Conklin:
Are there any questions from the Subcommittee? I see none. Mr. Lenox, I am going to assume you have nothing to add here, or do you?

Howard Lenox:
I would concur with the comments of Ms. Berkbigler. I had a conversation with both John Doran and Liz Sorenson on this issue. We have talked and continue to talk about ways that we can work together on this issue, absent the language that is currently proposed which creates the same difficulties for us as Ms. Berkbigler described for her company.

Assemblywoman Kirkpatrick:
How would this be any different if we did not make any of these changes? If the bill dies, what would be different?

Howard Lenox:
The status quo would be that we do use contractors in our company today; we do employ contractors from time to time. I cannot give you specific numbers, but I can get them for you if you would like. If the bill died we would continue to do business just as we do today and reserve our right to use contractors as necessary in order to complete large jobs that were time sensitive and did not require a sustained workforce.

John Doran:
We hold a collective bargaining agreement with AT&T. In that collective bargaining agreement it allows the company to hire temporary workers. When we bring contractors in, we limit the ability of our represented workers to transfer among these good-paying jobs. We are not in favor of bringing in outside contractors. If we do so, we diminish our bargaining unit. That is important for the sanctity of the collective bargaining agreement.

Chair Conklin:
I understand that. My read is that it is covered in Sections 2 and 3. My read of Section 4 is that anyone, whether they have a collective bargaining agreement or not, is subject to the same rules as those who have bargaining agreements. That might be onerous. Is that in the California statute?

John Doran:
No, it is not.

Kevin Powers:
This particular provision in some aspects has raised a serious constitutional concern under the Commerce Clause, especially with regard to the sales and service people. If they are outsourced out of state, this would essentially preclude that, thereby requiring almost all the employees to be located in state, favoring in-state employment and again discriminating against out-of-state companies. It would create a serious issue under the Commerce Clause.

Bob Ostrovsky, representing Cox Communications:
I just need to be on the record that Cox Cable is in the same situation as Charter relative to doing a lot of contracting, particularly in the construction aspects of the business. We also have call centers and other people supported in our Atlanta, Georgia, office and other areas around the country that do this

work. This is, of course, a subject of collective bargaining. In terms of Nevada, there are huge arguments between the casino industry and their local unions relative to the right to subcontract out for restaurants and other work. This is best settled between employers and the unions that represent those employees as a part of the collective bargaining process at the time these contracts are struck.

This is a very difficult and tough subject.

Chair Conklin:
If we are going to free up the market, there is going to be the desire to do things even cheaper, and I think there needs to be some protection for the workers.

Bob Ostrovsky:
My only suggestion is that bill creates opportunities for the unions to get out and organize people that they have not thought about organizing before.

Assemblywoman Kirkpatrick:
We could debate this all night long; I would like to just move on.

Chair Conklin:
Ms. Sorenson and Mr. Doran, do you have anything to add that helps us in this debate?

Liz Sorenson:
I would like to add that our only intent behind all of these amendments was strictly to protect the consumer and the workers.

Chair Conklin:
And, we absolutely respect that. We have gone through every single amendment. Is there anyone in addition who wants to speak in support, opposed, or in the neutral? I see none.

[There was an eight-minute recess.]

Chair Conklin:
The Subcommittee meeting is called to order and we will continue the hearing on Assembly Bill 526.

I want to make certain that we cover all the issues. I would make the same disclosure, in order to keep this process alive, I need to move something out tonight or we will hit the April 13, 2007, deadline.

The Subcommittee has agreed to move this issue back to the full Committee, with the following amendments:

- amendment 1, proposed by Dan Reaser,
- amendment 2, the Secretary of State amendment also proposed by Dan Reaser,
- amendment 3, proposed by Assemblyman Oceguera, and
- amendment 4, proposed by Ms. Sorenson; not all of them, particularly numbers 2 and 3. These are the ones that make the workers whole.

Assemblywoman Allen:
I move that we Amend and Do Pass this bill back to the full Committee for its review and approval.

Assemblywoman Kirkpatrick:
I second the motion.

Chair Conklin:
The motion passes. Is there any public comment? I see none.

[The meeting was adjourned at 11:31 p.m.]

RESPECTFULLY SUBMITTED:

_____
Patricia Blackburn
Committee Secretary

APPROVED BY:

_____
Assemblyman Marcus Conklin, Chair

DATE: _____

EXHIBITS

Committee Name: Subcommittee on Commerce and Labor

Date: April 5, 2007 **Time of Meeting: MeetingTime**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
AB 518	C	Ann Pongracz, Sprint/T-Mobile	Proposed Amendments
AB 518	D	Dan Reaser, AT&T Nevada	Proposed Conceptual Amendments
AB 526	E	Dan Reaser, AT&T Nevada	Proposed Amendment
AB 526	F	Assemblyman Oceguera	Proposed Amendment
AB 526	G	Nick Anthony, City of Reno	Proposed Amendment
AB 526	H	Liz Sorenson, CWA	Proposed Amendment