MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-fourth Session
May 8, 2007

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 7:02 a.m. on Tuesday, May 8, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Joseph J. Heck
Senator Michael A. Schneider
Senator Maggie Carlton

GUEST LEGISLATORS PRESENT:

Assemblyman David Bobzien, Assembly District No. 24
Assemblywoman Barbara E. Buckley, Assembly District No. 8
Assemblyman John W. Marvel, Assembly District No. 32

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Lori Johnson, Committee Secretary
Wil Keane, Committee Counsel
Scott Young, Committee Policy Analyst
Laura Adler, Committee Secretary

OTHERS PRESENT:

Rose E. McKinney-James, Barrick Gold of North America
Bob Reeder, Barrick Gold of North America
Fred Schmidt, Ormat Nevada, Incorporated; Embarq
Kyle Davis, Policy Director, Nevada Conservation League

Don L. Soderberg, Chair, Public Utilities Commission of Nevada
Judy Stokey, Nevada Power Company; Sierra Pacific Power Company
Rebecca D. Wagner, Commissioner, Public Utilities Commission of Nevada
Hatice Gecol, Ph.D., Director, Nevada State Office of Energy, Office of the Governor
Jason Geddes, Ph.D. Renewable Energy & Energy Conservation Task Force
Ernie Adler, International Brotherhood of Electrical Workers Local 1245
Scott Craigie, APS Energy Services Company, Incorporated
Barry Gold, Director, Government Relations, AARP Nevada
Debra Jacobson, Southwest Gas Corporation
Eric Witkoski, Chief Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General
Douglas Brooks, Assistant General Counsel, Nevada Power Company; Sierra Pacific Power Company
Howard A. Lenox, Jr., President, at&t Nevada
Howard W. Waltzman, Partner, Mayer, Brown Rowe & Maw
Kristin M. McMillan, Vice President and General Manager, Embarq Corporation
Dan R. Reaser, at&t Nevada
Nancy Wenzel, Utilities Hearings Officer, Public Utilities Commission of Nevada
Ann C. Pongracz, Sprint Nextel
Helen A. Foley, T-Mobile USA
Robert Gastonguay, Nevada State Cable Telecommunications Association
Steve Schorr, Vice President, Cox Communications
Marsha Berkbigler, Vice President, Charter Communications

CHAIR TOWNSEND:
We will open the work session on Assembly Bill (A.B.) 1.

ASSEMBLY BILL 1 (1st Reprint): Revises provisions governing the portfolio standards established by the Public Utilities Commission of Nevada for certain providers of electric service. (BDR 58-115)

ASSEMBLYMAN JOHN W. MARVEL (Assembly District No. 32):
The bill started because we have a purveyor of geothermal heat in the Reno area. As the bill developed, it became apparent we have a lot more use for geothermal heating in other parts of Nevada. In Elko, the schools, the hospital and some major businesses were heating this way. It was brought to my attention that geothermal energy systems provided heated water as an

energy-efficient measure. By using geothermal energy, they will be given credits for use of nonelectric or fossil-fuel-type energy.

ROSE E. MCKINNEY-JAMES (Barrick Gold of North America):
As a result of A.B. No. 661 of the 71st Session and the Repower Nevada legislation, Barrick Gold left the Sierra system, giving us the opportunity to mobilize private capital and credit to develop our own electric resources. As a result, we are the large power user that has left the system. We have constructed a $100 million gas-fired power plant; this is referred to as the Western 102, located in Storey County. We use fairly advanced technology from Finland and produce up to 115 megawatts of power, yet consume a minimum amount of water. We believe the plant has strengthened the electric grid in northern Nevada and think it is a good fit.

You gave us the legal tools and we delivered a new electrical resource. That then creates a unique and special status in the regulatory arena for Barrick and puts us in a gray area, which is why we felt it was appropriate to come forward with amendments to A.B. 1 while it was in the Assembly.

Some would say we are a generator without transmission. The official parlance is we are a *Nevada Revised Statute* 704B customer. This is named after the relevant provisions of the affected statute. We have a supplier and coordinator of our energy, it is Vista Energy, and it is called a provider of new energy resources. They are not a utility, but a licensed power marketer. That means we are the exception and not the rule, and this has had implications not contemplated in 2001.

Essentially, we are seeking, through amendments to the bill, the ability to comply with the portfolio standard. We were required to take with us a portion of our deferred energy cost and to comply with the portfolio standard.

The company has worked diligently to fulfill our energy obligations. We have been meeting our nonsolar requirements; a bit of a challenge, but we have put out a request for proposal to allow us to complete a solar facility at a cost of $10 million and we have the commitment going forward.

BOB REEDER (Barrick Gold of North America):
We are the customer of the provider of new electrical resources; that is the language used in the bill. The purpose of the bill is primarily technical

amendments to bring parity between utilities; an opportunity to generate renewable energy credits in the NRS 704B customers, the gray area; as well as to bring parity between the geothermal energy systems and solar systems, so they can each generate credits while displacing fossil fuels. Section 2 defines the two to make them parity as efficiency resources. Section 3 provides that we maintain our portfolio standards as the NRS 704B customers, but facilitates our use of the credits created by the new definitions. The definition is geothermal energy systems and credits are created by investments in efficiency resources. Section 3 facilitates our use of the credits that will occur as we build this new solar system displacing the energy in our plant at the Western 102. That is a quick, high-level view of the bill.

FRED SCHMIDT (Ormat Nevada, Incorporated; Embarq):
Ormat was opposed to the bill because the goal was to protect the integrity of the renewable portfolio standard. We now support the bill as amended, because geothermal steam systems that do not actually generate electricity are considered energy-efficiency measures; they are not considered renewable-energy measures in the other sense of portfolio standards. This way we will not displace the opportunity for new projects to be built.

It is not that we do not support projects with different concepts in terms of how they use geothermal steam or those projects using different fossil fuels in their process. So long as they do not consume or burn fossil fuels, we think they should be part of the portfolio standard. If they only displace the use of electricity or natural gas, which is what these geothermal-scheme systems being added to the legislation will do, then they should be in the energy system. To tweak what Mr. Reeder said, it is not true in the way we have set up the solar portion of the bill. That has been corrected in Senate Bill (S.B.) 437 so that hot water steam systems run by solar can also qualify for energy efficiency. We assume the cleanup will make it the way Mr. Reeder described.

SENATE BILL 437: Revises provisions concerning generation and consumption of energy. (BDR 58-232)

SENATOR CARLTON:
Winnemucca Farms was here a few sessions ago asking for something similar. Would this new provision also apply to them, because I do not think they would fall into the energy efficiency rule?

MR. SCHMIDT:
If I remember, Winnemucca Farms and several other entities tried to get what is called cogeneration included in the law. Cogeneration is an efficient use of energy, but is still the burning and consumption of natural gas or some sort of gas fuel in order to generate electricity through a steam turbine. I would contrast that, for example, to a process like waste heat, which was discussed four years ago when Ormat offered the amendment to use waste heat which is a cycle. In that cycle, gas may be used in the process, so long as it is used to run the turbine but not burned and thereby emit pollutants into the atmosphere or actually consume the fuel; then that qualifies. If they actually burn the fuel like a traditional natural gas-burning power plant, which is what most cogenerators do, then it does not qualify under our standard. It does qualify as a qualifying facility under federal law, but that is a separate matter. That gives it some advantages, but it does not help us build more renewable resources in Nevada, which is the goal of the request for the proposed legislation.

KYLE DAVIS (Policy Director, Nevada Conservation League):
I am in support of the bill. Energy efficiency and renewable energy are two sides of the same coin when it comes to reducing our dependence on fossil fuels.

CHAIR TOWNSEND:
We will close A.B. 1 and open the hearing on A.B. 103.

ASSEMBLY BILL 103 (1st Reprint): Revises provisions regarding general rate applications filed by public utilities. (BDR 58-564)

DON L. SODERBERG (Chair, Public Utilities Commission of Nevada):
Three bill draft requests (BDRs) from the Public Utilities Commission of Nevada (PUCN) were combined in this bill. The bill modifies how we do electric general-rate cases. In past legislation, Nevada's electric utilities were on a two-year, general-rate case cycle. In discussion with the Consumer's Advocate, the State's principal electric utility and our own staff, it was felt moving to a three-year cycle was more advantageous. We are having general cases we know we would not have but for mandate by statute. Electric customers are never crazy when these things happen. They consume a lot of our staff time, the Consumer's Advocate's staff time, as well as the regulated utilities' time; all costs which are born by the ratepayers.

This bill takes the 210-day catch-up provision adopted in S.B. No. 238 of the 73rd Session. At that time, the bill looked solely at natural gas utilities. Upon looking at how that mechanism worked, again in discussion with all parties, we concluded why not do this for regulated utilities. If we are going to have a 210-day forward catch-up provision, it did not make sense to have it for one type of industry and not the other. The other principal part of A.B. 103 is to grant that 210-day provision to all utilities in the situation of a general-rate case.

SENATOR CARLTON:
For the record, would you give an example of what you consider as known and reasonable regarding this future provision?

COMMISSIONER SODERBERG:
There is language in the bill adopted on the Assembly side that gives the Commission a set of standards on known and reasonable. An example is where we had the Commission actually take some liberties; it was a Nevada Power Company general-rate case. There was a land transaction where Nevada Power was selling a valuable piece of property near Flamingo Road and the Strip in Las Vegas. That transaction was contracted for during the test period, but not consummated. After the case was filed, but prior to the hearing, that transaction consummated, we knew the numbers. We knew exactly how much Nevada Power made on the transaction and we knew exactly how much was owed to ratepayers. We put the transaction into that general-rate case, which actually went to the benefit of Nevada Power's customers. That was known, we knew the numbers, and the only problem was the transaction occurred after the test period we were looking at. This 210-day catch-up provision is the type of thing we are looking for. We are not looking for estimates, projections or getting hours of testimony from economists. We want to see specific things we know have occurred or are going to occur that we can, so to speak, grab and touch, and put that into the rate case because we are now, hopefully, going to a three-year cycle. When these things sit around, they tend to cost money with carrying charges in either one direction or another.

SENATOR CARLTON:
You have addressed the known; how would you define reasonable?

COMMISSIONER SODERBERG:
Reasonable is one of those legal words for which nobody has a good definition. In the language the assistant majority leader amended into this bill, it is used a

lot. I think the word reasonable gives the Commission and the parties a little flexibility to go a step or two beyond a transaction where we know exactly what the numbers are going to be. It is my sense that the Commission would not deviate too far from that. It was not the intent when we came up with this to start, again, using projections or the like. I think it is there for legal purposes. As you know, parties before the Commission, if they do not like a Commission case, can take it up on judicial review. I think that is why that type of language is in there, to give people the ability to argue before the Commission on a variety of things. Otherwise, I have no definition for that word.

CHAIR TOWNSEND:
I would suggest you take the opportunity to spend a couple of hours or a couple of days in front of the Commission when they are arguing a rate case to see the types of witnesses brought forward. I took the opportunity to watch a case at the Nevada Supreme Court being argued a few months ago that was left over as a result of the ruling by the Commission from two and a half years ago as a result of the Enron issue. I was amazed they were not just arguing the issues of procedure at the Commission level; they were actually arguing the decision.

JUDY STOKEY (Nevada Power Company; Sierra Pacific Power Company):
We are in support of A.B. 103.

CHAIR TOWNSEND:
We will close the hearing on A.B. 103 and open the hearing on A.B. 178.

ASSEMBLY BILL 178 (1st Reprint): Revises provisions relating to net-metering and energy. (BDR 58-1054)

ASSEMBLYMAN DAVID BOBZIEN (Assembly District No. 24):
My bill deals with net-metering and wind power.

CHAIR TOWNSEND:
Tell us the differences between what this Committee passed in S.B. 437 and your bill, because we have addressed many of these issues in a large utility bill.

ASSEMBLYMAN BOBZIEN:
I believe the net-metering provisions as well as the wind power provisions are the same.

I will give a quick tour of the packet (Exhibit C, original is on file in the Research Library). This is a summary of net-metering programs across the states from the Union of Concerned Scientists. There is also a matrix that gets into the nitty-gritty. Included to give the discussion grounding are the Nevada Renewable Energy and Energy Conservation Task Force recommendations ahead of this session. You can see where some of the net-metering concepts come from. There is also a PowerPoint presentation from Sierra Pacific Power Company. I find this helpful when discussing net-metering; particularly on page 7, the demand levels for typical customers when talking kilowatts and different sizes eligible for net-metering; it is nice to know what specific facilities we are talking about. There are materials on the solar-generations program, which is the model for the wind-generations program in the bill. To give you the consumer's eye-view of wind power, there are sample quotes from the Independent Power Corporation on different backyard wind systems. These are the types of wind systems we are striving to incentivize in A.B. 178.

CHAIR TOWNSEND:
The packet has important components when we are looking at how we measure ourselves against other states.

MS. STOKEY:
We support A.B. 178.

REBECCA D. WAGNER (Commissioner, Public Utilities Commission of Nevada):
I am in support of the bill.

HATICE GECOL, PH.D. (Director, Nevada State Office of Energy, Office of the Governor):
I am expressing our support for the bill.

JASON GEDDES, PH.D. (Renewable Energy & Energy Conservation Task Force):
This bill is consistent with S.B. 437 and we support it.

ERNIE ADLER (International Brotherhood of Electrical Workers Local 1245):
We support this bill with one caveat. We would like to see, at some point in time, Sierra Pacific Power Company get into the business of generating power rather than purchasing renewable power from other sources for renewable energy to take off. The power company needs to be investing in plants rather than purchases.

SCOTT CRAIGIE (Arizona Public Energy Service):
I also support the A.B. 178. I have an issue to go through to make sure the legislative record is clear on behalf of APS Energy Services Company, Incorporated (APS), a utility that does a lot of renewable development work in northern Nevada. For example, they have a one-megawatt cogeneration biomass plant connected to the prison in Carson City and other similar projects.

CHAIR TOWNSEND:
Would you explain to this Committee, because I am not sure they are all familiar with the Carson City project, which is an important component for Nevada.

MR. CRAIGIE:
Stepping aside from the cogeneration operation, the projects we do around the State include three schools in the Clark County School District, some White Pine County schools, the Western Nevada Community College in Carson City and now this latest project. All of these are energy conservation projects that involve anything from double-pane windows and insulation to save electricity to reduce costs, to generating electricity as we are in the prison power plant, using biomass materials primarily from the forests. We also use pallets from construction companies and anything that will appropriately burn in a cogeneration plant. That plant is the subject of one of our major concerns here.

With the savings in conservation, that is savings on your electric bill or in added generation that can be sold to the company or savings from doing cogeneration. Money from the state budget is saved and APS and other groups in the State allow you to bond that saved money over a long term. Instead of building a 1,000-square-foot addition or remodeling an old structure using double-pane windows, etc., you can take that money and build 25-percent more capacity into your capital improvement project; that is a direct benefit to the State and the taxpayers. There is also renewable energy put to use and developed in our State in a way that encourages an industry that is good for Nevada. We have been doing this for about eight years.

CHAIR TOWNSEND:
Are we burning the excess forestation that we are pulling out?

MR. CRAIGIE:
We are. We are having difficulty getting it hauled in because we started working with a couple of groups of people that, I think, do not fully appreciate it or understand how difficult it is in some areas or understand the costs. We are dealing with those issues now for that plant. We have learned a lot and we are going to do more of these. Other companies are coming here that will be doing more of these, and competition will be good for all of us.

CHAIR TOWNSEND:
Given the challenges the prison faces, I recommended those who are serving a life sentence be used in that process. It is Nevada and I thought it would be a good way to eliminate some of those problems, but others were more rational and humane.

MR. CRAIGIE:
Just for the record, "That is not the policy of my client."

On page 3 the issue is making sure it is clear in the language. Obviously, Sierra Pacific Resources can and will appropriately use cogeneration projects for their own system. They will take advantage of the net-metering opportunities the Legislature is now passing. It is a good thing for the state. My client wants to make sure that whatever net-metering benefits there are will accrue to our customer group as those projects go forward. We want to make certain the record on what the content of this bill does works for us.

I think we have a solution that is in this package, but I need to make sure it is recognized and part of the record. One of the key areas of A.B. 178 starts on page 3, section 2, lines 12 to 14, and says, "May, at its own expense and with the written consent of the customer-generator, install one or more additional meters to monitor the flow of electricity in each direction." This is a critical piece because of what came up earlier. To the extent the utility does put their own meter in the system, you will find that the utility automatically, by this statute, has the right to take all the net-metering benefits for themselves. In some cases that will work for customer groups. They are not going to want it, they are not going to need it, and they are going to build on it.

Now go to page 5, line 5, keeping in mind the language, "with the written consent of the customer-generator." Here is the part that puts us through that regimen, "The value of the excess electricity," and page 6, line 15, "must not

be used to reduce any other fee or charge imposed by the utility." In other words, we cannot reduce our utility bill by doing this. Continuing on line 17, "If the cost of purchasing and installing a net-metering system was paid for: In whole or in part by a utility, the electricity generated by the net-metering system shall be deemed to be electricity that the utility generated or acquired from a renewable energy system for the purposes of complying with its," the utility's, "portfolio standard." In paragraph (b) starting on line 24, if the system is put in "Entirely by a customer-generator," then it accrues to the customer.

If the utility puts in one meter between the customer and their system, they get the entire benefit of the excess production inside that net-metering system. If the customer puts in every piece of that system up to where the utility accepts it, then the customer gets the benefit of the net-metering system. When we discovered this, we could not tell how that system was going work.

In conversations with the utility, and again this staff and others working on it, we have come to an agreement that makes that first section make sense. As long as the customer has the ability to control having the entire infrastructure be theirs that they installed, then they are going to get the benefit of that capacity. Where A.B. 178 says on page 3, "May, at its own expense," that is the utility at its own expense, "with the written consent of the customer-generator." If the prison decides they want to sign off that capacity to the utility, they can give all that benefit. There may be times that will work, as long as the control and the legislative intent is that the customer can, based on their own decision for whatever reason, opt not to give the utility the ability to do that. That is the purpose, and that is what I hope is the legislative intent. We must have that piece established clearly or this does not work.

This casts no doubt about the utility; this is a system that is going to be up. This is a system that net-metering programs are going to be with for decades, maybe for hundreds of years, and we need to make sure we put it in place correctly.

CHAIR TOWNSEND:
The articulation of the statute, an interpretation on its face, I think is quite clear and can put that on the record.

It begs the question that if a utility merely wants at its own expense to actually decide to put one or more additional meters to monitor the flow of electricity in

each direction, without the consent, then they should not get anything. They may want to monitor to see exactly how much is the flow. They may have reasons to do that. They may have technical reasons to find out if the proposed generator is doing what he or she says they are. I believe, under this bill, if you read it literally, if they do not get the consent, they can still put it on; they just do not get any of the benefits, because it says you have to consent.

MR. CRAIGIE:
They need to have the ability to measure as you described, because there are dollars involved. We have gone through a difficulty, although all the parties have participated aggressively, but it is not yet resolved on how this contract is going to be done with the prison. As long as it is understood, I do not know if it is legislative intent or added language that needs to be put together. The way this language is written in other parts, to the extent they have to put any piece of equipment on, they have the right to take the benefits out of that system.

CHAIR TOWNSEND:
One would expect the generator would know that and would not give consent to it, therefore would protect their rights. I still believe the utility would have the authority, since they are hooking on to their system, to put it on, but they do not get any benefit from it other than the ability to read and project what is coming in.

MR. ADLER:
Does that mean if we have net-metering systems, that the utility cannot count that in their portfolio standard at all? They should be able to count that in their portfolio. I do not think we should negate that language.

MR. SCHMIDT:
I worked with your group on the net-metering issue. I want to make it clear on the record that I agree with Mr. Craigie's interpretation that the purpose is to allow the customer the choice, so the utility did not automatically get all the renewable credits by investing a small portion of the cost. The reason the default provision works for the utility, particularly for customers which used to be under 30 kilowatts, but now is being raised to under 100 kilowatts, was because of the demonstration programs and rebates and some would call them subsidies or monies that we give to customers to put in these systems. The offset was that the utility in those situations would automatically get the credits.

What Mr. Craigie is trying to make clear and preserve, and my client, Southern Nevada Water Authority, feels the same way about it, is if you have a larger system, a couple of hundred kilowatts, now we are going to take the bill all the way up to one megawatt. The utility, for putting in a couple of thousand dollars of time measuring reverse metering, should not be allowed to claim all the credits for nothing when the customer has put in hundreds of thousands and maybe $1 million worth of investment. If the customer has the choice to pay for the meter, then the customer gets the credits, not the utility, as Mr. Adler suggested. Then the utility must, through a contract, acquire or purchase the credits from the customer; that is happening today. PowerLight Solar Company has contracts for the Las Vegas Valley Water District solar facility, and they sell those credits to the power company. That is what Mr. Craigie's client wants to do, or at least have the option to do.

MR. SCHMIDT:
If you are going to invest a substantial amount of money on your end to build a renewable energy system, you should be able to have those credits to sell to the utility at the market or going price for those credits. I would like the bill to be clearer, but it is the way it is because when we originally wrote the bill on net-metering in the 1990s, we put in a thirty kilowatts and under system. The goal was not to make it too complicated.

You may recall my earlier testimony in March when we talked about the net-metering issue and the Commission's concern about when you have literally hundreds of customers with a one-, two- or three-kilowatt system of solar panels on their roofs, it is literally an administrative nightmare for the utility and the Commission to do individual contracts. One of the things Assemblyman Bobzien agreed to amend out of his original bill, which you now also accepted in your bill S.B. 437, is that these credits would automatically go to the customer. In the case of smaller systems, the way the legislation is now drafted in A.B. 178 and consistent with your S.B. 437 bill, those credits do go to the utility in recognition of what they are contributing or investing. If the customer is going to make all the payments to pay for any related tariff charges and pay for the meter itself, then I agree with Mr. Craigie. I believe the intent of the legislation is for the customer to be able to control and own those credits and be able to market them at the market price.

MR. DAVIS:
We are in support of A.B. 178, just as we are in support of your bill.

MS. MCKINNEY-JAMES:
On behalf of the Clark County School District, we are in support of this measure.

SENATOR SCHNEIDER:
I have a proposed amendment (Exhibit D) to the bill. I did talk with Assemblyman Bobzien about this, although he has not seen the amendment, to put the traditional lightbulb out of use in Nevada by 2012. We would propose a light of 25 lumens a watt would go away after January 1, 2012. It directs the Nevada State Office of Energy to develop regulations to implement this performance standard and establish a more stringent standard level by July 1, 2011. I know other countries are rushing to do this. Australia recently adopted a law to prohibit the sale of incandescent lightbulbs. Ontario, Canada also did this and the rest of Canada and the European Union are considering similar legislation. California, New Jersey, North and South Carolina, Connecticut and Rhode Island are all proposing this legislation. In Nevada, if we do this, it would be like eliminating 160,000 automobiles off the streets. This is something we can do. Just one lightbulb a house would be a huge thing in Nevada.

CHAIR TOWNSEND:
I do not disagree so long as the sponsor of the bill has time to review and spend some time with Senator Schneider. I am not asking for a commitment now, but when we process this bill, I would ask you to look at it.

SENATOR SCHNEIDER:
I view this as a friendly amendment. I know Assemblyman Bobzien, on the surface, had no problem with it.

CHAIR TOWNSEND:
This Committee has jurisdiction over interior designers and they need to understand how important it is that they adapt to this new approach to life, and quit coming up with fancy designs that are not an efficient use of energy, because there are many wonderful things already out there.

We will take up the amendment as soon as we have a full Committee. This amendment is proposed by the Southwest Energy Efficiency Project and Dr. Weil.

We will close the hearing on A.B. 178 and open the hearing on A.B. 7.

ASSEMBLY BILL 7 (1st Reprint): Provides that certain public utilities have the burden of proving that costs sought to be recovered in deferred accounting proceedings were the result of reasonable and prudent practices and transactions. (BDR 58-280)

ASSEMBLYWOMAN BARBARA E. BUCKLEY (Assembly District No. 8):
To be succinct, I will read my testimony (Exhibit E). In a nutshell, this bill is intended to correct the Nevada Supreme Court's interpretation of our legislative intent. It is a consumer protection measure to make sure that before rate increases are passed along to the consumer, they were prudently incurred.

On the Assembly side, I worked on the language with all interested parties, and I believe there is no opposition and all support the bill as amended.

CHAIR TOWNSEND:
I actually sat through that court case. It was interesting to see. Initially, the burden of proof was always on the utility to prove their requests were prudent. I was a little taken aback by the court decision, but that is their right. I do not want you leaving here thinking deregulation was not a good idea nor a bad idea, it is just that the way California did it, the whole world suffered. We tried to explain to California it was not going to work, but all they wanted was to have us buy into their $330 million administrative nightmare as the California Independent Service Operator, and we politely declined. I appreciated the work on this, as the nuances of language when it comes to various issues, whether it is utilities or not, are the things they hang their hat on at the court level.

ASSEMBLYWOMAN BUCKLEY:
That is right. All the lawyers worked diligently on the language to make sure that it reflected our intent. We also had to square up the gas language to make sure it was consistent.

BARRY GOLD (Director, Government Relations, AARP Nevada):
I have prepared written testimony in favor of A.B. 7 (Exhibit F).

COMMISSIONER SODERBERG:
This bill fixes what we consider a significant unintended consequence of last summer's Nevada Supreme Court decision or maybe just a mistake in that

decision. We believe this bill reverses that mistake. More importantly, from our perspective it is clear in what it does and does not do.

Assemblywoman Buckley facilitated the discussion between Nevada's energy utilities and the Consumer's Advocate, in which we participated. We took a half-step back to see what the principle parties to our cases came up with and think they came up with very good language in sections of this bill. It is clear going forward what people can argue and not argue. We think this is an important bill and well written. We support its passage.

There has been confusion as to who has the burden of proof when we all thought we knew exactly how it happened. Since the Nevada Supreme Court entered its decision last summer, Sierra Pacific Power Company and Nevada Power Company have each filed a deferred energy case. During the pending of those cases, where technically the law of the State is the burden has shifted, the utility, to its credit, has not attempted to change how those cases are processed, and everything is moving forward as you intended in 2001 when you brought back deferred energy, and nobody has tried to take advantage of the language of that case. In the future, we want to make sure nobody gets any bright ideas and we urge the passage of this bill.

CHAIR TOWNSEND:
That goes to the character; they know what happened. I think they were in question of it. It shows a lot of dignity and respect for the process and they are to be commended.

For those of you who do not know, this was a rare case in front of the Nevada Supreme Court, because the Consumer's Advocate office and the applicant in this case, the utility, were on the same side for different reasons. They argued against another group, one being the Commission.

DEBRA JACOBSON (Southwest Gas Corporation):
We are here to support the bill. Specifically, in matching up the language for Southwest Gas Corporation, the previous session bill, S.B. No. 238 of the 72nd Session, gave natural gas utilities the ability to file quarterly deferred energy adjustments and Southwest Gas has opted into that. In section 2, subsection 8 of A.B. 7, we are already subject to some language, and want to make sure that language is prudent and the burden of proof was transferred to

the other section affecting natural gas utilities, should we decide to opt out of quarterly filings.

ERIC WITKOSKI (Chief Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General):
I agree with all the comments made and appreciate the parties working together to rectify a problem that could have been quite a concern and caused problems in deferred energy. This bill clarifies the burden of proof.

DOUGLAS BROOKS (Assistant General Counsel, Nevada Power Company; Sierra Pacific Power Company):
I was part of the discussions spoken about. Although we may have had different opinions about the Nevada Supreme Court decision, it became clear when we got together that we all agreed on what the appropriate standards of practices and procedures should be in these cases before the Commission. This bill, as amended by the Assembly, puts that all together in a way the Commission can easily interpret and apply, and the parties can understand. We believe it put the burden of proof and the burden of persuasion where it belongs throughout the whole proceeding. We support A.B. 7.

CHAIR TOWNSEND:
There have been many changes over the last few sessions and some here. I think there has been positive change when it comes to some key things hinged on this bill. First, Mr. Witkoski and his staff have analyzed the non-sexy part of rate cases and realized and articulated well that the carrying costs are a huge cost to the customer. In a number of these bills, we tried to shave that problem in the filings and recapturing of the deferred-energy accounting adjustment; that is important. With this bill, making sure everyone understands the rule is important.

These may appear as tiny things, but when added up, they are huge to customers. They are huge to the company which has to figure out how to manage it. At the end of the day, a cheap rate case is $1 million to the company. I do not know the time and value of Mr. Witkoski and his staff nor that of the Chairman and his staff, but these are costly issues and the customer pays for everything. Thus, the more we can make this a seamless transaction in terms of rate applications and clarity in the law, the better off is the customer. I think they have done all that.

We will close the hearing on A.B. 7 and take up two bills. One in which we have jurisdiction is A.B. 518.

ASSEMBLY BILL 518 (2nd Reprint): Revises provisions governing the regulation of telecommunication service. (BDR 58-1128)

CHAIR TOWNSEND:
I will make an opening comment to set the stage on how we process these bills. Although one could read these bills independent of one another, it is more important to the end user that we process them together, because this is about creating a commercial atmosphere in this state, as this Committee has always been able to do where the customer is able to benefit from additional opportunities, products and services as provided in the private sector in which the customer drives the market. Today, this bill is a continuation of a journey started about 25 years ago in attempting to have a market that started over 100 years ago catch up to where the public is today. That does not mean we have to rush willy-nilly into that market; what it means is we have an opportunity in this bill to move closer to a market that responds more quickly to the demands of the public. There is the consuming public which is individuals who buy individual products and services, whether for leisure or video information, voice, data or business, or whether to communicate better and enjoy life better within their family or business structure. The effort made by the parties that have come forward and worked with the Assembly members is a large effort, one that this Committee is prepared to review, because of our long-standing background in this area and our interest.

HOWARD A. LENOX, JR. (President, at&t Nevada):
At your request, we have Howard Waltzman telephonically available to testify on general issues relative to the market place.

CHAIR TOWNSEND:
I asked Mr. Waltzman to give his perspective on telecommunications in the country today and to give perspective on its effect on Nevada.

HOWARD W. WALTZMAN (Partner, Mayer, Brown Rowe & Maw):
The views I express today are mine and mine alone. I have prepared written testimony for you to follow along (Exhibit G), as well as a handout on the communications market place of 1995 and today (Exhibit H).

CHAIR TOWNSEND:
Your testimony sets a framework for today's debate.

MR. LENOX:
Before you are 15 pages of prepared testimony (Exhibit I, original is on file in the Research Library). I will not read it all, but provided it because it does offer additional perspective and background that goes beyond what Mr. Waltzman covered, relative to some important issues, mainly intermodal competition, which means between types of technologies, as well as the status of competition in this state.

Thirty years ago last month, I joined Pacific Telephone. In 1984, we went through divestiture of the Bell System and I went to work for a company known as Pacific Bell. Pacific Bell and Nevada Bell were both owned by the Pacific Telesis Group. Just after the 1996 Telecommunications Act was signed into law, Southwestern Bell Telephone bought my company and we became SBC Communications, Incorporated.

Today, I come before you as president of at&t. Why is that important? The world has changed substantially since the day I walked into Pacific Telephone 30 years ago to be a long-distance telephone operator. My dad did the same 35 years prior to me, and as an observer of this industry over that time, I can tell you it is a dramatically different business today.

It is unthinkable that cable would be able to deliver telephony services. It was beyond any of our imaginations, even 15 years ago, that we would be delivering, by using Internet Protocol (IP) Technology that Mr. Waltzman talked about in his testimony, a telephone signal. These are all the benefits of, and provided to us by, this explosion in technology and the platform it rides on, which we commonly refer to as the Internet.

All of our companies, whether they be cable, wireless, telephone or a derivative thereof, a broadband over powerline, for instance, is a nascent technology, but there is no reason for us not to believe it will be the next broadband delivery modality, which our consumers, your constituents, will have access to as a means of accessing the Internet. Discreet "siloed" technologies, discreet "siloed" services, are a thing of the past. We all now compete for what is commonly referred to as "the customer's eyeball," in the way of both page

views and video services as well as for their telephony services; their communication services in general.

Thirty years ago I went to work for "the" telephone company. Today I work for "a" communications company; one of many, all of whom are working hard to attract the consumers we all so greatly covet. Today in Nevada there are more cell phones than there are landline phones. Nevada mirrors the statistics that Mr. Waltzman presented. In 98 percent of Nevada's zip codes, people have access to at least one broadband provider. With the advent of commercially available satellite broadband services, it is arguable that everyone has access to the broadband.

In northern Nevada, I compete daily with my friends at Charter Cable who came into the market in August 2006 and are giving us a run for our money in a positive way. Prices are coming down in the marketplace. The bundles Charter offers, we attempt to match; then they respond to ours and the ultimate beneficiary of that behavior in the marketplace is the consumer.

The majority of customers in Nevada have access to five wireless carriers and fixed wireless, which is a new category of wireless that is becoming generally available across the state. You heard Mr. Waltzman reference both the Sprint offering as well as the Clearwire offering. Those are services that ride on an Institute of Electrical and Electronics Engineers (IEEE) technology category called World Interoperability for Microwave Access or more commonly referred to as WiMAX. With WiMAX we have another genuine substitute for wireline communications, either cable or telephony, in this state because WiMAX IEEE tells us we can operate in a range up to 70 miles at speeds up to 70 megabits (Mbps). I will tell you that 70 Mbps probably occurs in the laboratory, not in the marketplace. Certainly, 40 to 50 megabits is being seen today. What does that mean? It means the services we deliver through our Digital Subscriber Line (DSL) and broadband products, the services that our cable friends deliver through their services, are no faster than what the Clearwire or WiMAX alternative offers.

What this means is we have meaningful choice and meaningful competition in the marketplace. Already over 20 percent of the customers I serve or potentially could serve, are getting their residential telephone service from someone other than me. It is called "porting" when the consumer takes their number to another

carrier and they are gone. This is something that is substantially different than the company I went to work for some years ago.

Another example of how consumers benefit in a vibrant market is long-distance calling. If you think about the long-distance market just a decade ago, $20 would buy you, probably 4, 10-minute telephone calls; today, $20 buys unlimited calling anywhere in the United States from any number of carriers.

Ten years ago you probably paid 60 cents a minute to use a cell phone; today companies are giving you buckets of minutes, rollover minutes, weekends and nights-free minutes, in order to attract consumers to their brand.

High-speed Internet when it was first introduced, was somewhere around $70 a month. Today, you can buy high-speed broadband services in the $15 to $20 range, and it is not uncommon for our competitors to offer their products free for up to three months in order to attract them away from the incumbent telephone company. These are all examples of products and services that are either not regulated or considerably less regulated; light-touch regulated, if you will. That is a vivid example and illustration for the Committee of what this kind of legislation can offer as the next step to the residential consumer.

The way we have communicated has changed; that change has been made possible by the technology referenced earlier. In 1984, the federal courts attempted to stimulate competition by divestiture of the Bell System. In 1996, Congress made a similar attempt through the Telecommunications Act, but today it is technology that has made it a true viable alternative and an opportunity for Nevadans. Passage of this bill will benefit and reward Nevada consumers. I ask you to support A.B. 518.

KRISTIN M. MCMILLAN (Vice President and General Manager, Embarq Corporation):
You initially asked who we are and who we used to be. We like to say we are a brand new 107-year-old company. It was almost one year ago today that we split from Sprint Nextel. We are a separate and independently operated company. During that year's period of time, we have been in the process of actively reinventing ourselves as a company that brings to market innovative products and services. What we do is combine the best of the old with the best of the new. We take the traditional, reliable landline network and combine that with our new products, and services. We offer the full portfolio of services

which would be voice products both of long distance and local, high-speed Internet, wireless services and also have a business alliance with the DISH Network, putting us in the entertainment segment as well.

We have come a long way and continue to go forward. My remarks are in support of A.B. 518 and here is why. We distributed a PowerPoint presentation (Exhibit J, original is on file in the Research Library) and a booklet of competitive advertisements and Embarq's service area (Exhibit K, original is on file in the Research Library). I ask that these exhibits be incorporated into the record and made part of my comments.

The combination of these two exhibits demonstrates the dynamic nature of the competitive market today. If you go through the handout in any detail, you will see that it talks about the types and numbers of competitors, the types of services being offered in southern Nevada, the prices for those services and the pervasive and aggressive nature of the advertising we are experiencing every day in southern Nevada, as well as the general data regarding the increase in the breadth and depth of competition in our areas. All this is being provided to show that Nevada's telecommunications market is amongst the most competitive in the nation.

Traditional landline companies like Embarq and at&t need to be able to react to changes in customer demand and changes in technology with the same flexibility and speed as competitive providers. As heard in previous testimony, a traditional landline company is not the only way to make phone calls anymore. In Nevada, the percentage of customers that subscribe to cell phone service actually exceed that of the national average, and more and more people today are using only cell phones. Other people get their telephone service from the cable company or use what is called Voice-over-Internet Protocol, or VoIP service, which is a way of communicating through an Internet connection through your computer. In fact, today consumers can choose from many different types of technologies, whether landline, wireless or VoIP technologies.

MS. MCMILLAN:
As a result, customers are no longer automatically coming to us and they are no longer automatically staying with us as their local telephone company. As proof of that, Embarq has lost many more lines than it has gained over time. I would like to point out a graph on page 6 of the PowerPoint presentation, Exhibit J, which illustrates this point. It shows residential customer growth from

1997 through 2006. It compares Embarq in the green line below with Nevada Power Company in the red line; Nevada Power, obviously, being a traditional monopoly type service. It shows that from 1997 to about 2000, Nevada Power and Embarq, previously Sprint, were tracking each other closely in overall customer growth. There is some separation in early 2000, and suddenly in 2003, about the time number portability came on board and wireless competition and substitution started to become more prevalent, there is a drastic decline in customer growth over that period of time and that downward trend is still continuing today.

Because of the dramatic changes in the industry and the intense competition, current telecommunication laws lag reality and need reform. Many of them are based on a time when traditional landline companies were considered to be monopolies. There was little or no competition in the marketplace, and these laws fail to recognize that we have undergone a dramatic change in the marketplace and are experiencing extreme competition.

This legislation will treat all providers more equally in a competitive market and will promote fair competition. It will reduce regulation, encourage investment in new technology and will provide customers with greater choice and more pricing options.

I would like to point out some key provisions in the bill. As a backdrop to that, Embarq is the only southern Nevada telecom company whose rates are regulated by the PUCN. This bill will give incumbent telephone companies like Embarq and at&t pricing flexibility, closer to what other providers have today. It will enable us to bring competitive products and services to market without regulatory delays. The bill will eliminate rate cases and eliminate depreciation studies which are often related to rate cases. It will eliminate restrictions we currently experience on bringing promotional offers to market and current filing requirements we have with respect to bringing new services on board or making changes in our prices for bundles. These are current obligations not required of our competitors.

MS. MCMILLAN:
The bill will also eliminate time-consuming cost studies which we have to perform to support price floors for our services. These are no longer relevant in a competitive environment and our competitors are not required to spend time and money on those types of studies. However, the bill does retain significant

consumer protections such as having the PUCN continue to oversee customer billing disputes, service quality complaints and retaining a number of protections relating to basic residential service. The basic residential stand-alone service rate will remain capped for a transitional period of time in the bill. There will be a hard cap through 2011 and a soft cap that will enable Embarq and at&t to increase the basic residential rate of not more than $1 during 2011. The PUCN will continue to oversee wholesale pricing, that is the prices for access to Embarq's network that wireless or long-distance providers pay to utilize our network.

Lifeline is a service available to certain low-income customers who meet eligibility requirements. Prices and eligibility for the Lifeline program will remain regulated by the PUCN. As part of this bill, we have agreed to place into statute the requirement that eligibility for Lifeline be set at 175 percent of the federal poverty guideline. The federal standard, today, is 135 percent, so we will far exceed that.

Finally, the PUCN will continue to oversee carrier-to-carrier disputes that may occur from time to time. We strongly believe it is time to allow Embarq and at&t better pricing flexibility that will enable us to bring competitive services to market more quickly and on a more level playing field with our competitors. We ask for your support of this legislation so that at the end of the day, consumers will be the ultimate decision makers for their communications needs and will be the beneficiaries of greater options and better pricing.

SENATOR CARLTON:
I heard you say the PUCN would still be looking on and watching how this develops. If they are watching, what kind of camera will they have if you are not regulated?

MS. MCMILLAN:
There are areas where we will continue to be regulated and certain regulations are in place. For example, there are certain services that will remain subject to tariff, which are prices, rules and regulations in written form filed with the PUCN. We do not have the opportunity to make changes in the prices for those services or the terms and conditions without going through a process with the PUCN. Another area where we will continue to be regulated is wholesale access services.

There are still procedures and rules filed with the PUCN to which we have to adhere such as, if another carrier files a complaint against us. We are also required to file annual reports with the PUCN so they can continue to oversee the market in general, the overall state of competition in the market and to see where we all stand financially. That is a requirement of all competitive providers, not just at&t and Embarq.

DAN R. REASER (at&t Nevada):
I have provided written testimony and ask that it be made part of the record (Exhibit L).

CHAIR TOWNSEND:
Is there a Nevada Bell Telephone Company?

MR. REASER:
It is still the name of the corporation.

The A.B. No. 366 of the 69th Session created the authority for the Public Utilities Commission of Nevada, then the Public Service Commission of Nevada to create plans of alternative regulation to allow telephone companies to begin the process of migrating themselves to a competitive market. In 1989, S.B. No. 294 of the 65th Session laid the groundwork for alternative regulation.

The work done by the Legislature and PUCN with regard to plans of alternative regulations were improved and enhanced in 1999 and again in 2003 with the passage of S.B. No. 440 of the 70th Session and S.B. No. 400 of the 72nd Session. Those pieces of legislation provided for statutory plans of alternative regulation; deregulated broadband led to broadband availability in many of Nevada's rural communities by spurring investment and provided flexibility in certain types of pricing packages and bundles. Assembly Bill 518 is a natural progression along the regulatory and legislative guidance you have given and we believe it merits your support.

MR. REASER:
In my testimony, Exhibit L, I have provided some of this background and a section-by-section analysis of the bill. I would like to touch on a couple of points. For rural and small communities, this legislation preserves the existing statutory regulatory scheme for what are called small providers of last resort, in the bill. In rural or insular parts of the state where a small telephone company is

there, it is still subject to Commission regulation in the same way as the power company or a traditional telephone company was in the 1980s. The bill does provide a mechanism by which the Commission can allow those small providers of last resort, if they can demonstrate it is in the public interest and they have market pressures to move from that to the competitive supplier category. The competitive supplier category in the statute replaces all of the existing plans of alternative regulation carriers, and provides to them complete freedom with regard to pricing, terms and conditions of telecommunication services with the exceptions noted, that being the basic service rate cap for an additional five years, with a soft cap for the last year. The 911 services are always to be available to customers and certain carrier access will be regulated with the Commission going forward.

Additionally, on consumer protections, this bill does not touch in any way, shape or form chapter 703 of the *Nevada Revised Statutes*. That is the chapter that empowers the Commission to adopt regulations, entertain consumer complaints, maintain a consumer complaint branch and adopt regulations in furtherance of consumer protection. This bill does not affect that part of the Commission's jurisdiction.

As indicated, the bill also increases the rate of Lifeline eligibility and provides for the Commission to conduct a proceeding both rule making and otherwise, to determine a more robust Lifeline and universal service provisions. The bill also preserves a number of provider services of last resort obligations for telephone companies to ensure they will remain providing to people who have no other alternative, unless the Commission, through rule making and a process that it will develop, determines that the provider of last resort should be relieved of those duties. There are a number of other provisions dealing with the Commission's rule making, but they primarily preserve the existing rule making authority of the Commission and do not require it to undertake new rules. As Ms. McMillan indicated, the statute as we propose in A.B. 518 fully preserves intercarrier obligations of an incumbent local exchange carrier, such as Nevada Bell or at&t Nevada and Embarq.

The remainder of the bill, starting at section 56, just conforms a lot of *Nevada Revised Statutes* to the new definitions and new scheme set forth in A.B. 518. The final three sections provide for some transitional provisions in the rule making.

MR. SCHMIDT:
I am representing Embarq because I believe the competitive market has necessitated the need for this bill. I am also here to explain and defend provisions in the bill that continue to protect the consumers in Nevada as we go through this transition period.

In response to Senator Carlton's question, I would like to point you to section 20.5. There is substantial amount of continuing reporting obligation, not only to the PUCN, but also to this Legislature. Before there is any removal of the cap on the local residential rate, there will be two Legislative Sessions that occur, and those reports will be provided to you in that time frame. The competition we see today is continuing. You will receive information about how it changes and continues and we believe, escalates, before any cap is changed on the residential rates.

Another important provision is related to the 911 service, to clarify any confusion. That service is addressed in the bill and access to 911 will continue to occur and does not substantially change the resolve of this bill.

CHAIR TOWNSEND:
Go to page 10, section 26, line 13, "The Commission may not deregulate access to emergency 911 service provided by a competitive supplier." I think there was discussion as to whether that language is effective or should be removed.

MR. REASER:
In the proposed amendment to the bill (Exhibit M, original is on file in the Research Library), page 8, section 26, subsection 1, line 37, there is a proposed revision of this language to replace it with, "A competitive supplier shall provide access to emergency 911 service and shall not discontinue such access." There was discussion about whether we were dancing on the head of pin with the previous language, and we believe this is an appropriate statement for the legislation as to a competitive supplier's obligation and that the access will not be discontinued. It is unambiguous, clear and sets forth the retail consumer obligation.

CHAIR TOWNSEND:
Let us go through the amendments before I make further comment.

MR. REASER:
The first changes are on page 4, section 20.5, line 35 where we are eliminating a reference to video service which is a pure technical inadvertent reference, because a video service platform cannot be used by the telephone company which is making these reports concerning telephony as it cannot be achieved.

The next change is on page 6, section 23, subsections 2 and 3, lines 32 and 36. The words "switched or" have been reinserted as descriptive of the access services subject to these provisions. These provisions with regard to switched and special access remain a tariff service, a wholesale service among providers. Now this is dangerous because I am going to talk about how a telephone works. This is the method by which carriers originate and terminate traffic on each other's systems. In these provisions, we are making clear that they remain regulated by the Commission. Those changes in their pricing, terms and conditions must be done by advice letter, which is a term of art for a tariff change, and they Commission retains authority to reregulate or reclassify those services based on proceedings before the Commission.

Next is where we started this process. On page 8, section 26, lines 37 to 39, as I said, make clear the obligations with regard to emergency 911 service to retail customers.

In subsection 2 of section 26, we also made that change to "switched or" special making clear the Commission retains jurisdiction to classify, reclassify and exercise its jurisdiction over switched and special access.

On page 26, section 50, line 25, we have again made a "switched or" special access change to make it clear that the Commission retains authority over switched and well as special access.

That is the extent of the material changes. I see a couple of commas did not get marked or what not, but they are punctuation changes that were made.

MR. SCHMIDT:
Just so the record is clear, we are here supporting A.B. 518 in the second reprint. We are also asking the Committee to adopt this amendment mock-up number 3862, which has several small changes. They are small but important to some parties. We are asking the Committee to adopt this amendment when the Committee adopts A.B. 518, as we hope it will.

CHAIR TOWNSEND:
Go to section 25, subsection 1, "The Commission shall not decrease the rates or pricing of basic network service," which is defined in the law, "provided by a competitive supplier, unless the competitive suppliers files a general-rate application pursuant to paragraph (b) of subsection 2 and the Commission orders a decrease in the rates or pricing ... ."

Why would we want the Commission to have to go to a general-rate case to decrease the rates?

MR. REASER:
The general-rate case requirement is a safety valve provision. The statute as it is written in section 25 provides that during the four-year hard cap to 2011 and for the one-year soft cap, there can be no change in the basic rate.

CHAIR TOWNSEND:
How does that benefit the consumer? Why cannot we have file and use?

MR. SCHMIDT:
My understanding of the cap is a little different from what Mr. Reaser said. The purpose of this section is to make clear that the Commission may not have a rate case to decrease the rates, but that does mean the cap does not work as a cap. As a cap of the rates, it may be decreased by the incumbent providers. During the term, they may not be increased above the cap. This provision was put in by the Legislative Counsel Bureau (LCB) as a safety valve to ensure that the Commission could not take actions that would order the decrease through a formal rate case, because we are trying to avoid the formal rate case process in this interim period and replacing it with a protection to the customers in the form of a cap so the rates do not go above their current levels through 2010, and then with the opportunity for a $1 change through the year 2011.

MR. REASER:
I concur with Mr. Schmidt's representation.

CHAIR TOWNSEND:
Why does the customer benefit from having to file a rate case for a decrease during this period?

MR. REASER:
As Mr. Schmidt indicated, the company can decrease its rates; the Commission cannot order it to decrease its rates. The general-rate case is actually there for a rate protection in case, as the LCB noted, we have a situation as we experienced in electric deregulation where a carrier claimed that a rate cap was confiscatory. There is a rate cap in here, a very clear rate cap. We have written a general-rate case safety valve into the statute so we, hopefully, do not replay the issues that occurred in electrical deregulation.

If the carrier says the cap is confiscatory, they have to file and bring forward a general-rate case. They have to convince the Commission that the failure to give rate relief based on a general-rate case of the total revenues of the company results in a taking of the corporation's property. In that proceeding, and this is important, the company is at risk for both an increase and a decrease. In other words, if it files a general-rate case, and it was wrong, and it is actually an over-earning situation, it could have a decrease in rates.

This safety valve provision was thought to be important. It does not prevent an immediate decrease in prices by the company. These are all provisions that ensure the continuance of the rate cap; a hard cap for four years and a soft cap for the last year.

CHAIR TOWNSEND:
You may be reading this more sophisticatedly than I am, but section 25 says the Commission "... shall not decrease the rates, ..." not the incumbent. A competitive supplier must file a general-rate application and the Commission orders a decrease in rates. In subsection 2 of section 25, "Except as otherwise provided in this section, a competitive supplier that is an incumbent local exchange carrier shall not: Without the approval of the Commission, discontinue basic network service ... ." Are you saying the incumbent still has to go to the Commission, if they want to reduce their rates, but they do not have to have a general-rate case if they want to do it on their own?

MR. REASER:
Actually, if they want to decrease rates, they can just do it in the marketplace.

CHAIR TOWNSEND:
I just want to make sure.

MR. REASER:
What this statute does is nails down everything else the provider can do.

CHAIR TOWNSEND:
It is what it does not nail down.

MR. REASER:
That is correct. That is I can decrease my price or increase my price, as long as I do not go above my cap.

CHAIR TOWNSEND:
It is important to understand that you can do that. In a competitive market, the closer you get to the end of the time, the more you know the pressures you are facing and want to compete in the marketplace. You may want to have a more competitive pricing scheme and you need to be able to have that opportunity without going to the Commission and spending the hundreds of thousands of dollars it costs you to go through a rate file. I want to make sure the customer has that opportunity without a rate case; that is crucial to the debate.

Paragraph (b), subsection 2 of section 25, states that the maximum you are going to be able to do from 2011 to 2012 will be $1 for the basic rate. The basic rate is the one the average customer has going to their home.

MR. REASER:
Correct. For instance, it is important, for the record, to understand, at least for at&t Nevada, it has been under that $15 rate cap since 1997.

CHAIR TOWNSEND:
Your point about what is not in the bill is crucial, because it goes my question. Currently, both companies represented here represent the vast majority of the people in Nevada, and you are required under your certificate to provide service to geographically charge the same rate wherever your service territory is, unless there is an amendment to that. If there is a person in northwest Reno who has a basic line, and there is a person in southeast Reno who has a basic line, that basic rate is the same unless they qualify for some other discount. Is that correct for at&t?

MR. REASER:
That is correct, assuming identical service packages on the telephone.

CHAIR TOWNSEND:
I am talking about base rate. Would that be approximately the same when provided in Winnemucca?

MR. REASER:
Correct.

CHAIR TOWNSEND:
Now, in southern Nevada, the same is true if you live in Summerlin, Henderson, southwest Clark County or Mesquite. Is that fair to say?

MS. MCMILLAN:
That is correct. Today that base rate is $10.40.

CHAIR TOWNSEND:
Having said that, is it also fair to say that there is a legitimate debate between interveners, including the Commission staff, the Bureau of Consumer Protection (BCP) and your company, that that rate is actually below cost? I am not saying it is or it is not a legitimate debate. Is that fair to say?

MR. REASER:
For at&t Nevada, we understand from the Commission and the BCP, there would be a legitimate debate.

CHAIR TOWNSEND:
That is all I am asking. I am not asking whether there is or is not a legitimate debate, because I would ask Mr. Witkoski the same question. He would probably say there is a legitimate debate. The purpose of that question is, I did not find anything in this bill that says by 2012 when tariffs are no longer applicable for that group that is not excluded, that you cannot decide, based on market conditions, who you want to charge what for basic or package services. For example, southeast Reno, northwest Reno; if there is a greater demand for a package in southeast Reno, you will charge a different rate than there is for a package that does not appeal to those in northwest Reno; the same would go for southern Nevada. It is prohibited under this bill after 2012.

MR. REASER:
The theoretical construct you proposed I guess is plausible under this bill, with one huge caveat. Discriminatory pricing is still very illegal under this bill.

CHAIR TOWNSEND:
I am not going anywhere near discriminatory pricing. I am simply saying, based on demand, packaging, marketing and competitive conditions, and I am going to ask the same question of the cable industry which is now walking into this industry and you are walking into their industry, that they have different demands based on different things. I have no idea what my neighbors at either end of the state buy for telephones, video, data, cable or broadband.

MR. REASER:
Your point is well taken that, for instance, if in at&t service territory, Charter Communications were to offer, say in the city of Sparks, a particular package, and it is now the year 2015, for the first time ever, a company like at&t Nevada could meet that package because it will be free of the regulatory constraints of today to meet that package.

CHAIR TOWNSEND:
I will ask this same question of those in southern Nevada, Cox and Embarq. If your competitor in that marketplace went to the City of Sparks and to the Washoe County School District and said all Sparks athletic programs would be carried on channel X in this package for this cost, would you be allowed to compete with them and offer a competitive package? Maybe those in southwest Reno who do not have a child in that school district or are not interested in those sports would not have to pick that up, and they might have a different option, such as a Lake Tahoe option. Is that prohibited?

MR. REASER:
That is not prohibited.

CHAIR TOWNSEND:
Exactly. The way you are reading the bill, is that the same in southern Nevada?

MS. MCMILLAN:
That would not be prohibited by this bill.

CHAIR TOWNSEND:
That brings us back to a point we have been trying to make for 25 years, and some day I am going to get somebody to stand up and say this actually occurs. There is prohibition against geographic pricing for many reasons that are legitimate. It means there are subsidies that constantly flow inside a county or

inside a service territory. They do not always flow to those who need it. Is that a fair statement?

MS. MCMILLAN:
That very well may be correct.

CHAIR TOWNSEND:
That is all I am asking for, because that is an important distinction. I am trying to get to the point of the work you have done, which is extraordinary. As we evolve and transition, because there is transition in here, that at the end of the transition period, there are things that are going to allow customers to make greater demands on U.S. companies based on what they think they need for their business, lifestyle or personal needs. Is that a fair statement based on what you are reading in this bill?

MR. REASER:
On behalf of at&t Nevada, I believe that is absolutely correct, and the company will fall or rise on its ability to compete in the marketplace.

CHAIR TOWNSEND:
Let me ask Mr. Witkoski the following question, because this is crucial. Every day, as Committee members, we receive something on the Internet or read in a publication about new technologies entering the marketplace. Is it fair to say that customers are now overwhelmed, putting aside basic rates and basic hard line service, but there is a lot of product on the market provided by a number of suppliers?

MR. WITKOSKI:
It is true that there is a lot of technology, a lot of things have been developed and that is one reason why this price cap scenario is in place. We are transitioning from a monopoly service and are starting to see competition from cable companies. Through time, technology will dictate and tell us whether that technology is going to develop to where that brings even more competitors. There is some debate whether we are going to wireless as a substitute or complement, but over the next three years I think we will see that it will flush out through technology.

CHAIR TOWNSEND:
The four-year protection with a one-year soft cap is that transition period from now. We have a number of sessions to watch this occur. At the end of that time, if it evolves in the direction we think the reports will come back to, then you are going to have all these multiple technologies coming in a and being made available in vigorously competitive marketplace. That is the theory; is that your best analysis?

MR. WITKOSKI:
Yes, that is the concept and the idea. It was also the reason for the reports, as you will see. Every year there are reports to the PUCN and the Legislative Commission. After December 2010, there will be a report by the PUCN that will be sent to the Legislature and our office to evaluate how the marketplace has developed.

CHAIR TOWNSEND:
There are multiple details in the bill, but I do not think it is as important as the larger picture based on this. I want to make sure everybody is able to get everything on the record they think is important.

MR. WITKOSKI:
One of the reasons I came here is the rate-cap issue. The wording was a little convoluted with having a rate case, but LCB felt the company needed to have a least the potential to file a rate case to avoid a constitutional taking. As you know, back in 1999 when the deregulation bill was passed, there was a rate cap in there and the utility had concerns and filed in federal court, so the fight was in federal court. I do not expect it to happen in this case, but at the instance the company felt their earnings were so poor that it would meet the threshold for a constitutional taking, the fight would be back at the PUCN. They would have to file a full general-rate case and we would have to look at it. That is why that statute is constructed the way it is. I am not expecting them to need to file and I think the rates are compensatory. I think you will see a hard cap until December, 2010, and a soft cap in 2011.

The other thing is, the rate cap provides the transition from the monopoly service to a competitive market. With those reports, I think we be able to see what develops.

NANCY WENZEL (Utilities Hearings Officer, Public Utilities Commission of Nevada): We do want to go on record that we do believe A.B. 518 is a necessary evolution of competition. Consumers and technology have dictated that we have platform competition. The proponents of this bill have worked with the Commission to refine the language and concepts. We did not support the original one-year provision to transition to unregulated basic local service rates; however, we do support the amendment, because the current amendments do preserve legislative and regulatory oversight of deregulation of the telecommunications industry through that transition period to full competition in 2012. We believe that is more appropriate. We also feel that the Consumer's Advocate did a great job in negotiating the rate-cap provision. It is probably one of the most pro-consumer provisions in the nation providing price protection for consumers for four and half years. In spite of how you feel about a rate cap, we believe Mr. Witkoski did a great job in getting that provision in the bill. We support A.B. 518 as amended.

MR. GOLD:
I feel like I am tilting against a coal-fired, solar-backed, nuclear-driven windmill, but on behalf of our members, I feel I need to oppose the bill, because there are things that will impact consumers. I appreciate the efforts of the telecommunications companies and the Bureau of Consumer Protection to work with AARP Nevada. I have prepared a written statement as to why AARP opposes A.B. 518, and urge the Legislature not to lift the rate cap on essential basic local services in 2012 (Exhibit N).

CHAIR TOWNSEND:
Concerning section 25, would you be more satisfied if in section 51 the 175 percent of the poverty level and the 150 percent of the poverty level were raised to 200 percent of the poverty level, but the date was moved up a year?

MR. GOLD:
Move that date of the cap up a year. Increase the Lifeline. I do not know if that is a fair trade-off, because a lot of our members and a lot of people do not qualify for Lifeline, but do depend on basic network service. I think the fear is that after 2012 there is no guarantee where basic service could go. I think the Lifeline people would continue to be protected; it is one of those services that is underused anyway. A number of eligible people do not seem to sign up for it as much as they can, so I think we are concerned about the cap for basic network service. If you could have some kind of a yearly increase that is limited to

certain percent or dollar amount after 2012, we would be comfortable with that.

CHAIR TOWNSEND:
Maybe the PUCN knows the answer. Of all of the lines the two largest companies have, let us use them as an example since they provide basic service to most of the state. What percent of the total lines are Lifeline, and what percent are basic service with no add-ons?

MS. MCMILLAN:
I am only speaking on behalf of Embarq. About 15 percent of our total access lines are bare. About 5 percent of the bare are bare Lifeline. About 5 percent of the total bare R-1 lines are Lifeline. Of the total access lines, 15 percent are basic residential, the way it is defined in the bill as basic network service.

CHAIR TOWNSEND:
So it is 5 percent of the 15 percent. So you are arguing for the 5 percent of the 15 percent?

MR. GOLD:
I am arguing for the 95 percent of the 15 percent that are not Lifeline.

CHAIR TOWNSEND:
Five percent of the 15 percent are Lifeline, is that correct?

MS. MCMILLAN:
We have anywhere between 25,000 and 30,000 Lifeline customers at any given time.

CHAIR TOWNSEND:
You are saying that the cap that comes off in 4 years is a concern to you, because 95 percent of the 15 percent will then be left without any protection other than the competitive market?

MR. GOLD:
That is correct.

SENATOR CARLTON:
The 15 percent is the basic rate, no add-ons, no bundles, but is that incorporated with everyone who does have the add-ons and bundles? When this basic rate goes up, will it impact everyone? The way other services are offered today is primarily through packages or bundles of service. Am I correct that it starts at the same price?

MS. MCMILLAN:
Not necessarily. First of all, there is no guarantee at 2012. We do not know what is going to happen to that basic stand-alone rate in 2012.

SENATOR CARLTON:
It may not even exist.

MS. MCMILLAN:
That is not correct. We will have to offer a basic residential network service rate, unless we receive permission from the PUCN to discontinue that service. I do not think that is going to happen, and we would not ask for that as I think they may be hard-pressed. There is a provision in the bill that would allow us to request that, but we cannot drop that service without PUCN approval. The PUCN on a going forward basis continues to oversee the existence of that service, just not the price for that service after 2012.

SENATOR CARLTON:
Right now, my basic rate is $10.40. There is a cap in place that will possibly allow it to go up $1 and $1 and $1.

MS. MCMILLAN:
It does not go up at all until at least January 1, 2011. Then it may not go up, it may go down, but if it went up it could not exceed the $1 monthly increase for that entire year.

SENATOR CARLTON:
It could be possible that by adding some other services to my $10.40 base rate, I would only be paying $13.40. Now that platform for this bundle could be lower than the basic rate for just that R-1 service when bundled together.

MS. MCMILLAN:
That is hard to say.

SENATOR CARLTON:
I just want to understand how the pricing structure and what type of options we are talking about.

MS. MCMILLAN:
It is likely that price will be higher than the $10.40 with features, if I understand the question correctly.

CHAIR TOWNSEND:
The other point is simple. At the end of 2012, under this bill, anyone can come in and compete, whether it is Verizon, T-Mobile or Sierra Pacific Resources. At that point, whatever the rate is, the rate is, because you can get it from somebody else.

MS. MCMILLAN:
There are competitors out there offering a basic service rate today. They are offering it at a price lower than the $10.40 that we have in place. There are competitive alternatives for basic network service.

I would like to add to your question about the percentage of Lifeline to total residential lines. I have that number now, and it is 6 percent.

CHAIR TOWNSEND:
Let me ask again. Of your total residential lines, how many are the basic network service?

MS. MCMILLAN:
That is 15 percent.

CHAIR TOWNSEND:
Of that 15 percent, what percent are Lifeline customers who qualify?

MS. MCMILLAN:
Of the 15 percent, it is 5 percent.

CHAIR TOWNSEND:
What is this new figure you gave me?

MS. MCMILLAN:
Just 6 percent of total residential lines are Lifeline customers.

SENATOR CARLTON:
Just because you have Lifeline, does not mean you cannot purchase the other packages. That is not prohibited.

MS. MCMILLAN:
That is correct; you can add other features to Lifeline.

MR. GOLD:
I think our concern is for the 95 percent who are the basic customers who will not look at alternative technologies, who will never get a cell phone, who will rely on that hardwired line. These are the people we need to consider in this bill.

ANN C. PONGRACZ (Sprint Nextel):
Sprint Nextel happens to be the wireless and long-distance company that still operates under the name Sprint following the spin-off of Embarq.

We had a few concerns about A.B. 518 as initially written. We were concerned it might expose us to increased regulation of wireless companies. We were also concerned it might result in the deregulation of access services that are a major factor in how we do business. We believe all those concerns have been addressed by the amendments.

The first concern about increased regulation of wireless has been put to rest by the amendment to section 33 approved in the Assembly. The concern regarding deregulation of access services, specifically switched and special access services, have been addressed in the amendment, (Exhibit M), specifically sections 23, 26 and 50 of the mock-up. With those changes, we are prepared to support the bill provided those changes are included.

HELEN A. FOLEY (T-Mobile USA):
We echo everything Ms. Pongracz said. We wanted to make sure those wholesale switched and special access rates were still tariffed, because it is important that wireless be able to contract with the land lines and others so we can get our calls to and from Nevada.

ROBERT GASTONGUAY (Nevada State Cable Telecommunications Association):
Under advice of counsel, the cable telecommunications operators in the state wish to go on record as not opposing A.B. 518.

CHAIR TOWNSEND:
The proponents of this measure are in support of the bill with the proposed mock-up.

We will close the hearing on A.B. 518 and open the hearing on A.B. 526.

ASSEMBLY BILL 526 (1st Reprint): Revises provisions relating to community antenna television, cable television, video service, Internet service and other information technology. (BDR 58-1129)

MR. REASER:
I believe the most efficient way for the Committee to proceed because of the effort of the LCB is to work off of the mock-up of the proposed amendment to A.B. 526 (Exhibit O, original is on file in the Research Library).

CHAIR TOWNSEND:
The slow evolution of video, voice and data and the merging of those technologies for the benefit of consumers has been supported by a tremendous consolidation and investment and interest by the financial community, who, having seen entrepreneurial and technical advances driven by demand, are investing billions of dollars in this area.

The companies here today are familiar, but more importantly we are familiar with what they market in an open, competitive arena such as it is today. I believe this bill helps those who want to continue or move into this business. They will be to able to go to one place for a franchise, not spend unnecessary hours in front of local government when they could be spending time actually doing things for consumers, and have this centralized in a manner that creates a level playing field for those who want to be in this market.

STEVE SCHORR (Vice President, Cox Communications):
I have prepared testimony telling a little about myself, about Cox Communications Las Vegas, and why we support the bill (Exhibit P).

CHAIR TOWNSEND:
How many pay channels do you currently have in your service territory?

MR. SCHORR:
We have five.

CHAIR TOWNSEND:
Ms. Berkbigler, how many?

MARSHA BERKBIGLER (Vice President, Charter Communications):
We have five in northern Nevada.

CHAIR TOWNSEND:
How are they broken out?

MR. SCHORR:
Two government channels, two educational channels and a Homeland Security fire and police training channel.

MS. BERKBIGLER:
Charter Communications is the fourth largest cable company in the country and serves the greater Reno market, the Lake Tahoe area and several rural areas as far as Fallon to Yerington.

In the last four years, we have invested $21 million in just franchise fees in that market. We have invested around $50 million in infrastructure in that market. Today, we provide in northern Nevada the same services that Mr. Schorr mentioned for southern Nevada. We have high-speed data (HSD) and provide three megahertz and five megahertz service on our HSD. We are about to roll out ten megahertz in the greater Reno market. We are also providing direct-video recordings and telephone service. We are moving forward in competing with at&t in HSD and telephone service. They are going to be competing with us under this legislation with video service.

Competition is working in this market. That is what this legislation is about. It is to provide a level playing field for all to compete so the consumer wins. The goal is to make sure the rules are no more excessive for one company than they are for another. This allows us to provide a service that is competitive so the

customer can get involved in the broadband world we are all living in today. That is our goal for this legislation, and we join in the support of A.B. 526.

CHAIR TOWNSEND:
Mr. Schorr, is your company also in the telephony market now?

MR. SCHORR:
Yes. We have been in the telephony market for about eight months.

CHAIR TOWNSEND:
So, we are evolving into this competitive atmosphere.

You have how many channels, if you bought them all?

MR. SCHORR:
Just over 300.

MS. BERKBIGLER:
I am not sure of the exact number, but it is over 300.

CHAIR TOWNSEND:
You have multiple levels of service; basic, expanded on up the line to high-definition television (HDTV), etc.

MS. BERKBIGLER:
Right.

MR. SCHORR:
To add, you also have great Discovery Channel HDTV, wonderful Public Broadcasting System HDTV. The digital world is just beginning. I have been in the business for a while, and I honestly believe we have only scratched the surface. What Congress has done in making it a digital world in 2009 will force people and companies to get into that quicker than they would.

CHAIR TOWNSEND:
Plus, most of the local news on the network stations is going to HDTV, which is remarkable.

MR. SCHORR:
To be honest, last year, even what we shot in Carson City in our effort to show lawmakers for their constituency around the state, we shot in analog with two cameras. Today, we shoot with three cameras in digital.

CHAIR TOWNSEND:
You made a statement about when you started with Cox you had 28 stations. Is that correct?

MR. SCHORR:
That is correct.

MS. MCMILLAN:
We concur with the statements made today, and support A.B. 526 with the amendments. We support a statewide video franchising framework. It encourages competition and removes significant barriers to entry. I urge you pass this legislation with the amendments.

MR. LENOX:
I would like to point out that as we discussed in the first bill, Internet protocol is the enabler. Digital transmission is the enabler of what we are now seeing in the marketplace. It works both ways in the telephony market as well as in the broadcast and distribution market.

As was pointed out earlier, we currently have to go from municipality to municipality. It is inefficient, potentially adds to cost and most importantly, it delays the availability and the entry of new entrance into a marketplace based on the time it takes to work with any given municipality to get that done.

You will hear about investment and I think that is important. We are the next state in line considering a statewide video franchiser form. Most recently, Missouri completed it about a month ago. Last week we announced a $335 million capital improvement plan in Missouri in order to construct the platform upon which our IP, telephony and IPTV network will ride. These are not theoretical numbers, this is real. We have done substantial investment in California. Wherever we can get these franchises, we are going into the market, we are offering the product. We are offering a similar slate of products, including HDTV and so on.

OIt is meaningful competition, the investment is real and the cost predictability, which allows our investors to be comfortable with doing this, is real. I urge you to pass this bill.

MR. REASER:
I have prepared a pre-file testimony which I ask you to make part of the record (Exhibit O).

One month ago *The Wall Street Journal* reported that there were nine states that had changed their statutes already to do away with the patchwork of local government franchising. This year, along with Nevada, there are another 14 states undergoing the same kind of regulatory change that A.B. 526 would bring about. You are not on the cutting edge, but you are in the early stages of endorsing this kind of market-opening, competition-driven legislative proposal that will help consumers.

As indicated by others, we would ask you to endorse A.B. 526 as it is in first reprint along with the mock-up that is set forth in the proposed amendment Exhibit O. Most of the amendments are technical in clarification, and there are a couple of substantive amendments that are important, so that mock-up needs to be part of the processing of the bill.

CHAIR TOWNSEND:
We may not be right at the cutting edge, but we have to move forward because we have a constituency, not just the individual people who live in a house, we have a business community and a tourism community that demands this. When we talk about bringing nongaming business to Nevada, that cannot be done without an infrastructure for data, voice and video. I think this bill is a good step and all of you bring us a remarkable product.

MR. SCHORR:
Being involved with the Nevada Development Authority and the chamber of commerce, I talk to companies all the time that are looking to come to Nevada. There are always two questions they ask: One is what is your educational system like? Can we bring our employees and our children and feel comfortable with your educational system? Two is do you have the infrastructure to be able to provide the technology to move and help our companies forward?

I think the people here can verify that as an industry, that is what we are attempting to do, and this bill will make that happen.

CHAIR TOWNSEND:
There being no further business before the Senate Committee on Commerce and Labor, the meeting is now adjourned at 10:47 a.m.

RESPECTFULLY SUBMITTED:

_____
Laura Adler,
Committee Secretary

APPROVED BY:

_____
Senator Randolph J. Townsend, Chair

DATE:_____