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

Seventy-Seventh Session
April 10, 2013

The Committee on Commerce and Labor Subcommittee was called to order by Chairwoman Olivia Diaz at 1:01 p.m. on Wednesday, April 10, 2013, in Room 3161 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Olivia Diaz, Chairwoman
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Ira Hansen

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Matt Mundy, Committee Counsel
Earlene Miller, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Randy Brown, representing AT&T
Eric Witkoski, Chief Deputy Attorney General, Consumer's Advocate, Bureau of Consumer Protection, Office of the Attorney General
Sam Crano, Assistant Staff Counsel, Public Utilities Commission of Nevada
Barry Gold, Director of Government Relations, AARP Nevada
Torry Somers, representing CenturyLink
Mark DiNunzio, Director, Regulatory Affairs, Southwestern Region, Cox Communications, Phoenix, Arizona
Rudolph Reyes, representing Verizon Corporate Resources Group LLC
Mike Eifert, representing Nevada Telecommunications Association
Susan Lipper, representing T-Mobile USA
John Griffin, representing Sprint
Josh Griffin, representing TW Telecom

Chairwoman Diaz:
[The roll was taken and a quorum was present.] I will open the Subcommittee hearing on Assembly Bill 486.

Assembly Bill 486: Revises provisions relating to telecommunication providers. (BDR 58-970)

We are going to go through the bill section by section and get everyone's opinion. We will be referring to the Bureau of Consumer Protection's (BCP) and Public Utilities Commission of Nevada's (PUC) mock-up of section 2 (Exhibit C). Section 1 of the bill is clear, and if there are no comments, we will start with section 2. A lot of parties have come together to try to make the section more amenable and workable for everyone.

The purpose of section 2 is to permit provider of last resort (POLR) relief in a timely manner where sufficient competition exists from certain carriers which are much less likely to exit the market in Nevada and will remain viable providers. I invite anyone who has concerns about this section to come to the table. Please go ahead, Mr. Brown.

Randy Brown, representing AT&T:
I think it might be helpful from a high-level perspective to walk you through a few main topics in this section. I would like to say that we have worked diligently with the BCP and PUC and taken their input, as well as yours and Assemblywoman Kirkpatrick's, in a few specific areas, including the public notice and outreach components that are in section 2. We have adopted

language that has been supplemented by the BCP and provides for some specific public outreach campaigns, including notifying public safety answering points and customers who may be impacted by this measure. [Referred to the BCP and PUC mock-up of section 2 (Exhibit C).]

The next change is the addition of a rural safety net in section 2.H. We have added that section at the urging of involved parties. That section allows for customers in designated rural areas to approach the PUC with a complaint regarding the availability of alternative services. At that point, the Commission would adjudicate a complaint and would be in a position to issue an order requiring the entity that has been relieved of their provider of last resort (POLR) obligation to come back and serve that customer. That has a sunset clause, but we thought that was an important measure to show the Legislature that we could still be accountable if there were not alternative providers.

The third significant area was the suggestion of the BCP and the PUC that there be more than one alternative provider. They changed that number to two alternative providers, and that is a provision to which we have agreed. Relief would not be provided unless there were at least two alternative providers in addition to the incumbent who is already there.

There are two areas in which we have less agreement and require further work; one is in section 2, subsection 5, where it is suggested that at least one of the alternative providers be a wired provider. For instance, in Austin, Nevada, where 50 percent of the customers have access to three or more wireless providers but no access to a wired alternative, we would not be relieved of the obligation there. That is problematic for us. Speaking for AT&T's territory alone, if the 100 percent wired alternative requirement remains in place, only one central office out of 43 in the state will qualify for relief. If we were to lower that threshold to 90 percent, two-thirds of the central offices in the state would still not qualify in our service territory. So the wired option, for all intents and purposes, renders this bill useless.

The last section is in section 2.G, which was added by the PUC and the BCP in their latest draft. It provides some language regarding declaring a state of emergency without being more specific than that and allowing the Commission to order someone to provide service in a territory where the POLR has been relieved of its obligation. We have spoken to the PUC and BCP to add some language in there. What we do not want to do is be in the position ten years down the road of having an order issued for an emergency situation that says we have to go back in and serve these people. That does nothing to pave the way for making decisions or to incentivize investment into technologies. It could turn out to be the status quo, which is what we are trying to fix.

Assemblywoman Kirkpatrick:
Where are you referring to these sections?

Randy Brown:
It is the memorandum from the PUC and BCP, and these are the proposed new sections (Exhibit C). I am looking at the new section 2.G, subsection 1, that says the Commission may declare an emergency exists in any wire center not served by any alternative voice service as defined in section 2. It goes on to say that the Commission may issue any order necessary to protect the health, safety and welfare of the affected residents or businesses and may expedite the availability of alternative voice service. We are concerned that the Commission simply issues an order that says you must return to the provider of last resort.

Assemblywoman Kirkpatrick:
Please explain why the people in the rural areas would not be eligible.

Randy Brown:
For instance, we have some data showing that, let us say, there are 400 housing units in Austin, Nevada, that are served by our central office there. We know that 50 percent of those households could get wireless service from a choice of three providers. We think that demonstrates substantial competition and the availability of alternative services, but under the proposal that is before you today, because they do not have the availability of another wired provider, we would not be able to do anything in that territory.

Chairwoman Diaz:
Would a representative from the BCP or the PUC address their side of this argument?

Eric Witkoski, Chief Deputy Attorney General, Consumer's Advocate, Bureau of Consumer Protection, Office of the Attorney General:
I will address the comparative options where we were looking at whether you have a wire line. Under our proposal, we phased in the change. Between now and June 2015, if an area has at least one wire line provider, which could be the cable company, and one wireless company, that would be deemed to be competitive. In June 2015, there could be two wireless companies. The reason we put in the two-step process is that we wanted to give the legislators some options. We recognized there were some comments made about going slowly and there were some concerns about the rural area. We thought this could be a way to be sure that there is competition.

There is another way to draw a line between the urban and the rural areas. The urban areas normally have cable companies in the north and south. We

think those areas could easily qualify to be declared competitive if an application was sent to the Commission. We put in our proposal for the rules to be rolled through the next legislative session in case there were any concerns that needed to be readdressed. We felt when we are looking at the consumer and the public interest, we would at least bring that option if the legislature has concerns.

Chairwoman Diaz:
So these are the two scenarios we face in making a decision. We have the option you are presenting, where we are requiring wire line technology, which could be cable or digital subscriber line (DSL), and there would have to be not only that service but also wireless or voice over Internet Protocol (VoIP). Is that correct? The other side's argument is that they do not want the wire line language in there; they just want any kind of telephone service, so it could strictly be wireless.

Eric Witkoski:
That is correct. Mr. Brown's example in Austin was if they had three wireless providers, and they made an application to the Commission and showed that there were three wireless providers, they could be relieved of their POLR.

Assemblywoman Kirkpatrick:
Are there any areas in the state that are only wireless which would prohibit us from moving forward even in 2015?

Eric Witkoski:
It may be cheaper in some rural areas to provide wireless than wire lines.

Assemblywoman Kirkpatrick:
If you phase it in in 2015, would there be any areas that would still not qualify for that center?

Eric Witkoski:
I do not believe so.

Sam Crano, Assistant Staff Counsel, Public Utilities Commission of Nevada:
There are a couple of places in Nevada currently that only get wireless service—in Antelope Valley and the top of Mt. Charleston—but they have put in fixed wireless, which is a box that receives a wireless signal, and you can plug a regular phone into it and it works as if it were wired. Technically, it is a wireless signal.

Assemblyman Hansen:
Why is the wire requirement so critical when everything is going wireless? Is it federal law, or is wireless inefficient?

Eric Witkoski:
It does not necessarily have to be in there, but as we look at this and the public interest, we try to provide the Legislature with a couple of options. We looked at other states and heard some comments about moving slowly, so we thought to do it in the urban areas first and in a few years in the rural areas; that is how it developed. It was too complicated to make changes based on population, so we thought we would base it on technology. Areas that have wireless and other cable companies, such as in urban areas, are very competitive. That was the first step. It was just a proposal that we put forward. We are leaving it up to the Legislature to choose the best policy.

Sam Crano:
A number of the smaller wireless companies have not invested a lot, and some of them just go away. We thought the wire line requirement would demonstrate the level of investment that would make us comfortable that this company is going to be there for a while.

Assemblyman Hansen:
So it has nothing to do with the wire; people can still be provided with good quality phones with wireless?

Sam Crano:
Certainly.

Chairwoman Diaz:
So it is more about the reliability of the providers than the technology, is that accurate?

Sam Crano:
I believe so. Part of our plan follows the plan we did in 2007, which was the legislation that deregulated the rates. They did not become deregulated until 2010. If the Legislature wanted a two-step process, this is something we could do.

Chairwoman Diaz:
Mr. Brown, do you have other concerns?

Randy Brown:
I want to make one clarifying point. In the analysis that AT&T has provided (Exhibit D) under a nondisclosure agreement to the PUC and the BCP, when we identified wireless coverage in our service area in Nevada, we relied only on the big four wireless carriers—AT&T Wireless, Verizon Wireless, T-Mobile, and Sprint. While I appreciate Mr. Crano's concerns about small fly-by-night operations, we did not take into account any of those operators in the coverage of housing units in the state of Nevada.

Chairwoman Diaz:
Is there anyone else wishing to express concerns?

Barry Gold, Director of Government Relations, AARP Nevada:
I would like to talk about the consumer who will be affected by this. Consider the senior citizen who has always had a wired phone. We are talking about making her switch to something else. AARP is very concerned about the adequacy of the providers. When we talk about the phase-in period and going slow, we urge you to consider that as well because you are looking at changing people's usage. People have been comfortable with the phones they have had. If you go a little more slowly, you can ensure the adequacy of the networks and give people time to adjust. Let us be sure that we have public outreach so people can hear what is going to happen before we take out someone's basic wired phone service. Let people have time to adjust to this change.

We support the BCP and PUC proposal and urge you to support it. We are also concerned about the adequacy and continuance of basic network service, because there are a lot of people who want that to continue.

Assemblywoman Kirkpatrick:
I do not envision people taking out phones that are already there. I do not want to scare people into believing that someone is going to rip out their phone tomorrow. I do not believe that is what this does. I do not think Mr. Witkoski would let something so ridiculous be done. Ironically, our senior citizens are just as tech-savvy as the kids; it is the age group in the middle who has the problem. I hope the message is not that we are going to rip their phones out tomorrow because that is not the intent. The intent is to keep people on the cutting edge of technology. The members of AARP mean a lot to me. Do you have other concerns?

Barry Gold:
The biggest concern we have is about the POLR and moving slowly to give people time. The senior citizens may be tech-savvy, and many may be

connected to the Internet, but the only thing they know how to do is email, so we encourage you to move slowly.

Assemblywoman Kirkpatrick:
This does not take people's phones away. Are you saying go slow based on bringing in a new technology?

Barry Gold:
We support the proposal to wait until June 1, 2015. There are two alternative voice services without the wire line requirement.

Torry Somers, representing CenturyLink:
We support what AT&T said, but I want to clarify a few points. This is not about ending service. For us, this is about making sure we are on a level playing field with our competitors. The phase-in approach does not recognize the level and type of competition that we are experiencing today. We face significant competition from cable, wireless, and other technologies.

In section 2, subsection 1, this is a requirement that until 2015 we would only be relieved as a POLR if there were a wired provider. We can currently satisfy our obligations through other technologies. We do not even meet the requirement as a wired service. We generally do, but we do not have to. We would like to see subsection 1, as proposed by the BCP, stricken and start with subsection 2, and immediately allow for POLR relief in areas where there are two providers. We agree there should be two providers. Then on page 3 (Exhibit C) it says, "capable of providing service to all of the households served in the areas where relief is sought." That language is troubling. That is an extremely high bar that may never be met. It has to be all households served in the area. I do not know that Cox Communications serves 100 percent of homes. I do not believe CenturyLink serves 100 percent. I know there are developments where we are excluded. We would not meet that definition, and I do not know that Cox would.

We have spoken with Mr. Witkoski from BCP and believe there are some slight tweaks that might make subsection 2 work, and that is putting the word "collectively" before "capable." We also believe it is important to get rid of the words, "to all households served in the area," because that is so overly broad. So it would say, "collectively capable of providing service in areas where relief is sought." It also gives the opportunity to the BCP and the PUC to make objections. The proposal from AT&T and CenturyLink extends the time that they could make objections (Exhibit D).

With respect to section 2.A from the BCP proposal, in subsection 1, it uses the word "highlights." We would like to replace "highlights" with "states."

Chairwoman Diaz:
When I compared both recommendations for the bill, I felt the language in the AT&T, CenturyLink, and Verizon version was weaker. It said notices may be included as notices in billings or with promotional or other materials. I usually do not pay attention to those enclosures in my bills. I thought promotional was not conducive to informing consumers.

Torry Somers:
We understand that and do not have a problem with the language proposed by BCP other than changing "highlights" to "states." Moving on to subsection 2, there is a meeting requirement. We are not opposed to this meeting requirement with local police and sheriff's departments. There is a practical problem in making sure that is done in the required period of time and is dependent upon the police department's schedule. What we would like to see there is that we will make a good faith effort to have the meeting. Because BCP and PUC have the opportunity to object, we want it to be recognized that we attempted to have the meeting.

Assemblywoman Kirkpatrick:
Good faith effort does not work for me. There needs to be a time frame that works.

Torry Somers:
We agree with the concept of the meeting and that is something about which we would be happy to talk to BCP. Section 2.A, subsection 5, deals with how the notice for such consumer sessions would be done (Exhibit C). We want to clarify where it says, "shall be published via the Commissions website and in media of general distribution." We had the opportunity to discuss that with BCP. It is a little bit vague and that is not language that we have seen in other notice sections. It might be helpful to say, "in print or online media of general distribution."

Chairwoman Diaz:
Would that refer to newspapers?

Torry Somers:
It would allow for newspapers and online as well.

Assemblywoman Kirkpatrick:
All of this is subject to our Legal Division going over it.

Torry Somers:
In section 2.B on page 10, there is a point of clarification. When we had the opportunity to meet with the staff of the BCP and PUC, we agreed that a POLR that gets relief should not be entitled to Universal Service Funds, but the way the language is drafted, even if you do not seek relief in your entire area, you will not be able to get funds. That was no one's intent. We believe at the end of that paragraph it should indicate "in the areas where granted relief."

Chairwoman Diaz:
That makes sense because when I was comparing the bills, I thought of the larger companies that have many service areas. Do BCP and PUC agree?

Sam Crano:
Yes, we agree.

Eric Witkoski:
Yes, we agree with that.

Torry Somers:
Section 2.G, subsection1, on page 12 (Exhibit C) is the emergency section and is a safety net. We are concerned about this because it is essentially an exception that swallows the rule. We understand why BCP and PUC want this section included, but we would like to see it removed because we believe it is unnecessary. At the same time, if it remains, there are some concerns with this language. In the first sentence it says, "The Commission may declare that an emergency exists in any wire center." We believe it is important to change the words "wire center" to "area." "Wire center" is an old term that is essentially used for incumbent local exchange carrier (ILECs). If someone has to come back and provide service here, it is not going to necessarily be the person who was the previous POLR. So we think it is important to remove that reference to "wire center."

Chairwoman Diaz:
I recall that being addressed at the last meeting. Do the PUC and BCP agree that service areas are synonymous with wire centers? [There were nods of agreement from Eric Witkoski of the BCP and Sam Crano of the PUC.]

Torry Somers:
We think it should say "area."

Chairwoman Diaz:
"Area" is okay.

Torry Somers:
In subsection 2, it says, "If the Commission declares an emergency pursuant to this section, the Commission may utilize the fund to maintain the availability of telephone service." We believe the word "may" should be "shall," because someone is not coming back in here on their own business pace deciding to do service. We believe that if someone is going to have to provide service, the funds should come from the State Universal Service Fund. We also believe that if this section remains, it should have a sunset provision.

Assemblywoman Kirkpatrick:
Our definition of "may" and "shall" is always different.

Matt Mundy, Committee Counsel:
If we use "may," it is permissive. "Shall" is a legal duty to do so under all circumstances.

Assemblywoman Kirkpatrick:
Do you want it guaranteed that someone does come back and fund it?

Torry Somers:
There could be someone who says, "I only need a certain amount of universal service funds." My concern is that the PUC could force someone to provide services and not give them universal service funds even if they need it.

Chairwoman Diaz:
Does someone from the opposition want to address this?

Assemblywoman Kirkpatrick:
Would that be something through regulations when it is permissive or not?

Eric Witkoski:
The purpose is that if someone is ordered to come in to provide service—usually a provider who would not otherwise be in that space—they want to be able to use the universal service funds. So the use of "shall" will give them the ability to be paid out of the funds. I think that is reasonable. If there is going to be an emergency provision, there ought to be compensation for the provider.

Chairwoman Diaz:
Mr. Witkoski, you are good with that change in section 2.G, subsection 2, to change the "may" to "shall."

Eric Witkoski:
Yes.

Sam Crano:
We put "may" in there originally because if it were in someone's business plan, they would not need the reimbursement and we would be forced to give it to them with "shall." If we were forcing someone to come in unwillingly, I cannot imagine the scenario that we would not authorize the funds. It is not something that we are going to die for.

Torry Somers:
We believe section 2.G should have a sunset provision. Section 2.H, which is language that was provided to the BCP staff from CenturyLink and AT&T, has a sunset provision that says it shall expire by limitation on June 1, 2015. We believe there should be a mirroring provision in section 2.G.

Chairwoman Diaz:
If there is an emergency, it is difficult to determine when you are not going to have one. What would be a reasonable sunset?

Torry Somers:
Once someone filed for POLR relief, it would give the Commission an opportunity to see what is really happening. We believe there is already adequate protection in there with the safety net provision. We believe there is enough competition so we will get POLR relief, and with the two alternative providers, we do not see this as a problem. This is one of the reasons we believe section 2.G is unnecessary in its entirety.

Assemblywoman Kirkpatrick:
What other states gave you a sunset on that provision?

Torry Somers:
The only other state that I am aware of that has this language is Indiana.

Assemblywoman Kirkpatrick:
I am not comfortable with putting a sunset on it because an emergency is an emergency. We want everyone to have some type of service.

Torry Somers:
On page 4, in section 2, is the definition of alternative voice service. This is another point that I had the opportunity to speak about with the PUC and BCP. We believed the words "other than satellite voice service that provides" should be stricken. The definition for alternative voice service should simply be "a retail voice service made available through any technology or service agreement that provides voice-grade access to the public switch telephone network and access to the emergency 9-1-1 service." The reason it is

unnecessary is that the reference to satellite is already in subsection 2 on page 3. It is clear that satellite is not a basis where we would seek POLR relief. There are some unintended consequences because the term "alternative voice service" is used elsewhere in this section where satellite can be used as an alternative voice service. We believe that correction should be made.

Chairwoman Diaz:
Is that amendment friendly?

Sam Crano:
It is as long as the satellite cannot be used for a basis in section 2, subsections 1 and 2, as we have it now. Then we are okay with that.

Eric Witkoski:
We are also good with that change in paragraph 5.

Chairwoman Diaz:
To clarify, we are keeping that satellite service reference in section 2, subsection 1, paragraph (b), but eliminating it in section 2, subsection 5. Is that correct? [The parties indicated that was correct.]

Torry Somers:
Cox raised an issue when we had an opportunity to meet with you. The issue is that, if we are relieved of our POLR obligations, it should not put a similar obligation on one of the alternative service providers. We suggest the additional language such as "nothing in this section shall authorize the Commission to impose an involuntary service obligation upon a voice service provider."

Chairwoman Diaz:
Where would this fit in?

Torry Somers:
I think it would fit in section 2 because that is where we would be provided relief from our POLR obligation. It would say that no one else becomes the POLR either.

Chairwoman Diaz:
Is it in the proposed bill from AT&T?

Torry Somers:
No, it is not.

Chairwoman Diaz:
Can you restate it?

Torry Somers:
"Nothing in this section shall authorize the Commission to impose an involuntary service obligation upon a voice service provider."

Assemblywoman Kirkpatrick:
How would you write that in legal terms?

Sam Crano:
I would object to that language because it eviscerates section 2.G, the safety net that we were just discussing. Mr. DiNunzio from Cox actually showed me some language to which I do not object.

Mark DiNunzio, Director, Regulatory Affairs, Southwestern Region, Cox Communications, Phoenix, Arizona:
We do not oppose POLR relief where appropriate, but we do have a recommendation for that language. We want to ensure that those POLR obligations are not assigned to another voice provider like Cox. We believe our proposed language could be section 2, subsection 6, on page 4. The language would read, "The relief described in subsections 1, 2, 3, 4, and 5 shall not result in similar obligations being imposed upon alternative voice service providers in the area in which relief is granted."

We have the same concerns about section 2.G, which talked about the emergency relief. I would like to propose additional language in 2.G, subsection 3, on page 12. That language is, "This section shall not be construed to require a provider of alternative voice service that is not a provider of last resort to assume any provider of last resort obligations if the Commission acts pursuant to subsection 2 of this section and a provider of alternative voice service receives monies from the fund to maintain the availability of telephone service. The Commission may in an order impose obligations on a provider of alternative voice service consistent with the purpose of the fund to maintain the availability of telephone service." We would recommend that those additions be made to this section.

Chairwoman Diaz:
Would you please make those recommendations available to the Subcommittee?

Mark DiNunzio:
We will.

Chairwoman Diaz:
What do the PUC and BCP think about this amendment?

Eric Witkoski:
I believe I understand it. It is for somebody who is not a POLR and says they could not be made a POLR at a later time.

Sam Crano:
I just saw this language. The concern I have is that there would not be a POLR there because the relief had already been granted, so anyone would be an alternative provider at that point. This would prevent the safety net from taking effect because the Commission would not be able to force any carrier or former POLR to serve someone who cannot get 9-1-1 service, for example.

Chairwoman Diaz:
So the last amendment we heard says that if you were not a POLR to begin with, we cannot tell you in an emergency situation to be a POLR. Is that correct?

Torry Somers:
If that was the intent of Cox, we would have concerns with that. If section 2.G remains, we believe any provider should have to come back in there. However, as a general matter, we agree that CenturyLink being relieved of a POLR obligation does not make someone else a POLR. We want to make sure in section 2.G that we are not the only company that would have to come back and serve.

Chairwoman Diaz:
In an emergency, if we adopted that recently stated amendment, we could only call the previous POLRs to help. Mr. DiNunzio, could you clarify that for us?

Mark DiNunzio:
The intent of the language was that in the event of an emergency declared by the Commission, if an order was issued—whatever order that might be—requiring somebody to come in, that funds would be available and certain obligations would be imposed. If that is a concern, we could just keep the first sentence and strike the remainder. That would reiterate what I had advised in section 2, subsection 6.

Chairwoman Diaz:
We will look into that.

Torry Somers:
I have an issue in section 2 on page 3 about what is actually submitted with the application to the PUC. The BCP has proposed that we have to include a map of the area where the alternative provider is being served. The practical problem is that this is information within the control of the alternative provider and may even be confidential within the control of the alternative provider. What I suggest is language that AT&T, CenturyLink, and Verizon proposed in section 2, subsections 2 and 3 (Exhibit D), which is that we would provide a map of the area where we are seeking relief. Further, we would provide a listing of the alternative service providers that are being used so we satisfy that requirement and the information consistent with subsection 1.

Chairwoman Diaz:
Can you emphasize the stark differences?

Torry Somers:
This is simply what is included in the application that would be submitted to PUC. The proposal from the BCP would require that the application include a map of the area or areas that demonstrate separately the alternative service provided by the provider. There is not a problem in providing a map of the area where we seek relief; however, there could be a problem providing detail with respect to alternative service provider information, because that is information within the control of the alternative service provider. Our proposal is that we will provide a map of the area where we are seeking relief, a listing of those alternative providers, and any other information consistent with subsection 2. That would still give the PUC and BCP the information they would need in order to file an objection with respect to those requirements. There are also separate requirements to which they could make objections based upon the notice requirements.

Chairwoman Diaz:
What does this mean?

Eric Witkoski:
We thought we were avoiding conflict here because we took the language from what AT&T had originally proposed. I think Mr. Somers is refining it, which is acceptable. He is saying there would be a map of the area. I think we agree with this.

Chairwoman Diaz:
I want to be sure that the PUC is in agreement with this and it will satisfy their needs to make the determination whether to relieve or not relieve those companies seeking to be relieved from being the POLRs.

Sam Crano:
We are requesting a map of the area that the providers want to be relieved from service. We think it is important because the map shall be of sufficient detail to determine the area bound by streets. I would be able to look at the map and know if my house were in that area. I would know if I were affected and know if I should show up at a consumer session. What we captured on page 3 in section 2, subsection 3, is a requirement for a map of the area or areas that demonstrates the alternative voice service provided by each provider. We want their map to show where they want relief and the other providers who are in the area. Mr. Somers is saying that they do not know exactly where the other providers necessarily provide. Some of that is confidential information that their competitors might not be willing to share. We definitely want the map, and the specificity language we have in our draft is important, so the public can see the map and be able to see if they are in the area or not.

Chairwoman Diaz:
So, it may not be possible for a company to obtain all of the alternative service providers for an area. They would only be able to provide their own service area map. Can the PUC get the information about the alternative providers?

Sam Crano:
We could probably get some of it. The alternative providers may be more willing to share with us than their competitors. Depending on the type of provider, we do not have a lot of regulatory authority over entities such as wireless companies. If we put "to the extent possible" or "to the extent available," it may alleviate their concerns. They would have to show, by street, where they want relief, and then they would do their best to show where other providers are. Part of the obligation to get POLR relief is that they have to show that other providers are providing service. They should know generally where those providers are.

Assemblywoman Kirkpatrick:
If they want to get rid of POLR, they are going to know who else is in the spectrum because that is the case they need to prove. I do not buy that it would be difficult for them to get the information. We have cell tower sites that are public information according to the planning commission. There is also a utility corridor that is recorded on a map in every local jurisdiction. If new companies are building infrastructure, they would have that information. They may not have specific information about a carrier, but they can provide a lot of information that they have to use for their business. In business, they know what their competitors are doing.

Chairwoman Diaz:
Would "to the extent possible" relieve concerns?

Torry Somers:
Yes, that would alleviate our concerns.

Assemblywoman Kirkpatrick:
It does not alleviate my concerns because it is vague. I want to make it clear that if you are going to make the change, you better do your due diligence. This is one of those places where I draw the line.

Chairwoman Diaz:
We will move to the next speaker.

Rudolph Reyes, representing Verizon Corporate Resources Group LLC:
I would like a clarification on section 2.G, that the language to be circulated to address this emergency situation will also be circulated to the stakeholders. This issue came up at the last moment, and we have not had an opportunity to look at it. Conceptually, we share the same issues that Cox does. Wireless have not been POLRs in Nevada, and we would not want those obligations even in an emergency situation imposed upon these providers unwillingly. We are willing to look at the language and ask the Chairwoman to circulate the language amongst the stakeholders so we could try to work on this.

Chairwoman Diaz:
We will be sure to disseminate it to the work group once we receive it.

Mike Eifert, representing Nevada Telecommunications Association:
I would like to discuss rate of return carriers, with specific regard to the two wire line objectives suggested by the BCP. Most of what we are talking about here is investment in new technology. At least in the rural areas, more than likely there will never be a second wire line provider. We support the Bureau's concerns and those expressed by Mr. Crano of the PUC regarding fly-by-night companies and the desire to protect the public. If we stay with the language of two wire line providers, we would strongly support a sunset on that provision.

Assemblywoman Kirkpatrick:
I am assuming that if the other carriers do not speak, they have no issues. I hope everyone has expressed their concerns about section 2 at the very least.

Susan Lipper, representing T-Mobile USA:
I have not had a chance to review this language, but we would be concerned about being forced to be a POLR because we are not now in Nevada, nor would I expect us to be anytime soon. It would be a heavy obligation on us.

Chairwoman Diaz:
Is your concern in section 2.G?

Susan Lipper:
In general, we would agree with the same concerns on page 4 and in section 2.G. For sure, we would not want to be forced to be a POLR.

John Griffin, representing Sprint:
We share T-Mobile USA's concerns.

Josh Griffin, representing TW Telecom:
We have the same testimony and will review the amendment.

Chairwoman Diaz:
We would like our Legal Counsel to provide information on section 3. Then I am going to ask all of the parties to make their recommendations for amendments and other information available to this Subcommittee, so we can weigh everybody's recommendations along with those of the BCP and PUC.

Matt Mundy:
The Federal Communications Commission (FCC) regulates telecom providers, and currently there is a dispute about who falls under the federal Telecommunications Act. They currently regulate the traditional phone services which is called time division multiplexing (TDM). At issue is whether or not they are going to bring the Internet Protocol (IP) and the Voice over Internet Protocol (VoIP) services under the Telecommunications Act. The PUC's authority, which is codified in statute, flows from what they are allowed under the federal Telecommunications Act. Section 3 would, in general, prohibit the state or political subdivision of the state from regulating the IP and VoIP service to the extent they would do so outside of what they are authorized to do currently under federal law. If the FCC decides to bring these types of technologies under the Telecommunications Act, the PUC would have their authority to regulate them preserved in the statute. If the FCC decides not to regulate the VoIP and the IP, the PUC would be precluded in the future from doing so.

Chairwoman Diaz:
Are there any major concerns?

John Griffin:
I think everyone is fully aware of Sprint's concerns about the bill. We submitted a proposed amendment to Assemblywoman Kirkpatrick's office and we could submit that at the direction of the Chairwoman. We do not disagree with Mr. Mundy's recitation of the law, and if we are waiting for the FCC, why not continue to wait? In which case, why do we need section 3?

Susan Lipper:
I agree with what Mr. Griffin said and would caution that the state may want to be careful about not losing certain authorities that are supported by the amendment that Sprint has provided.

Mark DiNunzio:
We have concerns over this section of the bill. We have expressed those previously with language changes. Our biggest concern is having the words "technology neutral" in the language that pertains to *United States Code*, Title 47, Sections 251 and 252 over interconnection rights, which is a very big issue to ensure competition in the state. There have been other states that have adopted similar language, and the Ohio PUC has rules that have adopted similar language. We would like to see the inclusion of that language and will submit it to the Subcommittee again.

Josh Griffin:
I agree with Mr. DiNunzio's testimony about the amendment and his thoughts on it.

Susan Lipper:
As a point of clarification on my earlier testimony, the interconnection issues are extremely important to us. Those are supported by the amendments from Sprint, so we do not lose those as we are looking at the FCC impacts.

Chairwoman Diaz:
Is section 3 necessary? Do we need it to achieve what we have discussed so far?

Matt Mundy:
I think it maintains the current state of things as far as what the PUC does. They have permissive authority to review and approve interconnectivity agreements under the Telecommunications Act for the traditional service and even IP service. I believe there is case law that says if you are operating on the TDM technology, then it falls within the Telecommunications Act. This would affect the PUC's ability to regulate in the future if the federal government, under

the Telecommunications Act, decided that they did not want to regulate the IP and the VoIP under the act.

Susan Lipper:
Our concern is not having the clarification in the bill around interconnection. If we go forward with section 3, it would be important to have interconnection included. If the FCC decides that states do have the authority to regulate interconnection, the language in the bill as currently proposed would preclude the state from arbitrating on interconnections. That is what we do not want to lose.

Rudolph Reyes:
This bill is a codification of the status quo. It is not intended to confer any new rights to the PUC or to take any rights away. With respect to the interconnection issue, it preserves all existing authority that the Commission has today. The suggestion that interconnection as we know it will end with this bill is simply not correct. This language has been adopted by 25 other states and the District of Columbia. The federal statutes referenced under section 3, subsection 2, paragraph (c), subparagraph (1), 47 U.S.C. §§ 251 and 252, are the Telecommunications Act, and the title of 251 is Interconnection.

The body of rules and laws that govern interconnection as we know it will not end. It is preserved as clearly as can be under section 3, subsection 2, paragraph (c), subparagraph (1). Customers on traditional networks can call customers on IP networks today. The issue is in the middle where the traffic is exchanged; it is exchanged in TDM format, which is the traditional telecommunications format. So VoIP customers can call customers on their Princess telephones and vice versa. There is no consumer issue here. The only issue pending at the FCC with respect to interconnection is whether ILECs, the incumbent carriers in Nevada, shall be required to interconnect directly in an IP-to-IP format. That is an open issue at the FCC at this time. T-Mobile, Sprint, Cox, and others have filed numerous briefs at the FCC stating their opinion. Whatever the FCC decides, it will decide under 47 U.S.C. §§ 251 and 252.

If the FCC decides there is a role for states to play with respect to IP-to-IP interconnection as Mr. Mundy correctly stated, the language will flow through. Has interconnection as we have known it ended in the 25 other states that have adopted this language? The answer is clearly no.

Assemblywoman Kirkpatrick:
Is there a different way to write it or a different way to protect the interconnection piece? I would like those in opposition to explain in layman's terms what it does.

John Griffin:
Interconnection over any format currently under the Telecommunications Act is supposed to be competitive. The competition drives innovation and competition, spurs smaller competitors, and encourages the market. If you are an incumbent local exchange carrier and you have some of the lines necessary for a company like Sprint that no longer has landlines, we have to make agreements with ILECs like AT&T to connect. The interconnection makes the calls between landlines and cellular lines complete. It is not through a substandard network or an old network. It is competitive and equal. That is the interconnection.

The dispute comes in marketplace bargaining power. If there is no oversight from the state or the FCC, then AT&T can charge Sprint or T-Mobile more to interconnect or they could send them to substandard networks as their customers. That is not beneficial to our customers, and we will pass the cost along. Our customers will get substandard service. It is bad for all of our customers and it is bad for competition. Ultimately the ILECs will bring the charges to their customers up to our level. We think, under the Telecommunications Act, interconnection is fundamental to competition.

Susan Lipper:
I agree with what Mr. Griffin said. An important point to emphasize is the ILECs can force us to be charged certain rates, determine where we connect, and what format or type of network we can use to connect. In other words, they can determine if the network is more efficient or not, whether it is TDM or IP. The fact that we have such vehement differences suggests that there is a problem or we would not be sitting on opposite sides of this language. As to the issue of the FCC, what we are talking about here is not just the interconnection, but where there are disputes. No one is saying that the world of interconnection is going to change. Interconnection is working today. What could be broken as the result of this bill, if it is not amended properly, is what happens when they try to charge us more. AT&T and Verizon have wireless affiliates that are part of their company and run on their network. If we want to connect to that network and we are competitors to them, they have control. That is why it is so important to us and why there are great differences in our testimony and positions.

Chairwoman Diaz:
Are there any questions?

Mark DiNunzio:
I want to reiterate a point that I made earlier. I think you have heard a good description of how interconnection works. It connects carriers so that calls for

consumers can complete. In an IP world, it is extremely important as we move forward in technology that the ability of carriers to interconnect on that basis, regardless of technology, needs to exist, as do the provisions in the Telecommunications Act that grant the authority to the state PUC to arbitrate disputes among these carriers that attempt to gain these interconnection agreements so that those disputes are hammered out at the PUC. They should not be decided in the courts where the incumbents would like them to reside. It is extremely critical that this language, if it stays in this bill, include the words "technology neutral" so it is clear and explicit that it is included and is part of the bill.

Assemblyman Hansen:
If section 3 is passed into law and an interconnection dispute develops, is that something the PUC could referee and is that something it currently does?

Sam Crano:
Yes, we currently have the jurisdiction to do that. The FCC as recently as November 16, 2012, in the Connect America Fund, reiterated that PUCs have the authority at this point to regulate that. There is a rulemaking open at the FCC, and they could change their mind at any time. If there is a dispute between carriers, we can act as an arbitrator and hear the case. We currently have that authority in the Connect America Fund order. They cited a 2006 order that Time Warner Cable requested a declaratory ruling where they said the language is technology neutral. The current language in 47 U.S.C. §§ 251 and 252 is technology neutral, so the states have the authority to enforce that in a technology neutral manner. We are concerned that if we start to insert technology into the language in our statutes, we could find ourselves at odds with federal law. It could also lead to prejudging an interconnection dispute between two carriers. As an arbitrator we should not be biased.

Assemblyman Hansen:
If this language goes in now, you will be completely removed from the ability to be the arbitrator.

Sam Crano:
The language in section 3 does not restrict our technology. We have concerns about some of the amendment language.

Assemblywoman Kirkpatrick:
You said in section 3, if the language stays in, it does not prohibit you from arbitrating these cases. Is that correct? Have you done any?

Sam Crano:
We have arbitrated a couple of intercarrier connection disputes. We have that authority. Because the language in section 3 of our draft says this does not affect or modify any right or obligation of any telecommunication provider or authority granted to the PUC pursuant to 47 U.S.C. §§ 251 and 252, it should not affect that.

Assemblywoman Kirkpatrick:
Why is there no fiscal note on this bill?

Sam Crano:
Because we already have the authority to do these things, we did not think the bill changed that. The bill as drafted did not change the authority.

Chairwoman Diaz:
Does the change in the POLR relief bring a bigger burden to the PUC? There always seems to be a cost involved so it does not add up to us.

Sam Crano:
I have not discussed it with our fiscal staff since the bill has been changed. I will do that if you like.

Chairwoman Diaz:
Please do, because we need to know if this will have a fiscal note and will have to go to the Assembly Committee on Ways and Means.

Assemblywoman Kirkpatrick:
My point was that if you already have the ability to do this, I am not understanding the argument. I thought I heard the federal government would supersede in some way.

Sam Crano:
We currently have the authority to do that and do not think the language in the BCP and PUC draft changes that. It would not change our current responsibility, and that is why we did not think there would be a fiscal impact. There is an open rulemaking in front of the FCC, and that may change some things, but as of yet, it has not. The last thing we have seen from the FCC said the state Commission's authority under 47 U.S.C. §§ 251 and 252 applied technologically neutral.

Susan Lipper:
We have not been talking about the language in the draft by the BCP and PUC. If you look at page 1 (Exhibit C) under section 3, subsection 2, paragraph (c), subparagraph (4), it says, "The authority of the Commission to address or affect the resolution of disputes regarding intercarrier compensation," but it does not say interconnection. Without that word in here, they lose that current authority. If the FCC decides there needs to be a regulation and the states have authority and you do not include interconnection, then it means that you no longer have the authority.

Rudolf Reyes:
I want to correct the record. The interconnection language is in paragraph (c), subparagraph (1), and is not in subparagraph (4). This technology neutral language is a little confusing. In the 2007 Time Warner decision, the FCC has said you have a regular phone line and your sister lives in California and she has Cox digital voice. You can call each other and the calls go through. The decision said that customers on traditional networks can call customers on IP networks and vice versa. That is how the calls originate or terminate at the end user's location. The dispute that is pending at the FCC is about interconnection, which is the exchange of traffic between companies. The only dispute pending at the FCC is whether the FCC is going to require that companies translate that from traditional telecommunications format to IP format and exchange it in the middle in IP format. That is the open question at the FCC. And who is going to pay for it? It is not an end user issue. They can still call each other. It is about who pays for the conversion in the middle where the traffic is exchanged.

As you heard from the PUC attorney, this language preserves the status quo. If there is an interconnection dispute, they can arbitrate it today. The only open question is can the PUC arbitrate IP-to-IP interconnection disputes? That is the open issue at the FCC.

Matt Mundy:
The way section 3 operates, it does not modify or change the current authority of the PUC under the federal Telecommunications Act with respect to interconnection agreements. It is just a matter of what the FCC decides they are going to pull under the federal Telecommunications Act. It will not affect the PUC's ability to regulate interconnection agreements.

Susan Lipper:
With the one proviso. If they decide that the states can continue to be involved in this in the IP world, we would argue that you would not have the authority.

Chairwoman Diaz:
Please make sure that the Subcommittee gets your input. The meeting is adjourned [at 2:38 p.m.].

RESPECTFULLY SUBMITTED:

_____
Earlene Miller
Committee Secretary

APPROVED BY:

_____
Assemblywoman Olivia Diaz, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Commerce and Labor Subcommittee

Date: April 10, 2013 **Time of Meeting: 1:01 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 486	C	Assemblywoman Olivia Diaz	Proposed Amendment
A.B. 486	D	Randy Brown, rep. AT&T	Proposed Amendment