

0001

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS  
Public Hearing  
September 12, 2005  
Jefferson City, Missouri  
Volume 1

In the Matter of Proposed                    )  
Amendments to the Missouri                ) Case No. TX-2005-0460  
Universal Service Fund Rules                )

COLLEEN M. DALE, Presiding,  
CHIEF REGULATORY LAW JUDGE  
JEFF DAVIS, Chairman,  
CONNIE MURRAY,  
STEVE GAW,  
ROBERT M. CLAYTON, III,  
LINWARD "LIN" APPLING,  
COMMISSIONERS

REPORTED BY:  
PAMELA FICK, RMR, RPR, CCR #447, CSR  
MIDWEST LITIGATION SERVICES

0002

1 P R O C E E D I N G S

2 JUDGE DALE: Okay. We're on the record.

3 Welcome. This is a proposed rulemaking hearing for  
4 Case No. TX-2005-0460, in the Matter of Proposed  
5 Amendments to the Missouri Universal Service Fund  
6 Rules. We are at the Governor's Office Building in  
7 Jefferson City, Missouri. I'm Colleen M. Dale, the  
8 Administrative Law Judge assigned to this matter.  
9 And we will begin by taking entries of appearance  
10 from staff, Public Counsel and Southwestern Bell.

11 MR. MEYER: Good morning. David Meyer  
12 on behalf of the staff of the Missouri Public Service  
13 Commission. Our address is P.O. Box 360, Jefferson  
14 City, Missouri 65102.

15 JUDGE DALE: Thank you.

16 MR. DANDINO: Michael Dandino of the  
17 Office of Public Counsel, Post Office Box 2230,  
18 Jefferson City, Missouri 65102, representing the  
19 Office of Public Counsel and the public.

20 JUDGE DALE: Thank you.

21 MR. GRYZMALA: Good morning, Your Honor.  
22 Bob Gryzmala on behalf of Southwestern Bell  
23 Telephone, L.P., doing business as SBC Missouri. My  
24 address is One SBC Center, Room 3516, St. Louis,  
25 Missouri 63101.

0003

1 JUDGE DALE: Thank you. As this is not  
2 a contested case, there will be no cross-examination.  
3 Comments or sworn testimony will be taken from the  
4 staff of the Commission, the Office of the Public  
5 Counsel and then Southwestern Bell.

6 Following each testimony or comments,  
7 the Commissioners may have questions. We will then  
8 begin with staff.

9 MR. MEYER: For staff we have Natelle  
10 Dietrich who is here to provide testimony.

11 JUDGE DALE: Okay. Will you raise your  
12 right hand, please.

13 (The witness was sworn.)

14 JUDGE DALE: Thank you. You may begin.

15 MS. DIETRICH: Thank you. As stated in  
16 our written comments, this proposed rulemaking  
17 largely incorporates various requirements pursuant to  
18 new FCC rules in the FCC's April 2004 report and  
19 order and further notice of proposed rulemaking in WC  
20 Docket No. 03-109.

21 We also took the opportunity to clarify  
22 various discrepancies in the existing Missouri USF  
23 rules, and today I'd like to address the written  
24 comments of SBC.

25 The staff and SBC have been working

0004

1 today to try and resolve the outstanding issues. In  
2 4 CSR 240-31.030, Section 2, SBC suggests the  
3 requisite approval and authorization for release of  
4 records containing company-specific information must  
5 come from the Commission, not the board. SBC also  
6 suggests the company involved should be provided an  
7 opportunity to be heard and respond to a request for  
8 company records.

9 As for the approval and authorization  
10 for the release of records, when requested in the  
11 context of the Missouri Universal Service Funds,  
12 those records are in the possession of the board or  
13 the administrator, and as such, become the property  
14 of the board to release.

15 Staff agrees the company should be given  
16 the opportunity to respond and offers the following  
17 change beginning with the third section of subsection  
18 2 to address this concern. The language would read:  
19 Records containing company-specific information shall  
20 not be open records unless release is approved and  
21 authorized by the board. Following notification to  
22 an opportunity to object by the company, the  
23 requester seeking release of company-specific  
24 information should submit the request to the  
25 secretary of the board who shall provide the company

0005

1 with prompt notice of the request. The requester  
2 shall be responsible for supporting its request  
3 before the board. The decision of the board shall be  
4 reviewable pursuant to the provisions of this  
5 chapter.

6 The next section SBC addresses is 4 CSR  
7 240-31.050 2(D)(1). And that contains a requirement  
8 that telecommunications carriers obtain a  
9 certification from any resellers of its services and  
10 that the reseller is complying with all Commission  
11 requirements governing low income or disabled  
12 customer programs.

13 SBC suggests the requirement be expanded  
14 such that the reseller must provide that  
15 certification to the telecommunications companies  
16 will be provided upon request. Staff agrees that the  
17 intent of this is -- of this requirement is to ensure  
18 that resellers comply with Commission rules and does  
19 not object to the language proposed by SBC on page 5  
20 of its written comments.

21 Finally, at 4 CSR 240-31.050(3)(E), this  
22 section codifies verification requirements to ensure  
23 the continued eligibility for low income or disabled  
24 customers to receive support. This was one of the  
25 requirements put forth by the FCC in its report and

0006

1 order. SBC questions the inclusion of, quote,  
2 compliance with federal verification requirements,  
3 end quote, in a state rule. SBC states that FCC  
4 rules require states to establish state verification  
5 procedures making it inappropriate to include federal  
6 requirements.

7 In discussions with SBC, SBC also  
8 expressed concerns that the FCC rules do not contain  
9 specific requirements to be incorporated. This  
10 particular section of the Missouri rule was  
11 intentionally added because of conversations with  
12 other carriers during the drafting of the proposed  
13 rules.

14 Carriers expressed concerns with  
15 verification requirements because some carriers  
16 already had verification processes in place and were  
17 concerned that state-mandated requirements would be  
18 costly to modify and implement. Other carriers  
19 expressed concerns because they had operations in  
20 other states that applied the federal verification  
21 requirements, and they were concerned that they would  
22 have rules that were specific to Missouri for  
23 verification procedures and then have different  
24 procedures throughout their other operating states.

25 To address these concerns, staff worked

0007

1 with Mr. Teltoris (phonetic spelling) of MTIA to try  
2 and develop language that was generic enough to  
3 address all concerns. In addition, after discussion  
4 over concerns with SBC over federal requirements,  
5 staff searched the Universal Service Administrator or  
6 USAC's website. USAC has notations on its website  
7 that federal verification procedures were due  
8 June 22nd, 2005. It also included a chart to help  
9 eligible telecommunication carriers determine how to  
10 calculate a, quote, statistically valid sample, end  
11 quote, and has posted a sample form letter for  
12 carriers to submit the results of those verification  
13 efforts to USAC on behalf of the federal  
14 requirements.

15 While this process may not be codified  
16 in FCC rules, it appears there is an expectation that  
17 the process will satisfy federal verification  
18 requirements.

19 USAC notes details described in the  
20 verification process are set out in the FCC's report  
21 and order cited at paragraphs 33 through 36 and  
22 appendix J. And that is the same order that I  
23 previously noted.

24 Therefore, while staff is not willing to  
25 remove federal requirements from the list of

0008

1 procedures for state verification, staff suggests the  
2 following language changes in attempt -- as an  
3 attempt to broaden the requirements. The language at  
4 Section 2 would now read: The telecommunications  
5 company shall, by December 31st, 2005, establish  
6 state procedures to verify customers' continued  
7 eligibility for the low income or disabled customer  
8 programs. State verification procedures may include,  
9 but are not limited to, federal verification  
10 requirements, processes or guidelines, random  
11 beneficiary surveys, or periodic submission of  
12 documentation showing participation and qualifying  
13 programs or periodic self-certification updates.  
14 This proposed language was changed to include the  
15 word "state" at the beginning of the requirement to  
16 make it clear that the intent for the various  
17 procedures were to satisfy state verification  
18 mandates.

19 "Compliance with" was removed and  
20 "federal verification requirements" was changed to  
21 "federal verification requirements, processes or  
22 guidelines."

23 These suggested changes should allow  
24 those carriers with federal procedures to incorporate  
25 those processes in Missouri while expanding the

0009

1 phraseology to allow for the incorporation of federal  
2 processes where federal requirements are not  
3 specifically mandated.  
4 And this ends my prepared comments, and  
5 I'd be happy to answer any questions.  
6 JUDGE DALE: Commissioner Murray, do you  
7 have any questions?  
8 COMMISSIONER MURRAY: I have one or two.  
9 Thank you, Judge.  
10 Ms. Dietrich, I tried to follow, but you  
11 speak awfully quickly. And would you go over the  
12 first change --  
13 MS. DIETRICH: Yes.  
14 COMMISSIONER MURRAY: -- the changed  
15 language that staff had suggested?  
16 MS. DIETRICH: Yes. The language about  
17 the release of information?  
18 COMMISSIONER MURRAY: Yes. And that  
19 was -- that was Section 2, 4031.030, subsection 2?  
20 MS. DIETRICH: Correct, uh-huh.  
21 COMMISSIONER MURRAY: All right.  
22 MS. DIETRICH: And it would be the third  
23 section -- third sentence of that section that begins  
24 with "records containing company-specific  
25 information..."

0010

1 COMMISSIONER MURRAY: My problem is I'm  
2 looking at the wrong thing. Hold on a minute.

3 MS. DIETRICH: Okay. Sure.

4 COMMISSIONER MURRAY: All right.  
5 Starting where?

6 MS. DIETRICH: It's the last sentence,  
7 "Records containing company-specific information..."

8 COMMISSIONER MURRAY: Yes.

9 MS. DIETRICH: Okay. That would now  
10 read: Records containing company-specific  
11 information shall not be open records unless release  
12 is approved and authorized by the board following  
13 notification to an opportunity to object by the  
14 company. The requester seeking release of the  
15 company-specific information should submit the  
16 request to the secretary of the board who shall  
17 provide the company with prompt notice of the  
18 request. The requester shall be responsible for  
19 supporting its request before the board. The  
20 decision of the board shall be reviewable pursuant to  
21 the provisions of this chapter.

22 COMMISSIONER MURRAY: All right. Thank  
23 you.

24 MS. DIETRICH: Uh-huh.

25 COMMISSIONER MURRAY: And the changes

0011

1 suggested to 31.050(2)(D)(1), did your changes  
2 eliminate the requirement for the discounter to  
3 receive -- to obtain the certification from the  
4 reseller?

5 MS. DIETRICH: No. We agreed with SBC,  
6 that instead of just requiring the discounter to seek  
7 the information, the reseller would be required to  
8 provide it upon request. So it's adding an  
9 additional clause that says: And such reseller shall  
10 provide a certification to the telecommunications  
11 company upon request.

12 COMMISSIONER MURRAY: So your suggested  
13 change is fairly close to the suggested change that  
14 SBC made; is that correct?

15 MS. DIETRICH: We agreed with SBC's  
16 language. We didn't have any suggested language of  
17 our own. We're just agreeing with what they added to  
18 the language.

19 COMMISSIONER MURRAY: And then as to  
20 31.050(3)(E), did you address that?

21 MS. DIETRICH: Yes.

22 COMMISSIONER MURRAY: Okay. That was --  
23 that was the last language that you read; is that  
24 correct?

25 MS. DIETRICH: Correct, uh-huh. We were

0012

1 proposing adding "state" to the language to clarify  
2 that it was state verification procedures, and then  
3 where it talked about federal verification  
4 requirements, expanding that to include processes or  
5 guidelines since they do have some federal processes  
6 out there.

7 COMMISSIONER MURRAY: All right. Thank  
8 you for clarifying.

9 MS. DIETRICH: Uh-huh.

10 JUDGE DALE: If those are the only  
11 questions, then we'll move on to Office of Public  
12 Counsel.

13 MR. DANDINO: Thank you, Your Honor.  
14 May it please the Commission. Public Counsel  
15 essentially supports this rule and in its -- in the  
16 form that was presented, and also we support  
17 Ms. Dietrich's first revision, I guess, to 4 CSR  
18 240-31.05(3)(E). We think that that's -- I think I  
19 just read the wrong one. That was the verification  
20 requirement. I'm sorry. I apologize. I meant the  
21 confidentiality one; why don't we just call it that.

22 In the confidentiality one, we support  
23 that. We think it's a reasonable approach that the  
24 board certify it to determine the issue of  
25 confidentiality subject to the right of the party to

0013

1 review it. Also just to point out that the -- any  
2 decision of the board including this determination of  
3 either declassifying something or making it  
4 confidential, is appealable to the board as all -- I  
5 mean, to the full Commission as is any decision of  
6 the USF Board.

7 Now, as to the eligibility requirements  
8 in subsection (E), adding the words "state" to  
9 procedures and verification and adding the processes  
10 and guidelines is an excellent suggestion.

11 One point that Public Counsel would like  
12 to bring up is after those guidelines or processes or  
13 procedures are established by the company, that  
14 for -- I think for the board's protection and for the  
15 protection of the consumer, that at least the company  
16 ought to either file or notify the board of what --  
17 of what the process is with the idea that the board  
18 could review it if they -- if it was necessary to see  
19 if the process or requirements that they establish  
20 were too stringent or, on the other hand, too lax in  
21 keeping with the federal requirements and also  
22 with the -- with the intent of the state  
23 requirements.

24 It would make sure that there would be  
25 no unreasonable burden on either the company or

0014

1 the -- or the rate payer and that it be consistent  
2 with the board's policy. I don't know if it would be  
3 better to file it as a tariff. I hate to get into  
4 that aspect, or to file it with the -- with the board  
5 with notice to the Office of Public Counsel and to  
6 the staff where they would have an opportunity to at  
7 least submit a -- submit a comment or, or challenge  
8 it if either the staff or the Public Counsel or the  
9 board felt that it was unreasonable. We're not  
10 thinking of a whole adversarial hearing on it, but  
11 just at some point there ought to be a -- a notice to  
12 the board and an opportunity to look at it for  
13 reasonableness.

14 That's all I have, Your Honor.

15 JUDGE DALE: Thank you. Commissioner  
16 Murray, do you have any questions?

17 COMMISSIONER MURRAY: Mr. Dandino, are  
18 you offering any suggested language change?

19 MR. DANDINO: I'm trying to -- I was  
20 trying to think of something. I think other than  
21 just adding, "The company shall file the -- their  
22 procedures or eligibility procedures, processes or  
23 guidelines with the board and with notice to the  
24 Office of Public Counsel and to the staff to provide  
25 an opportunity for comment." Like I say, I don't

0015

1 want to make it an onerous, involved process.

2 COMMISSIONER MURRAY: So you're -- I  
3 want to be clear I understand what you're suggesting.  
4 You're -- at the language that says, "such reseller  
5 shall provide a certification"?

6 MR. DANDINO: No. "The  
7 telecommunications company shall, by December 31st,  
8 establish procedures." I guess that would be in  
9 four -- I guess it's Commission rather than board.  
10 That would be on 4 CSR 240-31.05, eligibility for  
11 funding. And it would be two -- number 2 and (E) in  
12 parens, capital E in parens, 3(E) -- oh, okay. I'm  
13 getting confused here. Three, yes, it's under  
14 individually -- individual eligibility. Let me  
15 restate that: I guess it's 4 CSR 240-31.05(3) (E),  
16 eligibility requirements.

17 COMMISSIONER MURRAY: Give me a minute,  
18 if you would.

19 MR. DANDINO: Oh, certainly. Since I've  
20 confused you.

21 COMMISSIONER MURRAY: So you're  
22 suggesting that in addition to establishing  
23 procedures to verify the customer's continued  
24 eligibility, that the company files those procedures  
25 with the board and with the Office of Public Counsel

0016

1 or with the Commission and the Office of Public  
2 Counsel?

3 MR. DANDINO: That they -- after they  
4 establish it, and I'm not putting it as a -- as a  
5 prior review, but after they establish the procedure,  
6 they file it with the Commission and provide a copy  
7 to the Office of Public Counsel and to the staff so  
8 that -- so that if -- if either them or -- if either  
9 those parties or the Commission had any problem with  
10 that procedure, they'd have notice of it and could  
11 raise any objection to it.

12 COMMISSIONER MURRAY: And you're  
13 suggesting, I assume, that they file those by  
14 December 31?

15 MR. DANDINO: That would be fine. It's  
16 whenever -- whenever they establish their rule, their  
17 procedures.

18 COMMISSIONER MURRAY: Okay. Thank you.

19 MR. DANDINO: Thank you, Your Honor.  
20 Thank you, Commissioner.

21 JUDGE DALE: Mr. Gryzmala, whenever  
22 you're ready.

23 MR. GRYZMALA: Good morning, Your Honor.  
24 Good morning, Commissioner Murray. My remarks would  
25 be brief. Focusing on those three areas which were

0017

1 previously discussed. The first would be proposed  
2 Rule 31.0302 which, as you have heard, has to do with  
3 the protection of company-specific information. Our  
4 preference would be that the board -- I'm sorry --  
5 That the Commission approve the release of  
6 company-specific information, but we can live with  
7 the proposal as modified by staff in which the board  
8 is given that authority or provided that authority,  
9 the company is adequately protected with a right of  
10 review, if you will, under the Commission's existing  
11 rules.

12 With regard to the second item, the item  
13 which would be 31.050 2(D)(1), this is the instance  
14 in which SBC suggested adding this statement to the  
15 effect that the reseller must provide a certification  
16 to the telecommunications company upon request. And  
17 to respond to your point, Commissioner Murray, the  
18 company would remain obligated to obtain the  
19 certificate. That requirement would not be deleted.

20 It simply recognizes that the reseller  
21 is in a unique position to be able to provide that  
22 certificate, and they ought to do it when they're  
23 requested to. And there's no opposition, I gather,  
24 from OPC on that point.

25 MR. DANDINO: That's correct.

0018

1                   MR. GRYZMALA: The third item has to do  
2 with Commission proposed rule amendments to  
3 31.050(3)(E). That is a little more difficult. This  
4 is the portion of the rule amendments which are  
5 directed to the requirement to establish procedures  
6 to verify a customer's continued eligibility for low  
7 income or disabled support. And where we departed  
8 ways with staff was in one very limited respect.

9                   Clearly, those elements of the rule that  
10 they indicated would satisfy the procedures we had no  
11 quarrel with. And those are random beneficiary  
12 audits, periodic submission of documents or annual  
13 self-certification. The point of the rule is that  
14 the companies shall establish procedures which may  
15 include, but are not limited to, those certain items.

16                   Where we departed -- and we agree with  
17 that, we agree with that -- although the FCC does not  
18 mandate the manner in which a state which has its own  
19 USF program must go about verifying continued  
20 eligibility requirements, in those states which have  
21 not a mandated state requirement, mandated state USF  
22 support program, the FCC's rule provides that the  
23 company shall establish procedures which can be  
24 utilized up against, if you will, a statistically  
25 valid sample.

0019

1           Our quarrel with the rule as proposed by  
2 the staff, was that it led the reader to believe that  
3 firstly there was a federal requirement. In Missouri  
4 there is none. Because we have a state-mandated USF  
5 support program, the federal rules direct compliance  
6 with whatever the state determines shall be those  
7 requirements. So it is not as though you're pointing  
8 to federal requirements. They are not there in  
9 Missouri.

10           The second objection has to do with the  
11 notion that there are federal requirements at all.  
12 Because while in paragraph -- or while the rule  
13 said -- the rule does not prescribe that any specific  
14 procedure be employed.

15           If you look at the order as Ms. Dietrich  
16 well pointed out, in paragraph 33, verification  
17 procedures could include random beneficiary audits,  
18 periodic submission of documents or annual  
19 self-certification. Could.

20           So even if the FCC is recognizing that  
21 they are not federal verification procedures that are  
22 required now in states in which there is not a  
23 mandate for a state-supported USF, do those  
24 procedures, whatever they may be, have to be bumped  
25 up against a statistically valid random sample? Yes,

0020

1     that is the case.

2             But in any case, where we come out with  
3     is that with respect to Ms. Dietrich's two references  
4     to the word state procedures, if I recall, and state  
5     verification requirements, we support those. Those  
6     are good. Those emphasize that what is important  
7     here is to recognize that these are state  
8     procedures, these are state verification  
9     requirements.

10            Now, with respect to compliance, with  
11     federal verification requirements, processes or  
12     guidelines, that clause. SBC would be amenable to  
13     compliance with federal verification processes or  
14     guidelines. I would only reemphasize that in terms  
15     of the word requirements, there are none. That is  
16     our view of the -- our reading of the ETC -- or I'm  
17     sorry, the lifeline order of the FCC.

18            So to sum up, the first two edits, state  
19     procedures are here correctly, state verification  
20     requirements, those should be adopted; we recommend  
21     that. The last clause should be modified, in our  
22     view, to state compliance with federal verification  
23     processes or guidelines, plus eliminating the  
24     words -- the word requirements.

25            As to Mr. Dandino's suggestion that in

0021

1 any case, after these procedures are set up, the  
2 company should file or notify the board what the  
3 process is. Notice to OPC and staff was also a part  
4 of the recommendation. That is the first I've --  
5 this is the first opportunity we've heard of that  
6 sort of proposal. Be that as it may, it strikes me  
7 as something we would not recommend. That is, SBC  
8 would not recommend.

9 A couple of thoughts occur to me on that  
10 front. First, the FCC gave this state the latitude  
11 to determine what verification requirements it would  
12 employ. And even in those states in which the state  
13 may not have a state-mandated USF program, the FCC  
14 dictated procedures, but I don't recall that the rule  
15 or the order requires that those procedures be the  
16 subject of comment, criticism. There is a question  
17 of deference, there is a question of giving companies  
18 latitude, and for those reasons, particularly because  
19 those additional points suggested by Mr. Dandino do  
20 not appear in the FCC's rules nor in the staff's  
21 proposed amendments, we think that it should be well  
22 enough left alone and that those additional  
23 suggestions by OPC not be implemented.

24 That's all I would have, unless you have  
25 any questions, Commissioner.

0022

1                   COMMISSIONER MURRAY: Thank you. I do  
2 have a couple of questions. I noticed when you were  
3 looking at -- you were talking about subsection (E),  
4 you stated annual self-certification updates, but the  
5 language, I believe, is periodic self-certification  
6 updates. And it made me wonder why we don't have a  
7 specific period. Why don't we have "annual" in  
8 there? Is it -- does it actually read "periodic"?

9                   MR. GRYZMALA: As my recollection --  
10 well, let me go to where I think I need to be here.  
11 At 47 CFR 54.410, the rule simply says that "eligible  
12 telecommunications carriers in states that mandate  
13 state lifeline support must comply with state  
14 verification procedures to validate consumers'  
15 continued eligibility for lifeline. Okay. That's  
16 Missouri.

17                   In the portion of the rule that has to  
18 do with non -- what we call a nonmandate state,  
19 eligible telecommunications carriers in states that  
20 do not mandate state lifeline support must implement  
21 procedures to verify the continued eligibility of a  
22 statistically valid random sample of their lifeline  
23 consumers, et cetera, et cetera.

24                   And I don't believe either of those  
25 rules and the remainder of those rules point to

0023

1 annual. I think there is a reference in the order to  
2 that, but I don't know -- I don't know that anyone  
3 has suggested annual or any particular period of  
4 time.

5 It may well be that on -- it's on a  
6 biennial basis, every two years, every three years.  
7 I don't know that the companies should be denied the  
8 discretion to identify which -- what would be  
9 suitable periods.

10 COMMISSIONER MURRAY: Do you think the  
11 company should be required to identify a period,  
12 though?

13 MR. GRYZMALA: If a period were proposed  
14 that -- I would need to check with our clients, but I  
15 think that if a period would be proposed, it would  
16 not be offensive to state over what term or with what  
17 frequency those audits must be conducted or those  
18 verification procedures.

19 COMMISSIONER MURRAY: Do you think these  
20 verification procedures are reasonably adequate to  
21 determine the continued eligibility of the customers  
22 in the program?

23 MR. GRYZMALA: I do.

24 COMMISSIONER MURRAY: What kind --

25 MR. GRYZMALA: They are -- they are --

0024

1 they are no less sufficient than the eligibility  
2 requirements themselves. For example, one of the  
3 verification procedures that a company could employ  
4 would be annual self-certification, sort of a  
5 reself-certification.

6 I take that to mean that at some point,  
7 whether alluding to your prior question, a year, or  
8 two years down the road, a company could request  
9 customers, lifeline customers, to recertify or to  
10 resubmit a certification. And to that extent, it's  
11 envisioned by the FCC, and I think that would be  
12 adequate to answer your question.

13 I will say that it's deemed adequate for  
14 purposes of eligibility. My recollection of the rule  
15 is that if a customer self-certifies their  
16 eligibility for lifeline, the company must utilize  
17 that document to provide that customer lifeline, and  
18 it has a right and obligation to presume that that  
19 customer remains eligible until they're told  
20 differently.

21 So to answer your question, yes, I think  
22 that that aspect certainly is adequate, and it may be  
23 that random beneficiary audits and periodic  
24 submission of documents might also be additional  
25 safeguards.

0025

1                   COMMISSIONER MURRAY: That  
2 self-certification, as I understand it, is merely a  
3 statement by the recipient that he or she is  
4 eligible; is that correct?

5                   MR. GRYZMALA: That is correct, is my  
6 understanding. I've not actually seen the form, but  
7 based on my reading of the rule.

8                   COMMISSIONER MURRAY: Okay. And in your  
9 opinion, is that adequate for the original  
10 qualification?

11                  MR. GRYZMALA: I don't know that I would  
12 not have been amenable to selecting different --  
13 different methods from the -- from the outset, but  
14 given that that is in place, I have not heard of any  
15 indication or any evidence at least, you know, while  
16 I've worked these areas in the last couple of years  
17 that that's been insufficient or that it has failed  
18 in some regard. I don't know that that's occurred.

19                  Now, if I were here when it was  
20 originally crafted, if there would have been a  
21 different mode or a different vehicle, it certainly  
22 would have been something to discuss. I will say  
23 that the self-certification is a sworn document, and  
24 to that extent, it enhances its reliability.

25                  COMMISSIONER MURRAY: Are there any

0026

1 penalties to falsely certifying?

2 MR. GRYZMALA: I don't -- I don't know  
3 right off the top of my head, Commissioner. I know  
4 that one of the rule amendments was that the fund  
5 administrator had to, when making requests for  
6 reimbursements, had to abide by an oath.

7 In other words, it would be a sworn  
8 submission and a statement that provision of  
9 information with an intention to mislead could be  
10 referred to prosecution. I don't know if that is a  
11 part and parcel of the certification form. I could  
12 check the rule if it's alluded to, but I don't know  
13 offhand.

14 COMMISSIONER MURRAY: That's all right.  
15 Let me move on. Does SBC do random beneficiary  
16 surveys now?

17 MR. GRYZMALA: I don't know that, Your  
18 Honor. I don't know the factual answer to that.

19 COMMISSIONER MURRAY: And when you  
20 referenced statistically compare -- I can't remember  
21 the language you used, comparison to statistically  
22 valid samples, is that what you said?

23 MR. GRYZMALA: The FCC's rules says that  
24 in terms of verification requirements, that  
25 whatever -- it says "the procedures to verify the

0027

1 continued eligibility of a statistically valid random  
2 sample of their lifeline consumers." That's the  
3 words that the FCC uses. Those are the words the FCC  
4 uses.

5           So the point is, is that it was not --  
6 this rule does not tell the State or even a state  
7 that does not have a mandated program what procedures  
8 to put into place. It simply says, as I read the  
9 rule, whatever procedure you use has to be utilized  
10 against a statistically valid sample and that's of  
11 some comfort to companies who don't want to have to  
12 survey the entire base.

13           In other words, for example, if there  
14 were, hypothetically, 10,000 customers, you would not  
15 have to undergo the laborious task of serving or  
16 recertifying or verifying continued eligibility for  
17 10,000 customers. The FCC's rules would allow you to  
18 employ the procedure against the statistically valid  
19 base, whatever that would be.

20           COMMISSIONER MURRAY: And assume you had  
21 10,000 customers and you did a random survey that was  
22 statistically valid and you came up with 15 percent  
23 of those who were receiving the assistance not being  
24 eligible. What -- what would be the procedure then?  
25 What do you do with that sample if you come back --

0028

1 if it comes back and shows, okay, 15 percent of those  
2 were really not eligible, or 25 percent or 5 percent?

3 MR. GRYZMALA: I don't know. I will say  
4 as I stand here, I don't know that any rule that we  
5 currently have addresses that, but I could not ignore  
6 the fact that ten to 15 percent could be a pretty  
7 significant number to question. And I don't know  
8 that I would leave that information sitting right  
9 there.

10 I will say that there's some guidance  
11 afforded by the rule, if not a requirement. The rule  
12 31.0503(F) -- I'm sorry -- it's renumbered so I can't  
13 really tell. It's either (F) or (H), but the point  
14 is that the fund administrator shall be authorized by  
15 the board to conduct audits of individual's  
16 self-certification using records that could be  
17 lawfully made available from the administrators of  
18 qualifying programs.

19 That doesn't dictate the outcome here,  
20 but it does tell me that the fund administrator has  
21 some role, may have some role in ensuring the  
22 integrity of the program. And I don't know that we  
23 would discount the possibility of bringing the  
24 information that you're suggesting to the attention  
25 of either the administrator or the board to take a

0029

1 look at the matter itself using perhaps the  
2 procedures it may wish.

3 Again, that language is there for some  
4 reason. That language is there because there is an  
5 intent to make sure that those individual  
6 self-certifications are valid. If the company  
7 acquires information that has a significant  
8 percentage or not, I think we would at least take  
9 some guidance by that rule

10 COMMISSIONER MURRAY: Okay. And then to  
11 Office of Public Counsel's suggested change, it  
12 appears to me that those suggested changes were for  
13 the purpose of giving the Commission and the Office  
14 of Public Counsel the ability to look at the  
15 procedures that a company had developed and -- I  
16 don't -- I think it's a little unclear as to what  
17 could be done following -- looking at them, but at  
18 least to have them for reference.

19 And without that suggested change, it  
20 appears that the rule would simply require the  
21 company to establish procedures and not share them  
22 with anyone. Is that your understanding?

23 MR. GRYZMALA: As the rule is proposed,  
24 that would be -- the rule as proposed would  
25 effectively track the FCC in that regard. That is,

0030

1 neither the FCC nor the states -- nor the staff's  
2 proposed rule would require that there be notice, if  
3 you will, provided to another party.

4 Humbly, my recollection -- or my  
5 experience is that with some frequency, the word  
6 "notice" moves quickly or can move quickly to an  
7 opportunity to second-guess.

8 I believe the FCC and I believe it did,  
9 and the State should afford companies the latitude  
10 and discretion to choose the methodology they would  
11 like to employ given their experience in  
12 administering the program.

13 COMMISSIONER MURRAY: But shouldn't the  
14 board and the Commission and the Office of Public  
15 Counsel know what those procedures are?

16 MR. GRYZMALA: I guess I would -- I  
17 would -- I would still remain unclear about what  
18 would happen as you pointed out after notice.

19 COMMISSIONER MURRAY: I don't -- I  
20 didn't hear Mr. Dandino use the word "notice." I --  
21 and maybe I just missed it.

22 MR. GRYZMALA: Or file procedures -- I'm  
23 sorry. The company should file or notify. I was  
24 trying to write. Is that close?

25 MR. DANDINO: That's fine, notify.

0031

1                   COMMISSIONER MURRAY: You did -- all  
2 right. I didn't -- Mr. Dandino, I didn't hear you  
3 suggest any language for anything beyond that.

4                   MR. DANDINO: What would be the  
5 impact -- or what to do after that?

6                   COMMISSIONER MURRAY: Yes. I thought  
7 you were suggesting that basically, once the company  
8 established procedures, that then those procedures  
9 would be filed with the Commission and a copy to  
10 Office of Public Counsel.

11                  MR. DANDINO: Right, that's correct.  
12 And the staff, in particular, and then after that,  
13 having -- we kind of left that -- that opened what  
14 would happen if they -- if they found -- if the  
15 Office of Public Counsel felt that it was  
16 unreasonable, they can file a complaint or ask the  
17 board to, you know, to review those, or the  
18 Commission, or ask the company or talk to the company  
19 and say maybe this needs to be revised. I didn't  
20 want to set in -- set up a whole process into this.  
21 It's just more of a notification where it's on the  
22 record and where the people who are affected by this,  
23 who would be affected by it, which is both the  
24 Commission and the -- and the customers, would have  
25 an opportunity to at least see the -- see what was

0032

1 proposed.

2 COMMISSIONER MURRAY: As you read the  
3 rule as it is proposed, do you see a way to -- for  
4 either the Commission, Commission staff, or the  
5 Office of Public Counsel to examine those procedures,  
6 or to -- or to look at them or view those procedures?

7 MR. DANDINO: As written now?

8 COMMISSIONER MURRAY: Yes.

9 MR. DANDINO: There's nothing that  
10 requires -- requires really a notification or, you  
11 know, filing with it. I think it was just putting  
12 in -- I'm thinking it's just adding that extra step,  
13 adding an extra requirement to, you know, to give a  
14 copy of them to Public Counsel and to the Commission.  
15 Certainly we could, you know, send them a data  
16 request, but it should be an automatic type of thing  
17 rather than having to go through a process of a data  
18 request or...

19 COMMISSIONER MURRAY: All right. Thank  
20 you. And Ms. Dietrich, did you have a response --  
21 and I apologize for moving to person to person, but  
22 I -- I wanted to get the input from all three of you  
23 on this.

24 MS. DIETRICH: I had a response to your  
25 previous question, but I can also address this one.

0033

1 COMMISSIONER MURRAY: All right.

2 MS. DIETRICH: As far as incorporating  
3 some kind of requirement that the companies provide  
4 notice or file something with the Commission, we had  
5 had those discussions and kind of ran into the same  
6 problem. Once that information is filed or notice is  
7 provided, what do we do with it.

8 And so we don't object to the  
9 requirement, but we did have concerns with, you know,  
10 how would we determine whether it was satisfactory,  
11 and if we did determine that it was not satisfactory,  
12 what would we do with it?

13 Would we, you know, file something with  
14 the Commission saying this isn't satisfactory  
15 because, would we notify the board and the board  
16 would address it? And so those were some of the  
17 issues that I think still need to be worked out if  
18 there is that type of extra step.

19 COMMISSIONER MURRAY: May I ask this, in  
20 regard to that, wouldn't -- what -- what would you  
21 think of a requirement that it be filed with the  
22 board? The procedures be -- be on file with the  
23 board?

24 MS. DIETRICH: I think the concept of  
25 filing it is fine, it's just, again, whether it be

0034

1 with the board or the Commission. I'm not sure what  
2 the next action step would be if you -- if the board  
3 found the procedures were not satisfactory, or if the  
4 Commission found the procedures were not  
5 satisfactory, would the company go back and try again  
6 or just exactly what would happen.

7 COMMISSIONER MURRAY: Well, as your --  
8 are you just contemplating that no questions will be  
9 asked about the procedures?

10 MR. DIETRICH: Correct, because I think  
11 the way the FCC has set it out, it's pretty open as  
12 to what the procedures could be. And that was what  
13 we were -- what we were trying to do also, is knowing  
14 that companies already have some procedures in place.

15 And let me clarify that I have had some  
16 conversations with companies, and even before these  
17 requirements were in place, I do know that, like, for  
18 instance, one company does the annual  
19 recertification, if you will, and they already do  
20 that.

21 Another company isn't -- even though the  
22 only thing that they're required to do at this time  
23 is to receive the annual certification from  
24 customers, they don't feel comfortable with that, and  
25 so they already ask for copies of tax returns or a

0035

1 statement from Department of Social Services saying  
2 they qualify for the programs or some kind of  
3 verification. I know another company is using this  
4 statistically valid sample that Mr. Gryzmala  
5 referenced that is out on USAC's website.

6 So the companies that I've talked to  
7 already have procedures in place that they view are  
8 kind of above and beyond what they're even required  
9 to do, and they do have concerns that if they didn't  
10 have a sufficient procedure in place for the low  
11 income fund where the Commission felt comfortable or  
12 the board felt comfortable with that procedure, it  
13 may somehow jeopardize the Commission's annual  
14 certification for their high cost fund. So they're  
15 very cognizant of keeping everything in order because  
16 they don't want their high cost support jeopardized  
17 in any way.

18 COMMISSIONER MURRAY: It sounds like  
19 you're saying they're concerned with the Commission's  
20 oversight of -- of their -- their procedures for the  
21 low income and disabled.

22 MS. DIETRICH: They're concerned that  
23 they be sufficient so that people felt comfortable  
24 with them, correct.

25 COMMISSIONER MURRAY: All right. Well,

0036

1    how -- how do they envision the Commission looking at  
2    them to determine whether they're sufficient?

3               MS. DIETRICH: We didn't have those  
4    conversations. They just, you know, more or less  
5    said we have them -- we want them strict enough  
6    because we don't want any problems, but we didn't  
7    have the conversations, well, you know, should we be  
8    reviewing them or that type of thing -- with the  
9    companies. We have had them internally.

10              COMMISSIONER MURRAY: The language here  
11    bothers me somewhat because, for one thing, as I  
12    pointed out, the words "periodic self-certification"  
13    is in there. Also, the reference to random  
14    beneficiary surveys or periodic submission of  
15    documentation; there are no time lines here. A  
16    company could determine that once every ten years  
17    we're going to require something.

18              MS. DIETRICH: Right. And that language  
19    is from the FCC's order, although as Mr. Gryzmala  
20    pointed out, in the order it does say annual  
21    self-certification, not periodic, but the rest of the  
22    language is directly from the FCC's order.

23              COMMISSIONER MURRAY: Where do you say  
24    it says "annual"?

25              MS. DIETRICH: In the -- in the FCC's

0037

1 report and order. Not in the rules, but in the order  
2 itself.

3 COMMISSIONER MURRAY: So why do we not  
4 have "annual" in our rule?

5 MS. DIETRICH: That I can't answer.

6 MR. DANDINO: Commissioner,  
7 Ms. Meisenheimer was involved in that. She could  
8 probably assist you and respond to that.

9 COMMISSIONER MURRAY: Do we need to  
10 swear her or...

11 JUDGE DALE: Well, she's -- are you  
12 providing comments or testimony?

13 MS. MEISENHEIMER: I'm happy to provide  
14 testimony.

15 JUDGE DALE: Then if you'll raise your  
16 right hand and say whether you swear or affirm that  
17 the testimony you're about to give is the truth.

18 MS. MEISENHEIMER: I swear and affirm.

19 JUDGE DALE: Thank you.

20 MS. MEISENHEIMER: The -- I've lost  
21 track of the question now that I was -- where -- why  
22 is "periodic" in the rule?

23 COMMISSIONER MURRAY: Versus annual.

24 MS. MEISENHEIMER: The Commission  
25 approved a report and order that created a process by

0038

1    which certification of carrier -- of customers would  
2    initially be determined. That was a  
3    self-certification process and on an ongoing basis  
4    would be reverified based on audits ordered by the  
5    board using information from Social Services.

6                So I think that the inclusion of  
7    "periodic" would have been appropriate in the event  
8    that the board didn't have audits done on an annual  
9    basis, so it gave the flex -- or left the flexibility  
10   with the board.

11               I don't know if that was the original  
12   reasoning for it being in the wording like that, but  
13   it is appropriate to leave that flexibility unless  
14   the Commission determines that it wants to change the  
15   board's flexibility in that respect.

16               COMMISSIONER MURRAY: Are annual audits  
17   required?

18               MS. MEISENHEIMER: They are audits as  
19   directed by the board is what was approved in the  
20   Commission's report and order.

21               COMMISSIONER MURRAY: But not  
22   necessarily annual; is that correct?

23               MS. MEISENHEIMER: That's my  
24   recollection. Now, the -- so the joint  
25   recommendation which was entered into by virtually

0039

1 all telecommunications carriers that intended to  
2 provide low income support CLECs at the time, thought  
3 that they might eventually -- staff participated and  
4 Public Counsel participated, there was a proposed  
5 process developed for both initial certification and  
6 ongoing sample auditing to be conducted.

7 And the initial certification was that  
8 customers would swear under penalty of perjury that  
9 they did qualify. At the time that matched the  
10 federal requirement for customers to certify where a  
11 state didn't have its own process.

12 And then -- and then the ongoing was --  
13 it was envisioned that there would, in a short amount  
14 of time, be a process by which information from  
15 Social Services could be utilized to identify  
16 customers that didn't qualify for support, and then  
17 through administrative procedures that were  
18 recommended in the joint recommendation, the  
19 administrator would notify the company, the company  
20 would mail a letter to the customer saying, Hey you  
21 may not qualify, the customer has an opportunity to  
22 respond demonstrating that they did, and if they  
23 didn't in a timely manner, they would be kicked off.

24 However, that process has not been  
25 tested yet because we are still in the process of

0040

1 working out an exchange of information with Social  
2 Services.

3 COMMISSIONER MURRAY: So  
4 Ms. Meisenheimer, as a participant in examining the  
5 language here in this proposed rule, is it your  
6 opinion that subsection (E) provides some method of  
7 reasonable verification and that the only thing that  
8 is missing is that the company's procedures be on  
9 file?

10 MS. MEISENHEIMER: Yes. My impression  
11 of this language is that it allows carriers more  
12 flexibility than they had before in terms of what  
13 they could utilize as a verification process, an  
14 ongoing verification process. Public Counsel -- back  
15 at that time I participated in those negotiations,  
16 and we were very adamant that whatever was adopted  
17 not be a burden on customers, that they not have to  
18 continually shuffle paper, and so we ended up  
19 negotiating a process that -- that really hasn't been  
20 used yet.

21 I think that we are fine with allowing  
22 carriers an additional alternative to recommend some  
23 other process that perhaps works better for them. We  
24 simply want the ability to review it to make sure  
25 that it is not burdensome or -- burdensome to

0041

1 customers or does not create an obstacle to  
2 participation.

3 COMMISSIONER MURRAY: Are you concerned  
4 about participation by those who are not eligible?

5 MS. MEISENHEIMER: Certainly. I mean,  
6 we also represent the customers that ultimately pay  
7 into the fund and so, you know, my experience at the  
8 federal level is that there is additional concern  
9 that monies be going where they're intended to and  
10 for the intended purpose.

11 And so in part, this giving additional  
12 flexibility to carriers to propose alternative  
13 methods that we don't find burdensome or to be  
14 obstacles, in my experience, you're going to find  
15 that some carriers will come in with more rigorous --  
16 a more rigorous process than currently is envisioned  
17 by the Commission's rules.

18 So I think that, you know, perhaps  
19 carriers will propose things that are less burdensome  
20 on them and a better -- a better way to ensure that  
21 only customers receive support are actually receiving  
22 the support.

23 COMMISSIONER MURRAY: When you say this  
24 gives them more flexibility, how does this compare  
25 with what they have to do today?

0042

1 MS. MEISENHEIMER: Today there is a  
2 process by which they accept initial  
3 self-certification under the customer's sworn  
4 statement that they -- or under penalty of perjury,  
5 and then the carrier is required to rely upon  
6 information from the administrator before they can  
7 say customer, we're not sure you're really eligible  
8 for this service.

9 There was also intended to be an  
10 opportunity for a carrier that was not fully audited  
11 to submit a list of all of their customers to the  
12 administrator to be compared against the Social  
13 Services. But once again, that process was not in  
14 place, so carriers that wish to be more diligent in  
15 ensuring their customers qualify, there's -- there's  
16 no mechanism for them to do that.

17 I do want to -- to emphasize that those  
18 procedures were set up to minimize unreasonable  
19 burdens on customers and to not create obstacles to  
20 participation. So that's our primary interest in  
21 looking at whatever is adopted or whatever the  
22 companies would seek to utilize. It's not that we're  
23 going to object to it necessarily, if we find it to  
24 be -- to be reasonable from a consumer perspective.

25 COMMISSIONER MURRAY: So now on this

0043

1 proposed rule, subsection (F) provides that the  
2 company shall terminate an individual's enrollment  
3 and then, you know, based on certain things here.

4 What happens today if a company gets  
5 information that a customer is not eligible but is  
6 still receiving?

7 MS. MEISENHEIMER: I'm not entirely sure  
8 what carriers across the state are doing today. It  
9 sounds like we have a patchwork of different  
10 procedures that carriers are doing and, in part,  
11 that's likely because the uniform process that was  
12 intended to apply to all carriers has not  
13 materialized. So I can't -- I really can't tell you  
14 what they are doing.

15 My understanding what they should be  
16 doing, if they were following the process that was  
17 set out in the joint recommendation and adopted by  
18 the Commission, is that they should be waiting for  
19 information from the administrator telling them that  
20 a customer is not qualified.

21 COMMISSIONER MURRAY: Thank you. Did  
22 either of you have anything else to add?

23 MS. DIETRICH: I wanted to clarify.  
24 Earlier you had asked, and it goes along with what  
25 you were just discussing, you asked if, say, for

0044

1 instance, the statistically valid sample showed a 15  
2 percent or whatever percent a customer's no longer  
3 qualified, the section that you just pointed out --  
4 4 CSR 240-31.050(3)(F) is a new language based on the  
5 FCC's order and directive and it says that upon  
6 finding out that a customer no longer qualifies, the  
7 carrier is required to cease providing lifeline or  
8 low income support or disability support to that  
9 customer, but prior to cutting them off, they have to  
10 allow them 60 days to provide some sort of  
11 documentation that they do still qualify for the  
12 support. And so that's -- that's a new procedure  
13 that was included in the rulemaking in response to  
14 the FCC's order.

15 COMMISSIONER MURRAY: Thank you.

16 MR. GRYZMALA: I would echo that,  
17 Commissioner Murray. When I heard your question, I  
18 somehow thought of maybe your thinking was to  
19 bring -- whether SBC would bring this to the  
20 attention of an external body. But clearly, the rule  
21 is as Ms. Dietrich pointed out. If the company  
22 learns that an individual is not eligible, then the  
23 new proposed rules which would be put in place  
24 replicating the FCC's approach, requires that the  
25 companies shall terminate and, of course, there's the

0045

1 60-day protection so as to afford that customer the  
2 option -- opportunity to show the company that it may  
3 be wrong in what it initially found out.

4 I would concur with Ms. -- with OPC and  
5 with staff that we believe the company should be  
6 accorded that fundamental latitude and discretion to  
7 engage in verification procedures on a period of  
8 their selection in accordance with their practices  
9 that they built up that have not been shown to be  
10 deficient, at least to our knowledge, so that we  
11 would not recommend an annual or a fixed time as you  
12 point out.

13 Finally, with regard to the filing or  
14 notification of the verification procedures with OPC  
15 and staff, I did not know the prior discussions that  
16 had been alluded to this morning. Your question --  
17 or this proposal caught me new, but I would point out  
18 that apparently the staff has indicated that there  
19 had been some discussions which suggested, in their  
20 judgment, that that notification may not be something  
21 to embark on at this time. That's the way I took her  
22 comment.

23 I want to correct myself in one regard.  
24 I was writing as I heard Ms. Dietrich, and I may have  
25 written something incorrectly. Going back to that

0046

1 sentence that talks about what state verification  
2 procedures may include, I used some wrong words.  
3 What we would recommend is that state verification  
4 procedures may include, but are not limited to,  
5 federal verification processes or guidelines, comma,  
6 random beneficiary surveys, comma, or periodic  
7 submission, et cetera, et cetera, as she pointed out.  
8 I think I got botched up between the word "in  
9 compliance with" and "incorporated." This is our  
10 final word on that.

11 If there's no other question, I think  
12 I'm completed. And thank you.

13 COMMISSIONER MURRAY: Thank you.

14 JUDGE DALE: Commissioner Murray, do you  
15 have anything else?

16 COMMISSIONER MURRAY: That's all.

17 JUDGE DALE: Commissioner Clayton  
18 advises me that he has no questions. With that, we  
19 will conclude this proceeding and go off the record.

20 (PROCEEDINGS CONCLUDED.)

21

22

23

24

25