

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
3  
4  
5 TRANSCRIPT OF PROCEEDINGS  
6 Hearing  
7 July 20, 2006  
8 Jefferson City, Missouri  
9 Volume 1  
10  
11 In the Matter of a )  
12 Proposed Amendment to ) Case No. TX-2006-0429  
13 4 CSR 240-3.545 )  
14  
15  
16 COLLEEN M. DALE, Presiding,  
17 CHIEF REGULATORY LAW JUDGE  
18 STEVE GAW,  
19 COMMISSIONER.  
20  
21  
22 REPORTED BY:  
23 PAMELA FICK, RMR, RPR, CCR #447, CSR  
24 MIDWEST LITIGATION SERVICES  
25

1 APPEARANCES:

2

3

LEO J. BUB, Senior Counsel  
AT&T Missouri  
One AT&T Center, Suite 3518  
St. Louis, Missouri 63101  
(314) 235-4300

6

FOR: Southwestern Bell Telephone, LP,  
doing business as AT&T Missouri.

8

LARRY W. DORITY, Attorney at Law  
FISCHER & DORITY  
101 Madison Street, Suite 400  
Jefferson City, Missouri 65101  
(573) 636-6758

12

FOR: CenturyTel Missouri, LLC, and Spectra  
Communications Group, LLC,  
doing business as CenturyTel.

13

14

15

MARC D. POSTON, Senior Public Counsel  
P.O. Box 2230  
Jefferson City, Missouri 65102

16

17

FOR: The Office of Public Counsel and  
the public.

18

19

WILLI LAM K. HAAS, Deputy General Counsel  
P.O. Box 360  
Jefferson City, Missouri 65102.  
(573) 751-8705

20

21

22

FOR: Staff of the Public Service  
Commission.

23

24

25

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

2 JUDGE DALE: All right. We are on the  
3 record. Oh, wait. I have to do all my video things  
4 because we've got to save this for posterity.

5 We are here today, Thursday, July 20th,  
6 19 -- I don't know where that came from -- 2006, in  
7 the Matter of Proposed Amendment to 4 CSR 240-3.545,  
8 Case No. TX-2006-0429. I am Colleen M. Dale, the  
9 presiding officer in this case. We will begin with  
10 entries of appearance from counsel.

11 MR. HAAS: Good morning -- good  
12 afternoon. William K. Haas, appearing on behalf of  
13 the Staff of the Public Service Commission. My  
14 address is Post Office Box 360, Jefferson City,  
15 Missouri 65102. With me is Natelle Dietrich, a staff  
16 member who is available to answer questions from the  
17 bench. Thank you.

18 MR. POSTON: Marc Poston, appearing for  
19 the Office of the Public Counsel.

20 MR. DORITY: Good afternoon, Judge.  
21 Larry W. DORITY, Fisher & DORITY, P.C., 101 Madison  
22 Street, Suite 400, Jefferson City, Missouri, 65101,  
23 appearing on behalf of CenturyTel Missouri, LLC, and  
24 Spectra Communications Group, LLC, doing business as  
25 CenturyTel.

1 JUDGE DALE: Thank you.

2 MR. BUB: Good afternoon, Judge. Leo  
3 Bub for Southwestern Bell Telephone, LP, doing  
4 business as AT&T Missouri. Our address is One AT&T  
5 Center, St. Louis, Missouri 63101.

6 JUDGE DALE: Mr. Bub, could you please  
7 check and make sure your microphone's on?

8 MR. BUB: Is it on now?

9 JUDGE DALE: Yes.

10 MR. BUB: Sorry.

11 JUDGE DALE: Thank you. If -- and if  
12 counsel would like to, they may stay at counsel table  
13 and we will handle it from there. If you do that, be  
14 sure you speak into a microphone.

15 We'll begin, then, with Staff. Do you  
16 have any presentation to make?

17 MR. HAAS: Your Honor, I would just  
18 repeat what's in the written comments, and that is  
19 that the Staff generally supports the adoption of the  
20 proposed amendment because it follows the amended  
21 statute. Thank you.

22 JUDGE DALE: Thank you. I am required  
23 to ask Ms. Dietrich to testify, so if you'll raise  
24 your right hand.

25 (Witness sworn.)

1 JUDGE DALE: Do you have any comments on  
2 this proposed rule?

3 MS. DIETRICH: None, other than what  
4 we've already filed in our comments in -- in the  
5 written proceeding. In addition to what Mr. Haas  
6 said, we would just reiterate that the additional  
7 language, while it is statutory language, does lead  
8 to -- potentially lead to some confusion. So we  
9 would be looking for some direction from the  
10 Commission as to what they would consider qualifying  
11 as a rate decrease.

12 JUDGE DALE: Okay. Thank you.

13 MR. POSTON: Thank you. Office of  
14 Public Counsel also filed a letter on July 14th in  
15 support of the proposed changes, and Mr. Dandino  
16 hoped to be here but he could not, and asked me to  
17 come down and actually make a few comments about the  
18 proposed changes that Embarq has made, changes in  
19 addition to what has been proposed.

20 And they have requested changing from  
21 30-day to ten-day notices on -- for terms and  
22 conditions, introducing new services and eliminating  
23 services.

24 For terms and conditions, Public Counsel  
25 is okay with the ten-day notice if the change has a

1   beneficial impact on the customers. And so we would  
2   just ask that the company be required to make some  
3   sort of statement with the filing explaining how this  
4   is beneficial.

5                   For introduction of new services, we're  
6   okay with the ten-day requirement. And for  
7   eliminating services, we would prefer 30 -- it remain  
8   30 days. We have concerns with limiting the services,  
9   such as COS, MCA, you know, things like that. That's  
10  all the comments we have. Thank you.

11                  JUDGE DALE: Thank you. Mr. Dority.

12                  MR. DORITY: Thank you, your Honor. On  
13  July 14th the CenturyTel companies also filed  
14  comments in support of the proposed amendment. We  
15  really have nothing further to offer this afternoon,  
16  but Mr. Arthur Martinez is here and available should  
17  the bench have any questions. Thank you.

18                  JUDGE DALE: Thank you. Mr. Bub.

19                  MR. BUB: Thank you, your Honor. AT&T  
20  Missouri filed comments on July 12th, and we support  
21  the proposed rule as it appropriately conforms the  
22  rule to the statutory changes, and we believe that  
23  the change to the rule is necessary. And in our view,  
24  the Commission's proposed rule correctly captures the  
25  legislative directive that competitive service rate

1 decreases be brought to customers as soon as  
2 possible. So we, therefore, urge the Commission to  
3 adopt the rule as proposed. Thank you.

4 JUDGE DALE: Thank you. Mr. Idoux, you  
5 may either go to one of the vacant tables or come to  
6 the podium, as you prefer.

7 MR. IDOUX: I do not want to sit next to  
8 Leo so I'll come up here.

9 JUDGE DALE: Okay. I understand that.  
10 He can be vicious. Do you swear -- well, you  
11 could -- you could do comments or you can do  
12 testimony. Which --

13 MR. IDOUX: I'll do comments.

14 JUDGE DALE: You want to do comments?  
15 Well, then --

16 MR. IDOUX: Just in case there's a slip.

17 JUDGE DALE: I'm required to make you do  
18 it.

19 MR. IDOUX: Thank you, Judge. And I am  
20 pleased to be here before the Commission for Embarq  
21 Missouri, Inc. and Embarq Communications. We too  
22 filed comments in this matter and we acknowledge that  
23 the comments as drafted are consistent with Senate  
24 Bill 237.

25 However, we take exception to the part

1 of the rule that requires 30 days' notice for things  
2 like changes to terms and conditions, the  
3 introduction of new service offerings, and the  
4 elimination of existing services.

5               As an example, last week on July 13th,  
6 Embarq offered a new bundled offering in the state of  
7 Missouri. Bundled offerings are price-deregulated.  
8 Once we introduce them, we can raise rates in ten  
9 days and we can lower rates in one day, but because  
10 this is a new service offering, we now have to wait  
11 30 days before we can start offering it to our  
12 customers.

13              This particular example, called standard  
14 home phone service, provides the customers that  
15 subscribe voluntarily with local exchange service and  
16 a multiple amount of custom calling features for  
17 31.95.

18              I mean, there's absolutely no reason why  
19 this tariff needs to wait 30 days before it goes into  
20 effect. Attached to Embarq's comments was Exhibit A  
21 which listed 42 tariff filings that Embarq Missouri  
22 and Embarq Communications have made thus far in 2006.  
23 I won't go through all of them, but several of them I  
24 did want to point out.

25              On multiple occasions we had to change

1 our -- we had tariff filings to simply change our  
2 company name. While that was done in ten days, we  
3 did have to file a motion for expedited treatment.  
4 There is absolutely no reason that would normally  
5 require a 30-day type of filing.

6 I also point out that while we have a  
7 30-day requirement for new services, many of our  
8 competitive -- our competitors do not. Comcast does  
9 not file tariffs with the Commission.

10 Before the Commission now, we have a  
11 case where Time Warner is trying to detariff some of  
12 its offerings. Our competitors are able to change  
13 prices without any notice, offer new products without  
14 any notice, withdraw products from the market without  
15 any notice.

16 This simply is not regulatory parity,  
17 and we urge the Commission to allow what we think is  
18 a reasonable alternative to a ten-day tariff filing  
19 for these type of activities.

20 Those are my short comments on behalf of  
21 Embarq Missouri and Embarq Communications. I would  
22 be happy to answer any questions.

23 JUDGE DALE: I do have one question.  
24 When you refer to your competitors, are you referring  
25 only to wireline competitors or are you also

1 referring to wireless or --

2 MR. IDOUX: Obviously --

3 JUDGE DALE: -- voice competitors?

4 MR. IDOUX: Obviously, wireless  
5 competitors do not file tariffs nor are they required  
6 to follow the Commission rules. Certain wireline  
7 competitors that are regulated by the Commission  
8 would have to follow similar rules, but most of our  
9 competition, as in cable companies, cable companies  
10 offer voiceover IP.

11 Several of them are regulated by the  
12 Commission, several of them are not. And like I  
13 said, the ones that are currently regulated, such as  
14 Time Warner, are trying to withdraw their tariffs and  
15 say that they're not regulated.

16 Voiceover IP is not regulated, and once  
17 they do so, they'll have the ability to make any  
18 change without notice. While Embarq offers a new  
19 service, not only do we have to wait 30 days, but it  
20 gives our competitors a 30-day head start in any type  
21 of competitive response that they may have. So it's  
22 absolutely not a level playing field as far as  
23 competitive neutrality goes.

24 JUDGE DALE: As to the --

25 COMMISSIONER GAW: I have a question.

1 JUDGE DALE: Okay.

2 COMMISSIONER GAW: Sorry to interrupt  
3 you, Judge --

4 JUDGE DALE: That's okay.

5 COMMISSIONER GAW: -- but this is a very  
6 interesting topic to me. Does that mean that Embarq  
7 supports getting rid of tariffing so that you can be  
8 on an even playing field?

9 MR. IDOUX: I'm not prepared to go that  
10 far. I know that staffing --

11 COMMISSIONER GAW: Wouldn't that put you  
12 on an even playing field as far as this is concerned,  
13 so if you didn't have to file these tariffs that also  
14 include all of the protective language on liability  
15 and other things that phone companies seem not to  
16 want to give up?

17 MR. IDOUX: I'm not gonna go there other  
18 than to state the reason we're not going in that  
19 direction is because current law doesn't allow us  
20 that option.

21 COMMISSIONER GAW: But you've had and --  
22 you've had several opportunities to discuss whether  
23 or not current law ought to be changed on that  
24 subject, and although Embarq is very -- is very new,  
25 and I should -- I can talk to you about this,

1 Mr. Idoux, in a way that I can't about -- with other  
2 companies. It certainly has been -- wouldn't you  
3 agree that there have been significant opposition  
4 from the telephone industry in this state to losing  
5 the tariff protections that they currently have that  
6 other companies that are not regulated do not  
7 possess?

8 MR. IDOUX: In all honesty, I don't  
9 remember this issue being discussed during the  
10 legislative session. It may have been. Do you  
11 remember it?

12 JUDGE DALE: No. I was just gonna  
13 ask --

14 MR. IDOUX: But I certainly don't  
15 remember that in my five years in this particular  
16 position.

17 COMMISSIONER GAW: That's interesting.

18 JUDGE DALE: I was gonna ask whether or  
19 not Sprint, as was, filed any comments in the  
20 mandatory detariffing at the federal level. That  
21 happened six or seven years ago.

22 MR. IDOUX: I don't recall.

23 COMMISSIONER GAW: So you weren't  
24 involved in the discussions about -- that had  
25 occurred prior to last legislative session regarding

1 proposing getting rid of the tariffs and replacing  
2 them with informational filings that -- and/or any  
3 feedback that was reported back to the Commission  
4 that the telephone industry would be opposed to that?  
5 You're not aware of that?

6 MR. IDOUX: I had no involvement in  
7 that. I -- I just simply did not. I don't even  
8 remember the topic I am involved with.

9 COMMISSIONER GAW: But you're prepared  
10 to go find out whether Embarq would be supportive of  
11 that legislative change next session?

12 MR. IDOUX: At this point we're simply  
13 urging the Commission to allow new product offerings  
14 on a ten-day notice as opposed to the currently  
15 required 30-day notice. We believe it's consistent  
16 with current statute.

17 COMMISSIONER GAW: Okay. I'll leave you  
18 alone. Thank you, Mr. Idoux.

19 MR. IDOUX: That's quite all right.

20 JUDGE DALE: I'm still not finished.

21 COMMISSIONER GAW: I'm sorry, Judge.

22 JUDGE DALE: That's okay. What I was  
23 starting to ask you was whether or not you're willing  
24 to make the statement of the beneficial nature of the  
25 change to customers that OPC has suggested?

1                   MR. IDOUX: I'll acknowledge that goes a  
2 long way towards Embarq's recommendation, but our  
3 preference would be to simply allow ten-days-notice  
4 requirements for the three types that I had listed.  
5 We went back and forth when we were coming up with  
6 our comments.

7                   We have, I think, equal justification to  
8 argue for one-day or seven-day or five-day. We  
9 believe ten-day is more than enough time to allow any  
10 party the opportunity to intervene or to file  
11 whatever motion it may deem appropriate. So anything  
12 less than ten days I can't support, although I will  
13 acknowledge that it's better than the current rule of  
14 30 days.

15                  JUDGE DALE: Thank you.

16                  MR. IDOUX: Thank you.

17                  JUDGE DALE: I'd like to follow up with  
18 Staff and ask if you've considered Public Counsel's  
19 counter-proposal and what your feelings are on that?  
20 I'm presuming that the other companies support any  
21 shortening of tariff intervals?

22                  MR. BUB: (Nodded head.)

23                  JUDGE DALE: Thank you.

24                  MS. DIETRICH: I'll address it from the  
25 policy standpoint. When we had -- we saw Embarq's

1    comments, starting with that and then working to what  
2    OPC suggests it modifies, the proposal that Embarq  
3    has suggested, ten days is a very fast turnaround for  
4    us to do some of our review. Especially when you  
5    include a weekend or weekend and holiday in there,  
6    sometimes, you know, we lose two or three days right  
7    away. And then, you know, if it's filed late on a  
8    Friday, you know, we continue to lose days that way.

9                    So it does make it difficult to review  
10    even existing filings that fall under the ten-day  
11    filing requirement, let alone when you're talking  
12    about potentially new services, new terms and  
13    conditions, changes in terms and conditions, you  
14    know, some things that are about -- excuse me,  
15    relatively substantive.

16                   To give you an idea, on our current  
17    recommendations for competitive services, we still  
18    look at several statutes and also several rules that  
19    are in place right now to make sure that the filings  
20    just generally imply those. And you know, that's  
21    whether it be a ten-day, 30-day or in some instances  
22    a seven-day or a one-day filing.

23                   But the more you shorten it up, the  
24    harder it is for us to review those statutes and  
25    rules and give them the same objectivity and the same

1 consideration as we would under our current 30-day  
2 process. And I think Mr. Haas is also going to  
3 address the legal standpoint of this.

4 MR. HAAS: I would add that the notice  
5 of proposed rulemaking notified the public that the  
6 Commission was considering a rulemaking to implement  
7 the provisions of 392.500 as amended, and I would  
8 suggest that Embargo's proposal to allow ten-day  
9 filings or other types of filings goes beyond the  
10 scope of that notice and beyond the scope of 392.500.

11 JUDGE DALE: So it would be your  
12 assertion that if we wanted to change the time frames  
13 set out for these other kinds of tariff filings, that  
14 we would have to do so in a separate rulemaking?

15 MR. HAAS: Yes, that's correct. And I  
16 would note that on page 2 of its comments, Embargo  
17 suggested that there may need to be a similar  
18 proceeding to look at promotions.

19 JUDGE DALE: Does anyone else have  
20 anything that they wish to add in response to all of  
21 these comments and concerns that have been raised?  
22 Do you have any other questions, Commissioner Gaw?

23 COMMISSIONER GAW: Is everyone done  
24 already?

25 JUDGE DALE: Yes.

1                   COMMISSIONER GAW: I have a few  
2 questions for Staff just real quick. Ms. Dietrich,  
3 I'll probably address these to you generally.

4                   As far as the status of the rule's  
5 concerned, refresh my memory, is Staff okay with the  
6 current draft?

7                   MS. DIETRICH: We're okay with the  
8 current draft, although we do point out that the  
9 language that talks about any changes to  
10 classifications or any changes to tariff filing that  
11 may result in a decrease could be confusing as to,  
12 you know, what all that entails.

13                  And so we were asking for some guidance  
14 from the Commission as to how far they were  
15 interested in taking that language or what they would  
16 consider a decrease.

17                  COMMISSIONER GAW: Well, let me ask  
18 you -- I want you to be more specific with me now  
19 and --

20                  MS. DIETRICH: Okay.

21                  COMMISSIONER GAW: -- assume that I -- I  
22 want to -- I want to be clear about it. Give me some  
23 example -- or examples of what you would consider  
24 might be a problem.

25                  MS. DIETRICH: Well, for instance, in

1 our written comments we cited that one of the  
2 carriers had previously suggested when we were doing  
3 informal discussions on this that a carrier may wish  
4 to provide a lower rate for ABC service which is  
5 already in their tariff if the customer also  
6 purchased XYZ service.

7                   So both ABC and XYZ would be a current  
8 tariffed offering. Say one's \$10 and one's \$12. If  
9 you purchase both of them together, you may be able  
10 to get the \$10 one for \$8 and 12.

11                   And so they were saying that in their  
12 mind that would constitute as a rate decrease. When  
13 we took a look at it, depending on how the tariff  
14 wording actually comes in, that --

15                   COMMISSIONER GAW: Right.

16                   MS. DIETRICH: -- could potentially be a  
17 new service because the new service would be if you  
18 purchase ABC and XYZ, then you get this discounted  
19 rate, making it a new service, not just a lower rate  
20 for the existing service.

21                   COMMISSIONER GAW: Okay. And what would  
22 it be that Staff would want to review in that new  
23 service that could be important? I mean, I...

24                   MS. DIETRICH: Well, we review -- just  
25 one second.

1                   COMMISSIONER GAW: The reason I'm asking  
2   is that I'm trying to understand whether or not  
3   you're getting sufficient time to review what Staff  
4   believes is important or that they're obligated to  
5   review because of the fact that the presumption will  
6   shift after the -- after the time elapses.

7                   So I'm trying to gauge whether this --  
8   how important this is based upon that.

9                   MS. DIETRICH: I didn't bring the rules  
10   with me. We have 20 rules and statutes that we  
11   generally review, and of course not all would apply  
12   to all filings. But I didn't bring the entire rules  
13   or statutes with me to be able to go through and tell  
14   you which was which, but we have generally 20 that we  
15   apply to most tariff filings. And so it would be  
16   within those, whatever ones would be applicable to  
17   what they submitted.

18                  COMMISSIONER GAW: Okay. Well, the  
19   example that you gave, would that be something that  
20   you would consider problematic in viewing that  
21   portion that is not related to the decrease itself?

22                  MS. DIETRICH: I'm sorry. Could you  
23   repeat that?

24                  COMMISSIONER GAW: Well, the example  
25   that you gave in regard to having a lower rate for a

1 particular service if they also acquired this  
2 additional service as a part of it, is that something  
3 that you would consider to be problematic for a  
4 one-day review?

5 MS. DIETRICH: I don't know that it  
6 would be problematic. It just, in our interpretation  
7 of the language, would not be allowed as a one-day  
8 review under the language because it would not be a  
9 rate decrease; it would be a new service. And there  
10 are requirements that new services be submitted as a  
11 30-day filing.

12 COMMISSIONER GAW: Okay. And we're  
13 gonna have to find this out from you, and I  
14 apologize. But are we talking about something that  
15 separately would have already been tariffed in every  
16 occasion?

17 MS. DIETRICH: From this particular  
18 language each individual --

19 COMMISSIONER GAW: Yeah.

20 MS. DIETRICH: -- offering would be  
21 tariffed already --

22 COMMISSIONER GAW: Okay.

23 MS. DIETRICH: -- and they would be  
24 coming in and saying if you purchased both of them  
25 together, it's a lower rate.

1                   COMMISSIONER GAW: And your only  
2 question is whether it's a new service. So it's been  
3 examined in the past, correct?

4                   MS. DIETRICH: Each individual  
5 component, correct.

6                   COMMISSIONER GAW: All right. So in  
7 your example you're just putting them together, and  
8 the only element that is changing is a lower rate for  
9 a portion of it --

10                  MS. DIETRICH: Right.

11                  COMMISSIONER GAW: -- correct?

12                  MS. DIETRICH: Right.

13                  COMMISSIONER GAW: So in that case there  
14 shouldn't be too many things to have -- to examine  
15 that haven't already been examined. And I guess my  
16 question is, what is it that you would be examining  
17 for the first time in that example?

18                  MS. DIETRICH: I think in that example  
19 we would just be making sure that both had been  
20 previously reviewed and approved --

21                  COMMISSIONER GAW: Yes.

22                  MS. DIETRICH: -- and it falls back to,  
23 you know, is this a new service and there's different  
24 standards for new service as opposed to just a rate  
25 decrease. And so does it -- is it legally allowed?

1                   COMMISSIONER GAW: What would -- what  
2 would you be concerned about finding if you were  
3 examining it as a new service since the parts had  
4 already been approved?

5                   MS. DIETRICH: That's what I'm saying.  
6 Since both parts had already been approved --

7                   COMMISSIONER GAW: Right.

8                   MS. DIETRICH: -- there probably  
9 wouldn't be any concern other than to make sure it  
10 both had been approved and that it was something that  
11 was already tariffed.

12                   So in that particular example, I don't  
13 think we would necessarily have a concern as far as  
14 Staff reviewing it. It would be from the legal  
15 aspect.

16                   COMMISSIONER GAW: Mr. Haas is looking a  
17 little bit like he might want to say something. I  
18 don't know.

19                   MR. HAAS: Well, there's also the  
20 potential concern that a company will do something  
21 beyond just change the rate. When they make that  
22 filing, they may change a liability provision or some  
23 other term, and they will insert it into that new  
24 combined service.

25                   COMMISSIONER GAW: Okay. But can the --

1 can language be drawn up so that it's clear that that  
2 is a different thing so that -- so that issues that  
3 are just related to a change -- a lowering of the  
4 rate and perhaps in combination with another tariffed  
5 service with nothing else being changed would fall  
6 into a one-day provision, and anything else, if there  
7 was a language change in it, would not.

8 Or is the language already sufficient  
9 for that? It doesn't sound like it's clear enough to  
10 Staff. Maybe I'm not asking the question correctly.  
11 It wouldn't be the first time.

12 MR. HAAS: Language could be drawn up,  
13 but there's still that potential for a violation.

14 COMMISSIONER GAW: Well, if it's a  
15 violation -- a violation would not appropriately go  
16 into effect in one day. I suppose the question,  
17 then, is, if it's -- if it's labeled as a one-day  
18 tariff but it truly isn't, what's the consequence of  
19 that?

20 I mean, if they label it, it comes in as  
21 a one-day, you-all don't catch it and it's really a  
22 ten-day tariff or a 30-day tariff or whatever it  
23 should have been, is it -- is it because it's labeled  
24 a one-day tariff, a one-day tariff, or is it really a  
25 30-day tariff? Is the name the determining factor or

1 the content of what's in the tariff?

2 MR. HAAS: Well, it would take a motion  
3 by some other party to -- meaning Staff or Public  
4 Counsel or a competitor to ask the Commission to  
5 reject that tariff filing. But until that happens,  
6 the filing company would be operating under that  
7 tariff filing.

8 COMMISSIONER GAW: Well, this is a  
9 broader issue than just with this. I mean, you can  
10 mislabel tariffs and try to get them under another  
11 window regardless of what you -- what you do on the  
12 particular factor. I don't know that I've ever seen  
13 it happen before or somebody raise it before.

14 MS. DIETRICH: Part of the problem with  
15 the one-day is that the company can submit a tariff  
16 say at 11:59 p.m. and it go into effect at 12:01 a.m.  
17 and it would meet the one-day requirement, and  
18 obviously nobody would be here to catch it.

19 And so if -- you know, even if we had a  
20 full one day, the chances of being able to catch it  
21 and stop it before it goes into effect, from my  
22 understanding of the way tariffs work, once it hits  
23 that date that's been indicated as being effective,  
24 then it's effective.

25 And then it shifts to, instead of, say,

1 for instance, filing a motion to suspend and  
2 addressing it that way, then a party would have to  
3 file a motion, perhaps a complaint, and address it  
4 that way with the burden being on the party filing  
5 the complaint saying this is not a one-day filing  
6 because, as opposed to the person submitting the TRF  
7 saying this is a one-day filing because. So the  
8 burden would be shifting.

9 COMMISSIONER GAW: Are there other  
10 consequences to the company for mislabeling a tariff?

11 MS. DIETRICH: For the company  
12 themselves?

13 COMMISSIONER GAW: Uh-huh, yes.

14 MS. DIETRICH: That's a legal question.

15 MR. HAAS: If the Commission were to  
16 find that there were a violation of a rule or  
17 statute, then there's the potential for penalties.

18 COMMISSIONER GAW: Right. That's what I  
19 was -- that's kind of what I was inquiring about.  
20 Let me ask the others here if they can -- maybe they  
21 can shed some light on that for me if they want to.  
22 Mr. Bub?

23 MR. BUB: Your Honor, just a couple  
24 of thoughts here. I don't know if the carriers  
25 would go to the trouble to file something at 11:05 or

1 11:45 p.m., but certainly they could. If that is  
2 perceived to be a problem, you know, I think the  
3 Commission would have the ability and authority to a  
4 separate rule to maybe put some type of a time  
5 deadline in order to qualify for the one-day  
6 treatment to make it prevent that, you know, 11:45  
7 type filing.

8 COMMISSIONER GAW: I'm not clear. To me  
9 that's kind of another issue, but it is an issue to  
10 be discussed. I'm not clear, while you're on that  
11 subject, why they can't be fixed now if someone has  
12 some language. I'm kind of surprised that wasn't  
13 already in this draft actually.

14 MR. BUB: Your Honor, we didn't see it  
15 as an issue or a problem. We didn't think it would  
16 occur. But certainly, the Commission, you know,  
17 could propose some language to address it if it is a  
18 problem.

19 I had one other comment, and I don't  
20 know if you want me to save it for --

21 COMMISSIONER GAW: Hold on just a  
22 second. Does someone have some language on that  
23 one-day provision in regard to it not being one  
24 minute?

25 MS. DIETRICH: We didn't propose

1 specific language, but we have had these discussions  
2 before. And that was an extreme, but, you know, I  
3 mean, it could even be 4:59 p.m. --

4 COMMISSIONER GAW: Sure.

5 MS. DIETRICH: -- at the close of  
6 business. So what we had proposed or discussed in  
7 the past was something along the lines of either 24  
8 hours or one business day. Which one business day  
9 would probably be more realistic, because then you  
10 would avoid potentially the weekend issues. So it  
11 would be one day equals one business day type thing.

12 COMMISSIONER GAW: Was that something  
13 that was objectionable to the entities that are  
14 participating in the rulemaking, using some language  
15 like that? Is that objectionable?

16 MR. BUB: I don't think it would be  
17 objectionable to us to put a timeline, but we -- it  
18 would probably need to be proposed as a separate  
19 rule.

20 COMMISSIONER GAW: Okay. I'm not sure  
21 about that issue, but if --

22 MR. BUB: We wouldn't object.

23 COMMISSIONER GAW: -- I'm really looking  
24 for, you know, that kind of response. Go ahead,  
25 Mr. Idoux.

1                   MR. IDOUX: I don't think Embarq would  
2 be opposed to a time. The suggestion of one business  
3 day would, I believe, be beyond what is required in  
4 the statute.

5                   COMMISSIONER GAW: So it might be a  
6 problem in regard to exceeding the statute if you  
7 used one business day, in your opinion?

8                   MR. IDOUX: Yes.

9                   COMMISSIONER GAW: But 24 hours might be  
10 a different thing, a different question?

11                  MR. IDOUX: Correct.

12                  COMMISSIONER GAW: Okay. Who else?  
13 CenturyTel?

14                  MR. DORITY: Yes, Commissioner. We have  
15 not been involved in these sorts of discussions, so I  
16 really don't know from the company's standpoint. I  
17 would think the 24-hour period would be perhaps more  
18 in line with the statute than a business day that's  
19 being considered.

20                  COMMISSIONER GAW: Does Public Counsel  
21 have any opinion on this? Thank you, Mr. DORITY.

22                  MR. POSTON: Well, the one business day  
23 sounds more appropriate to me. If the intent is to  
24 follow whether statute would allow for a one-day  
25 review, I would think a 4:59 filing on Friday would

1 not allow for a one-day review.

2 COMMISSIONER GAW: Okay. Am I missing  
3 anyone? That's all I'm seeing. That's the reason  
4 I'm asking.

5 Now, Mr. Bub, I interrupted you a while  
6 ago. I hope I didn't completely throw you off.

7 MR. BUB: No. I just didn't want to  
8 change the subject while we were discussing --

9 COMMISSIONER GAW: Yeah, I appreciate  
10 your patience here with me. Go ahead.

11 MR. BUB: Earlier you were discussing  
12 with Ms. Dietrich the idea of two services being  
13 purchased together resulting in a lower price on  
14 either one or both of those.

15 COMMISSIONER GAW: Yes.

16 MR. BUB: Our view would be that the  
17 proposed rule as written and the statute would allow  
18 that to be done on a one-day filing because it would  
19 result in a decrease in a rate so it would therefore  
20 qualify. We'd see that as a bundle of services to  
21 existing services, and we wouldn't see that as  
22 requiring anything more than a one-day filing because  
23 of the decrease in rate.

24 COMMISSIONER GAW: Okay. All right.  
25 Public Counsel have an opinion on that?

1 MR. POSTON: No, Commissioner.

2 COMMISSIONER GAW: Okay. Back to you,  
3 Ms. Dietrich, on that issue. I know we had had -- I  
4 believe we had had some discussion just generally  
5 before this rulemaking started about the reason for  
6 the need for some sort of rule on this issue, and I'm  
7 trying to remember whether or not this particular  
8 question was -- was a reason why Staff felt it might  
9 be a problem in regard to these one-day reviews.

10 Can you help me out a little bit with  
11 seeing the big picture on that?

12 MS. DIETRICH: Sure. When we first  
13 started these discussions, Senate Bill 237 had just  
14 become effective and we had been receiving some calls  
15 about would this type of offering be a one-day or  
16 not.

17 And then there were also some filings  
18 that were made that either weren't caught and so they  
19 went through, or that we were able to catch and bring  
20 to the Commission's attention as to whether it  
21 constituted a one-day filing or not.

22 The ones that were actually filed as  
23 opposed to just the phone calls, were examples of  
24 bundles now that bundles are price-deregulated if  
25 they meet certain statutory requirements, and then

1 also promotions.

2                   Some of the companies thought that  
3 because a promotion is typically a rate decrease or  
4 some kind of discount, that that fit the statutory  
5 requirement of a rate decrease. But we also have the  
6 rule which says that promotions are allowed either on  
7 seven or ten days, depending on if it's a competitive  
8 or a noncompetitive service.

9                   And so those were the types of issues  
10 that teed up the rulemaking to provide the  
11 clarification but then also because we currently had  
12 a rule that was inconsistent with statute.

13                   COMMISSIONER GAW: Right. Okay. In  
14 regard to this issue, then, again, is there -- are  
15 there things that you would be concerned about,  
16 pushing aside this one-day question, which I -- is a  
17 significant question, I know. Are there things that  
18 you would be concerned about in regard to the  
19 combination of existing services if the service was a  
20 decrease, if the price was decreased, that you  
21 haven't already -- already stated in your responses  
22 to me?

23                   MS. DIETRICH: I don't think so.

24                   COMMISSIONER GAW: Okay. Okay. Does  
25 anyone have an opinion in regard to the question I

1 was raising earlier with Ms. Dietrich about a  
2 mislabeling of a tariff effective date? If a tariff  
3 effective date is labeled as a one-day effective date  
4 when it should have been labeled as something greater  
5 than that, and what the ramifications would be?  
6 What's the disincentive for a phone company to do  
7 that?

8 MR. BUB: Your Honor, this is Leo Bub  
9 from AT&T. I don't know if -- a mislabeling, you  
10 know, certainly could be an error and either a  
11 mistake or an error in judgment.

12 COMMISSIONER GAW: Yes.

13 MR. BUB: I don't know if that would  
14 rise to the level of a violation of a Commission rule  
15 that would cause a penalty, but I could see certainly  
16 a rejection of the tariff filing. I think that  
17 itself would be enough of a -- of a disincentive to a  
18 company to mislabel something.

19 COMMISSIONER GAW: It strikes me that  
20 the difficulty here is that if there were other  
21 changes that didn't qualify, assuming that we went to  
22 something that -- similar to your interpretation,  
23 that as long as it's a price decrease, it could be a  
24 combination of currently existing tariffed services.

25 That if something were in there

1 intentionally or not, that, in effect, would have  
2 made it something that should have been a tariff that  
3 had had more review time. That something happens in  
4 between that time frame of when it's labeled and when  
5 it should have gone into effect.

6 And I guess my question is, normally  
7 after the tariff goes into effect, the burden shifts,  
8 there has to be a complaint filed before the tariff  
9 can be set aside. Does that occur in a case of a  
10 tariff that is mislabeled and really should have had  
11 a longer effective date or not?

12 Do you-all have any opinion on that?  
13 Whoever wants it. I mean, this is -- I haven't seen  
14 this come up before.

15 MR. BUB: Your Honor, this is Leo Bub  
16 from AT&T. We haven't either, and I have to tell  
17 you, I have not researched it, so...

18 COMMISSIONER GAW: Sure.

19 MR. BUB: -- to give you a definitive  
20 answer, I think we'd need to research it.

21 COMMISSIONER GAW: I understand.

22 MR. BUB: I still don't see that as a  
23 violation of a, you know, Commission rule. Certainly  
24 I don't think the intent would be there, but I could  
25 see -- and I'd have to research this, whether you

1 would have the authority on your own motion to  
2 suspend it to give yourself the time necessary to  
3 review it.

4 COMMISSIONER GAW: You know, my concern,  
5 though -- yes, go ahead. I'm sorry.

6 MR. BUB: So we'd have to look at the  
7 statutes to see if there was anything, whether the  
8 Commission, on its own motion, if they -- the  
9 Commission or maybe Staff on a motion thought that  
10 something was mislabeled, that on its own motion  
11 could suspend it for investigation. We'd have to  
12 look at the statutes to be sure, but that's where I  
13 would look.

14 JUDGE DALE: Well, I have a question.  
15 If -- if it is something that is not eligible for a  
16 one-day tariff filing and it is mislabeled as a  
17 one-day tariff filing, does it take effect on one  
18 day --

19 COMMISSIONER GAW: That's my question.

20 JUDGE DALE: -- or does it not take  
21 effect until it would have, based on the substance of  
22 what the actual change is?

23 COMMISSIONER GAW: That's it. That's  
24 the question.

25 JUDGE DALE: Yeah, without filing a

1 complaint sui sponte anything by the Commission.

2 Does anyone have an opinion on that?

3 COMMISSIONER GAW: The reason it's  
4 important in this case, to me anyway, is because of  
5 the question of how much time Staff has to review  
6 something that's more than just this is being  
7 decreased -- this particular tariff is being  
8 decreased by this amount and that's all.

9 And I know as a practical matter the  
10 same problem could exist there as well, but it seems  
11 like that the combination of multiple tariffs lends  
12 itself to being more difficult for Staff to review to  
13 me, and that's why -- that's why I'm trying to  
14 understand that issue.

15 Because if -- if the effective date is  
16 the longer one, regardless of when it's labeled, then  
17 it really isn't such a big important matter because  
18 the presumption hasn't shifted, it's not that big of  
19 a thing, somebody can still catch it.

20 Now, Staff may, as a practical matter,  
21 also have to decide whether they're going to actually  
22 review that for the period it should be reviewed. I  
23 don't know how they tell that, but it's still legally  
24 easier to deal with.

25 Whereas, if it goes into effect in that

1 one day because it's labeled that one day and the  
2 presumption shifts regardless whether it should or  
3 shouldn't be labeled that way, that's more  
4 problematic.

5 MS. DIETRICH: If I might? I can't  
6 obviously answer the legal question, but just to  
7 give you a frame of reference, we have had issues  
8 where a company has filed, say, on ten days what  
9 should have been a 30-day filing, and because we  
10 have the time, the ten days, we're able to call up  
11 the company and say this is -- should be a 30-day  
12 filing because -- and then they're able to extend  
13 the effective date and maybe make it what it should  
14 be. So it has come up even on the time frames that  
15 we have today.

16 COMMISSIONER GAW: Okay. But with a  
17 one-day it might not be as easy to catch it because  
18 of the time is so short.

19 MS. DIETRICH: Correct. And companies  
20 do quite often file tariffs fairly late in the day,  
21 so, you know, that's -- that's not an extreme.

22 COMMISSIONER GAW: Unless someone else  
23 has something to add on that.

24 JUDGE DALE: Anyone have something to  
25 add? Mr. Idoux?

1                   MR. IDOUX: Thank you. If I could just  
2 clarify what Embarq is proposing for the new  
3 services for changes in terms and conditions of  
4 existing service, for the elimination of a service,  
5 it is limited to those products that have already  
6 been deemed price-deregulated by the Commission or  
7 statute and/or competitively classified by the  
8 Commission.

9                   It is not a blanket ten days for  
10 every type of new product offering. While we  
11 could make some good arguments with that, just  
12 like we could make good arguments for one-day  
13 filings for everything, we decided to take a more  
14 reasonable approach in our proposal and a proposal  
15 that's limited to just those services that have been  
16 deemed a price-deregulated and/or competitively  
17 classified.

18                  COMMISSIONER GAW: And Mr. Idoux, since  
19 you're sitting back there next to Mr. Bub, did you  
20 talk to him about the possibility that you together  
21 would be supportive of not having tariffs and going  
22 to informational filings and there's a change in the  
23 law next year?

24                  MS. DIETRICH: I'm -- I'll let Mr. Bub  
25 answer.

1                   COMMISSIONER GAW: You don't have to  
2 answer that. I think I know Mr. Bub's response. But  
3 maybe -- maybe he has a different one than I would  
4 expect.

5                   MR. BUB: I have not been involved in  
6 that, your Honor.

7                   COMMISSIONER GAW: That's a good  
8 answer. Well, Judge -- did Public Counsel have a  
9 comment?

10                  MR. POSTON: I was just gonna suggest if  
11 the Commissioner wanted us to do, you know, legal  
12 research into, you know, the issue of what would be  
13 the impact of a one-day label on a ten-day filing,  
14 we'd be happy to do that, provide something.

15                  COMMISSIONER GAW: It might be helpful.

16                  JUDGE DALE: We'd be happy to get that  
17 from any or all of you. Thank you.

18                  COMMISSIONER GAW: I guess that's all I  
19 have, Judge, to ask. Actually, I have several  
20 questions for AT&T, but they're outside the scope of  
21 this proceeding.

22                  MR. BUB: Thank you, your Honor.

23                  JUDGE DALE: With that, then, are there  
24 any other matters that I need to address before I go  
25 off the record?

1 (NO RESPONSE.)

2 JUDGE DALE: Hearing none, we are  
3 adjourned and off the record.

4 (WHEREUPON, the hearing in this case was  
5 concluded.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25