

Hearing

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Rulemaking Hearing

July 9, 2018

Jefferson City, Missouri

Volume 1

In the Matter of:
The Revisions of the)
Commission's Rules Regarding) File No. TX-2018-0120
Telecommunications)

MORRIS L. WOODRUFF, Presiding
CHIEF REGULATORY LAW JUDGE

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Hearing

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Hearing

1	EXHIBITS	
2	Exhibit Instructions:	
3	Exhibits are attached to transcript.	
4		PAGE
5	Exhibit 1	
6	Staff Response to Comments Regarding	
7	Proposed Amendments to Title 4 -	
8	Department of Economic Development	
9	Division 240 - Public Service Commission	
10	Chapter 28 - Communications	6
11	Exhibit 2A	
12	Staff Response to Comments (Broadband)	
13	Proposed Amendments to Title 4 -	
14	Department of Economic Development	
15	Division 240 - Public Service Commission	
16	Chapter 31 - Universal Service	6
17	Exhibit 2B	
18	Staff Response to Comments (No Broadband)	
19	Proposed Amendments to Title 4 -	
20	Department of Economic Development	
21	Division 240 - Public Service Commission	
22	Chapter 31 - Universal Service	6
23	Exhibit 3	
24	Application for Missouri High-Cost Support	
25	Missouri Universal Service Fund	21

Hearing

PROCEEDINGS

JUDGE WOODRUFF: Let's go ahead and get started. We're here for a rulemaking hearing in Commission File TX-2018-0120 which concerns the various telecommunication rules of the Commission.

This is an informal process. We're not going to swear any witnesses. It's a chance for -- to take comments. I notice we've already received written comments from a number of commenters. Those, of course, are part of the record and the Commission will respond to them, so you don't need to repeat that. But you're certainly welcome to come forward and make comments if you'd like.

As I indicated, this is an informal process. I'm going to ask Staff to start first and then I'll give them a chance to respond to any other comments that might come in during the process. So let's begin with Staff.

MS. PAYNE: Thank you, Judge. And prior to the beginning of the hearing, I handed out a few exhibits from Staff. These reflect, in light of our reading of the comments, certain changes that we agree with the interested stakeholders' comments and have proposed additional changes to the rules. There is one for Chapter 28; I don't know what exhibit

Hearing

1 number you'd like to put on that.

2 JUDGE WOODRUFF: Let's make that No. 1.

3 MS. PAYNE: And then there are two for
4 Chapter 31. One reflects the Commission agreeing
5 with Staff's proposal to extend USF to include
6 broadband services, and the other did not.

7 JUDGE WOODRUFF: Okay. Let's call
8 them 2A and 2B.

9 MS. PAYNE: Thank you.

10 JUDGE WOODRUFF: You want to explain a
11 little bit more about what 2A and 2B do?

12 MS. PAYNE: They are essentially
13 identical. The 2A would be the one that's marked as
14 Staff's Response to Comments, parenthesis, Broadband.

15 JUDGE WOODRUFF: Okay.

16 MS. PAYNE: And then what that reflects
17 is the comments that were proposed that permit the
18 inclusion of broadband. We've accepted those;
19 however, the -- to the extent that some of the
20 comments disagreed with Staff's proposal to include
21 it, we have created Exhibit 2B which would be Staff's
22 Response to Comments, parenthesis, No Broadband.

23 JUDGE WOODRUFF: And I think we missed at
24 the start when you started speaking, if you could
25 identify yourself for the benefit of the record and

Hearing

1 the court reporter.

2 MS. PAYNE: I apologize. My name is
3 Whitney Payne and I represent the staff of Missouri
4 Public Service Commission. And I previously provided
5 my address and other information to the court
6 reporter.

7 JUDGE WOODRUFF: Thank you. Is there
8 anything else that Staff wants to respond at this
9 point?

10 MS. PAYNE: No. I would move for the
11 admission of the exhibits --

12 JUDGE WOODRUFF: Okay.

13 MS. PAYNE: -- at this time.

14 JUDGE WOODRUFF: They will be received
15 into the record.

16 (Exhibits 1, 2A, and 2B were received.)

17 MS. PAYNE: And then at this time I'll go
18 ahead and I've prepared an opening statement.

19 JUDGE WOODRUFF: Go ahead.

20 MS. PAYNE: Executive Order 17-03 issued
21 by the Governor's Office in January of 2017 asked
22 Missouri state agencies to review their regulations
23 under the jurisdiction of the Code of State
24 Regulations. Staff undertook an extensive review of
25 the Commission's regulations in response to this

1 order.

2 As a result of the review, Staff has
3 recommended in this matter that the Commission move
4 to rescind and modify three of its rule chapters
5 relating to telecommunications utilities. The
6 telecommunications utilities in the state of Missouri
7 saw drastic regulatory changes in 2014 with the
8 passing of Missouri Statute 392.461. This has led,
9 in part, to large portions of Chapters 28, 31, and 37
10 being no longer vital to the Commission's dealings
11 with the telecommunications industry. Staff
12 recognizes that portions of these rules continue to
13 be necessary and for that reason has proposed
14 streamlining the necessary rules in these chapters
15 into the remaining telecommunications rules in these
16 chapters.

17 Staff has recommended rescinding eight
18 Chapter 28 rules relating to certification,
19 registration, reporting, assessments, service,
20 tariffs, interconnection agreements, the 211 service,
21 and certain general provisions. The necessary
22 elements of these rules have been included in Staff's
23 proposals for the remaining Chapter 28 rules.

24 Upon reviewing the comments that were
25 submitted in response to Staff's proposal of the

Hearing

1 Chapter 28 rules, we have determined that some
2 additional changes may be necessary and created what
3 has been submitted as Exhibit 1, which was offered
4 and provided to the parties at the commencement of
5 this hearing. However, Staff is unable to agree with
6 some of the comments and proposals. Specifically
7 several parties have proposed retaining the
8 definition for net jurisdictional revenue in 28.010.
9 Staff however has included the definition from
10 Missouri jurisdictional revenue and net
11 jurisdictional revenue is already defined in
12 Chapter 31 as proposed.

13 Additionally several parties proposed
14 including "shall" instead of "may" in Rule 28.011.1.
15 However, Staff believes that that would change the
16 intent of the rule which is to emphasize that a form
17 may be used to seek certification, not that
18 certification must be obtained. Staff has proposed a
19 revised rule in its Exhibit 1 to clarify its intent
20 better.

21 As to Rule 28.012.1 the parties have
22 suggested that the process for seeking confidential
23 treatment of company data needs to be included.
24 However, Staff would point out that Chapter 2 of its
25 rules already lays out the guidelines for seeking

1 confidential treatment of any information provided to
2 the Commission and our website lays out the process
3 for seeking confidential treatment of information
4 specifically provided in an annual report in the
5 location where the annual reporting forms are
6 provided. We would propose that this is sufficient
7 and the rule does not need to be modified to include
8 this information as well.

9 Also in 28.012.1.B the parties have
10 suggested that the definition for net jurisdictional
11 revenue needs to include existing language describing
12 revenues and the safe harbor percentage. These
13 elements are already explained on the Public Service
14 Commission website which is noted in the introductory
15 paragraph of that proposed rule. So Staff would
16 argue that it is unnecessary to include the same
17 information in the subsection.

18 In addition to Chapter 28, Staff has
19 recommended rescinding all of the Chapter 37 rules
20 that are related to numbering, numbering
21 conservation, and reporting. However, the necessary
22 elements of these rules are included in Staff's
23 proposals for the Chapter 28 rule modifications.

24 Finally Staff recommends rescinding nine
25 of the Chapter 31 rules related to the Missouri

Hearing

1 Universal Service Fund Board, high-cost fund areas,
2 the Lifeline program, and eligible telecommunication
3 carriers. The necessary elements of these rules are
4 included in Staff's proposals for the Chapter 31 rule
5 modifications.

6 Upon renewing the comments to Chapter 31
7 Staff has again determined that some additional
8 changes may be necessary and created what has been
9 marked as Exhibits 2A and 2B which were also offered
10 previously to the parties at the commencement of the
11 hearing. However, Staff is also unable to agree with
12 some of the proposed comments including the Small
13 Telephone Company Group has proposed that certain
14 provisions in Rule 31.011 need to be retained due to
15 the statutory requirement that the PSC adopt rules
16 governing operations of the USF. Staff was unable to
17 determine exactly what provisions the Small Telephone
18 Group was proposing and so has not made any changes
19 to reflect that proposal.

20 Many of Staff's proposed changes and
21 rescissions are related to duplications between our
22 existing state requirements and Missouri statutes and
23 federal law. Staff has outlined the crossovers in
24 its comments which were filed in this docket July 2nd
25 and would recommend it is unnecessary to have state

1 provisions that -- to have Commission rules that
2 simply echo state and federal provisions.

3 Many comments were filed in response to
4 Staff's proposed changes as previously stated, some
5 of which suggest the Commission is exceeding its
6 authority by seeking to expand the definition of
7 essential local telecommunications services. Staff
8 certainly appreciates the concerns that were outlined
9 in these comments and is not suggesting that the
10 Commission expand its reach to services such as
11 broadband, cable television, or even to reassert its
12 authority over telecommunications.

13 Some of the proposals in this docket are
14 a direct reflection of the changes being implemented
15 at the federal and our own state's level to increase
16 the availability of broadband solely by the
17 Commission allowing broadband providers access to
18 Missouri Universal Service Fund. But it is up to
19 this Commission to determine if it agrees with Staff
20 that the Missouri statutes are unclear. Thus, it is
21 up to the Commission to determine if it agrees with
22 Staff and other stakeholders that it would be
23 statutorily permissible.

24 Staff appreciates this opportunity to
25 streamline the Commission rules for the ease of the

Hearing

1 utilities themselves and we as the regulators.

2 At this time I'm available to answer any
3 questions regarding the legal aspects, and I have
4 staff director, Natelle Dietrich, and utility
5 regulatory manager of telecommunications, John Van
6 Eschen, available to answer questions regarding the
7 technical aspects. Thank you.

8 JUDGE WOODRUFF: Thank you. I do have a
9 question. Which stakeholders are supporting the
10 expansion of broadband?

11 MS. PAYNE: Specifically I know that the
12 small telecommunications group has proposed -- or has
13 agreed with it, but beyond that, I do not believe any
14 other stakeholders specifically expressed support.

15 JUDGE WOODRUFF: Okay. Any stakeholders
16 out there who didn't file comments that are
17 supportive of the expansion of broadband?

18 MS. PAYNE: I'm sorry?

19 JUDGE WOODRUFF: Are there any other
20 stakeholders out there beyond the people who actually
21 filed comments in this rulemaking proceeding that
22 support the expansion to include broadband?

23 MS. PAYNE: I have not received any
24 direct communications regarding that.

25 JUDGE WOODRUFF: Okay. And what is

Hearing

1 Staff's reasoning for why is it important to expand
2 it to broadband?

3 MS. PAYNE: Staff has recognized that the
4 FCC itself has expanded its own definition of
5 telecommunications services to include broadband and
6 has issued a bit of a directive to the states to also
7 start considering this. And then the Governor's
8 Office has also issued an initiative to expand
9 broadband, especially to underserved areas.

10 JUDGE WOODRUFF: Okay. Do you know where
11 the FCC's direction would be found? Do you have a
12 citation for it?

13 MS. PAYNE: Yes. And I have the order
14 number and I am not certain that I have it in front
15 of me at the moment. It is, I want to say, 17-90,
16 but. I can certainly provide that in a subsequent
17 filing.

18 JUDGE WOODRUFF: Okay. Well, since
19 you're Staff and this is not a contested case, you
20 can go ahead and provide that to me whenever you'd
21 like.

22 MS. PAYNE: I will, yes. I apologize.
23 I'm sure it's somewhere in our comments and I'm
24 just --

25 JUDGE WOODRUFF: Okay. Well, if it's in

Hearing

1 the comments, I'll find it.

2 MS. PAYNE: Okay.

3 JUDGE WOODRUFF: All right. Anything
4 else Staff wants to add at this point?

5 MS. PAYNE: No. That's it for now.
6 Thank you.

7 JUDGE WOODRUFF: Then we have the
8 comments from various other entities who are in the
9 room here with us. Who wants to go first?

10 MR. RICHARD TELTHORST: Good morning.

11 JUDGE WOODRUFF: Going morning.

12 MR. TELTHORST: Rick Telthorst. I'm
13 president of the Missouri Telecommunications Industry
14 Association here in Jefferson City, and I've provided
15 my address to the court reporter.

16 We have filed comments in the case. Our
17 comments were focused on changes to chapter 28, many
18 of which, I believe, have been replied to and
19 responded to by the staff. I don't have anything in
20 addition to our written comments to offer, but I'd be
21 glad to answer any questions you might have.

22 JUDGE WOODRUFF: I don't really have any
23 questions for you at this point. Thank you for your
24 comments.

25 MR. TELTHORST: Thank you.

Hearing

1 JUDGE WOODRUFF: Anyone else wish to come
2 forward? Good morning.

3 MR. BRIAN McCARTNEY: Good morning.
4 Brian McCartney, law firm of Brydon, Swearngen &
5 England, PC, 312 East Capital Avenue, Jefferson City,
6 Missouri, on behalf of the Missouri Small Telephone
7 Company Group. That group is listed in the list of
8 clients in our written entry of appearance.

9 The Small Telephone Company Group
10 consists of 29 small telephone companies, each
11 serving approximately 200 up to 15,000 lines in
12 predominately rural high-cost areas in the state of
13 Missouri. All of the small telephone companies are
14 ETCs. They participate in the Missouri USF Disabled
15 program and the Missouri and Federal USF Lifeline
16 programs. The STCG companies participate in the
17 Federal USF's High-Cost Support program.

18 Before I forget the cite, one of the
19 cites to the FCC's decision to include broadband
20 in its Lifeline program was WC docket 11-42. It's
21 the third report in order, further report in order
22 and order on reconsideration which was released
23 April 27th of 2016, and that's in the matter of
24 Lifeline and Link Up Reform and Modernization.

25 First, the Small Telephone Company Group

Hearing

1 concurs with the comments of the MTIA that were filed
2 on July 2nd. We appreciate Staff's efforts to
3 include many of those in its comments. I haven't had
4 an opportunity to review in entirety Exhibit 1, but I
5 we appreciate Staff's working with us on that.

6 Number two, we agree with the
7 Commission's staff that the Commission can update the
8 Missouri USF Lifeline and Disabled programs to
9 include support for broadband just as the FCC did two
10 years ago in its order that I just cited. We
11 support Staff's broadband proposal; I believe it's
12 Exhibit 2A.

13 We also agree with the other commenters
14 that the Commission does not or cannot regulate
15 broadband services, and we proposed a slight
16 modification in the wording which Staff did
17 incorporate in its Exhibit 2A.

18 Finally we appreciate Staff's proposal
19 from MO USF High-Cost Fund; however, we do not
20 believe that that would fit within the current
21 statutory structure. So we would support and
22 participate in technical conferences, workshops, and
23 whatever effort we could do to help make a high-cost
24 support fund work.

25 And those are my comments, but I'd be

Hearing

1 happy to answer any questions. Thank you.

2 JUDGE WOODRUFF: Thank you.

3 MR. CRAIG JOHNSON: May it please the
4 Commission, Craig Johnson, Johnson & Sporleder LLP.
5 My address has been provided on my entry of
6 appearance today.

7 I'm here today to briefly respond to some
8 comments made by AT&T in their recently filed
9 comments. I'm here today on behalf of Chariton
10 Valley Telecom Corporation which has been renamed
11 Chariton Valley Communications which is a CLEC.

12 The existing rule and the one that Staff
13 has proposed be retained in this docket provides that
14 an approved interconnection agreement whose original
15 terms expired but which remains in effect pursuant to
16 renewal or extension provisions are subject to
17 adoption for as long as those extension or renewal
18 provisions remain in effect.

19 And four or five years ago, your Honor,
20 we addressed this issue in the TW-2014-0295. And
21 basically what my concern is is that if we don't
22 leave the rule as it's been proposed in this docket
23 and we agree with AT&T to take that sentence out, it
24 will put the incumbent in a position where it could
25 discriminate between CLEC competitors. It could say

1 to one competitor that has an existing agreement,
2 We're going to keep letting you use that for as long
3 as you want to. But if somebody else wants to adopt
4 it, they -- and the ILEC says you can't adopt it
5 because its original terms expired, then it lets the
6 ILEC discriminate between the CLEC competitors.
7 Because the only choice you have if you're a
8 competitor that the incumbent will not let adopt it
9 is to go through the internet negotiation process
10 which is lengthy, expensive, can involve arbitration
11 sometimes that lasts over a year.

12 In AT&T's comments they did say that if
13 the Commission were inclined to keep the rule, as I
14 support, they would like to see some provision in
15 there that allows there being an objection process to
16 somebody adopting an interconnection agreement, and
17 we have no problem with that. We just don't want
18 to -- or we want to make sure the Commission enforces
19 the rules and not the competitors. Thank you.

20 JUDGE WOODRUFF: Mr. Johnson, I seem to
21 recall this discussion from, maybe from an earlier
22 rulemaking as well.

23 MR. JOHNSON: I think that was the docket
24 I referred to, TW-2014-0295. And I don't why, but it
25 was a working group and it resulted in rules and they

Hearing

1 did become the rule. And I don't remember the
2 differences between that process and what we're doing
3 today.

4 JUDGE WOODRUFF: Well, it probably would
5 have been given a TX designation at some point.

6 THE WITNESS: It was published with the
7 Secretary of State; I do remember that much.

8 JUDGE WOODRUFF: Okay. I'm sure I can
9 find it.

10 MR. JOHNSON: Thank you very much.

11 JUDGE WOODRUFF: Anyone else wishing to
12 comment? No one else? Okay. Well, with that then,
13 any responses from Staff to the comments?

14 MS. PAYNE: We would just like to say in
15 response to Mr. Thompson's comments -- Johnson, I'm
16 sorry, that we would be fine with keeping that
17 language in; we recognize the concern.

18 Right. Correct.

19 The language that permits an objection.

20 JUDGE WOODRUFF: Right. The language
21 that was proposed by AT&T?

22 MS. PAYNE: Yes. Correct.

23 JUDGE WOODRUFF: Okay.

24 MS. PAYNE: And it's in our Exhibit 1.

25 JUDGE WOODRUFF: Okay. All right.

Hearing

1 Anyone else? More from Staff?

2 MS. PAYNE: Staff does intend as well to
3 file a subsequent exhibit as soon as this hearing
4 commences. It will be a revised form to apply for
5 high-cost support, and that will go also into our
6 proposals. I apologize; we thought it was included
7 with the exhibits that were already offered.

8 JUDGE WOODRUFF: I thought I saw
9 something -- was it part of your original comments?

10 MS. PAYNE: I thought it was in here.

11 JUDGE WOODRUFF: I thought I saw it this
12 morning.

13 MS. PAYNE: I believe it was filed in the
14 comments.

15 JUDGE WOODRUFF: Attachment A to the
16 Chapter 31 rulemaking?

17 MS. PAYNE: Yes. But there was an
18 additional change to it, so we will be filing an
19 updated version of that. Yes. Correct. It is
20 attached to the comments that were filed on July 2nd,
21 but we will be filing an updated version. And that,
22 we would ask that that be considered as an Exhibit 3.

23 JUDGE WOODRUFF: Will you be doing it
24 later today?

25 MS. PAYNE: Yes. I would say immediately

Hearing

1 following this rulemaking.

2 JUDGE WOODRUFF: Okay. We'll accept it
3 as Exhibit A [sic] then.

4 (Exhibit 3 was received.)

5 MS. PAYNE: Thank you, Judge.

6 JUDGE WOODRUFF: And just get it to me
7 or -- depending on how quickly you can get it down
8 here, is it something that's already prepared?

9 MS. PAYNE: It is.

10 JUDGE WOODRUFF: Just give it to the
11 court reporter immediately after the hearing. Or if
12 you have it now, we can give it to her right now.

13 MS. PAYNE: I apologize for the
14 confusion.

15 JUDGE WOODRUFF: That's all right. Okay.
16 We'll mark that as Exhibit 3. Anyone else wishing to
17 make comments or anything else? I don't see anybody
18 else in the room standing up, so with that, we are
19 adjourned. Thank you all.

20 (Off the record.)
21
22
23
24
25

Hearing

CERTIFICATE

I, Shelley L. Mayer, a Certified Court Reporter,
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A handwritten signature in cursive script, reading "Shelley L. Mayer", is written over a horizontal line.

Shelley L. Mayer, CCR

Exhibits	3		
Exhibit 1	3 20:22 21:4,16	ahead 6:18,19 13:20	broadband 5:6,14, 18,22 11:11,16,17 12:10,17,22 13:2,5,9 15:19 16:9,11,15
Exhibit 2A	31 5:4 7:9 8:12 9:25 10:4,6 20:16	allowing 11:17	Brydon 15:4
Exhibit 2B	31.011 10:14	annual 9:4,5	
Exhibit 3	312 15:5	apologize 6:2 13:22 20:6 21:13	C
1	37 7:9 9:19	appearance 15:8 17:6	cable 11:11
1 5:2 6:16 8:3,19 16:4 19:24	392.461 7:8	apply 20:4	call 5:7
11-42 15:20	A	appreciates 11:8,24	Capital 15:5
15,000 15:11	accept 21:2	approved 17:14	carriers 10:3
17-03 6:20	accepted 5:18	approximately 15:11	case 13:19 14:16
17-90 13:15	access 11:17	April 15:23	certification 7:18 8:17,18
2	add 14:4	arbitration 18:10	change 8:15 20:18
2 8:24	addition 9:18 14:20	areas 10:1 13:9 15:12	chapter 5:4 7:18,23 8:1,12,24 9:18,19,23, 25 10:4,6 14:17 20:16
200 15:11	additional 8:2 10:7 20:18	argue 9:16	chapters 7:4,9,14,16
2014 7:7	Additionally 8:13	aspects 12:3,7	Chariton 17:9,11
2016 15:23	address 6:5 14:15 17:5	assessments 7:19	choice 18:7
2017 6:21	addressed 17:20	Association 14:14	citation 13:12
211 7:20	adjourned 21:19	AT&T 17:8,23 19:21	cite 15:18
27th 15:23	admission 6:11	AT&T's 18:12	cited 16:10
28 7:9,18,23 8:1 9:18, 23 14:17	adopt 10:15 18:3,4,8	attached 20:20	cites 15:19
28.010 8:8	adopting 18:16	Attachment 20:15	City 14:14 15:5
28.011.1 8:14	adoption 17:17	authority 11:6,12	clarify 8:19
28.012.1 8:21	agencies 6:22	availability 11:16	CLEC 17:11,25 18:6
28.012.1.B 9:9	agree 8:5 10:11 16:6, 13 17:23	Avenue 15:5	clients 15:8
29 15:10	agreed 12:13	B	Code 6:23
2A 5:8,11,13 6:16 10:9 16:12,17	agreeing 5:4	basically 17:21	commencement 8:4 10:10
2B 5:8,11,21 6:16 10:9	agreement 17:14 18:1,16	behalf 15:6 17:9	commences 20:4
2nd 10:24 16:2 20:20	agreements 7:20	believes 8:15	comment 19:12
	agrees 11:19,21	benefit 5:25	commenters 16:13
		bit 5:11 13:6	comments 5:14,17, 20,22 7:24 8:6 10:6, 12,24 11:3,9 12:16,21
		Board 10:1	
		Brian 15:3,4	
		briefly 17:7	

13:23 14:1,8,16,17,20, 24 16:1,3,25 17:8,9 18:12 19:13,15 20:9, 14,20 21:17	current 16:20	East 15:5	extend 5:5
Commission 5:4 6:4 7:3 9:2,14 11:1,5,10, 17,19,21,25 16:7,14 17:4 18:13,18	<hr/> D <hr/>	echo 11:2	extension 17:16,17
Commission's 6:25 7:10 16:7	data 8:23	effect 17:15,18	extensive 6:24
communications 12:24 17:11	dealings 7:10	effort 16:23	extent 5:19
companies 15:10,13, 16	decision 15:19	efforts 16:2	<hr/> F <hr/>
company 8:23 10:13 15:7,9,25	defined 8:11	elements 7:22 9:13, 22 10:3	FCC 13:4 16:9
competitor 18:1,8	definition 8:8,9 9:10 11:6 13:4	eligible 10:2	FCC's 13:11 15:19
competitors 17:25 18:6,19	depending 21:7	emphasize 8:16	federal 10:23 11:2,15 15:15,17
concern 17:21 19:17	describing 9:11	enforces 18:18	file 12:16 20:3
concerns 11:8	designation 19:5	England 15:5	filed 10:24 11:3 12:21 14:16 16:1 17:8 20:13, 20
concurs 16:1	determine 10:17 11:19,21	entirety 16:4	filing 13:17 20:18,21
conferences 16:22	determined 8:1 10:7	entities 14:8	Finally 9:24 16:18
confidential 8:22 9:1,3	Dietrich 12:4	entry 15:8 17:5	find 14:1 19:9
confusion 21:14	differences 19:2	Eschen 12:6	fine 19:16
conservation 9:21	direct 11:14 12:24	essential 11:7	firm 15:4
considered 20:22	direction 13:11	essentially 5:12	fit 16:20
consists 15:10	directive 13:6	ETCS 15:14	focused 14:17
contested 13:19	director 12:4	exceeding 11:5	forget 15:18
continue 7:12	Disabled 15:14 16:8	Executive 6:20	form 8:16 20:4
Corporation 17:10	disagreed 5:20	exhibit 5:21 8:3,19 16:4,12,17 19:24 20:3, 22 21:3,4,16	forms 9:5
Correct 19:18,22 20:19	disagree 5:20	exhibits 6:11,16 10:9 20:7	forward 15:2
court 6:1,5 14:15 21:11	discriminate 17:25 18:6	existing 9:11 10:22 17:12 18:1	found 13:11
Craig 17:3,4	discussion 18:21	expand 11:6,10 13:1, 8	front 13:14
created 5:21 8:2 10:8	docket 10:24 11:13 15:20 17:13,22 18:23	expanded 13:4	fund 10:1 11:18 16:19,24
crossovers 10:23	drastic 7:7	expansion 12:10,17, 22	<hr/> G <hr/>
	due 10:14	expensive 18:10	general 7:21
	uplications 10:21	expired 17:15 18:5	give 21:10,12
	<hr/> E <hr/>	explain 5:10	glad 14:21
	earlier 18:21	explained 9:13	Good 14:10 15:2,3
	ease 11:25	expressed 12:14	

governing 10:16 Governor's 6:21 13:7 group 10:13,18 12:12 15:7,9,25 18:25 guidelines 8:25 <hr/> H <hr/> happy 17:1 harbor 9:12 hearing 8:5 10:11 20:3 21:11 high-cost 10:1 15:12, 17 16:19,23 20:5 Honor 17:19 <hr/> I <hr/> identical 5:13 identify 5:25 ILEC 18:4,6 immediately 20:25 21:11 implemented 11:14 important 13:1 inclined 18:13 include 5:5,20 9:7,11, 16 12:22 13:5 15:19 16:3,9 included 7:22 8:9,23 9:22 10:4 20:6 including 8:14 10:12 inclusion 5:18 incorporate 16:17 increase 11:15 incumbent 17:24 18:8 industry 7:11 14:13 information 6:5 9:1,	3,8,17 initiative 13:8 intend 20:2 intent 8:16,19 interconnection 7:20 17:14 18:16 internet 18:9 introductory 9:14 involve 18:10 issue 17:20 issued 6:20 13:6,8 <hr/> J <hr/> January 6:21 Jefferson 14:14 15:5 John 12:5 Johnson 17:3,4 18:20,23 19:10,15 Judge 5:2,7,10,15,23 6:7,12,14,19 12:8,15, 19,25 13:10,18,25 14:3,7,11,22 15:1 17:2 18:20 19:4,8,11,20,23, 25 20:8,11,15,23 21:2, 5,6,10,15 July 10:24 16:2 20:20 jurisdiction 6:23 jurisdictional 8:8,10, 11 9:10 <hr/> K <hr/> keeping 19:16 <hr/> L <hr/> language 9:11 19:17, 19,20 large 7:9	lasts 18:11 law 10:23 15:4 lays 8:25 9:2 leave 17:22 led 7:8 legal 12:3 lengthy 18:10 lets 18:5 letting 18:2 level 11:15 Lifeline 10:2 15:15, 20,24 16:8 lines 15:11 Link 15:24 list 15:7 listed 15:7 LLP 17:4 local 11:7 location 9:5 long 17:17 18:2 longer 7:10 <hr/> M <hr/> made 10:18 17:8 make 5:2 16:23 18:18 21:17 manager 12:5 mark 21:16 marked 5:13 10:9 matter 7:3 15:23 Mccartney 15:3,4 missed 5:23 Missouri 6:3,22 7:6,8 8:10 9:25 10:22 11:18, 20 14:13 15:6,13,14, 15 16:8	MO 16:19 Modernization 15:24 modification 16:16 modifications 9:23 10:5 modified 9:7 modify 7:4 moment 13:15 morning 14:10,11 15:2,3 20:12 move 6:10 7:3 MTIA 16:1 <hr/> N <hr/> Natelle 12:4 negotiation 18:9 net 8:8,10 9:10 noted 9:14 number 5:1 13:14 16:6 numbering 9:20 <hr/> O <hr/> objection 18:15 19:19 obtained 8:18 offer 14:20 offered 8:3 10:9 20:7 Office 6:21 13:8 opening 6:18 operations 10:16 opportunity 11:24 16:4 order 6:20 7:1 13:13 15:21,22 16:10 original 17:14 18:5 20:9
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

outlined 10:23 11:8	programs 15:16 16:8	recall 18:21	replied 14:18
<hr/>	proposal 5:5,20 7:25 10:19 16:11,18	received 6:14,16 12:23 21:4	report 9:4 15:21
P	proposals 7:23 8:6 9:23 10:4 11:13 20:6	recently 17:8	reporter 6:1,6 14:15 21:11
paragraph 9:15	propose 9:6	recognize 19:17	reporting 7:19 9:5,21
parenthesis 5:14,22	proposed 5:17 7:13 8:7,12,13,18 9:15 10:12,13,20 11:4 12:12 16:15 17:13,22 19:21	recognized 13:3	represent 6:3
part 7:9 20:9	proposing 10:18	recognizes 7:12	requirement 10:15
participate 15:14,16 16:22	provide 13:16,20	recommend 10:25	requirements 10:22
parties 8:4,7,13,21 9:9 10:10	provided 6:4 8:4 9:1, 4,6 14:14 17:5	recommended 7:3, 17 9:19	rescind 7:4
passing 7:8	providers 11:17	recommends 9:24	rescinding 7:17 9:19, 24
Payne 5:3,9,12,16 6:2,3,10,13,17,20 12:11,18,23 13:3,13, 22 14:2,5 19:14,22,24 20:2,10,13,17,25 21:5, 9,13	provision 18:14	reconsideration 15:22	rescissions 10:21
PC 15:5	provisions 7:21 10:14,17 11:1,2 17:16, 18	record 5:25 6:15 21:20	respond 6:8 17:7
people 12:20	PSC 10:15	referred 18:24	responded 14:19
percentage 9:12	Public 6:4 9:13	reflect 10:19	response 5:14,22 6:25 7:25 11:3 19:15
permissible 11:23	published 19:6	reflection 11:14	responses 19:13
permit 5:17	pursuant 17:15	reflects 5:4,16	result 7:2
permits 19:19	put 5:1 17:24	Reform 15:24	resulted 18:25
point 6:9 8:24 14:4,23 19:5	<hr/>	registration 7:19	retained 10:14 17:13
portions 7:9,12	Q	regulate 16:14	retaining 8:7
position 17:24	question 12:9	regulations 6:22,24, 25	revenue 8:8,10,11 9:11
predominately 15:12	questions 12:3,6 14:21,23 17:1	regulators 12:1	revenues 9:12
prepared 6:18 21:8	quickly 21:7	regulatory 7:7 12:5	review 6:22,24 7:2 16:4
president 14:13	<hr/>	related 9:20,25 10:21	reviewing 7:24
previously 6:4 10:10 11:4	R	relating 7:5,18	revised 8:19 20:4
problem 18:17	reach 11:10	released 15:22	RICHARD 14:10
proceeding 12:21	reason 7:13	remain 17:18	Rick 14:12
process 8:22 9:2 18:9,15 19:2	reasoning 13:1	remaining 7:15,23	room 14:9 21:18
program 10:2 15:15, 17,20	reassert 11:11	remains 17:15	rule 7:4 8:14,16,19,21 9:7,15,23 10:4,14 17:12,22 18:13 19:1
		remember 19:1,7	rulemaking 12:21 18:22 20:16 21:1
		renamed 17:10	rules 7:12,14,15,18, 22,23 8:1,25 9:19,22,
		renewal 17:16,17	
		renewing 10:6	

25 10:3,15 11:1,25 18:19,25 rural 15:12	started 5:24 state 6:22,23 7:6 10:22,25 11:2 15:12 19:7 state's 11:15 stated 11:4 statement 6:18 states 13:6 Statute 7:8 statutes 10:22 11:20 statutorily 11:23 statutory 10:15 16:21 STCG 15:16 streamline 11:25 streamlining 7:14 structure 16:21 subject 17:16 submitted 7:25 8:3 subsection 9:17 subsequent 13:16 20:3 sufficient 9:6 suggest 11:5 suggested 8:22 9:10 suggesting 11:9 support 12:14,22 15:17 16:9,11,21,24 18:14 20:5 supporting 12:9 supportive 12:17 Swarengen 15:4	telecommunication 10:2 telecommunication s 7:5,6,11,15 11:7,12 12:5,12 13:5 14:13 telephone 10:13,17 15:6,9,10,13,25 television 11:11 Telthorst 14:10,12,25 terms 17:15 18:5 Thompson's 19:15 thought 20:6,8,10,11 time 6:13,17 12:2 today 17:6,7,9 19:3 20:24 treatment 8:23 9:1,3 TW-2014-0295 17:20 18:24 TX 19:5	V Valley 17:10,11 Van 12:5 version 20:19,21 vital 7:10
S safe 9:12 Secretary 19:7 seek 8:17 seeking 8:22,25 9:3 11:6 sentence 17:23 service 6:4 7:19,20 9:13 10:1 11:18 services 5:6 11:7,10 13:5 16:15 serving 15:11 sic 21:3 simply 11:2 slight 16:15 small 10:12,17 12:12 15:6,9,10,13,25 solely 11:16 speaking 5:24 specifically 8:6 9:4 12:11,14 Sporleder 17:4 staff 6:3,8,24 7:2,11, 17 8:5,9,15,18,24 9:15,18,24 10:7,11,16, 23 11:7,19,22,24 12:4 13:3,19 14:4,19 16:7, 16 17:12 19:13 20:1,2 Staff's 5:5,14,20,21 7:22,25 9:22 10:4,20 11:4 13:1 16:2,5,11,18 stakeholders 11:22 12:9,14,15,20 standing 21:18 start 5:24 13:7	T tariffs 7:20 technical 12:7 16:22 Telecom 17:10	U unable 8:5 10:11,16 unclear 11:20 underserved 13:9 undertook 6:24 Universal 10:1 11:18 unnecessary 9:16 10:25 update 16:7 updated 20:19,21 USF 5:5 10:16 15:14, 15 16:8,19 USF's 15:17 utilities 7:5,6 12:1 utility 12:4	W WC 15:20 website 9:2,14 Whitney 6:3 wishing 19:11 21:16 WOODRUFF 5:2,7, 10,15,23 6:7,12,14,19 12:8,15,19,25 13:10, 18,25 14:3,7,11,22 15:1 17:2 18:20 19:4, 8,11,20,23,25 20:8,11, 15,23 21:2,6,10,15 wording 16:16 work 16:24 working 16:5 18:25 workshops 16:22 written 14:20 15:8
			Y year 18:11 years 16:10 17:19