BOISE, IDAHO, MONDAY, NOVEMBER 16, 1998, 9:30 A. M.

              COMMISSIONER SMITH:  Good morning, ladies and gentlemen.  This is a public hearing convened by the Idaho Public Utilities Commission to deal with a rulemaking, 31.42.01, rules for telephone corporations subject to the regulation of the Idaho Public Utilities Commission.

              We've never done one of these hearings before, so I'm not sure of the form and substance, except that this is to be a hearing for public comment on the Commission's proposed rule and with that, I guess I'll just ask if there are any people who wish to comment.

              Mr. Ward.

              MR. WARD:  Madam Chair, yes, we do wish to comment.  What I thought we would do is since the Commission is acting in a legislative capacity, we would simply make our comments without necessarily being sworn or anything, but we're flexible.

              COMMISSIONER SMITH:  We checked with the rules office and apparently that is the current procedure here.  It's not like a hearing where you take testimony. It's where the public is invited to make comments, so that's how we will proceed.

              MR. WARD:  What I thought we would do, Madam Chair, is begin with Mr. Wiggins who will talk about the practical effect of these rules and then I want to make some brief remarks about the relevant law.

              COMMISSIONER SMITH:  And, Mr. Wiggins, we'd just ask that you identify yourself for the record by stating your full name and your business affiliation and address.

              MR. WIGGINS:  My name is Rick Wiggins.  I'm general manager of Cambridge Telephone Company.  I reside at 580 Central, Cambridge, Idaho, and I'm representing both Cambridge Telephone and CTC Telecom today.

              First of all, I'd like to thank you for the opportunity to testify today and just talk about how we got involved in Hidden Springs and some of the decision that we did to get involved and part of that decision was based upon the fact that we were going into a nonregulated-type environment and that we were going to be able to go into that environment and provide service to those customers in a new and less regulated environment.

              Those services include advanced network-type services.  We wanted to go in and provide a bundle of services which included a video service, a high speed data-type service and traditional telephone  service, and to do that, we have designed our system in an open architecture-type design and using fiber backbone to nodes which will both carry video signals and telephone signals, and when we've gotten into this situation where we would unbundle those fiber nodes and use these unbundled rules to resell our services, it becomes more of a technical problem, too, because we're selling not just traditional copper loops, we're selling fiber transport, plus the end copper loop to the very end of the customer, the last 300 feet of that.

              A lot of those loops, that's the only thing that's going to be copper, so there's not only a competitive side to this rule where we feel like we're going into a new area and are risking our capital to compete in more of an open market and that's what we felt we were doing when we first got involved in this, but there's also a technical side where we're trying to build a more technical, a more modern system that really we feel are being penalized for going into this area, so these are the concerns that we have, these are concerns that we need to address.

              I'd be open for questions.

              COMMISSIONER SMITH:  Are there any questions for Mr. Wiggins?  Commissioner Nelson.

              COMMISSIONER NELSON:  I don't think so at  this time.  Maybe later.

              COMMISSIONER SMITH:  So just let me clarify, it sounds like when you install this fiber network that a requirement imposed by our rules to sell unbundled components you're saying is technically difficult?

              MR. WIGGINS:  It would be --

              COMMISSIONER SMITH:  Infeasible? Impossible?

              MR. WIGGINS:  It's not infeasible, but it becomes a much different situation than I would say a traditional loop where you would have a copper loop, because we're going deep with electronics into the system.

              COMMISSIONER SMITH:  So if you sold some kind of unbundled access, would the purchaser automatically get the capability to also do video over this line that they're ostensibly just buying for voice, is that the problem?

              MR. WIGGINS:  It depends on which part of the loop they would purchase.  Now, if they purchased fiber transport to the node, then they could feasibly do other services over that fiber.  Now, if they just bought the service to the end loop, then that's the service they would get, just dial tone to the end loop, but it becomes  a much more difficult question the farther out in the system that you put the electronics.  The closer you put the act of electronics to the subscriber the more capability that you're moving out there, so it becomes a more difficult situation.

              COMMISSIONER SMITH:  Thank you, Mr. Wiggins.

              Mr. Ward.

              MR. WARD:  Thank you, Madam Chair, just maybe to follow up with the thoughts that Rick expressed.  On the federal level, as the Commission probably knows, one of the ongoing debates is whether there should be any regulation or unbundling requirement for enhanced networks that are built by incumbents and I think it's fair to say that there is a general industry consensus that at least for non-incumbents that there should not be any unbundling requirement.  Then the question becomes whether the RBOCs should be required to unbundle, but the problem with trying to unbundle an enhanced -- well, the reason why we're so concerned about the unbundling requirement as applied to an enhanced network is that it does if you're forced to unbundle offer the competitors the capability of providing alternative services beside telephone; whereas, if you're just subject to the resale requirement, then, of course,  you just sell the dial tone to the competitors, so that's part of what's at issue here, but the other part that I think the Commission has to keep in mind is that this is a -- the decision to enter a U S WEST territory and compete with U S WEST is not an easy one to make.

              If you look at the economics of these cases, and Rick could give you more particulars than I, what you're faced with when you take a development like this for service is you're faced with significant losses in the front end years.  You not only have significant losses, you don't even have cash flow and you do that on the grounds that down the road, hopefully, the thing will be profitable.

              Now, if you're forced to unbundle as opposed to resale, you have a very significant risk to your capital investment after the development becomes profitable.  It won't be profitable in the first instance where it's still in-filling, so you have a situation in which if we're subject to unbundling, a competitor that enters one of these areas is going to take all the front end risk, but have the risk that when the development is filled out and is profitable that that entrant's competitors can take advantage of that, and I have to tell you, I don't know what the situation is in all the U S WEST states, but I can tell you that, for instance,  in Arizona where I do some work, U S WEST has basically said it will not serve new developments period and nobody else will either.

              The Arizona Corporation Commission last year put out a list of, I've forgotten how many, I think roughly two dozen developments in communities that were without phone service and asked for anybody to serve and, in fact, with one exception nobody would.  Midvale Telephone looked at the economics of offering to serve these communities and essentially has decided to back out of its investigation of about half of them, so to the best of my knowledge, these communities remain unserved and the reason is because you're putting capital at risk with losses on the front end and no security that you'll be able to reap the benefit of your investment and to my mind that is the biggest single policy issue here.

              If you take -- if you extend the 251(c) obligations to non-incumbents, then what you are doing is creating the same disincentive for the non-incumbents as the incumbents now have.  Now, we can argue, and I think maybe U S WEST if I may characterize their position briefly, their position is one of well, the pain should be shared industry-wide, but it seems to me that makes, that's an irrational decision for this Commission to make if it wishes to see new communities served and  particularly if it wishes to see competitors enter that market.

              The other thing I'd like to point out just before I get to the legal side of this issue is that these rules have been predicated on an assumption that may or may not be true.  We have assumed that there will be customer complaints.  We have assumed that there will be some reason for this Commission to intervene in this circumstance to protect consumers, but at the moment we don't even know that the consumers have any such concerns there.

              It seems to me at the very least it would be time enough to deal with that problem if and when we have complaints or service problems in Hidden Springs, but to act on the assumption that we are going to have those sorts of problems seems to me to be terribly premature, and I would point out that if in fact those sorts of problems do exist, then there are alternative ways for this Commission to provide that alternative providers will be available.

              Obviously, one possibility is that U S WEST could be ordered to provide facilities-based service and competition.  Another is that they could be ordered to use resale to provide service for these customers. Nothing in this situation suggests to me, at least, that  we need such Draconian rules in place when we don't even know if the harm feared is going to take place and when we have simpler, alternative remedies.

              Finally, I think quite apart from the policy side of this, we have to keep in mind the relevant law and on this point I think the law is very clear. What this case demonstrates to me, at least in part, is the dangers in hasty decision making.  This problem arose basically at the last minute in CTC's certificate case. The Commission put the rules in effect on emergency notice without an evidentiary investigation and without the normal sort of procedural investigations that we would go through.

              Because of that, all of us missed initially the relevant FCC regulation, so we now have a situation in which we have -- the Commission has promulgated rules that I think are very clearly unlawful and I argue that on two grounds.

              First of all, by the statute itself, the Commission is preempted from imposing the duties of an incumbent on a non-incumbent.  The cases we cited in our brief point out that when a superior jurisdiction, in this case the federal government, acts and enumerates certain duties, the inferior jurisdiction is preempted from a similar enumeration of those duties even though it  may be an attempt to rhyme with the superior jurisdiction's policies, and the case we've cited is Envirosafe versus Owyhee County where the county attempted to adopt essentially the state's RCRA rules and it was struck down on the grounds that in those instances that's clear evidence of implied preemption, that the field has been occupied by the superior jurisdiction and the inferior has no jurisdiction to act.

              That's the case here.  What we have is the Commission attempting to adopt de facto the federal rules by relisting them individually.  That's clearly preempted by the Act itself.

              Secondly, even if it were not preempted by the Act, the FCC has by rule stated that state commissions cannot impose the obligations of an incumbent on non-incumbents.  It's interesting that the language chosen is not simply a prohibition of states declaring non-incumbents incumbents, it is a prohibition of an attempt to impose the obligations of 251(c), that is the unbundling and co-location requirements, on non-incumbents.  The language is very clear and it speaks to exactly what the Commission has done here.

              Now, the import of that is two-fold. First, the Commission is clearly preempted from enacting these rules or any rules for that matter on this  subject.  Secondly, it can't even be justified on the grounds of trying to test the validity of the FCC's rules, because in a federal district court enforcement proceeding, the rules are assumed to be valid and validity cannot be raised either by an individual nor by a public utilities commission and we've cited cases directly in point.  The reason, of course, is that original jurisdiction lies in the federal appellate courts, so if these rules are challenged in federal district court, the Commission's posture will have to be that it confesses the rules to be valid and to my mind I fail to see an argument of sufficient ingenuity to even plausibly argue that these rules are not precisely the kind of rules that the FCC prohibited, so I think to proceed with these rules buys us all nothing but litigation, expense and potentially harmful precedent and I want to stress the latter point.

              It's one thing to be reversed on appeal to the Supreme Court.  What happens then is the Commission's decision may be reversed.  Typically, it's remanded to the Commission to then correct the error and there's no loss of jurisdiction unless there is a specific allegation that it was a non-jurisdictional matter. That's not what happens when a federal district judge issues an injunction.

              Under those circumstances, the Commission is then subject to the command of a superior body who will tell you what to do.  It won't be remanded back to you for your discretionary resolution.  You will be ordered to take an action if you lose in federal district court that you may or may not approve of and it may or may not contain restrictions that go beyond the actual matter in point.  There is very grave danger of this Commission finding itself with a federal order that goes farther than simply reversing these rules.

              To the best of my knowledge, at least within my recent memory, this Commission has never lost a case in federal district court and in fact, it very, very seldom has been challenged and it's not something that you want to do lightly.

              Finally, I want to make one other point here in general.  I want to stress again that we find ourselves in a very unusual situation for regulation and regulators.  We can all come up with our opinion as to the efficacy and the wisdom of the Federal Act and the deregulation and the modified regulation that's taken place in this industry and is continuing to take place, but what I see, at least from my vantage point watching this industry, is that more and more it is evolving out from under regulation's ability to cope and this again is  a perfect example.

              Here you have a network that's unlike anything we know of.  Trying to fit it into or subject it and the parties that invest in it to regulatory requirements is a very, very difficult process and in that regard, I'd like to leave you with a comment.  It's rather a long quote, but I think it's worth repeating and it's perfectly germane to what we're considering here.

              This is from an article by Michael Powell who is the newest Republican member of the Federal Communications Commission and it's in Federal Communications Law Journal Volume 50, No. 3, beginning at page 529.  On page 534, Powell says, and, as I warned you, it's a rather long quote, but I want to read it in its entirety, "One reason that policy makers find it difficult even after setting appropriate ground rules to allow the market to run its course is ironically their fear of ceding control to the marketplace.  The Act commands policy makers and industry to move away from the monopoloy-oriented, over-regulatory origins of communications policy and toward a world in which the market rather than bureaucracy determines how communications resources should be utilized.  Yet so often we cannot actually bring ourselves to let go, to jump off our regulatory perch.  It is true that risks  await in free markets, risk that the consumers will be harmed by anti-competitive conduct on the part of firms with market power, risk that communications companies may be acquired, downsized or driven out of business and risk that some individuals will not vie successfully for the many choice jobs that competition will create.  Though these risks are not inconsequential, they nearly always are overstated and tend to paralyze us from taking action that would allow markets to flourish and competition to grow.  Instead, we speculate about possible anti-competitive effects and then adopt policies intended to protect new entrants and consumers from them.  Rather than protecting their interests, however, we more often in practical effect handicap the market and postpone the arrival of competition and customer choice. Communications leaders must not give in to these fears so lightly, but instead must have the courage to trust the market."

              I think that comment goes directly to the heart of this problem.  We have a fear that something bad will occur if the Commission does not act to assert some sort of regulatory authority over this entrant, but doing so, first of all, almost certainly overstates the actual harm that might occur and, secondly, it will in effect strangle the exact sort of competition we see in this  case, and with that, I'm also available for questions.

              COMMISSIONER SMITH:  Mr. Ward, I think while we all know who you are, maybe on the transcript we ought to get you noted so someone else can find you if they need to.

              MR. WARD:  My name is Conley Ward.  I'm an attorney with the firm of Givens, Pursley and I'm representing the Idaho Telephone Association today.

              COMMISSIONER SMITH:  Thank you.  Do we have questions for Mr. Ward?

              COMMISSIONER NELSON:  I do have a couple. Thank you.

              COMMISSIONER SMITH:  Commissioner Nelson.

              COMMISSIONER NELSON:  Mr. Ward, I don't know whether this is going to really help in this rulemaking but maybe enhance my general knowledge, I was wondering what it was about the regulatory atmosphere in Arizona that caused CLECs not to want to serve these new areas.

              MR. WARD:  The essence of it is not just CLECs, but the incumbent doesn't want to serve because of placing its capital at risk because of the unbundling requirements that attach.  The CLECs have presumably all done the same sort of investigation that Mr. Wiggins did here of the economics.  They look at the economics.  It's  a big money loser up front and nobody will take that on without some sort of either universal service support or protection from resale later on down the road and neither has been forthcoming in Arizona, so the market is making a perfectly rational decision there or at least the market competitors are making a perfectly rational decision simply not to try to serve these new facilities, they're too expensive.

              COMMISSIONER NELSON:  My other question is why doesn't the incumbent telephone company have an obligation to serve those areas?

              MR. WARD:  Well, you'll have to take that up with the Arizona Corporation Commission.  All I know is they have not ordered U S WEST to serve.

              COMMISSIONER NELSON:  Okay, thank you.

              COMMISSIONER SMITH:  Do you have any questions, Commissioner Hansen?

              COMMISSIONER HANSEN:  No.

              COMMISSIONER SMITH:  Are there other persons in the room who wish to comment on the Commission's rules?

              Ms. Hobson.

              MS. HOBSON:  Yes, I'm Mary S. Hobson from the firm of Stoel Rives and I'm representing U S WEST Communications.  I would like to just comment briefly on  the concept of a radically different network that we've never seen before, the testimony that has just been provided by Mr. Ward and Mr. Wiggins.  In 1992, this Commission embarked on what was called the Technology Plus II program in which this Commission invested ratepayer dollars in the then prevailing public switched network of U S WEST Communications and those dollars were spent bringing fiber into the local loop.

              Fiber in the local loop is not new technology.  The capability of fiber to carry video signal is not a new innovation.  What Mr. Wiggins is talking about is the horrors of something that U S WEST also opposes which is the concept of sub-loop unbundling, taking something less than the whole loop when one attempts to interconnect and U S WEST has stood firmly against that as being an appropriate regulatory obligation and we would certainly support CTC in that effort should that be their position.

              I would like to also talk about the concern of recovery of investment made through the sale of unbundled network elements as opposed to the sale of finished services.  I think that that is a dilemma that this Commission has faced with regard to its large incumbents in this state and has found its way through that maze to provide rates for the incumbents that are  believed at least to cover those costs and ensure that those investments will in fact be recovered over time.

              Obviously, any proponent of any party will argue for a larger price, but the fact of the matter is that that is first a question of negotiation and ultimately a question of arbitration.  It's not a foregone conclusion that unbundling, per se, will bankrupt CTC or any other provider that is required to unbundle.

              Finally, I'd like to talk about the concern, the regulatory concern, which Mr. Ward perceives these rules were adopted to correct.  The Commission knows better than anyone else what those regulatory concerns are, but it is my perception that the regulatory concern was in fact that instead of enhancing competition through facilities-based entrants that a situation such as presented in Hidden Springs will mean that there is no facilities-based competition, indeed no competition at all, in new developments and that the danger was not that customers would complain or perhaps prices would be a bit too high, but rather that the exact problem that the Federal Act and this Idaho legislature's acts in the past have attempted to address, that is the total lack of competition in the local market, would be perpetuated rather than alleviated by the entrants like CTC in these  undeveloped areas.

              With regard to the duty to serve, very clearly had CTC not jumped into the fray, U S WEST would have been required and not only would have been required, but, as a matter of fact, I will represent to you was ready, willing and able to step into this area and provide telecommunications services.  U S WEST would have been required to do that.  U S WEST would have faced all the 251(c) requirements.  It simply does not make sense that the law of the land or the law of the State of Idaho can depend on who it is that first goes in there in terms of whether or not they have the obligation to open the market to competition.

              Thank you.

              COMMISSIONER SMITH:  Are there any questions for Ms. Hobson?

              COMMISSIONER NELSON:  I don't have any. Thank you.

              COMMISSIONER HANSEN:  I have one.

              COMMISSIONER SMITH:  Commissioner Hansen.

              COMMISSIONER HANSEN:  I guess just to kind of clarify in my mind what you said is that you stated, did I get you right, that protecting the investment, in this case CTC's investment, you're saying it actually inhibits competition; is that correct?

              MS. HOBSON:  Well, I didn't say quite that, but I do think that allowing CTC to go forward without the obligations that this Commission has contemplated by adopting these proposed rules will mean that there is no viable competition in the area served by CTC.

              COMMISSIONER HANSEN:  That's all I have.  I guess I'd like to have Mr. Ward comment on that, would you, please?

              MR. WARD:  I'm awfully glad you asked me that.  Counsel just stated that without these rules, it will mean that there is no viable competition in Hidden Springs and I remember so clearly Ms. Copsey earlier when we first debated this proposition saying essentially you and I know that there will never be competition in Hidden Springs.  Frankly, I don't know that at all and I don't understand how anybody could be so far-sighted as to be sure of that.

              It seems to me quite reasonable to assume that, first of all, if there is a market there that's desirable that somebody else will compete to serve it. If nothing else, it will be a simple matter to build a cellular tower that will serve that community, so you'll probably have wireless service.

              Second of all, we know that TCI, which is part of a pending merger with AT&T, has facilities  already in place and has conduit.  Even if it decides not to serve, it will have conduit available to somebody else who wants to serve.

              Third, when I raised the Staff concern that once the streets are in facilities-based competition becomes difficult, when I raised that assertion at the ITA meeting not too long ago, that was met with considerable derision; the members' view being that modern technology, with modern technology and installation practices, the fact that paved streets are in place before you decide to go in is not a terribly great impediment.  It is some impediment, but it's not a significant one or at least it's not a killer, and then, finally, there is still the possibility of resale. Anybody can resell our services.  That is a fundamental obligation that applies regardless, so there's all these ways that competition could emerge.

              I can't sit here and tell you I guarantee there will be a competitor, but I think that goes to the exact point that Mr. Powell was making; that is, how will we ever know if we don't allow the marketplace to work, how will we know, and I think it at least as likely that there will be competition in one of many forms, in one form or many forms, in Hidden Springs and I think that will be a satisfactory solution to the competitive  concerns, and then I'd make one final point.

              It seems to me we've lost sight of the fact here, we've lost sight of a very important part of reality.  I don't have a competitive alternative where I live.  This Commission can't make a competitor come out and serve me, but it's trying to essentially do that in this case, but we have hundreds of thousands of customers that don't have any competitive option now, so it seems to me it's not as if this is the most terrible thing that ever descended on the State of Idaho.  It's no different than the situation I face in my choice of local exchange providers and my choice consists of one.  Now, there may be others who have legal opportunities, but they have not chosen to serve me.

              COMMISSIONER SMITH:  Well, Mr. Ward, your comments just generated a question from me.  Where you are, you're right, we can't force a competitor to serve you, but it seems a potential competitor has two choices; he can reach you through resale or unbundled network elements and why should a person under our rules where all our rules would do is give a person living in the new CTC territory the same potential, in other words, it wouldn't -- under the existing scheme without the rules, the unbundled element option is foreclosed, so all there is is resale and I think all we're trying to do is create  the same opportunity wherever a person chooses to locate.

              MR. WARD:  Well, Madam Chair, you've hit on it.  Actually, there are three possibilities.  They could extend facilities to me, too.

              COMMISSIONER SMITH:  True, and that exists both places.

              MR. WARD:  Yes.  Now, why should only two of those possibilities exist in the case of Hidden Springs?  And I guess that really gets to the heart of it.  The problem with that is that unbundling is a very Draconian remedy.  We don't do anything like this in any other industry.  We don't tell Albertson's you have to make room on your shelves for Safeway's products and stock them and allow them to use any portion of your facilities that they want.

              We did that because incumbent monopolies had a preexisting system that was deemed to be an insurmountable competitive advantage.  That's my view as to why that remedy was imposed.  This is not a preexisting monopoly that had an overwhelming competitive advantage.  When it went in and today, everybody is

free -- let's not forget, U S WEST can go in there right now and put facilities in and compete with us, so it's not a question of we had some preexisting advantage.

              Now, what's the harm in unbundling?  The  harm is, to put it in a nutshell, the Commission must be right.  You will have to -- to the extent you erroneously price any element, then the competitors are going to arbitrage against the one who has to unbundle elements. They're going to arbitrage that party with his own system or her own system; in other words, they're going to pick and choose the elements.  Wherever you set a price that's lower than reality would have compelled or market would have compelled or that the incumbent or the competitor can build out for, then they'll purchase that element. Wherever you set a price that's too high, they'll build and the result is they get -- they are virtually guaranteed, because wise as you are, you are not gods. You're not going to get all these prices right and to the extent you make a mistake, that's a mistake that in a marketplace would not exist but a competitor will capture and in fact that's what is happening right here in downtown Boise, so that's the risk.

              That's why it's one thing to resell your service and say, okay, we'll resell our service at some discount from our total overall cost, but when you get into this business of modeling a supposed perfectly engineered, least cost system, breaking apart the elements of each cost and determining a price, frankly, that's a fantasy world.  I understand it's compelled by  law, but no competitor wants to be at risk that this fantasy will actually work for them.  That's what the risk is.  That's the downside and frankly, if I'm a lender, I wouldn't lend on that basis.

              COMMISSIONER SMITH:  Are there other persons wishing to comment?

              Ms. Copsey.

              MS. COPSEY:  Yes, Madam Commissioner and Commissioners, we do, the Staff does, have a few comments.  I'm Cheri C. Copsey, Deputy Attorney General, representing the Idaho Public Utilities Commission Staff.

              Very briefly, the Staff does believe contrary to Mr. Ward's legal arguments that you do have the legal authority and that indeed there has been no preemption.  The issue is not whether the FCC thinks that it can preempt.  The real issue is whether Congress did that.  The most important case is the Louisiana case. The Louisiana case made it very clear, the United States Supreme Court made very clear, that any Congressional preemption has to be clearly stated and it would be our argument that that has not happened and regardless of what the FCC intends to do, it either has the authority to preempt or it does not.

              However, rather going through those legal  arguments at this time, this is not a time for oral argument, we think those are more appropriately reserved for anything further down the road, whether it be litigation or some other proceeding, however, there are some things that do need to be commented on.  I want to make it very clear that these rules are not directed at one provider and although we continually talk about CTC and it may have been the impetus for the creation of these rules, they are not directed at CTC.  They are more concerned with customer choices in the future in future planned communities such as this one.

              I also want to make clear that the purpose here, as Commissioner Smith pointed out, is not to create competition.  There's no way that this Commission or frankly anyone else can create competition.  The issue here is to create the competitive opportunity, at least in the future, and I also want to point out that while Mr. Ward talked about only having essentially one provider, I want to point out that his choice is in fact regulated and, therefore, he has many protections built in.  What the idea of competition is to do is to substitute regulation, substitute competition for regulation to ensure that customers are indeed protected.

              I also want to point out that when we talk  about resale, while every telecommunications carrier under the federal law has a requirement that it provide its services for resale, the issue that these rules address is whether that resale should be at a cost that is non-discriminatory to ensure that indeed other telecommunications providers can provide those services.

              I also briefly want to say that this is the time for the Commission to look at this issue before there are complaints.  It's interesting, I have to kind of comment a little bit about this anti-trust case that's ongoing with Microsoft.  Microsoft makes the argument, no consumers are complaining, no consumer is upset about it and the Justice Department's response, which I think is an appropriate one, that's really not the issue.  The issue is to ensure that in the future that customers are protected, because if in essence what you have is a monopoly, there are no protections built into the system, so that's really what we're trying to ensure.

              There is a thing that I think we're sort of also overlooking.  Staff in its comments to the temporary and proposed rules made one recommendation which I want to highlight.  I don't want to go through all the comments because you have those, but we recommended very strongly that the petition for exemption from the rules be broadened, that it not only be that a local exchange  carrier that's covered by these proposed rules could petition to be exempted from all of the rules, one of the rules, like unbundled access, or parts of them simply by showing that there was indeed some competition, but we also added the provision that allowed a petitioner to demonstrate that the exemption is in the public interest.

              What that does is it further extends to the Commission the authority to exempt, for example, if CTC were to come in and say we can't unbundle, there are technical reasons, we can do all the rest of these things, we can provide resale at non-discriminatory rates, et cetera, et cetera, if the Commission found that it was in the public interest to remove that condition from a particular carrier under the proposed rules that we have, the Commission would have that authority, so we think that a lot of the concerns that have been raised here are addressed in the proposed changes to the rules.

              With that, I have nothing further and I'm open for questions.

              COMMISSIONER NELSON:  I don't have questions of Ms. Copsey.  Thank you.

              COMMISSIONER SMITH:  Nor I.  Is there anyone else who wishes to comment on the Commission's proposed rules?  If not, then I would say that the  Commission will close this public hearing and consider comments made here and those written comments which have been filed with us and make a decision concerning these rules.

              Thank you for your help and your attendance.

                      (The Hearing adjourned at 10:20 a.m.)

                       AUTHENTICATION

              This is to certify that the foregoing proceedings held in the matter of 31.42.01, rules for telephone corporations subject to the regulation of the Idaho Public Utilities Commission under the Telecommunications Act of 1988, commencing at 9:30 a.m., on Monday, November 16, 1998, at the Commission Hearing Room, 472 West Washington, Boise, Idaho, is a true and correct transcript of said proceedings and the original thereof for the file of the Commission.

                           CONSTANCE S. BUCY

                           Certified Shorthand Reporter #187