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TELECOMMUNICATIONS POLICY ISSUES AND OPTIONS

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Note: This paper was prepared to assist the Commission in developing draft regulations to release for public notice. The Staff may revise the views expressed herein in light of comments and information filed in response to that public notice.

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Common Carrier Staff
10/15/03

LOCAL COMPETITION REGULATION CHANGES

R-02-06 and R-03-03

I. Background

In response to a petition from GCI[1] on October 10, 2002, the Commission opened Docket R-02-06 to review changes to its local competition policies and regulations. Comments and reply comments were received in Docket R-02-06. In its reply comments ACS[2] filed a detailed proposal for changes to the regulations. GCI also filed proposed regulation changes, but of a limited nature. Since that time, the Legislature passed HB111 providing additional policy directives.

In response to HB111, the Commission opened Docket R-03-03 to review a variety of changes to telecommunications regulations. Many of those commenting in Docket R-03-03 addressed proposed changes to the local competition regulations. The ACS changes proposed in R-03-03 are for the most part identical to those it proposed in Docket R-02-06.

Unless otherwise noted, all references to options and proposals refer to those developed through Docket R-03-03.

Those who have commented in Docket R-02-06:

ACS	GCI
ATA[3]	RC[4]
AT&T Alascom[5]	UUI/United-KUC[6]

Those who have commented in Docket R-03-03:

ACS Companies	Dobson[7]
ATA	GCI
AT&T Alascom	RC

[1] GCI Communication Corp, Inc.
[2] ACS of Anchorage, Inc.; ACS of Fairbanks, Inc.; ACS of Alaska, Inc., ACS of the Northland, Inc., and ACS Long Distance, Inc.
[3] The Alaska Telephone Association.
[4] The Rural Coalition.
[5] Alascom, Inc. d/b/a AT&T Alascom.
[6] United Utilities Inc. and United-KUC, Inc.
[7] Dobson Cellular System, Inc.

II. Issues

a. Section 3 AAC 53.200 – Application and Purpose

Relevant Legal Cites:

- HB111 Policy 4: "a definition of 'competitive service areas' shall take into account whether actual competition exists in an area."

Issues:

1) What geographic area should be covered by the local competition regulations (3 AAC 53.200(a))?[8]

- **Option 1:** Broaden the regulations to apply beyond Anchorage to "competitive service areas" (RC) or "competitive service areas as defined by these regulations" (ACS).
  - Pro: Removes antiquated reference to the regulations only covering "Anchorage".
  - Con: It is unclear whether the carrier or the Commission decides when an area is a "competitive service area".
- **Option 2:** Apply the regulations to "competitive service areas as ordered by the Commission." (Staff recommendation):

2) How should the Commission define "Competitive Service Area"?

- **Option 1:** A "competitive service area" is defined as –
  - A community within a certificated local exchange service area.
  - With multiple local providers or CETCs[9] "in which the majority of customers has a choice of service providers."
  - Will be community-specific. (ACS, proposed 3 AAC 53.299(6))
    - Pro: Community specific provision addresses the concern that monopoly areas served by a competitive carrier will be subject to relaxed regulation.

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[8] Section 3 AAC 53.200(a) states: "The provisions of 3 AAC 53.200 - 3 AAC 53.299 apply to all local exchange carriers that furnish local exchange telephone service within the Anchorage service area and any other service area as ordered by the Commission."

[9] Competitive Eligible Telecommunications Carriers (CETC).

- Con: May prematurely relax regulation when competition was due solely to a wireless carrier (not necessarily an ETC[10]) capable of serving 50% of the market.[11]
- Con: The FCC has concluded that while specific data are "largely unavailable, it appears that only a small percentage of wireless customers use their wireless phones as their only phone."[12]
- Con: Given the above points, this option might not conform with legislative policy that the definition of competitive service area must take into account whether actual competition exists in an area.

- **Option 2:** A "competitive service area" is any of the following areas:
  - The Anchorage service area.
  - Any service area where multiple carriers are certificated to provide local exchange service and are actually providing local exchange service.
  - Any service area or study area where multiple carriers have been designated as eligible telecommunications carriers.
  - Any area where the rural exemption has been lifted.
  - Any other service area determined to be a competitive service area by the Commission. (RC)

  - Con: May prematurely relax regulation when competition was due solely to a wireless ETC.
  - Con: May prematurely relax regulation to areas where the rural exemption has been lifted even though competition has yet to develop. After lifting the rural exemption, competitors must still negotiate an interconnection agreement and take other actions necessary to commence service. These actions can take months.
  - Con: Minimal competition in a service area would qualify the area for "competitive service area" status.
  - Con: Given the above points, this option might not conform with legislative policy that the definition of competitive service area must take into account whether actual competition exists in an area.

- **Option 3:** A "competitive service area" means:
  - [T]he portion or portions of the service area served by a local exchange carrier under a certificate of public convenience and necessity in which retail customers have a choice of facilities-based providers. (GCI)

  - Con: The term "choice of facilities based providers" could include wireless carrier competition and could lead to premature relaxation of regulations.

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[10] Eligible Telecommunications Carrier (ETC). ETC designation is required for a carrier to receive universal service funds.
[11] September 4, 2003 Hearing Transcript, page 356.
[12] WT Docket No. 02-379, Eight Report, paragraph 102, FCC 03-150, July 13, 2003.

- Con: ACS opposes GCI's definition, stating the Legislature did not include the "facilities-based" language and it should not be added to by regulation. ACS states that the Act offered a wide range of ways to compete and "actual" competition should be left open to any form of competition.
- Con: Given the above points, this option might not conform with legislative policy that the definition of competitive service area must take into account whether actual competition exists in an area.

- **Option 4:** A "competitive service area" is:
  ▸ the portion or portions of a certificated local exchange service area where multiple carriers are certificated to provide local exchange service and are actually providing local exchange service throughout the area. The Commission may designate an additional area as a competitive service area based on the nature and extent of competition available. (Staff, proposed section 3 AAC 53.299(9))

  - Pro: This is an attempt to take the best features of each of the above proposals, while eliminating those features that could lead to premature relaxation of regulation.

3) Should the Commission expand the Purpose of the regulations (3 AAC 53.200(b))?[13]

- **Option 1:** No Change

  - Pro: Changes to the Purpose section are not critical to understanding or enforcing the remainder of the regulations.
  - Con: Does not recognize the new HB111 Legislative principles.

- **Option 2:** Expand the Purpose section as follows:

  The purpose of 3 AAC 53.200-3 AAC 53.299 is to allow competition in the provision of local exchange telephone service to the extent possible while maintaining and promoting universal local exchange telephone serivce; **to promote the maintenance and continued development of a modern telecommunications intrastructure; and to ensure that no carrier (including the incumbent carrier) is placed at an unfair competitive disadvantage.** (RC)

  - Pro: Added language recognizes certain Legislative policy goals.
  - Con: Asks for fair treatment of carriers, but is silent about the consumer.

[13] Section 3 AAC 53.200(b) states: "The purpose of 3 AAC 53.200 - 3 AAC 53.299 is to allow competition in the provision of local exchange telephone service to the extent possible while maintaining and promoting universal local exchange telephone service."

- Con: Text could be made simpler.

- **Option 3:** Simplify the RC proposal and add text to recognize fair treatment of consumers (Staff recommendation):

  The purpose of 3 AAC 53-200-3 AAC 53.299 is to allow competition in the provision of local exchange telephone service to the extent possible while maintaining and promoting universal local exchange telephone service, **fair treatment of competitors and consumers, and a modern telecommunications infrastructure**.

4) Should the Commission delete the existing option for waiver under 3 AAC 53.200(c)[14]?

- **Option 1:** Eliminate 3 AAC 53.200(c). (ACS)
  - Pro: Not clearly explained by ACS.
  - Con: It would become unclear whether waivers were allowed and if so, under what conditions.

- **Option 2:** No change to 3 AAC 53.200(c) (RC, Staff Recommendation).

5) Should the Commission add a new section 3 AAC 53.200(d) regarding inconsistency in regulation?

- **Option 1:** Add the following section (RC):

  (d) If any conflict or discrepency arises or is discovered between the application of these local exchange competition rules and other rules or regulations of the commission, these local exchange competition rules will control.

  - Pro: Explains how inconsistencies would be resolved.
  - Con: Might be unnecessary
  - Con: Allows no flexibility for the Commission to interpret conflicting regulatory provisions.

- **Option 2:** Do not add section (d) unless legal counsel indicates the proposed section is needed. (Staff recommendation)

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[14] Section 3 AAC 53.200(c) states: "For good cause shown, the commission will, in its discretion, waive the application of all or any portion of 3 AAC 53.200-3 AAC 53.299 to a local exchange carrier and establish appropriate criteria for that carrier."

b. Section 3 AAC 53.210 - Certification

1) **Should the Commission clarify that certification requirements do not apply to exempt carriers (3 AAC 53.210(a))?**

- **Option 1:** Make the following change to 3 AAC 53.210(a) (RC):

  (a) Unless otherwise exempt by state or federal law, an [AN] entity proposing to provide local exchange telephone service in competition with an existing local exchange carrier must file an application for a certificate of public convenience and necessity that includes....

  - Pro: May clarify that some carriers are exempt from the certification process.
  - Con: Might not be necessary. If there is a need to clarify the scope of the Commission's jurisdiction over certification and possibly other requirements, it may be better to place such clarification earlier in the regulation.

- **Option 2:** No change. (Staff recommendation).

Staff recommends the Commission not take Option 1 unless legal counsel indicates the change is needed.

2) Should the Commission allow registration in place of certification for small local carriers in competitive markets?

- **Option 1:** Add a new section to allow local carrier registration similar to that for the interexchange market.
  - Pro: Registration of small carriers was allowed in the interexchange market.
  - Pro: Continued certification of small carriers in competitive markets may offer low benefit compared to the cost of continued regulation.
  - Pro: Registration would reduce carrier and staff work.
  - Con: Local exchange services are essentially prepaid services (i.e., paid one month in advance), and without financial review (both initial application review and review of annually-filed financial statements) or a bond requirement, consumers could lose money and (temporarily) service if a small CLEC goes under.
  - Con: No commentor has proposed registration in the local market.
  - Con: Adding a new registration section may complicate review of these dockets.

- Con: The Commission has no evidence on what would be appropriate features (e.g., level of price caps, limitations on eligibility for registration) of such a process.
- Con: There would be less oversight over small local exchange carrier entry.

- **Option 2:** No change. (Staff Recommendation)

  - Pro: Financial review lessens chance of small CLEC going under, subject consumers to lost money (1 month prepaid service plus deposit) and temporary lack of service.

c. Section 53.220 – Determination of Dominant Status

Relevant Legal Cites:

- HB111 Policy 2: "in determining whether a carrier is the dominant carrier for the purposes of setting consumer rates, it is not relevant that the carrier in a competitive market is the incumbent carrier."

- 3 AAC 53.220 (a) Upon petition or on its own motion, the commission will, in its discretion, determine whether a local exchange carrier has market power in its service area and, as appropriate, designate or change the designation of the local exchange carrier as dominant or nondominant. (b) Until changed under (a) of this section, the incumbent carrier in any service area is a dominant carrier, and all other local exchange carriers in that service area are nondominant carriers.

Issues:

1. **Should the Commission continue to maintain a distinction between carriers based upon market dominance?**

   Option 1: Eliminate all references to dominance or dominant carriers in local competitive market rules. (RC)

   - Pro: Allows LECs to quickly adjust (rebalance) rates in response to competitive entry with a minimum of regulatory delay.
   - Pro: Leads to greater parity in treatment between carriers.
   - Con: Eliminates the ability to identify and designate LECs with market power during the initial transition period from monopoly market to a competitive market

- Con: Weakens the ability of the Commission to prevent unjust and unreasonable local rate increases when LEC still has market power.
- Con: May conflict with HB111 principles that "the public shall be protected" and "rates charged to the public shall be fair".
- Con: Could require changes in critical accounting and other regulations that are applied to dominant carriers.

Option 2: Maintain dominant classification in noncompetitive markets and for incumbent LECs during transition period to competitive market. (GCI, ACS, Staff Recommendation)

- Pro: Provides for a transition period during which the incumbent may still retain market power.
- Con: May give small rural incumbent LECs less competitive flexibility when faced with market entry by much larger well financed competitors.

2. **If the Commission continues to designate dominant carriers, what standard should be use?**

- **Option 1** [Automatic market trigger (ACS)]: Incumbent remains dominant "until such time as: (i) a [CLEC]; or (ii) any other entity that has been designated as a [CETC] commences to offer service in that service area."

  - Pro: Automatic market trigger may reduce regulatory delays in incumbent's ability to compete with market entrant(s) under the same rules.
  - Con: Incumbent automatically becomes nondominant upon commencement of service by competitor regardless of whether the incumbent retains market power, the nature of the competitor or the actual extent of competition.
  - Con: Incumbent automatically becomes nondominant when competition is by a wireless service provider.
  - Con: Could lead to unjust or unreasonable increases to local residential rates.
  - Con: Maybe inconsistent with the philosophy of HB111 that the Commission consider whether "actual" competition exists in an area when defining "competitive service area".
  - Con: Could require changes in critical accounting and other regulations that are applied to dominant carriers.

- **Option 2** [Case by case Commission adjudication (GCI)]: The Commission evaluates dominance designation: 1) for incumbent and competitor when it grants a certificate of public convenience and

necessity to provide local exchange service; and 2) for any currently designated dominant LEC within 180 days of adoption of these regulations. In its determination of whether or not a carrier has market power, the Commission shall determine the relevant product market and the relevant geographic market and shall consider the following factors in the relevant product and geographic market: the market share of the carrier; the number and size distribution of competing firms; the existence and nature of barriers to entry; the availability of reasonably substitutable service; and whether the carrier controls any bottle neck or essential facilities. Control of bottleneck facilities, defined as sufficient control over some essential commodity or facility to be able to impede new entrants, constitutes prima facie evidence of market power.

- Pro: Provides for a thorough review of a carrier's dominance at any particular point in time.
- Pro: Addresses the past criticism that the Commission has not clearly defined what factors it considers when determining market dominance.
- Con: Could be time consuming and administratively burdensome
- Con: May be unnecessary for many smaller entrants with no obvious market power.
- Con: Creates a potential barrier to entry to entering CLECs.
- Con: Creates a competitive advantage for existing nondominant carriers (that have never been investigated for dominance) over market entrants.

- **Option 3** [Automatic Trigger with option for case by case review (Staff Recommendation)]:

a) A local exchange carrier is dominant for the provision of retail service in a location if 1) its market share in that location is 60% or more; and 2) no single local exchange carrier ETC[15] has obtained a market share of 20% or more at that location, as determined by the Commission.

b) For purposes of this section, market share is measured by percent access lines under control of the carrier, including lines sold through local service resale but not including lines leased as Unbundled Network Element loops.

c) Notwithstanding (a) a carrier that holds a facilities monopoly for the provision of local exchange loops in a location is dominant in regards

[15] ETC status is important because it ensures that a competitive alternative is available throughout the study area and that customers have an alternative provider of Lifeline service.

to the following services until the Commission directs otherwise: 1) line extension services; 2) construction services; 3) subdivision agreements; 4) interexchange carrier access services; 5) data services; 6) private line services; and 7) Interconnection services not subject to review under federal rules.

d) During the certification process for a competitor or the ETC designation process for a competitor, the incumbent carrier may petition for review of its dominant status. Should the Commission find the incumbent is likely to face significant competition immediately upon entry of the certificated competitor or upon designation of the new ETC, the Commission may classify the incumbent as nondominant for a service or a group of services.

e) Notwithstanding any other provisions of this section, the Commission may find a carrier to be dominant or nondominant in the provision of any service or category of service after investigation.

f) In conducting a review of an incumbent's status as a dominant carrier in response to a petition filed under (d) of this section or pursuant to a review under (e) of this section, the Commission will determine whether a local carrier has market power by taking into consideration the following factors: (1) carrier's market share, (2) number, size distribution, nature, and capabilities of competing carriers, (3) the existence and nature of barriers to entry, (4) the availability of reasonably substitutable service, (5) the availability of competitive facilities alternative(s), (6) the presence or absence of factors that restrain the exercise of market power, such as rate caps, and similar safeguards, (7) number of customers transferred to a competitor, and (8) any other factors the Commission deems relevant to the issue, including the presence of material consumer complaints.

- Pro: Except in the cases where the Commission finds it necessary to conduct an inquiry in response to the petition of an incumbent, the primary objective standards are otherwise simple, focusing on relatively easy to obtain measures of market share.
- Pro: The objective standard is administratively efficient and in some cases, a lengthy and burdensome proceeding to investigate dominance may be avoided.
- Con: Simple objective standard using one measure of dominance may be imprecise.
- Con: This option moves away from a market power standard. A carrier may be declared "nondominant" even though it retains market power.

3. **When using access lines as a measure of a carrier's dominance should the Commission also include lines sold to another LEC through total service resale?**
    - Pro: Yes, the selling LEC, by varying its retail price or service availability or quality, can materially influence the price and services of its wholesale competitor.
    - Pro: Yes, the selling LEC remains the provider of access services on a wholesale line sold to a total service resale competitor. Wholesale line therefore only represents a limited loss of market share to underlying facilities based provider.
    - Con: Wholesale line represents a loss of nominal retail market share.

d. <u>Section 53.230 – Discontinuance of Service</u>

This section cannot be viewed in isolation of other proposed regulation changes. For example, if the Commission chooses to no longer regulate a carrier based on its dominant or nondominant status, then that could affect this section.

Relevant Legal Cites:

- HB111 Policy 6 states in part: "the incumbent local exchange carrier remains the carrier of last resort in the relevant area until the commission orders otherwise."

- AS 42.05.261 Discontinuance, suspension, or abandonment of certificated services:

> (a) Except as otherwise provided in this section, a public utility may not discontinue or abandon a service for which a certificate has been issued by the commission unless upon the application of the public utility and if, after notice and opportunity for hearing, the commission finds that the continued service is not required by public convenience and necessity. Any interested person may file with the commission a protest or memorandum of opposition to or in support of discontinuance or abandonment. The commission may authorize temporary suspension of a service or of part of a service.

- AS 42.05.291 Standards of service and facilities:

> (a) Each public utility shall furnish and maintain adequate, efficient, and safe service and facilities. This service shall be reasonably continuous and without unreasonable interruption or delay.

- Section 214(e)(4) Relinquishment of universal service:

  A State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) of such relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall establish a time, not to exceed one year after the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) approves such relinquishment under this paragraph, within which such purchase or construction shall be completed. (emphasis added)

Issues:

1) Under what conditions may a carrier discontinue and abandon service (3 AAC 53.230)?

- **Option 1 (30 day notice for all carriers):** ACS proposes to allow any non-dominant carrier to abandon any or all of its local exchange service after 30 day notice unless the Commission finds continued service is needed for the public convenience and necessity. Under this proposal, all carriers in a competitive market would be deemed non-dominant.[16] To Implement this, ACS would make the following change to 3 AAC 53.230(a):

[16] See ACS proposal 3 AAC 53.299(6) where all carriers in a competitive market are by definition non-dominant. ACS has also deleted most references to dominant carrier regulations throughout its proposed regulations. So while ACS' proposed a standard for dominance (see proposed 3 AAC 53.220(a-b), it is possible that ACS anticipates that under its standard the ILEC would likely not remain dominant in most existing competitive markets.

(a) A nodominant carrier may discontinue, suspend, or abandon **all of its** local exchange telephone service at the end of the 30-day notice....unless the Commission finds that continuation of the servide is required by the public convenience and necessity.

Variation: Allow all carriers in a competitive service area to abandon service after 30 days notice, unless the Commission finds continued service is needed for the public convenience and necessity *or the service was required by law.* (RC):

(a) A **local exchange** [NONDOMINANT] carrier **in a competitive service area** may discontinue, suspend, or abandon local exchange telephone service at the end of the 30-day notice ...unless the Commission finds that continuation of the service is required by the public convenience and necessity **or is otherwise required by law.**

- Pro: Simplifies exit of carriers from all existing competitive local markets for some or all services.
- Pro: As it would be implemented under the ACS proposal, provides for effective parity of regulation between all local carriers regarding market exit and abandonment of service in all existing competitive markets, as all can easily abandon service.
- Pro: ACS and others assert that dominant carrier regulation is not necessary in competitive markets.
- Pro: With competition, if a carrier discontinues service, the customer may have some protection from harm if the customer can switch to another carrier and that carrier offers the needed service.

- Con: To protect the public, it may remain critical for the Commission to continue to review requests to abandon service until full facilities based competition is available throughout a service area. In the interim, customers may be harmed if a local carrier controlling key facilities discontinues a needed service.
- Con: For a carrier with extensive facilities or a critical service offering, 30 days would likely not provide sufficient time to allow the Commission to evaluate the effects on the public of a proposal to discontinue or abandon critical services.
- Con: For an ETC wishing to exit the market, 30 days would likely not provide sufficient time to allow the Commission to evaluate the effects on the public and provide for smooth transition of customers to another carrier.
- Con: Reseller carriers that provide service through purchase of wholesale or retail services may be harmed if the local carrier discontinues a service that the reseller purchases.

- Con: For some services (e.g., private line, data), customers may need more than 30 days to buy necessary equipment and arrange for alternative service.
- Con: The ACS version of this option may allow premature discontinuance of service contrary to 47 U.S.C. 214(e)(4) as quoted above and Carrier of Last Resort (COLR) requirements . Section 214(e)(4) places limits on when an ETC may exit the market. The RC version of this option attempts to address carrier of last resort and ETC requirements by including the text "or is otherwise required by law." This language however, might not be specific enough for carriers to understand their obligations under this section.
- Con: HB111 Policy G requires the incumbent to remain the Carrier of Last Resort until the Commission orders otherwise.
- Con: ACS' proposal to allow abandonment of "all" of a carrier's local exchange telephone service could be interpretted to include non-retail services such as access and interconnection, though this might not be what was intended.

- **Option 2:** In conjunction with Option 1, also allow non-dominant carriers to abandon service through "notice tariff" filings by including the following new section 3 AAC 53.230(c) (ACS):

  (c) A nondominant carrier required to make "notice tariff" filings per 3 AAC 53.220(c) and 3 AAC 53.240 [new proposed sections] may discontinue an individual retail product or service offering by making the appropriate "notice tariff" filing. The Commission will only intervene to limit such action where a party has made a clear demonstration that continuation of the product or service is required for the public convenience and necessity and is not otherwise available from another provider.

  - Pro: The pros from Option 1 also apply here.

  - Con: Under the ACS proposal, "notice tariff" filings may be implemented in 7 days. This means that the Commission would only have 7 days to allow for public comment, opposition, and for determining if a "clear demonstration" had been made for continuation of service, regardless of the complexity of the situation. This would appear contrary to HB111 Principle 1: "the public shall be protected".
  - Con: Many of the cons from Option 1 also apply here, but with a shorter 7 day deadline.
  - Con: The ACS proposal contains errors or unclear requirements:

- The reference to 3 AAC 53.220(c) would appear inaccurate as section (c) does not pertain to tariff filings.
- This proposal to allow 7 days notice prior to abandoning service appears inconsistent with Option 1 and 3 AAC 53.220(b), which both require 30 days notice prior to abandoning service. ACS did not propose to delete section (b).
- ACS proposed Sections 3 AAC 53.230(c) and 3 AAC 53.240(a) appear to have different standards for when the Commission may intervene on proposals to abandon service.
- The proposal refers to the term "party" which has a special legal meaning perhaps not intended in this context. This could be corrected by using the term "interested party".

- **Option 3:** Use the interexchange carrier service abandonment rules as a template for the local carrier rules. Under this option, all large local carriers and all ETCs must obtain Commission approval prior to abandonding service. All other carriers may abandon service after 30 days' notice unless the Commission takes action. (Staff Recommendation)

Proposed Replacement Text for Section 3 AAC 53.230:

(a) a local carrier with less than 10 percent market share in a community, as measured by lines served, may discontinue, suspend, or abandon a local exchange telephone service at that community after giving 30 days notice unless the commission finds that the public convenience and necessity require that carrier to continue service. For purposes of this section only, lines served includes lines offered through total service resale. A carrier seeking to discontinue, suspend or abandon service under this section shall give the required notice, in writing, to

(1) the commission;

(2) the carrier's subscribers at the community where the carrier proposes to discontinue, suspend, or abandon service; and

(3) each local exchange carrier and interexchange carrier serving the community where the carrier proposes to discontinue, suspend, or abandon service.

(b) A carrier proposing to discontinue, suspend, or abandon service under (a) must file a plan for the transfer of its customers to another carrier. This plan will be filed with the commission at the same time the carrier files its required notice under (a).

(c) Section (a) does not apply to an Eligible Telecommunications Carrier;

(d) A carrier that does not meet the criteria of (a) of this section or a carrier that is an Eligible Telecommunications Carrier may not discontinue,

suspend, or abandon local exchange telephone service without commission approval under AS 42.05.261.

- Pro: Provides parity of treatment for all large carriers and ETCs (for those regulated by the Commission).
- Pro: A 10% benchmark was chosen to better protect customers from expeditious withdraw of local services that the customer may be dependent upon for emergency and other critical services.
- Pro: Retains the Commission's ability to address requests to abandon service on an expedited basis (e.g., 30 days), if necessary.
- Pro: Allows the Commission more than 30 days to address complex issues associated with a key carrier proposing to leave a market or discontinue a critical service.

- Con: Increases the existing level of regulation as currently all non-dominant carriers may abandon service after 30 days notice absent Commission action.
- Con: Some commentors believe that less regulation is preferred in a competitive market.

- **Option 4:** No change to the regulation on abandonment of service.

  - Con: The Commission may need more than 30 days to review requests to abandon service by ETCs and other competitors.

2) What abandonment of service rules should apply to rate deregulated carriers?

- **Option 1:** Limited oversight of abandonment by deregulated carriers. (ACS, proposed 3 AAC 53.230(d)):

  A nondominant carrier operating in a competitive market described in [proposed] 3 AAC 53.220(e) that has had its retail and special access product and service offerings detariffed will provide reasonable notice of intent to discontinue an individual retail product or service offering via its Internet web page. The Commission will only intervene to limit such action where a party has made a clear demonstration that continuation of the product or service is required for the public convenience and necessity and is not otherwise available from another provider.

  - Pro: With the exception of Carrier of Last Resort and ETC responsibilities, abandonment of service may be less of a concern in effectively competitive markets that are no longer regulated.

- Con: Under proposed Section 3 AAC 53.230(d), the Commision could intervene to limit discontinuance of service for detariffed services, but it is unclear how this could occur before the fact.
- Con: The term "reasonable notice of intent" is undefined and provides no clear idea of what type of notice is required prior to discontinuance of service.
- Con: It is not clear that the carrier must provide notice to the Commission of its intent to discontinue service, outside of posting on the carrier's Internet website.
- Con: The term "party" may be inappropriate in this context. This could be corrected by using the term "interested party".
- Con: It is not certain that all customers have internet access and would timely know about a proposal to discontinue service. Thus notice by Internet web page posting could be ineffective, leaving customers temporarily without service at the end of the notice period.
- Con: The ability to discontinue service as proposed under this option may be inconsistent with limitations placed on ETCs and Carriers of Last Resort.

Note: The Commission cannot rely on ETC obligations for providing assurance that carriers will continue to provide all necessary service as the ETC obligations do not cover data and private line services.

- **Option 2:** Apply the same rules as those selected in the previous section concerning regulated markets. (Staff recommendation)

  For purposes of public notice, Staff recommends that the Commission issue Option 2 for further comment.

- **Option 3:** Do not regulate abandonment of service by deregulated carriers.

e. Section 53.240 – Retail Rates

Relevant Legal Cites:

- **Rates must be just, reasonable and non-discriminatory:**

  - AS 42.05.381 Rates to be just and reasonable.

  - AS 42.05.391 Discrimination:

    (a) Except as provided in AS 42.05.306, a public utility may not, as to rates, grant an unreasonable preference or advantage to any of its customers or subject a customer to an unreasonable prejudice or disadvantage. A public utility may not establish or maintain an unreasonable difference as to rates, either as between localities or between classes of service. A municipally owned utility may offer uniform or identical rates for a public utility service to customers located in different areas within its certificated service area who receive the same class of service. Any uniform or identical rate shall, upon complaint, be subject to review by the commission and may be set aside if shown to be unreasonable.

  - HB111 Principle 2: "the rates charged to the public shall be fair"

  - HB111 Principle 3: "the incumbent carrier may not be placed at an unfair competitive disadvantage."

- **Rate flexibility:**

  - HB111 Policy 2: "in determining whether a carrier is the dominant carrier for the purposes of setting consumer rates, it is not relevant that the carrier in a competitive market is the incumbent carrier."

  - HB111 Policy 3: "all telecommunications carriers may unilaterally reduce consumer rates, subject to state and federal antitrust laws."

  - HB 111 Policy 6: When the commission approves a carrier's application for a certificate to provide competitive local exchange telecommunications service in an ILEC's service area, in areas where the commission has determined there is competition among carriers, the ILEC shall be subject to the same retail tariffing standards and regulations as the new carrier, but the ILEC remains the COLR in the relevant area until the commission orders otherwise.

- HB111 Policy 8: "in areas where significant competition exists between carriers, competitors shall be allowed to increase rates under the same rules."

- HB111 Policy 9: "the commission may deny any rate increase to protect the public.'

- **Universal Service Requirements Placed on Local Rates:**

- 47 U.S.C. 254 (b)(1) Universal Service Principles:

  (1) Quality and rates --- Quality services should be available at just, reasonable, and affordable rates.

- 47 U.S.C. 254(b)(3) Universal Service Principles:

  (3) Access in rural and high cost areas --- Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. (emphasis added).

RETAIL RATE DEREGULATION:

1) Under what conditions and to what extent should the Commission implement Rate Deregulation?

- **Option 1:** Detariff and deregulate all retail services in a community when a CLEC or CETC offers facilities based services (using its own facilities or unbundled network elements) capable of reaching 75% or more of the customers in the market. Require posting of rates, terms and conditions on the internet. (ACS, proposed 3 AAC 53.220(e)) in Docket R-03-03.

  - Pro: The Commission could devote time to other tasks given no regulation of local competitive market rates.
  - Pro: Customers might get services and special rates faster as the public notice period would no longer apply and filings would no longer be reviewed or face possible suspension.
  - Pro: Rate deregulation might encourage additional carriers to enter the market.
  - Pro: Carriers would face reduced costs associated with deregulation, such as those associated with no longer having to follow the tariff process.

- Pro: The FCC prohibited tariff filings by interstate interexchange carriers. The FCC believed that tariffs facilitated price coordination; end-users rarely consulted tariffs; few end-users were able to understand tariffs when they examined them; tariffs impeded vigorous competition and rapid rate changes; imposed costs on carriers when attempting to make new offerings; and prevented consumers from seeking or obtaining service arrangements tailored to their needs. The FCC believed that applying tariff requirements to competitive entities was superfluous in the interstate interexchange market since competition circumscribed the price and practices of the carriers.
  Note: The FCC analysis was made with regard to the interexchange market, where long distance rates are based on customer calling pattern and access to emergency services is not as critical an issue. It could be argued that consumer interest in local exchange rate/terms of service information could be heightened due to the necessity of flat fee local exchange service for access to emergency services.

- Con: This option would deregulate the rates to 25% of the customers that did not have the ability to switch to a competitor.
- Con: The 75% benchmark only measures "capability". A new entrant may be capable of serving 100% of the consumers if it bought retail service from the incumbent, but the price may be such that it is not an effective choice for consumers. The 75% benchmark does not measure whether the consumers have actually found the competitor adequate and have been willing to change services.
- Con: Whether a carrier is "capable" of serving may be subjective.
- Con: The proposed benchmark does not allow the Commission to recognize special circumstances (e.g., consumer complaints) that may suggest that regulation is needed.
- Con: It is unclear whether a market would return to regulation if the 75% benchmark was no longer met.
- Con: It is possible the Commission would be unable to review or direct how wire line companies used federal or state universal service support in the deregulated market.
- Con: The Commission has in the past received numerous complaints regarding ACS' wire line extension policies. See Docket U-01-37. Currently ACS has significant control over subdivision line extensions as its competitors do not generally provide this service at this time.
- Con: Some oversight may be needed as long as retail rates remain the basis for developing competitor wholesale rates.
- Con: Deregulation may be inappropriate if ACS succeeds in its challenge of the Commission's order lifting the Rural Exemption, and this affects the level of competition in the Fairbanks and Juneau markets.

- Con: In the Fairbanks (21%) and Juneau (19%) markets, competition has yet to reach high levels.
- Con: The Anchorage prices for private line services determine the Standard Urban Rates for which rural health care support levels are established. Difficulties in obtaining Anchorage rate information could lead to difficulties in managing the Rural Health Care portion of the federal universal service fund. However, this problem may be addressed by having rates posted on a utility web site as proposed.
- Con: Consumers would no longer be able to bring complaints to the Commission for resolution. Telecommunications complaints are by far the largest category of complaints (roughly 80%) received by the Commission.[17] Of all telephone complaints, almost 50% are for competitive local markets, with the vast majority in Anchorage.[18] The majority of the complaints in competitive areas relate to quality and provisioning of service, though billing complaints have also been received. See consumer protection charts in the appendix.
- Con: The carriers might face increased costs associated with resolving customer disputes in court rather than before the Commission.
    - *Note:* Resolution of consumer disputes in courts could also result in increased carrier liability for the negligent provision of service. Currently limited liability provisions in carrier tariffs are enforced under the filed tariff doctrine,[19] but the filed tariff doctrine may no longer apply if the Commission is not required to approve tariff provisions.

- Con: Consumer and carrier complaints in court are constrained because local carriers are exempt from compliance with state anti-trust laws under AS 45.50.572(d). It may be premature to deregulate any local market until statutory changes can be made to eliminate this antitrust exemption. For example, the Legislature applied state antitrust laws to the interexchange market when it authorized competitive entry.

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[17] Data range: January 2003 through and including September 2003.

[18] Data range: June 2003 through and including August 2003.

[19] The Filed Rate Doctrine forbids a regulated entity from charging rates other than those filed and approved by the appropriate regulatory authority. Courts have characterized the doctrine as serving two goals; it assures nondiscrimination between customers and promotes agency autonomy in rate setting without judicial interference. The effect is to withdraw from the courts the ability to alter the filed rate, shielding the carrier from liability for negligence and breach of contract claims depending upon the terms of the tariff. In Goll v. Interior Telephone Company, where a lodge owner sued a local exchange carrier for lost business revenues, the Commission interpreted the limited liability clause in the carrier tariff as protecting the carrier from claims for damages arising from the failure of its equipment to work properly when providing the telecommunications. See Order U-01-77(2), dated October 16, 2002.

- Con: If competition for all retail services is not fully effective prior to rate deregulation, some customers may face undue discrimination, unreasonable rates, and unreasonable business practices.

- **Option 2:** Detariff and deregulate all retail services in a community when a CLEC or CETC "has deployed its own switching equipment capable of serving 25% or more of the customers in that service area via its own loop facilities or loops leased from the incumbent..." (ACS, proposed 3 AAC 53.220(d)) in Docket **R-02-06.**

  Staff assumes that the above ACS proposal filed in Docket R-02-06 has been superceded by the ACS proposal filed in Docket R-03-03.

- **Option 3:** Consider rate deregulation on a case-by-case basis, but do not amend the regulations to set triggers for determining when to deregulate a market or a service. (Staff Recommendation)

  - Pro: Triggers can be imprecise predictors of effective competition.
  - Pro: This option provides the greatest flexibility to the Commission.
  - Pro: This option best ensures that markets will not be prematurely deregulated.
  - Pro: Allows consideration of special circumstances that might warrant continued regulation or early deregulation.
  - Con: Does not provide a standard to allow carriers to anticipate when a market or service will become rate deregulated.

2) Should there be parity in the treatment of all carriers in the competitive markets?

Relevant Legal Cites:

- HB 111 Policy 6: When the commission approves a carrier's application for a certificate to provide competitive local exchange telecommunications service in an ILEC's service area, in areas where the commission has determined there is competition among carriers, the ILEC shall be subject to the same retail tariffing standards and regulations as the new carrier, but the ILEC remains the COLR in the relevant area until the commission orders otherwise.

- **Option 1:** Treat all carriers in the market the same. (RC, proposed 3 AAC 53.290(d)):

  No implicit modification or waiver of any statutory or regulatory requirement is intended by 3 AAC 53.200 – 3 AAC 53.299. <u>However, in a competitive service area no carrier shall be subject to</u>

regulatory requirements that will place the carrier at an unfair competitive disadvantage. All carriers in a competitive service area will be subject to the same or substantially similar regulatory requirements, including the requirement of 3 AAC 52.200 – 52.340 [switching design standards, quality of service standards]. A carrier may petition the commission for a waiver or modification of any regulatory requirement that violates this section.

- Pro: May support the Legislative Principle 3 that the incumbent not be placed at an unfair competitive disadvantage.
- Pro: Some comments filed in Docket R-02-06 argue that the regulations that apply to urban areas should not apply to small rural villages facing competition. Option 1 may partially address that concern.
- Pro: Some comments filed in Docket R-02-06 argue that it is not fair to rigorously regulate the incumbent but not the competitor.

- Con: The meaning of this provision is vague.
- Con: Given that wireless carriers are not regulated by the Commission, this could be interpreted to mean that any market served by a wireless carrier should become rate and quality of service deregulated.
- Con: The provision does not consider Legislative Principles 1 and 2 concerning protecting the public and fair rates charged given that ILECs do not currently face effective competitive pressure from wireless carriers.
- Con: A carrier currently has the ability to seek waiver of any regulatory requirement.

- If the RC regulations are intended to allow rate deregulation, then see the Pros and Cons under Issue 1, Option 1 beginning on page 19. It is possible that the RC does not intend full rate deregulation as it also proposes continued tariff review. However, then the meaning of Option 1 here becomes unclear.

- **Option 2:** Complete parity of regulation for all carriers is not in the public interest at this time. (Staff Recommendation).

  - Pro: A parity policy impacts a variety of interrelated issues in this docket. For example, see:
    - d: Section 53.230 Discontinuance of Service;
    - e: Section 53.240 Retail Rates; and
    - h: Section 53.290 Miscellaneous Provisions, including treatment of accounting standards, carrier of last resort.

CONTINUED RETAIL RATE REGULATION OF SOME KIND:

1) Should the dominant carrier retail rate standards be relaxed in competitive markets?

- **Option 1:** Effectively allow all competitive carriers[20] to modify retail rates, "special access" rates, and special contracts by filing a "notice tariff". After 7 days' notice the tariff will automatically go into effect. The Commission could not intervene unless a "party has made a clear demonstration that the proposed tariff change results in below-cost pricing or is unreasonably discriminatory." Carriers would maintain a current tariff of retail and special access rates on file with the Commission. (ACS, proposed 3 AAC 53.240(a))

  - Pro: Customers might get services and special rates 23 days faster compared to the status quo which requires 30 day's notice prior to a tariff filing going into effect.
  - Pro: Reduction in regulation might encourage additional carriers to enter the market.
  - Pro Carriers might face reduced costs associated with submitting tariff filings as there would be limited opportunity for regulatory action.
  - Pro: ACS asserts that under the present system, competitors have 30 days advance warning and ability to adapt to a carrier's future plans through the tariff process, reducing the advantages of being the "first mover" for an innovative service.

  - Con: Most utility's bill on a 30 day basis.
  - Con: At heart, there is only a 23 day difference between a 7 day notice period and a 30 day notice period. Any advantages to one carrier created by reducing the public notice would be short lived and may be of little value given that the same 7 day notice period would also apply to its competitor.
  - Con: Little to no evidence was provided that Alaskan carriers were unable to take advantage of a novel idea due to the 30 day public notice process. Carriers have been able to market innovative ideas (e.g., the AT&T Alascom mile-a-minute plan) under the 30 day notice process.
  - Con: A 7 day notice period provides no practical opportunity for public notice. Statutes require adequate public notice (AS 42.05.411).
  - Con: A 7 day notice period provides no practical opportunity for an affected party or the Commission to review and act on an unreasonable tariff filing prior to its going into effect. For example, it may be virtually impossible for any individual in seven days to a) become aware of a tariff filing and conduct a review, b) collect data to

[20] ACS' proposes that "notice tariffs" be filed only by non-dominant carriers. However, by ACS' definition, in competitive markets, all carriers are non-dominant.

clearly demonstrate below cost pricing or unreasonable discrimination, c) submit an objection to the Commission, d) allow opportunity for rebuttal of the objection, e) allow time for the Commission to review an objection, f) issue an order. The proposal therefore provides an illusion of regulation, but no effective regulation to guard against below-cost pricing or undue discrimination.

- Con: The Commission could take no action to suspend an anti-competitive or anti-consumer proposal if that proposal didn't involve below-cost pricing or discrimination. For example, the Commission would likely be unable to act on the following issues:
  - Unreasonable termination penalty provisions;
  - High rates for services;
  - Unreasonable provision of service and line extension policies (unless discrimination issues arose);
  - Discontinuance of service;
  - Violation of statutes and regulations not directly related to below-cost pricing or unreasonable discrimination; or
  - Changes in the tariff terms and conditions of service that affect quality of service.

- Con: This proposal would appear contrary to HB111 Policy 9 as it severely restrains the Commission's ability to deny a rate increase to protect the public. For example, the Commission's ability to act on unduly discriminatory rate structures or terms of service would be curtailed by the "clear evidence" standard necessary to establish that the discriminatory action is unreasonable.
- Con: The public, especially businesses, may need more than 7 days to adjust to tariff changes.
- Con: Wholesale rates are based on a discount off retail rates. A 7 day notice may not provide adequate time for some wholesale providers to adjust to the change in rate. While AT&T Alascom at hearing indicated that it may be able to operate under 7 days notice, the same may not be true of all wholesale purchasers.
- Con: In addition, resellers may be required to absorb the cost of any rate increase in the first month it is placed in service.
  - Presume that 8 days before a billing cycle commences, ACS-AN files a rate increase under 7 day noticing rules. A reseller such as AT&T Alascom would be unable to respond to the rate increase until the next billing cycle, and consequently would be required to absorb the cost of the rate increase for one month.
- Con: There is no evidence on record that the public views the 30 day notice period as too long.
- Con: Outside of ACS, there is little support for a 7 day notice period.

- **Option 2:** Apply the status quo (30 day tariff filings, including dominant carrier regulation) to "competitive service areas". (GCI, Staff)
  - Pro: If dominant carrier rules are retained and revised so that they are not based on incumbency (i.e., based on market power or market share), goals of HB111 policies 2, 6, and 8 are fulfilled.
  - Pro: Carriers and the Commission are familiar with the status quo.
  - Pro: Allows time to review and suspend, if necessary, questionable carrier filings.
  - Con: Some carriers prefer a shorter than 30 day review period.
  - Con: See also pros of Option 1.

  Note: Depending upon how the Commission defined "dominant carrier", this option may lead to significant parity of rate regulation between carriers in the existing competitive markets.

- **Option 3:** Delay incumbent rate flexibility until after competition has actually begun, but allow rate flexibility to a new entrant. Allow greater pricing flexibility for retail services immediately for a local carrier once its retail market share was less than 65% of the lines in a service area for 3 consecutive months. However, deny greater pricing flexibility to any incumbent LEC that asserts a "rural exemption" in its relevant market --- including through petitions for reconsideration or court challenge (GCI, **Docket R-02-06**).

  Staff assumes that GCI's proposal in R-02-06 has been superceded by its proposal and comments in R-03-03. The GCI R-02-06 proposal did not receive much support from commentors.

- **Option 4:** Apply the status quo (30 day tariff filings) to "competitive service areas", but treat all carriers as non-dominant carriers. (RC, proposed 3 AAC 53.240(a)).

  - Pro: Similar Pros and Cons as Option 2.
  - Con: In some markets, it may be premature to allow carriers with market power the same ease to raise rates as carriers without market power.

- **Option 5:** In conjunction with Option 4, add that the regulation applies unless "otherwise exempt by state or federal law". (RC, proposed 3 AAC 53.240(a))

  - Con: The meaning of this provision is unclear, especially in conjunction with other proposals by the RC that would create a regulation requiring parity of treatment among carriers.

2) Should the Commission eliminate the regulation that specifies the dominant carrier retail rate rules (3 AAC 53.240(b))?[21]

- **Option 1:** Delete 3 AAC 53.240(b) (ACS, RC).
- **Option 2:** Do not delete the section.

If the Commission no longer regulates carriers based on whether they are dominant or non-dominant, then the section could be deleted. Otherwise the section, or some version of it should remain to explain what retail tariff policies apply to dominant carriers.

Staff notes that ACS' proposed regulations are internally inconsistent. ACS proposes circumstances where a carrier could remain dominant (proposed 3 AAC 53.220(a)) while it eliminates the provisions governing dominant carrier rate regulation (proposed 3 AAC 53.220(b)). ACS also proposes to eliminate the definition of dominant carrier in Section 3 AAC 53.299 and define nondominant carrier as a LEC providing service in a competitive local exchange market. This makes it unclear whether 3 AAC 53.240(b) can be deleted under the ACS proposal.

3) Should the Commission delete the regulation requiring just and reasonable, and non-discriminatory retail rates (3 AAC 53.240(c))?[22]

- **Option 1:** Delete the 3 AAC 53.240(c) requirement that rates be just, reasonable, and non-discriminatory (ACS).

  Note: In place of 3 AAC 53.240(c), ACS would limit Commission tariff review to below cost pricing and unreasonable discrimination as outlined in its "notice tariff" proposal of Issue 1, Option 1, page 24. As a result, a decision on the notice tariff proposal may affect a decision on Option 1 here.

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[21] Section 3 AAC 53.240(b) states: "(b) The dominant carrier shall maintain a current tariff of retail rates and all special contracts for retail rates on file with the commission. The dominant carrier may reduce retail rates, offer new or re-packaged services, and implement special contracts for retail service without approval of the commission after 30 days' notice to the commission of a tariff filing submitted in accordance with 3 AAC 48.220, 3 AAC 48.240, 3 AAC 48.270, and 3 AAC 53.290(f). A tariff revision by the dominant carrier to increase a rate is subject to the provisions of 3 AAC 48.200 - 3 AAC 48.430."

[22] Section 3 AAC 53.240(c) states: "(c) Notwithstanding (a) or (b) of this section, the commission will disapprove and require modification of rates that are not just and reasonable or that grant an unreasonable preference or advantage to any customer or subject a customer to an unreasonable prejudice or disadvantage."

- Pro: ACS believes that the terms "just and reasonable" rates is grounded in the "arcane concept" of rate base/rate of return pricing theories and that market forces will drive rates to "just and reasonable" levels. (comments from **R-02-06**).
- Pro: In markets with effective competitive there may be no need for the Commission to review whether a rate is just reasonable, and non-discriminatory.

- Con: If 3 AAC 53.240(c) is eliminated, it may become unclear as to what standard the Commission would apply when reviewing tariff filings.
- Con: The statutes require that rates be just, reasonable, and not unduly discriminatory.[23]
- Con: Deleting this standard implies the Commission would allow unjust, unreasonable, and unduly discriminatory rates to go into effect.

- **Option 2:** Do not delete 240(c). (GCI)

- **Option 3:** Do not delete 240(c), and expand the regulation to require just and reasonable rates and *conditions* for both customers and *carriers.* (RC, Staff)
  - Pro: Expanding the reasonableness requirements to "conditions" may better protect the public interest and is consistent with how the Commission has interpreted Section 240(c) in the past.
  - Pro: Expanding the reasonableness requirement to "carriers" would be consistent with a number of the Legislative directives of HB111 promoting competition and fair treatment among carriers.

4) How should the Commission comply with the rate <u>increase</u> policy of the Legislature?

Relevant Legal Cites:

- HB111 Policy 8: "in areas where significant competition exists between carriers, competitors shall be allowed to increase rates under the same rules."

- HB111 Policy 9: "the commission may deny any rate increase to protect the public.'

- AS 42.05.381: "All rates...shall be just and reasonable...

- HB 111 Policy 6: When the commission approves a carrier's application for a certificate to provide competitive local exchange

[23] See AS 42.05.391.

telecommunications service in an ILEC's service area, in areas where the commission has determined there is competition among carriers, the ILEC shall be subject to the same retail tariffing standards and regulations as the new carrier, but the ILEC remains the COLR in the relevant area until the commission orders otherwise.

Issues:

- **Option 1:** Amend the regulations to state that non-dominant carriers are "free to increase or decrease retail rates". (ACS, 3 AAC 53.220(d))

  - Con: The proposal could effectively rate deregulate the market for non-dominant carriers as each would be "free" to adjust its rates at will.
  - Con: This provision would appear inconsistent with the ACS proposal that carriers are not free to implement below-cost or unreasonably discriminatory tariff filings. (ACS, 3 AAC 53.240(a).)
  - Con: This proposal would be contrary to HB111 Policy 9 as it does not allow the Commission the ability to deny a rate increase to protect the public.
  - Con: This proposal might be contrary to HB111 Policy 3 as it places no limits on rate reductions.

- **Option 2:** Allow a dominant carrier that serves less than 80% of the access lines in a competitive area to increase rates for retail service without approval of the commission after 30 days notice. For purposes of determining the 80%, the dominant carrier's access lines will include lines served by another carrier using total service resale. (GCI, proposed 3 AAC 53.240(d))

  - Pro: Provides a standard for when "significant competition" exists (80%) such that a dominant carrier may increase rates effectively under the same rules as a non-dominant carrier.
  - Pro: Provides a simple and relatively easily applied standard for "significant competition."

  - Con: It is unclear if 80% is a good gauge of "significant competition".
  - Con: A carrier may have less than 80% of the lines in an area, while still able to hold market power over a serve. For example, this proposal would allow ACS in Anchorage to increase the rates it charges for line extensions and for its subdivision agreements as if it were a non-dominant carrier even though the treatment of subdivision agreements has been an issue of concern for some consumers and a docket of investigation was opened on the matter (U-01-37).
  - Con: This option would require revision if the Commission decides to no longer regulate carriers based on their dominant/non-dominant status.

- **Option 3:** Option 2, but with a different percentage benchmark then 80%.

- **Option 4:** Option 2 or Option 3, but exclude services (e.g., line extensions, subdivision agreements, data services, private line services, Lifeline, LinkUp, Centrex) for which the line based benchmark is not a relevant indication of market power. (Alternative Staff recommendation if Option 5 is not selected).

- **Option 5:** Assume that "significant competition" exists for a service when all carriers are deemed non-dominant for that service. Once the incumbent is no longer dominant, then it would be able to increase rates under the same rules as the non-dominant carrier by virtue of the existing regulations. (Staff recommendation).

  - Pro: Simple means of complying with the Legislature's intent.
  - Pro: Addresses the issue of "significant competition" as part of the dominant carrier review process.
  - Pro: Would require no change in regulation outside of consideration of how dominance should be defined.

  - Con: This option is not a practical method if the Commission decides to no longer regulate carriers based on whether they are dominant or non-dominant.

5) How should the Commission comply with the rate decrease policy of the Legislature?

Relevant Legal Cites:

- HB111 Policy 3: "all telecommunications carriers may unilaterally reduce consumer rates, subject to state and federal antitrust laws."

- AS 42.05.391(a): A public utility may not, as to rates, grant an unreasonable preference or advantage to any of its customers....

- AS 42.05.391(c): A public utility may not extend to any customer any form of contract, agreement, inducement, privilege, or facility, or apply any rule, regulation, or condition of service except such as are extended or applied to all customers under like circumstances.

- AS 42.05.381: "All rates...shall be just and reasonable..."

- HB 111 Policy 6: When the commission approves a carrier's application for a certificate to provide competitive local exchange

telecommunications service in an ILEC's service area, in areas where the commission has determined there is competition among carriers, the ILEC shall be subject to the same retail tariffing standards and regulations as the new carrier, but the ILEC remains the COLR in the relevant area until the commission orders otherwise.

Note: To implement the Legislative intent, it might be necessary to promote changes to both the local competition regulations and to the regulations that apply to all utilities.

Issues:

- **Option 1:** Amend the competition regulations to state that non-dominant carriers are "free to increase or decrease retail rates". (ACS, 3 AAC 53.220(d))

  - See Pros and Cons from previous section.

- **Option 2:** Amend the competition regulations to state the Commission will disapprove and require modification of a reduction to an existing rate if the reduction conflicts with "principles of state or federal antitrust law". (GCI, proposed 3 AAC 53.240(c))

  - Pro: Provides a response to the Legislative intent.
  - Pro/Con: The standard to "unilaterally reduce rates" would not apply to new services.

  - Con: There is significant controversy over what the Legislature meant by "reduce rates".
    - GCI argues that Legislative Policy 3, literally interpreted, can only apply when there is an existing rate to reduce. GCI argues that the policy cannot apply to new services or packages, for which there was no previous rate. GCI also states new packages and services may have terms and conditions of service that are unreasonable and should not be approved by virtue of Policy 3.
    - ACS argues that if the Legislature's policy initiative does not apply to most rate changes, it has little value.

    - ACS states that GCI's proposal requiring the Commission to evaluate compliance with the principles of state or federal antitrust law improperly confers jurisdiction on the Commission to enforce the antitrust laws and will lead to confusion.
    - GCI effectively argues that the principles of antitrust law are also standard principles of rate regulation and therefore there is no jurisdictional issue or conflict between the two.

- Con: It is unclear how the Commission would apply an "existing" rate standard to substantially similar, but not identical, services.
- Con: The current State antitrust law policy is to *not apply* the antitrust laws to local carriers. As a result, GCI's proposed standard, while literally consistent Legislative policy, may be confusing in application.

- **Option 3:** Amend the competition regulations to provide that any carrier may implement a retail rate decrease, after public notice, if it meets the following criteria:
  - The rate decrease does not violate existing statutory requirements, including those concerning undue discrimination.
  - The rate decrease does not lead to predatory pricing, below-cost pricing, cross subsidization, or anti-competitive pricing or practices.

  (Staff Recommendation, if Option 5 is not adequate to meet the Legislative intent.)

  - Pro: Attempts to reconcile joint Legislative policies to promote rate reductions while ensuring fair treatment of customers.
  - Pro: Provides a rough standard for compliance with antitrust policies.
  - Pro: Allows rate reductions.

- **Option 4:** Amend the regulations that apply to all carriers by limiting the amount of Supporting Information needed when filing a rate reduction; conditionally allow rate reductions to go into effect after 45 days notice. (GCI, proposed 3 AAC 48.275(a) and (c)):

  3 AAC 48.275 Supporting Information. (a) Except as provided in (b) **and (c)** of this section...

  (c) Subsection (a) of this section does not apply to a request to reduce an existing rate. Such a request shall become effective without approval of the Commission at the conclusion of the 45-day notice period. Notwithstanding the foregoing, the commission will disapprove and require modification of a reduction in an existing rate if the reduction conflicts with principles of state or federal antitrust law.

  Note: This option would appear to be designed to allow monopoly carriers to implement rate reductions, but would also apply to competitive markets.

- Pro: This proposal implements the HB111 Policy #3 concerning antitrust law and the rate reductions.
- Pro: Companies would be able to reduce rates without providing data in support, making rate reductions easier.

- Con: This amendment would go beyond the scope of HB111 by allowing all non-telecommunications utilities to implement rate reductions without submission of evidence in support. If this option is issued for notice, it should be amended to limit its application to telecommunications carriers.
- Con: This amendment would go beyond the scope of HB111 by allowing relaxed regulation of rate reductions for all existing rates. The Legislative policy is limited to "consumer rates".
- Con: The above proposal only prevents the Commission to act if a proposed reduction is contrary to state or federal antitrust law. It is unclear whether the Commission could suspend for further review a rate decrease that was contrary to other statutory provisions (e.g., rate discrimination); that appeared to be contrary to the public interest; or where not just and reasonable.
- Con: This proposal would appear to create an inconsistency between proposed section 3 AAC 48.275, which requires 45 day notice and existing section 3 AAC 53.240, which requires 30 day notice. However, this inconsistency already exists under Commission regulation (see 3 AAC 48.220 and 3 AAC 53.240).
- Con: It may be confusing to have notice timing requirements (e.g., the 30/45 day notice) in three separate regulations (existing 3 AAC 48.220, existing 3 AAC 53.240, and proposed 3 AAC 48.275).
- Con: By eliminating the Section 3 AAC 48.275(a) requirement to provide information, it may be difficult to tell whether a rate decrease is in compliance with principles of state or federal antitrust law.
- Con: Current state anti-trust laws do not apply to local carriers.

- **Option 5:** Create a new regulation that applies to all telecommunications carriers. (Staff Recommendation)

3 AAC 48.315 Telecommunications Carrier Rate Reductions

(a) A telecommunications carrier may reduce a retail rate without approval of the commission after notice of a tariff filing submitted in accordance with the filing requirements and notice procedures applicable to such a filing.

(b) Notwithstanding (a) of this section, the commission will disapprove and require modification of a rate decrease that:

(1) Violates an existing statutory requirement, including those concerning undue discrimination and provisioning of just and reasonable rates.
(2) Leads to predatory pricing, below-cost pricing, cross subsidization, or anti-competitive pricing or practices.

- Pro: This proposal attempts to comply with the Legislative intent while avoiding some of the negative aspects of previous options.

6) How should the Commission treat bundling of local and long distance services?

See the Tab on Bundling of services.

7) How should the Commission treat promotional offerings?

Issues concerning local promotional offerings were not raised in Docket R-03-03. Staff recommends that any issues related to promotional offerings, to the extent they exist, be addressed in Docket R-02-06 at a later date.

f. Section 53.250 - Wholesale Services and Rates

See the Tab on Wholesale.

g. Interconnection Services and Rates

See the Tab on Interconnection.

h. Section 53.290 – Miscellaneous Provisions.

Section 53.290(a) and (b)[24] - Waivers that apply to nondominant carriers.

Billing and Contract Forms

- **Option 1:** Broaden the existing waiver of 3 AAC 48.230 (Billing and Contract Forms) so that it applies to all competitive carriers. (ACS,

[24] 3 AAC 53.290(a) and (b) state:
(a) The provisions of 3 AAC 48.230, 3 AAC 48.275, 3 AAC 48.277, and 3 AAC 48.430 do not apply to a nondominant carrier.
(b) The provisions of 3 AAC 48.275(a) do not apply to the dominant carrier for rate decreases, new services, and repackaging of existing services.

proposed 3 AAC 53.290(a), and 3 AAC 53.299(5); RC, proposed 3 AAC 53.290(a)).

Pro: Throughout the various types of industries that the Commission regulates, companies do not always submit their billing and contract forms for the Commission review, though they are currently required to do so.
Pro: Option 1 would reduce the level of regulation in the competitive market.

Con: Billing and contract forms, if done poorly, can unduly impact the agency and confuse customers. For example, about 40% of all calls going to the agency receptionist are calls from consumers seeking to reach GCI but dialing the Commission instead given the prominence of the Commission's phone number on the GCI bill. GCI is not currently required to file its billing and contract forms for Commission review, though Staff believes the utility may be seeking to resolve this problem.

Con: Billing and contract forms, if unclear or undecipherable, can hide the costs that consumers pay for service, hindering the ability of consumers to make an informed competitive choice and contrary to the public interest.

- **Option 2:** Require all carriers with 20% or more market share to comply with 3 AAC 48.230 (Staff Recommendation):

(a) The provisions of ~~3 AAC 48.230,~~ 3 AAC 48.275, 3 AAC 48.277, and 3 AAC 48.430 do not apply to a nondominant carrier. <u>The provisions of 3 AAC 48.230 do not apply to nondominant carriers with less than 20% market share as measured in lines.</u>

Note: Staff selected 20%, but other percentages may also be appropriate.

Tariff Cost Support

- **Option 1:** Broaden the existing waiver of 3 AAC 48.275 (Supporting Information with tariff filings) so that it applies to all competitive carriers. (ACS, proposed 3 AAC 53.290(a), and 3 AAC 53.299(5); RC, proposed 3 AAC 53.290(a)).

  - Pro: This would make it easier for carriers to file rate revisions as it would reduce the level of support that must be concurrently filed with the Tariff Advice Letter.

- Pro: This would place dominant carriers when filing rate increases on par with their competitors as competitors do not currently file cost support information under 3 AAC 48.275. Carriers are not required to comply with 3 AAC 48.275(a) when filing for rate decreases, new services, or repackaging of existing services.
- Con: Delays in processing may occur if the Commission needs the 275 information to evaluate whether a dominant carrier's rate is set below cost or at too high a level.

- **Option 2:** Dominant carriers continue to comply with 3 AAC 48.275 when filing rate increases. (Staff Recommendation)

Accounting Standards

- **Option 1:** Amend 3 AAC 53.290(a) so that carriers that file "notice tariff" filings under the ACS proposal would no longer have to comply with the Uniform System of Accounts (USOA, 3 AAC 48.277) or with Jurisdictional Separations (3 AAC 48.430). (ACS, proposed 3 AAC 53.290(a) and 3 AAC 53.299)

  - This option is only applicable if the Commission accepts ACS' proposal that carriers file "notice tariffs".
  - Pro: This option would increase parity in regulation as non-dominant carriers currently are not required to follow the Commission's accounting standards.
  - Pro: In connection with accounting standards, some argue that it is unreasonable for the Commission to apply different levels of scrutiny for use of federal universal service funds if the carrier is an incumbent or a CLEC. (comment from R-02-06)

  - Pro/Con: The ATA believes that when a potential CLEC asks to provide the same services to the same set of customers and obtains ETC status then the ILEC and CLEC should immediately face the same regulatory burdens, including jurisdictional cost separations. (comment from R-02-06)

  - Con: The USOA and jurisdictional separations are the "building block" accounting standards employed by the Commission to evaluate the retail local rates and revenue requirement (including use of universal service funds), rate of return, access charge revenue requirement, access charge rate cap levels, Lifeline rates, and if adopted through the Commission's access charge reform process, Subscriber Line Charges.
  - Con: If interconnection rates move away from a forward-looking cost basis to an embedded cost system, then preserving the USOA may

also be critical to understanding a local carrier's costs for purposes of setting interconnection rates.

- Con: If all local carriers did not use substantially the same USOA and jurisdictional separations, it would be difficult for the Commission to compare costs throughout the local exchange and access industry and evaluate trends.
- Con: If the state broadens its universal service fund to include a local affordability or similar factor, the Commission may benefit from applying the USOA and Jurisdictional separations to evaluate use of funds.
- Con: Use of a standards such as the USOA allows for consistency in reporting financial data from year to year. Without a standard of reporting, the Commission could not tell if a change in account balance were due to a change in operations or a change in accounting.
- The USOA is a documented and well understood system for recording costs.
- Con: The USOA is a good tool for the Commission to evaluate the financial health, costs, revenues, and return of a Carrier of Last Resort. It would assist in determining if the COLR were reducing its level of investment, maintenance levels, or rate of equipment upgrade from year to year.
- Con: No party has shown that there is material harm in maintaining the USOA or jurisdictional separations for the dominant carriers.

- **Option 2:** Option 1, but carriers that participate in the state access charge pool must continue to comply with the Uniform System of Accounts (3 AAC 48.277) and Jurisdictional Separations (3 AAC 48.430). (RC)

  - Pro: This option provides a short-term improvement from Option 1, as carriers in the pool would continue to subscribe to the Commission's accounting standard.
  - Con: When an incumbent carrier faces competition in its service area, the carrier is often required by the Access Charge Manual to leave the pool. As a result, in implementation this option would ultimately have the same pros and cons of Option 1.
  - Con: There may be other reasons (beyond participation in the access charge pool) for preserving the USOA and Jurisdictional Separations.

- **Option 3:** Require dominant carriers to continue to apply the USOA and Jurisdictional Separations. (Status quo)

  - Con: If the Commission relaxes its dominant carrier standard or eliminates dominant carrier regulation, then some carriers may be prematurely relieved of USOA and Jurisdictional Separations obligations.

- Con: See "Cons" of Option 1 for importance of the USOA and Jurisdictional Separations.

- **Option 4:** Require carriers that meet any of the following criteria to comply with the USOA and Jurisdictional Separations (Staff Recommendation):
  - The carrier receives state universal service funds (excluding Lifeline);
  - The carrier's costs are used to develop access charge rates based on an analysis of revenue requirement;
  - The carrier's costs are use to develop Subscriber Line Charges or rate caps;
  - The carrier is required to provide wholesale services;
  - The carrier is a Carrier of Last Resort;
  - The carries is a dominant carrier for a service;
  - And any other carrier designated by the Commission for good cause shown.

  - Pro: This Option attempts to prevent premature waiver of the USOA and Jurisdictional Separations process.
  - Pro: The USOA cannot be easily reinstated if the Commission decides at a later date that it desires a carrier to return to the USOA standards.
  - Pro: Carriers remain able to seek waiver of any Commission requirement, including compliance with the USOA and Jurisdictional separations.
  - Pro: See the "Cons" of Option 1 for importance of the USOA and Jurisdictional Separations.
  - Pro: Application of USOA standards to receivers of state universal service funding will better ensure the Commission's ability to track use of funds.

Tariff Advice Letter Formats

- **Option 1:** Amend 3 AAC 53.290(a) to add a new waiver so that a carrier would no longer need to submit tariff filings using the Commission's standard Tariff Advice Letter format of 3 AAC 48.270. This would only apply to carriers that made "notice tariff" filings under the ACS proposal. (ACS, proposed 3 AAC 53.290(a))

  - Con: ACS implied at hearing that its proposal might be consistent with its intent as it anticipated carriers would still file Tariff Advice Letters. ACS' primary desire was that carriers would no longer have to submit customer impact or revenue impact information when complying with 3 AAC 48.270.[25]

[25] R-03-03 Hearing Transcript at pages 343-344.

- **Option 2:** Amend 3 AAC 52.390 by adding a new section (h) eliminating the requirement that carriers file revenue and customer impact information as part of the Tariff Advice letter, except when a carrier proposes to discontinue an existing service:

  > (h) A provision of 3 AAC 48.270 requiring the filing of "the estimated number of customers or shippers who will be affected by each separate schedule listed and the estimated annual revenues under both the existing and proposed rates" does not apply to retail service offerings of a nondominant or a dominant carrier except when the carrier proposes to discontinue a service. However, subsequent to submitting a Tariff Advice Letter, a carrier must provide this information if requested by the Commission or its Staff.
  >
  > (Staff Recommendation)

  - Pro: Staff rarely uses the customer/revenue impact information when reviewing competitive tariff filings, with the exception of when a utility proposes to discontinue a service.
  - Pro: When a CLEC enters a market, any customer/revenue impact information is based purely on projections and may be of little practical value.
  - Pro: Eliminating the filing requirement will eliminate unnecessary regulation and work by industry and the Commission.

Note: If the Commission considers Option 2 for the local market, it may also wish to propose it for the interexchange market.

Section 53.290(c) – Carrier of Last Resort

Relevant Legal Cites:

- HB111, Policy 6 states in part: "the incumbent local exchange carrier remains the carrier of last resort in the relevant area until the commission orders otherwise."

- Section 214(e)(4) of the Act (previously quoted) allows an incumbent ETC to relinquish its ETC status under certain conditions, implying the carrier might no longer be obligated to serve.

Issues:

- **Option 1:** Delete the Section 53.290(c) provision stating that the dominant carrier is the carrier of last resort. Replace it with the following provision: (ACS)

Proposed 3 AAC 53.220(c): An ILEC that has its status changed to nondominant per (b) of this section will continue to function as Carrier of Last Resort.

- Con: This proposal is unnecessarily complex as the simplest approach is to define the incumbent carrier as the carrier of last resort until the Commission states otherwise.
- Con: The ACS proposal is internally inconsistent on whether a carrier could technically retain dominant status. If a carrier could remain dominant status, then ACS' proposal would inappropriately eliminate the requirement that the dominant carrier be the Carrier of Last Resort.
- Con: There is no provision to allow any carrier but the incumbent to be the Carrier of Last Resort.

- **Option 2:** Add a new section 3 AAC 52.270 to allow sharing of Carrier of Last Resort obligations. (ACS, filed in **Docket R-02-06**).
  - LECs and CETCs operating in competitive local markets will assume a proportionate share of COLR "financial obligations" based on their relative market share as expressed in terms of average retail revenue per access line.
  - No later than July 1 of each year, the Commission initiates a proceeding to determine the annual COLR funding requirement. This proceeding would be required to conclude by December 31.
  - ACS states: "To the extent that more than one company desires to build infrastructure or extend existing facilities, and make such facilities available on an unbundled basis to any local provider, the Commission may elect to establish a bidding procedure and funding guidelines to be administered by the Alaska Universal Service Fund administrator."

  - Pro: ACS believes that sharing of carrier of last resort duties will relieve the incumbent of an undue burden of serving as the sole COLR in the market.
  - Con: The term "financial obligation" is subject to interpretation. Absent clarity of what this term means, the proposal is not sufficiently detailed to understand its intent and effect.
  - Con: The "financial obligation" could require a competitor to pay some share of the difference in cost between the incumbent's embedded costs and forward looking UNE prices. If so, issues may exist as to whether this option complies with the Telecommunications Act of 1996 and federal policies on interconnection.
  - Con: It is unclear what, if any, current COLR financial obligations are not already recovered from existing revenue streams.

Option 3: Share COLR responsibilities once a 35% benchmark is reached:

A nondominant local exchange carrier that provides service to at least 35% of the lines in a study area either through its own facilities or through unbundled elements obtained from the incumbent may be required to share in carrier of last resort responsibilities as determined appropriate by the Commission. In the determination of the appropriate sharing of carrier of last resort responsibilities, the Commission shall consider the carrier's market share and the extent of facilities for the provision of local exchange carrier owned by the carrier. To the extent that a nondominant carrier contributes to carrier of last resort obligations, the nondominant carrier shall receive appropriate discounts or credits on the price of unbundled elements purchased from the incumbent. (GCI, **R-02-06**)

- Con: This proposal is not sufficiently detailed to understand the details of how it would work or its effect.
- Con: It is unclear under what conditions COLR responsibilities would not be imposed on a carrier with 35% market share.
- Con: The provision of UNE credits may be controversial.

- **Option 4:** Define the incumbent carrier in a competitive service area as the Carrier of Last Resort. (RC)

(c) **The incumbent local exchange** [THE DOMINANT] carrier **in a competitive service area remains** [IS] responsible for providing local exchange telephone service in its service area as the carrier of last resort.

- Pro: Preserves the Legislature's intent that the incumbent be the carrier of last resort.
- Pro: If the incumbent was no longer dominant, then this regulation would still require the incumbent to be the Carrier of Last Resort.
- Con: Change may be unnecessary if the Commission retains dominant carrier regulations and a dominant carrier.

- **Option 5:** Define the incumbent carrier in a competitive service area as the Carrier of Last Resort, "unless and until the Commission directs otherwise". This is a minor variation from Option 4. (Staff)

(c) **The incumbent local exchange** [THE DOMINANT] carrier **in a competitive service area**, is responsible for providing local exchange telephone service in its service area as the carrier of last resort **unless and until the Commission directs otherwise**.

- Pro: Same Pros and Cons as Option 4.

- Pro: Leaves a "door open" to designate carriers other than the incumbent as the COLR.
- Pro: If serious erosion of the incumbent's market share were to occur to warrant a change in policy, the incumbent could request waiver of this provision.

- **Option 6:** No change to 3 AAC 53.290(c):

  (c) A dominant carrier is responsible for providing local exchange telephone service in its service area as the carrier of last resort.

  - Con: It the incumbent became nondominant, there would be no carrier of last resort.

Section 53.290(d) – Reassignment of carrier access lines.

No issues.

Section 53.290(e) - Statement that No Implicit Modification or Waivers are intended.

- **Option 1:** Eliminate the provision at (e) that states that no implicit waiver of statutes or regulations is intended under the local competition regulations. (ACS)
  - Pro: Not clearly explained by ACS.
  - Con: Deletion of this provision implies that there might be some implicit waiver of statute or regulation, adding ambiguity.

- **Option 2:** Delete text in (e) that refers to "dominant" and "nondominant" carriers.

  This is a housekeeping change if the Commission no longer regulates carriers depending upon their dominant status.

- **Option 3:** Retain provision (e). (Staff recommendation)

Note: The RC's proposed changes to section (e) concerning carrier parity were addressed earlier in this paper.

Section 53.290(f) – Notice Requirements.

- **Option 1:** Eliminate the requirement that notices include the following or similar text – "*To assure that the Commission has sufficient time to consider the comments prior to the revisions taking effect, (utility name)*

suggests that your comments be filed no later than (a specific date, not a weekend or holiday, approximately 7-10 days prior to the filing's taking effect." (ACS, proposed as a change to 3 AAC 53.290(c))

- Pro: If the Commission accepts the 7 day ACS "notice tariff" proposal, then it would no longer be applicable for consumers to file comments "7-10 days prior to the filing's taking effect". As a result, it would make sense for the above sentence to be deleted or modified to explain when consumers may file comments.

- Con: There would be no stated standard for when consumers file comments in response to the public notice.

If the Commission accepts the 7 day ACS "notice tariff" proposal, then the Commission should consider whether to delete 3 AAC 53.290(f) in its entirety so that newspaper notice would no longer be required. Newspaper notice is problematic given a 7 day effective date. In the alternative, the Commission could amend (f) to require newspaper publication as of the date the filing is made with the Commission, as opposed to the current requirement that publication occur within 3 days of the tariff filing.

- **Option 2:** Apply the notice requirement of Section 53.290(f) to "competitive service area".(RC, Staff recommendation)

  This is a housekeeping change if the Commission retains a requirement for 30 day public notice before a tariff filing goes into effect.

- **Option 3:** Change "Alaska Public Utilities Commission" to "Regulatory Commission of Alaska. (ACS, RC, Staff recommendation)

  Required housekeeping change.

Section 3 AAC 53.290(g) – Seven Day Rule for transferring customers.

- **Option 1:** Expand the Seven Day Rule to apply to all orders (GCI, Docket R-02-06 proposal):

  (g) Where all necessary facilities and equipment are in place, a local exchange carrier shall complete **all orders from** [THE TRANSFER OF A CUSTOMER TO] another local exchange carrier **affecting the nature or delivery of service to a customer** within seven working days of receiving a valid order **from the other local exchange carrier transfer** [FOR TRANSFER OF SERVICE.] service.

- **Option 2:** Create a new section 3 AAC 53.295 to place requirements on CLECs that have entered into negotiated or arbitrated interconnection agreements. These requirements refer to timelines for processing installation orders, disconnection of service; filing of forecast of demand data; staffing requirements; treatment of risks associated with under or over forecasts; and compensation for compliance. (ACS, proposed 3 AAC 53.295, **Docket R-02-06**)

- **Option 3**: No change proposed. (ACS and RC in R-03-03, Staff Recommendation).

    - Pro: Changing Section 3 AAC 53.290(g) may premature given that similar and more extensive issues concerning customer transfers policies are before the Commission as a result of the FCC's Triennial Review Order.

Other Miscellaneous Changes

- **Option 1:** Create a new section to allow carriers to restructure their companies at will (ACS, proposed 3 AAC 53.290(f)):

  "All local service providers in a competitive local market are free to structure their companies and business units in any manner not otherwise prohibited by federal, state and local laws. Structural separations of business units will not be required. Local service providers and their affiliates are free to jointly own and operate infrastructure, including networks, switches and other facilities, that may [be] used to provide local service as well as other services. All local service providers are free to exercise joint and common use of all resources, including staff resources, with other affiliated business units."

  See the Tab on "Corporate Restructuring".

j. Section 53.299 - Definitions

Note: Changes to Section 53.299 related to Competitive service area were addressed earlier in this document.

- **Option 1:** Delete the "Anchorage Service Area" definition. (ACS)

  This may be a housekeeping change if the regulations no longer refer to Anchorage. Certain of the RC proposals reference Anchorage.

- **Option 2:** Update the definition of "commission' to mean the "Regulatory Commission of Alaska." (ACS, RC).

  Necessary housekeeping change.

- **Option 3:** Delete the definition of "dominant carrier". (ACS, RC)

  Would depend upon options taken earlier in this document.

  Note: It may be beneficial to retain references to "dominant" carrier regulation even if no dominant carriers exist in the market in the event circumstances change and a dominant carrier re-emerges in the market.

- **Option 4:** Define "nondominant carrier" as a local carrier providing service in a "competitive local exchange market"(ACS)

  - Con: This definition would appear inconsistent with other portions of the ACS proposal that defines nondominant carriers:

    - The incumbent becomes non-dominant when a CLEC or any other CETC "commences to offer service" in a "service area". (proposed 3 AAC 53.220(a))
    - The incumbent becomes non-dominant when a CLEC or CETC offers service to a "majority of consumers" in a "service area". (proposed 3 AAC 53.220(b))

  - Con: This option should only be taken if the Commission no longer regulates carriers based on dominant and nondominant status.

- **Option 5:** Delete the definition of "nondominant carrier" (RC).

  Would depend upon options taken earlier in this document.

- **Option 6:** Redefine "Incumbent carrier" to mean "the first carrier (or its successor) certificated to provide local exchange telephone service within a competitive service area." (Staff)

Other LEC Market Issues: Restructuring Freedom

Issues:

Should the Commission amend its rules to allow a greater degree of structural freedom?

Option 1 (ACS): Permit all "local service providers" in a competitive local market to structure their companies and business units in any manner not otherwise prohibited by federal, state and local laws. Eliminate structural separation requirements. Permit local service providers and their affiliates to jointly own and operate infrastructure, including networks, switches and other facilities, which may be used to provide local service as other services. Permit local service providers to exercise joint and common use of all resources, including staff resources, with other affiliated business unites.

- Pro: May promote more equitable treatment of all carriers.
- Pro: Could reduce cost which is passed through to consumer rates.
- Con: Proposed change may be beyond the explicit scope of investigation required by HB111
- Con: May make it difficult or impossible to track costs between regulated and non-regulated business units
- Con: Increases the means by which a carrier may cross-subsidize unregulated operations through regulated operations.
- Con: Would allow unregulated operations to profit from investments made in regulated operations.
- Con: May lead to double recovery, unless carriers reduced regulated rates to recognize sharing of costs between business units.
- Con: May increase risk to rate payers if regulated investment may be used as collateral (through "sharing") for non-regulated business unit loans and business ventures.

Option 2 (Staff Recommendation): No change at this time.

- Pro: These issues are beyond the explicit scope of HB111.
- Pro: Structural separations issues are complex, the consequences of changing can be significant (e.g., cross subsidization of regulated and nonregulated services)
- Pro: Issues may not receive thorough scrutiny in a fast-tracked docket.
- Con: May delay adoption of some structural separation rules which could save providers money or lower cost to consumers.

Option #3: *Apply the modified ILEC/IXC restrictions adopted by Order U-99(5) to the ACS companies.*[1] *For example, the Commission would remove the following restrictions that are currently imposed on ACS-LD and its affiliates that (1) prohibit the ACS LEC's from use their assets or employees for the benefit of their IXC affiliate; (2) require the ACS LECs and their IXC affiliate to have separate employees and provide any administrative, financial, legal, accounting engineering, research, development or similar services be provided on a strict arm's length basis; and (3) prohibit the ACS LECs and their IXC affiliate from maintaining each other's facilities unless the same arrangements are offered to unaffiliated providers. The Commission would retain the following restrictions: (1) the ACS LECs assets may not be used directly or indirectly as collateral for financing their IXC affiliates operations; and (2) the ACS LECs and their IXC affiliate cannot jointly own or purchase any transmission or switching facilities.*

Pro: All ILECs with IXC affiliates are subject to the same rules regarding the structural freedom of its affiliates.
Con: The IXC operations of all other ILECs are relatively minor in scope at this time. The scope of the ACS-LD operations may suggest that different provisions should apply to the ACS companies.
Con: No comments have been filed on this matter to date other than general comments to promote parity between carriers operating in the same market.

If the Commission takes Option 3, then it must also determine whether it should adopt a regulation specifying these structural rules for ILEC/IXC affiliates, or alter its structural rules through Commission order. The FCC has opened WC Docket 02-112 and CC Docket 00-175 to review separate affiliate requirements that have been imposed on Bell Operating Companies. Given the existing FCC inquiry on bundling issues and the fact that existing bundling policies were set by Commission order rather than regulation, it may be advisable to amend the bundling policy through Commission order. This would allow the Commission to amend its bundling policy without going through the formal rulemaking process.

[1] During the application proceeding for IXC affiliates of ILECS, the Commission imposed several restrictions on the operations of the ILEC/IXC affiliates. The restrictions were intended to ensure that incumbent LECs did not use their position as the first point of consumer contact and the monopoly owner of local exchange facilities to engage in anticompetitive behavior. A Docket (U-99-1) was subsequently opened to address these restrictions. In Order U-99-1(5), dated June 18, 1999, the Commission accepted a stipulation entered into by several ILECs that had IXC affiliates.

LOCAL COMPETITION REGULATION CHANGES - BUNDLING

R-01-2/R-02-6

I. Background

The term "bundling" has been applied by the Commission to define the practice of selling local exchange and intrastate interexchange service as a single package. The bundling restriction was one of numerous restrictions imposed on incumbent LECs as the companies applied to also provide intrastate interexchange service. ACS Long Distance (ACS-LD) is one of several IXC affiliates of incumbent LECs who were subjected to the bundling restriction in its certification proceeding.[1] The restrictions were intended to ensure that incumbent LECs did not use their position as the first point of consumer contact and the monopoly owner of local exchange facilities to engage in anticompetitive behavior.[2]

Docket U-01-2 was opened in conjunction with the Commission's investigation in Dockets U-00-155 and U-00-156. Those dockets addressed tariff proposals filed by ACS-LD to introduce the Infinite minutes Intrastate Plan, the Infinite Minutes Combined Plan, and the Infinite Minutes Option A Promotion,[3] a group of tariff proposals that each involved the bundling of local exchange and intrastate interexchange service. Docket R-01-02 was opened allow the Commission to review the bundling policy in for interexchange carriers operating in the Anchorage market.[4] Comments and reply comments were received in Docket R-01-02 from ACS, Alaska Telephone Association (ATA), AT&T Alascom, GCI, the Rural Coalition,[5] and United Utilities, Inc. (UUI). ACS also filed supplemental comments and additional comments. Through Docket R-02-06, the Commission expanded its bundling investigation to consider what limitations, if any, should be

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[1]See Order U-96-40(3), dated November 15, 1996. Other restrictions included that (1) ACS-LD was required to maintain separate books and records for its IXC operations, (2) ACS-LD and ACS-AN would be completely separate, with separate employees, (3) ACS-AN customer services representatives would maintain strict neutrality when presubscribing ACS-AN customers to long distance carriers, and (4) ACS-LD's access to customer proprietary network information would be restricted except to the extent it is available to other unaffiliated carriers. In addition, ACS-LD and ACS-AN were prohibited from jointly owning or purchasing any transmission or switching facilities, and ACS-AN's assets could not be used, directly or indirectly, as collateral for financing of ACS-LD's operations. See Order U-96-40(1), dated September 10, 1996: Order U-96-40(3), dated November 15, 1996.

Other IXC application proceedings where the above restrictions - including bundling - were imposed include (find list)

[2]See Order U-96-40(3), Appendix, p. 11

[3]Those rate plans were filed under TA41-476 and TA42-476.

[4]See Order U-00-155(6)/U-00-156(5)/U-01-41(1)/R-01-2(1), dated April 23, 2001.

[5]The Rural Coalition is a group of rural ILECs, and is comprised of ?????

placed on a carrier's ability to sell local services as a bundle with non-local services in all competitive local markets.[6]

All commentors agree that ILECS currently are prohibited from bundling local and intrastate long distance service. GCI states that carriers are allowed to bundle local and other services with one exception – ILECs cannot bundle local and interexchange service.[7] Commission Staff position has been that no carriers are allowed to bundle local exchange and intrastate interexchange service, but for differing reasons. The ILEC prohibition on bundling is a result of The Commission imposing bundling restrictions on the certificates of the ILEC's IXC affiliate, while the prohibition against CLEC bundling is attributable to the Commission's policy to require statewide averaging of long distance services.

The comments are mixed regarding whether the Commission should allow bundling of local and long distance services in competitive local exchange markets. ACS is the strongest supporter of allowing bundling of local and long distance services in Anchorage and other local competitive markets. AT&T Alascom and GCI support relaxing the bundling requirement, but with qualifications. The Rural Coalition does not support lifting the bundling restriction. UUI argues that if bundling will be allowed in urban areas, regulations should ensure that long distance rates be specified in the bundle and available statewide.

There are two key issues central to the bundling argument for local competitive markets. First, does competition and the public interest warrant lifting the ILEC bundling restriction, and if so, what is the standard to determine if markets are sufficiently competitive to allow bundled service offerings. Second, should the Commission continue to require geographic rate averaging of interexchange rates if bundling is allowed. While the parties agree that unrestricted bundling would result in a rate preference in favor of urban consumers, ACS argues that the Commission should declare that bundling does not constitute an *unreasonable* preference. ACS also argues that geographical rate averaging rules should be waived with regard to bundling.

In addition, some commentors have requested that the Commission institute an investigation of bundling practices in noncompetitive, rural locations. These commentors seek to have the Commission examine the bundling of local exchange and intrastate interexchange service by both CLECs and ILECs, as

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[6]*See* Order R-02-06(1), dated November 21, 2002.

[7]Confusion on this issue may be due to the fact that some CLEC bundling tariff proposals have been allowed to go into effect. See GCI local exchange (Direct Advantage Local Plan, Tariff Sheet No. 157.11), GCI's intrastate interexchange tariff (Business Cents plan, Tariff Sheet No. 104.31-104.2; Basic Bundle Plan, Tariff Sheet No. 104.37), and AT&T Alascom's local exchange service tariff (Alascom Local Residential Mileage Rewards Plan, Tariff Sheet No. 184; Alascom Joint Vendor Promotion #5, Tariff Sheet No. 183.2).

well as the bundling of local exchange and nonregulated services by ILECs and CLECS. While issues regarding bundling in noncompetitive areas will be mentioned below, these issues do not need to be resolved in conjunction to HB 111 because the proposals do not affect competitive markets and are not otherwise raised by HB111. However, various types of bundled offerings (local and intrastate interexchange, local and nonregulated) in noncompetitive, rural areas may raise important policy issues that could be determined after a review of comments from all interested parties. Rules addressing analysis of bundling local/intrastate interexchange services and local/nonregulated services could be deferred to a docket addressing local exchange market rules in noncompetitive areas.

It should be noted that the Federal Communications Commission (FCC) currently has a pending docket on bundling issues.[8] Among the issues that may be resolved in that proceeding is whether the practice of bundling local and long distance service is a violation of the Communications Act. Depending on the FCC's resolution of that issue, the RCA may need to revisit the issue of bundling local and long distance services in the future.

II. Issues

A. Should the bundling of local exchange and intrastate interexchange service be allowed in competitive service areas, and if so, should any restrictions be imposed on the practice of bundling local exchange and intrastate interexchange services in locations where such bundling is allowed?

Legal Cites

HB111, Policy 2 (rates reductions in competitive areas)
In determining whether a carrier is the dominant carrier for the purposes of setting rates, it is not relevant that the carrier in a competitive market is the incumbent carrier.

HB111, Policy 6 (carriers in competitive areas subject to same tariffing standards and regulations)
When the commission approves a carrier's application for a certificate to provide competitive local exchange telecommunications service in an incumbent local exchange carrier's service area, in areas where the commission has determined that there in areas in areas where the commission has determined there is competition among carriers, the incumbent local exchange carrier shall be subject to the same retail tariffing standards and regulations as the new carrier, but the

[8] *See Petition for Declaratory Ruling in the United States District Court for the Middle District of Florida, Tampa Division*, (Petition), filed August 9, 2002.

incumbent local exchange carrier remains the carrier of last resort in the relevant area until the commission orders otherwise.

Existing state regulation (geographical rate averaging):
3 AAC 52.370(a): The retail rates for message telephone service of each interexchange carrier must be geographically averaged. If rates vary by the distance over which calls are placed, the rate for each mileage band must be equal to or greater than the rate for the next shorter mileage band. Discounts, if offered, must be available at all locations in the state where the carrier offers service.

Existing state statute (discrimination in service):
AS 42.05.301: Except as provided in AS 42.05.306, a public utility may not, as to service, make or grant an unreasonable preference or advantage to any person or subject any person to an unreasonable prejudice or disadvantage. A public utility may not establish or maintain or provide an unreasonable difference as to service, either as between localities or as between classes of service, but nothing in this section prohibits the establishment of reasonable classifications of service or requires unreasonable investment in facilities.

Existing state statute (discrimination in rates):
AS 42.05.391(a): Except as provided in AS 42.05.306, a public utility may not, as to rates, grant an unreasonable preference or advantage to any of its customers or subject a customer to an unreasonable prejudice or disadvantage. A public utility may not establish or maintain an unreasonable difference as to rates, either as between localities or between classes of service. A municipally owned utility may offer uniform or identical rates for a public utility service to customers located in different areas within its certificated service area who receive the same class of service. Any uniform or identical rate shall, upon complaint, be subject to review by the commission and may be set aside if shown to be unreasonable.

Existing federal regulation (Universal Service Principles):
47 U.S.C. 254(b)(3): Access in rural and high cost areas -- Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

1. **Should the bundling of local exchange and intrastate interexchange services be allowed.**

   Option #1: *Allow the bundling of services in competitive areas. (Staff recommendation)*

   Pro: National trend towards bundled service offerings.

   Pro: Bundling allows competitors to provide consumers with improved "one-stop shopping" when obtaining regulated telecommunications services.

   Pro: Competitors offer service outside of RCA's jurisdiction, and the confusing array of service bundles and pricing variations of regulated and nonregulated services make it hard to enforce the prohibition on bundling local and intrastate long distance service (e.g., GCI offers cable TV, interstate long distance, and Internet access via cable modem; ACS-AN offers Internet access, wireless telephone, and interstate long distance; AT&T offers interstate long distance and Internet service). (AT&T Alascom)

   Pro: With proper restrictions, bundling local and intrastate interexchange services may bring cost savings to local exchange customers in competitive areas and interexchange customers throughout Alaska.

   Pro: Carriers may be more willing to provide a rate discount on bundled services than the carrier would be if the services were sold individually.

   Con: Bundling makes it nearly impossible for the RCA to ensure that USF funds are used only for intended purposes unless the revenues received for bundled services must be allocated among individual services. (RC)

   Con: Since the allocated bundled revenues would be less than the unbundled tariff rate, those filing comments in this bundling argue that bundling violates the requirement for statewide averaged long distance rates or makes it difficult for the RCA to enforce the requirement on geographically averaged rates.

   Con: Bundling could obscure the rate-cost relationship and make it difficult for the RCA to ensure LECs or IXCs are not engaging in unfair pricing. (RC)

   Con: Bundling would provide an advantage major facilities-based IXCs (GCI and AT&T) if rural areas were declared competitive and facilities-based IXCs entered the local service market. This advantage may be increased if the IXC were also to obtain ETC status in rural Alaska. First, the larger IXCs have "deeper pockets" and would able to offer higher bundled discounts. Second, some commentors believe that AT&T and GCI could bundle local and long distance at rates not available to the ILEC because of a lack of reasonable IXC resale provisions.

Option #2: Prohibit all bundling of local exchange and intrastate interexchange service

Pro: Easier for RCA to ensure USF funds are used only for intended purpose.

Pro: Bundling violates requirement for statewide averaged long distance rates (unless local/long distance allocations are required to protect geographical rate averaging).

Pro: Easier for the RCA to ensure LECs and IXCs are not engaging in unfair pricing or cross-subsidization of services..

Con: Competitors are not allowed to provide consumers with "one-stop shopping" for regulated telecommunications services.

Con: Some potential cost savings that could be brought to local exchange customers and intrastate long distance customers through bundled offerings may be lost or directed to other customers.

2. How should geographical rate averaging and discrimination issues be addressed?

Option 1: Waive geographical rate averaging requirements and declare that the bundling of local exchange and intrastate interexchange services does not constitute an unreasonable preference (ACS).

ACS proposed regulation (3 AAC 53.290(c))

All local service providers in a competitive market are free to bundle products and services. Bundles may include either a multiple of local exchange products and services or may combine local with non-local products and services including intrastate long distance services. To the extent that local and long distance bundling might conflict with the requirements of 3 AAC 53.370(a), the Commission expressly waives application of this regulation to bundled offers that include a long distance component.

Pro: Removes regulatory impediments to bundling of local exchange/intrastate interexchange service.

Pro: Allows carrier to institute rate packages without regard to discrepancies between rural and urban interexchange rates.

Pro: Shift towards market-based rates.

Con: Shift away from long-standing Commission goal of comparable rates for interexchange rates for urban and rural consumers. Results in interexchange rate differential between urban and rural consumers, conflicting with universal service goals stated at 47 USC 254(b)(3).

Con: If Commission grants the RC's request to allow rural ILECs to deaverage local exchange rates prior to creation of a competitive market, this could result in an even greater differential in total telephone rates (i.e., combined local exchange and interexchange) between urban and rural consumers.

Con: Geographical rate averaging has helped preserve affordable long distance rates in rural areas (GCI Reply, p. 6)

Con: Geographical rate averaging requirements apply equally to ILECs and CLECs, and waiver of geographical rate averaging requirements is not necessary to satisfy HB111.

Con: Results in the Commission declaring there is no unreasonable preference resulting from urban/rural interexchange rate disparity despite existence of urban/rural rate disparity.

Con: Obscures rate-cost relationship and makes it difficult for RCA to ensure LECs are not engaging in unfair pricing. (RC, p. 17)

Con: Bundling without revenue allocation among local exchange and intrastate interexchange affiliates makes it nearly impossible to ensure that USF funds are used only for their intended purpose (i.e., subsidize local exchange service to high cost customers).

Con: Bundling without revenue allocation among local exchange and intrastate interexchange affiliates makes it nearly impossible for Commission to verify RCC revenue reports by affiliates.

Con: Determining the amount of the RCC charge to pass through to consumers in a bundled package may be difficult unless revenue allocation is required - different RCC rates for local exchange and interexchange service.

Con: Presuming the Commission retains jurisdictional separations requirements, ACS approach would make it extremely difficult to accurately allocate revenues from and costs of bundled packages among local exchange and intrastate interexchange affiliate operations.

Con: The potential negative effects of this option (e.g., significant urban/rural toll rate disparities) may be impossible to reverse.

Option 2: *Allow bundling of local exchange and long distance services and require carriers to make long distance services included in the bundle available statewide (GCI).*

Option 2 (UUI Variation): *Allow bundling of local exchange and long distance services, require carriers to make long distance services included in the bundle available statewide at rates specified in the bundle.*

Option 2 (Staff variation): *Allow bundling of local exchange and long distance services, require carriers to make long distance*

services included in the bundle available statewide at rates specified in the bundle. In addition, require carriers that provide services in a bundled package to also provide those services individually (i.e., provide and unbundled alternative). (Staff recommendation)

Pro: Consistent with long-standing Commission goal of comparable rates for interexchange rates for urban and rural consumers.

Pro: Consistent with the universal service goal stated at 47 USC 254(b)(3) (comparable rates for urban and rural consumers).

Pro: Improves parity in treatment between ILECs and CLECs; geographical rate averaging requirements apply equally to ILECs and CLECs.

Pro: Retains rate-cost relationship and enables RCA to ensure LECs are not engaging in unfair pricing. (RC, p. 17)

Pro: Makes it easier for Commission to ensure that USF funds are used only for intended purpose (i.e., subsidize local exchange service to high cost customers).

Pro: Makes it easier for Commission to verify RCC revenue reports by affiliates.

Pro: Presuming Commission retains jurisdictional separations requirement, Commission will be able to ensure that revenues from bundled packages are properly allocated among local exchange and intrastate interexchange affiliate operations.

Con: Maintains regulatory impediment to bundling of local exchange/long distance service.

Con: May limit allowed variations of bundled offerings.

Con: It may be time consuming and at times controversial for the Commission to determine whether a carrier has complied with the requirement to offer its bundled intrastate long distance services at geographically averaged rates.

Con: Requires carriers to limit rate packages to ensure there is no rate discrepancy between rural and urban interexchange rates.

Con: Limits the allowed shift towards market-based rates

The Commission must also determine whether it should adopt a regulation specifying these bundling rules, or alter its bundling policy through Commission order. Given the existing FCC inquiry on bundling issues and the fact that existing bundling policies were set by Commission order rather than regulation, it may be advisable to amend the bundling policy through Commission order. This would allow the Commission to amend its bundling policy without going through the formal rulemaking process.

Should the Commission determine that its bundling policy should be formalized through the adoption of a regulation, Staff proposes the

Commission adopt two regulations – one in the local exchange market rules section (new 3 AAC 53.275) and one in the intrastate long distance market rules section (new 3 AAC 52.372). The regulations should state as follows:

> *All local service providers in a competitive market may bundle local and interexchange products and services. The carrier shall specify separate rates for local and long distance services included in the bundle. Intrastate long distance services included in the bundle must be provided on a statewide basis at rates specified in the bundle, or a comparable service offering must be provided. A carrier shall not limit a customer's purchase options to only bundled services.*

B. How should competitive service areas be defined with regard to bundling rules?

Note: The Commission is concurrently deliberating a definition of "competitive service areas" in Dockets R-03-3. While three commentors in the bundling docket (R-01-2) have commented on the proper definition of "competitive service area", comments in R-01-02 predated the comments filed in docket R-03-3 on the definition of "competitive service area". For that reason, the issue of determining the proper definition of "competitive service area is deferred into Docket R-03-3. For informational purposes, below is an explanation of the three proposals in Docket R-01-2 for the definition of "competitive service area.

Option 1: *Apply "competition trigger/market trigger" test (i.e., once consumers have a choice of carriers) to determine when a market is sufficiently competitive to allow bundling by ILECs. (ACS)*

Option 2: *Apply standard for "sufficiently competitive" (ILEC retail share of less than 65% for 3 consecutive months). (GCI)*

Option 3: *Apply "competitive checklist" to determine when a market is sufficiently competitive to allow bundling by ILECs. (i.e., develop a competitive checklist similar to that used by the FCC at Section 271 of the Telecommunications Act (AT&T Alascom)*

C. Should bundling by CLECs be allowed in locations that are not sufficiently competitive to relax the bundling restriction imposed on ILECs?

Note: This issue involves noncompetitive areas that are not within the purview of HB111, and thus do not need to be resolved within the abbreviated timeline provided by HB111. In addition, there were limited comments filed in Docket R-01-2 on issues regarding imposing bundling restrictions on CLECs in noncompetitive service areas. The Commission could refer issues involving bundling by CLECs in noncompetitive service areas to a new rulemaking docket where the Commission can reach a determination based on a fully developed record. The Commission could also use that docket to examine issues related to the bundling of nonregulated and regulated services.

1. Should CLECs be prohibited from bundling of local exchange and intrastate interexchange service in areas that are not "sufficiently competitive" to relax the bundling restriction imposed on ILECs?

2. Should CLECS be allowed to bundle local exchange services with nonregulated services in competitive and/or noncompetitive service areas?

D. Should the Commission consider any restrictions on the bundling of regulated local exchange service with nonregulated services such as cable TV.

Note: This issue is not necessarily within the purview of HB111 – the Commission currently does not impose any restrictions on the bundling of local and regulated services - and thus does not need to be resolving within the abbreviated timeline provided by HB111. In addition, there were limited comments filed in Docket R-01-2 on issues regarding imposing restrictions on the bundling of regulated and nonregulated services. The above issue concerns competitive parity between large carriers with multiple nonregulated affiliates and smaller carriers with few (if any) nonregulated affiliates. The Commission could refer the above issue to a new rulemaking docket that examines the following issues: (1) the bundling of nonregulated and regulated services, and (2) the bundling of local and intrastate long distance service by CLECs in noncompetitive service areas.

Wholesale Pricing Issues

Section 53.250 – LEC Wholesale Service and Rates

I. Relevant Legal Cites:

- **TCA Section 251(c)** ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS- In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties: ... (4) RESALE- The duty: (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

- **TCA Section 252(d)** ...(3) Wholesale prices for telecommunications services.--For the purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

- **TCA Section 251(f)** EXEMPTIONS, SUSPENSIONS, AND MODIFICATIONS: (1) EXEMPTION FOR CERTAIN RURAL TELEPHONE COMPANIES: (A) EXEMPTION- Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

II. Issue:

1. Should the Commission modify its LEC Wholesale Service and Rates provisions (3AAC53.250)?

- **Option 1:** Should the Commission include a provision that an incumbent local exchange carrier operating under the rural exemption is not required to offer its services for resale at wholesale rates to other carriers? (RC)
  - Pro: Removes any confusion in 3 AAC 53.240 about whether an incumbent LEC is required to resell services at a discount when operating under the rural exemption.
  - Con: Federal law may provide adequate guidance on this issue.

- **Option 2:** Only require mandatory resale of services at retail rates (ACS).
  - Con: It appears to conflict with federal statutes and rules that require incumbent local exchange carriers (that are not operating under the rural exemption) to offer resale to CLECs using an avoided cost standard. TCA sections 251(c)(4) and 252(d)(3).

- **Option 3:** Eliminate 3 AAC 53.250 (Staff Recommendation).
  - Pro: With respect to the incumbent it may be unnecessary to keep in state regulations because federal statutes and rules already address wholesale requirements of incumbents.
  - Pro: Our regulations to the extent they are not the same as federal rules have caused confusion and may be in conflict (e.g., "Services must be offered for resale at wholesale rates to the extent determined appropriate in view of the facilities and general service offerings of the local exchange carrier.") When this regulation was first implemented, Staff was often asked if it required carriers to file intrastate tariffs.
  - Con: Elimination of section would prevent the Commission from requiring a significant competitor to offer services at wholesale rates to other LECs.

- **Option 4:** Require certain CLECs to offer reciprocal services and UNEs at rates, terms, and conditions at least as favorable as those found in their interconnection agreement with the ILEC (ACS).
  - Pro: May, in some instances, promote competitive neutrality if the CLEC is a significant competitor with its own network facilities in addition to leased UNEs.

- Con: Would appear to conflict with federal rules which prohibit application of the UNE resale provisions of the Act to CLECs.[1]

[1] 47 CFR 51.223(a): "A state may not impose the obligation set forth in section 251(c) of the Act on a LEC that is not classified as an incumbent LEC as defined in section 251(h)(1) of the Act, unless the Commission [FCC] issues an order declaring that such LECs or classes or categories of LECs should be treated as incumbent LECs." Under Section 251(h), the FCC can declare a CLEC to be an ILEC if: (a) such carrier holds a market position similar to the ILEC, (b) such carrier has substantially replaced the ILEC, and (c) such treatment is consistent with the public interest, convenience, and necessity.

LEC UNE Interconnection in Competitive Markets

I. Relevant Legal Cites

- TCA Section 251(c) Additional Obligations of Incumbent Local Exchange Carriers. In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties: ...(3) Unbundled access.--The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.
- **TCA Section 252(d) Pricing Standards.** (1) Interconnection and network element charges.-- Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--(A) shall be—(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and (ii) nondiscriminatory, and (B) may include a reasonable profit.
- **47 CFR 51.505 [Not included here due to length.]**

II. Issue:

1. **Should the Commission adopt specific rules regarding unbundled interconnection in local markets? And if so, what should those requirements include?**

- **Option 1** (GCI): Rates for unbundled network elements shall be determined by the Commission based on the Total Element Long Run Incremental Cost methodology, as defined by 47 CFR 51.505. The models and analysis used to determine unbundled network element rates and charges shall reflect network components that are sized, using fill factors consistent with an efficiently-operating firm, for the current level of demand with sufficient excess capacity to accommodate administrative spare, inoperative components, and short-term growth; these fill factors may or may not correspond to

those that are found at present in the existing network. Definition of "fill factor": A fill factor is the ratio of the amount of used capacity to total available capacity of a given telecommunications network component.

- Pro: The first sentence of the GCI proposed regulation is a simple requirement that UNE rates should be based upon FCC regulations.
- Pro: Attempts to reply to the HB111 Policy 7 on fill factors.
- Pro: GCI's proposal for fill factors based upon current demand is based upon FCC TELRIC design standards.
- Con: The docket in which the FCC developed its standard was for the purposes of determining universal service compensation not UNE pricing.[1]
- Con: The FCC uses a slightly different description of fill factor: "The percentage of the total usable capacity of cable that is expected to be used to meet current demand is referred to as the cable fill factor." FCC 99-304, Para. 186.
- Con: An efficient carrier would not necessarily size its network and fill factor based on "current" demand and "short-term" growth. A carrier might instead base its network and fill factor so as to achieve efficient "long-term" costs. This may be more consistent with the TELRIC philosophy.
- Con: Commission will not be able to adopt TELRIC on an "as amended" basis meaning that the Commission will have to update state regulations each time there is a change in federal rules (although Commission could state in adoption order that carrier is free to request waiver based upon revised federal rule).

- **Option 2** (ACS): (a) Unbundled network element prices will be determined in conformance with the federal Telecommunications Act of 1996, the rules of the Federal Communications Commission adopted thereunder, and any other applicable state law. (b) In addition to the requirements prescribed by (a) of this section, the following additional guidelines will apply to the pricing of unbundled network elements:
  1. In selecting a pricing model for unbundled network elements, the Commission will use the FCC's "hypothetical network standard" and will presume the existence of the most efficient technology actually deployed by the providing company.
  2. The Commission will ensure that the unbundled network element pricing model conforms to industry standard design and construction criteria and adheres to all applicable state and local laws.

[1] Tenth Report and Order, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, "We caution parties from making any claims in other proceedings based upon the input values we adopt in this Order." FCC 99-304, Para. 32. [change font to aerial]

3. Unbundled network element prices will be based on the reasonably anticipated forward looking cost of the company providing the network elements.
4. Reasonably anticipated forward looking costs, including but not limited to the cost of labor and materials, will be determined by using the providing company's current actual cost adjusted for future changes.
5. In setting prices for unbundled network elements, the Commission will use fill factors that conform to industry standard design and construction criteria and adhere to all applicable state and local laws. Fill factors should reflect a reasonable projection of actual total usage of the elements in question.
6. Unbundled network element pricing will include a depreciation component that is based on the actual plant lives of the providing company. Actual plant lives will reflect the impact of technological change and the effects of competition. It is presumed that plant lives in competitive markets will be shorter than the ranges prescribed by the FCC for interstate services. Accelerated depreciation in competitive markets is deemed reasonable.
7. In evaluating the cost of capital component for unbundled network element pricing, the Commission will give consideration to the additional risks confronted by a providing company that operates in a competitive environment. It is presumed that application of a competitive risk premium will result in a higher cost of capital than prescribed by the FCC for interstate services.

- Pro: Provides guidance in many areas of past dispute.
- Con: Guideline (b)(1), above, would reestablish in regulation policies that this Commission has previously rejected based on the Commission's legal interpretation of federal law. U-96-89(30). Specifically, guideline (b)(1), is inconsistent with the FCC's TELRIC standard because it would base forward looking prices on a network design that uses the most efficient technology "actually deployed" rather than on the most efficient technology "currently available" as required by 47 CFR 51.505(b)(1). The FCC's authority to require use of its version of TELRIC, including a hypothetical network using the most efficient technology currently available has been upheld by the U.S. Supreme Court in *Verizon v FCC*.
- Con: ACS provides very little support for its proposed rule that 'unbundled network element pricing model conforms to industry standard design and construction criteria and adheres to all applicable state and local laws'. This proposed rule is vague and the implications are unclear. ACS provides no references to which industry design standards it believes should be codified or how to

address potential conflicts between industry design standards and TELRIC design standards. This proposed rule would also seem to suggest that the Commission give preference to state and local laws over federal law in the event of a conflict. Staff believes that in some cases there may be good reason to incorporate local planning requirements into model design (for example a prohibition on aerial cabling in certain areas); however a blanket rule of this nature is unnecessary and may lead to increased litigation as carriers debate the meaning and enforceability of the provision.

- Con: The proposal b(4) to use the company's "current actual cost adjusted for future changes" would not appear to comply with federal TELRIC standards. For example, the type and cost of switching equipment purchased by an incumbent a number of years ago, even after adjustment for inflation, might not accurately reflect what an efficient carrier would purchase today given the rapid changes in technology experienced by the industry.
- Con: Proposed guideline (b)(6) above is inconsistent with the recent decision of the FCC.[2] The FCC stated that the regulatory lives prescribed by the FCC in 1994 and 1995, and modified in 1999[3], should be used for purposes of calculating UNE prices. The FCC further stated that the low end of the "safe harbor" range prescribed by the FCC represent the FCC's most recent assessment of the forward-looking asset lives for each accounts. The FCC also stated that the low end of the safe harbor is consistent with the competition and technology assumptions required under the TELRIC rules.
- Con: The presumption (in (b)(6) above) that plant lives in competitive markets will be shorter than the ranges prescribed by the FCC is inconsistent with federal requirements that accelerated depreciation must be reasonably supported[4].
- Con: Adoption of ACS' proposed rules would be controversial because they are generally vague, poorly supported, and in many cases appear to conflict with federal law.

- Option 3 (Staff): Rates for unbundled network elements shall be determined by the Commission based on the Telecommunications Act of 1996 and the unbundled network element pricing standard established by the Federal Communication Commission and codified in 47 CFR 51.505. The Commission will use fill factors that reflect a

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[2] Memorandum Opinion and Order, CC Dockets No. 00-218 and 00-251, Para. 112. DA 03-2738.

[3] *See* Simplification of the Depreciation Prescription Process, CC Docket No. 92-296, Second Report and Order, 9 FCC Rcd 3206 (1994); Simplification of the Depreciation Prescription Process, CC Docket No. 92-296, Third Report and Order, 10 FCC Rcd 8442 (1995). The FCC modified the range for digital switching in 1999. *See* Biennial Review Depreciation Order, 15 FCC Rcd at 247-48, para. 13.

[4] *See* Triennial Review Order, para. 690.

reasonable projection of total usage of the elements in question during a reasonable measuring period. The Commission may use depreciation rates, including accelerated depreciation, that differs from those developed for other state ratemaking purposes.

- Pro: The first sentence should be non-controversial. It simple references the federal regulation that we are required to following in developing UNE rates.
- Pro: The second sentence addresses the Legislature's requirement that the Commission specifically address the application of fill factors.
- Pro: ACS proposes a fill factor regulation that incorporates industry standard design and construction as well as adherence to state and local laws. GCI proposes a fill factor standard used by the FCC in developing a TELRIC model for Universal Service compensation in which the FCC specifically rejected the arguments of LECs that fill factors should reflect the industry practice of building distribution plant to meet ultimate demand.[5] However, while it is inescapable that the FCC preferred current demand for USF purposes[6] it does not follow that current demand must be used in establishing UNE rates. The FCC UNE pricing regulations do not specifically address fill factors nor do they state a preference for either current or ultimate demand. We do note however that the FCC UNE pricing regulations refer to a "reasonable measuring period" when addressing the demand to use in calculating a UNE rate.[7] We also note that the FCC regulation uses the phrase "is likely to provide" which could be interpreted to suggest a projected demand will be used. When considered together these phrases could reasonably be interpreted to permit the Commission to use fill factors based upon demand that is neither strictly current nor ultimate, but rather a reasonable middle ground.
- Pro: Provides the Commission with flexibility in interpreting areas of TELRIC pricing that are not clearly specified by the FCC.

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[5] FCC 99-304, para. 199.

[6] "...we find that basing the fill factors on current demand rather than ultimate demand is more reasonable because it is less likely to result in excess capacity, which would increase the model's cost estimates to levels higher than an efficient firm's costs and could potentially result in excessive universal service support payments." (underline added) Para. 200.

[7] "The forward-looking economic cost per unit of an element equals the forward-looking economic cost of the element, as defined in ... 51.505, divided by a reasonable projection of the sum of the total number of units of the element that the incumbent LEC is likely to provide to requesting telecommunications carriers and the total number of units of the element that the incumbent LEC is likely to use in offering its own services, during a reasonable measuring period." (underline added) 51.511(a)

- Con: Proposed language does not provide a level of guidance on the issue of fill factors that is as detailed as the GCI or ACS proposals.[8]

[8] The following footnote from the FCC *Inputs Order* is instructive of the complexity of this particular fill factor issue:

> We note that the actual fill factor may be lower than the fill factor used to design the network (sometimes referred to as administrative fill), because cable and fiber are available only in certain sizes. For example, assume a neighborhood with 100 households has a current demand of 120 telephones. Dividing the 120-pair demand by an 80 percent administrative fill factor establishes a need for 150 pairs. Cable is not sold, however, in 150-pair units. The company would purchase the smallest cable that is sufficient to provide 150 pairs, which is a 200 pair cable. The fill factor that occurs and is measurable, known as the effective fill, would be the number of pairs needed to meet demand, 120 pairs, divided by the number of pairs installed, 200 pairs, or 60 percent. FCC 99-304, footnote 749.

DEPRECIATION REGULATION

R-03-03

I. Background

In response to the Legislature HB111, the Commission opened Docket R-03-03 to review a variety of changes to telecommunications regulations, including adoption of new depreciation regulation. Alascom, Inc. d/b/a AT&T Alascom (Alascom), Alaska Communications Systems (ACS)[1], GCI Communications Corporation (GCI), and the Rural Coalition (RC)[2] filed initial and reply comments and proposed depreciation regulations.

II. Relevant Legal Cites:

- HB111 Policy 5: "any method of depreciation used by the commission shall consider the actual useful life of depreciated equipment and facilities."

- AS 42.05.471. Depreciation rates and accounts:

  (a) To provide for the loss in service value of its property, not restored by current maintenance, a utility shall charge adequate, but not excessive, depreciation expense for each major class of utility property used and useful in serving the public. From time to time the commission shall determine the proper and adequate rates of depreciation for each major class of property of a public utility. The commission shall accept rates of depreciation and depreciation accounts prescribed and maintained under regulations of a federal agency or the terms of a bond ordinance. The commission shall determine and allow depreciation expense in fixing the rates, tolls, and charges to be paid for the services of a public utility.

  (b) The commission is not bound in rate proceedings to accept, as just and reasonable for rate-making purposes, estimates of annual or accrued depreciation established under the provisions of this section, or to

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[1] ACS of Anchorage, Inc.; ACS of Fairbanks, inc.; ACS of Alaska, Inc.; ACS of the Northland, Inc. and ACS Long Distance, Inc.

[2] For purposes of this docket, RC represents Interior Telephone Company, Mukluk Telephone Company, Ketchikan Public Utilities, Arctic Slope Telephone, Matanuska Telephone, OTZ Telephone Cooperative, Summit, Copper Valley, Bristol Bay, United Utilities, United-KUC, BushTel and Nushugak Telephone Cooperative.

allow annual or accrued depreciation on utility property directly or indirectly contributed by customers or others.

III. Depreciation Issues (non-UNE related)

Only the RC has developed an extensive regulations proposal while GCI and ACS have suggested regulations on particular issues. Staff focused its analysis on the proposal of RC and will only integrate, where appropriate, the proposals by ACS and GCI.

1) Should the Commission develop rate, life, or net salvage range tables to simplify the depreciation process?

Option 1: Accept the RC proposal to adopt a rate table:

3 AAC Section 53.XXX(b) Simplified depreciation rate changes:

(b) Simplified depreciation rate changes. If a local exchange carrier selects depreciation rates from within the approved ranges developed by the Commission for any or all of its property accounts, the carrier's selected depreciation rates may go into effect upon written notice to the Commission.

(c) Other depreciation rate changes. Any local exchange carrier requesting a change in depreciation rates not otherwise covered by (a) or (b) must obtain Commission approval. Any such change in depreciation rate shall be based on actual useful life of depreciated equipment and facilities. (RC as proposed in comments)

- Pro: This option provides the simplest means of developing a depreciation rate since a utility would simply look up the information in a table.
- Con: During the hearing, the RC corrected its proposed regulation and stated that the pre-approved table it was referring to should be a life ranges table (similar to the table developed by the FCC), and not depreciation rate ranges table.
- Con: LECs cannot select a depreciation rate that is within the table if the table only provides for life ranges.
- Con: It is not practical to develop a table of depreciation rate ranges and use it as a reference in approving remaining life depreciation rates. The computation of a remaining life depreciation rate relies on three variables: book reserve, estimated net salvage and estimated average remaining life. Each LEC would have different values for each of these parameters.
- Con: The Commission will have to develop a depreciation rate table.
- Con: If an LEC will propose a change in its depreciation rate and it is within the pre-approved lives table, the LEC may implement the

depreciation rate without Commission approval, even if the rate were unreasonable when applied to that utility.

- Con: This proposal might not be consistent with HB111 as the actual useful life of depreciated equipment and facilities for the specific utility would not be considered by the Commission when allowing the utility to select its depreciation rate.

Option 2: Revise the RC proposal to refer to lives and net salvages instead of rates: (Staff recommendation)

(b) Simplified depreciation rate development. A local exchange carrier may employ depreciation projection lives and net salvage levels from within the approved ranges developed by the Commission for any or all of its property accounts for purposes of developing intrastate depreciation rates. Depreciation rates developed using the approved ranges must be submitted for Commission approval.

(c) Other depreciation life or net salvage changes. Any local exchange carrier requesting a depreciation life or net salvage not otherwise covered by (a) or (b) must obtain Commission approval.

(d) Any change in depreciation rate shall be developed after consideration of the actual useful life of depreciated equipment and facilities.

- Pro: Parties at hearing generally supported use of a life table and proposed ways to develop such a table. GCI agreed to the idea of adopting the FCC lives, except for some accounts. ACS supports the idea of a workshop to develop a lives table but it did not say if it supported the FCC table.

- Pro: Use of a life table and net salvage table would significantly reduce the costs of developing and reviewing depreciation rates.

- Pro: Carriers would no longer need to provide data in support of their projection life estimates and net salvage estimates.

- Pro: Using lives in place of rates recognizes that remaining life depreciation rates cannot be directly compared from utility to utility as rates should vary depending upon the level of reserve. Put another way, two otherwise identical companies should have different remaining life depreciation rates depending upon how much depreciation expense they had already collected.

- Pro: Using lives in place of rates better ensures that the depreciation rate employed by the utility will comply with AS 42.05.471.

- Con: It is not clear whether using tables of ranges complies with HB111 as the Commission has technically not considered the actual useful life of depreciated equipment and facilities for the specific utility involved.

- Con: Carriers would still need to provide support (but to a lesser detail) for the proposed depreciation rates developed by using the life table data.

- Con: The Commission would still be required to review the depreciation rate to ensure that the utility developed appropriate rates based on the life and salvage table data.

Option 3: No table based regulation.

- Pro: The Commission doesn't have to develop a life table.
- Pro: The Commission has already been using the FCC life range table as a guideline in reviewing depreciation rates.

2) Should the Commission adopt a non-table based approach to comply with HB 111?

Option 1: Develop depreciation rates as proposed by GCI:

A telecommunications carrier proposing to establish depreciation rates for any purpose shall include in its proposal an analysis of the actual service life of equipment and facilities in service and of any equipment and facilities retired in the previous four years. In establishing depreciation rates for a carrier, the Commission will consider the actual service life of equipment and facilities either in service or retired in the previous four years, including the analysis submitted by the carrier and any similar analysis submitted by any other party.

- Pro: Provides guidelines for the Commission in approving depreciation rates and identifies the information that would be required from the LECs, at a minimum, in support of their proposed depreciation rates, as well.

- Pro: Incorporates the HB111 Policy No. 5 statement that any method of depreciation used by the Commission shall consider the actual useful life of depreciated equipment and facilities.

- Con: The proposed guidelines might not be appropriate. Others in this proceeding advocate that when setting depreciation rates the Commission should consider the impact of technological change, the effects of competition, whether the proposed depreciation rates promote deployment of new technology and infrastructure, as well as any company plans, and other studies provided by the local exchange carrier.

- Con: This option would apply when establishing depreciation rates "for any purpose", including development of Unbundled Network Element Rates. Use of historical data to develop UNE depreciation rates as proposed in Option 1 maybe contrary to federal policy and law.

- Con: The four year data requirement has not been demonstrated to be a commonly used or normal method for developing depreciation rates.

- Con: It is unnecessary to require the Commission to consider evidence presented in a proceeding ("the Commission will consider...") as this is normal practice.

Option 2: Revise the GCI proposal by adding additional factors that must be considered when developing rates:

A telecommunications carrier proposing to establish intrastate depreciation rates shall include in its proposal an analysis of the actual service life of equipment and facilities in service and of any equipment and facilities retired in the previous four years. In establishing depreciation rates for a carrier, the Commission will consider whether the new depreciation rates promote deployment of new technology and infrastructure, as well as any company plans, technological developments, and other studies provided by the local exchange carrier, *including the actual service life of equipment and facilities that are either in service or retired.*"

- Pro: This option attempts to address some of the defects of the GCI proposal and to respond to some of the comments made on this matter.

- Con: This option is fairly complex and requires extensive review of even simple depreciation filings.

Option 3: The RC proposes the following when developing depreciation rates (if the utility wishes not to use the proposed depreciation tables):

(c)(1) Consideration. In making its approval decision under this section, the commission shall consider whether the new depreciation rates promote deployment of new technology and infrastructure, as well as any company plans, technological developments, and other studies provided by the local exchange carrier.

(c)(2) Depreciation method. Depreciation rates may be based on any reasonable method of depreciation; however the commission may consider upon its own motion an alternative method of depreciation on a case-by-case basis.

(c)(3) Content of petition. Any request made under this section must include the following information:

(A) For each property account or subaccount for which depreciation rate change is proposed:

(i) the plant in service and the accumulated depreciation as of the requested effective date for the proposed depreciation rates;
(ii) a comparison of current depreciation rates with the proposed rates;
(iii) a comparison of both existing and proposed service lives; and
(iv) reasons for the proposed changes, including estimated useful life, remaining life, and net salvage value;

(B) The requested effective date of the changes; and

(C) The change in annual depreciation expense that would result from adoption of the proposed depreciation rates, expressed both as a dollar amount and as a percentage of current depreciation expense.

- Pro: Provides guidelines for the Commission in approving depreciation rates and identifies the information that would be required from the LECs, at a minimum, in support of their proposed depreciation rates, as well.

- Con: The proposed guidelines might not be appropriate.

- Con: Segments of this proposal appear out of balance as they focus only on a limited list of considerations for reviewing depreciation rates.

For example, the proposal does not mention the effect of depreciation changes on customers as a relevant consideration. As another example, studies "provided by the local exchange carrier" (but not by other parties) are listed as a valid consideration.

- Con: The "Consideration" section of this proposal would appear unnecessary and its intent is unclear. It is unnecessary as the Commission is already obligated to base its decision on the record in a proceeding. This proposal's intent is unclear as it implies the Commission should do more than simply base its decision on the record.

- Con: It is unclear from the "Depreciation method" what is meant by an "alternative method of depreciation". Alternative to what? Does this place limit on when the Commission may consider 3rd party proposals?

- Con: The list of needed information in (c)(3) appears incomplete. For example, the list should probably require the filer to provide data in support of its proposed changes (e.g., identification of survivor curves if employed, retirement data if necessary for the method chosen); an indication of whether whole life or remaining life methods were used; identification of any proposed reserve transfers between accounts; identification of reserve ratios; identification/explanation of the depreciation method selected. The exact data to be provided cannot be easily identified as the required data could vary depending upon the depreciation method chosen.

Option 4: Develop depreciation regulations that simply comply with HB111:

(x) When filing proposed changes to an intrastate depreciation rate, a telecommunications utility must include for the Commission's consideration information on the actual useful life of its depreciated equipment and facilities.

- Pro: This approach is simple and would appear consistent with HB111.

- Con: This approach may preclude use of rate, life, or net salvage tables as the utility "must include" information of actual useful life.

3) What burden of proof standards, if any, should be adopted by the Commission?

Option 1: Adopt the RC's proposal:

(d) Burden of proof. For proposed changes in depreciation rates, other than initiated by (a) or (b), the LEC shall have the burden of proof to show that depreciation or amortization expense is reasonable and in accordance with sound accounting and economic principles.

- Pro: Is consistent with common practice regarding which entity has the burden of proof.

- Con: The requirement that the expense be developed "in accordance with sound accounting and economic principles" is a new standard and it may be better to instead conform to the statutory requirements:
    - Rates must be "adequate, but not excessive";
    - "just and reasonable for rate-making purposes, estimates of annual or accrued depreciation established".

Option 2: Amend the RC proposal to include statutory requirement regarding burden of proof: (Staff recommendation)

(d) Burden of proof. For proposed changes in depreciation rates, other than initiated by (a) or (b), the LEC shall have the burden of proof to show that depreciation or amortization expense is just and reasonable, in accordance with AS 42.05.471, and in accordance with sound accounting and economic principles.

- Pro: This option explains that the burden of proof includes compliance with the statute on depreciation.

- Con: This option might be unnecessary as the Commission has already identified burden of proof under 3 AAC 48.660.

Option 3: Omit a burden of proof section.

- Pro: Section 3 AAC 48.660 already defines burden of proof and may be a substitute for the previous options.
- Pro: RC stated in the hearing that this subsection may be stricken out and it would not violate the overall structure of its proposed regulations.

4) Should the Commission allow utilities to use Interim Booking?

Option 1: Interim Booking should be allowed as proposed by the RC:

> Interim booking. Unless otherwise ordered by the Commission, a local exchange carrier may book proposed depreciation or amortization expense on an interim basis from the month a proposed depreciation rate is filed with the commission in accordance with (c) of this section until a final decision is reached by the commission. Interim booking shall be adjusted, if necessary, upon final commission approval of depreciation rates. A local exchange carrier shall maintain records to show the interim booking and the adjustments, if any that were made upon final approval of the rates.

- Pro: The utility may implement the proposed depreciation rates to its books pending approval by the Commission of the proposed depreciation rates.

- Pro: Allows the utility to implement updated depreciation rates and avoid the delay associated with the Commission's review of the proposed depreciation rate. RC stated that adjustments in its books are compounded over the lag period of review.

- Con: The interim depreciation rates may not be consistent with the standards that the Commission uses to review and approve depreciation rates.

- Con: Requires additional work for the Commission to ensure that the adjustments are accurate after the Commission has issued the depreciation rates to be used by the utility.

- Con: The RC clarified at hearing that it was its intent to limit this provision to non-rate case years. However, the provision does not reflect that caveat. Further, the interim depreciation rates could affect the access charge proceedings that are conducted every other year and at times annually.

- Con: This option may have been developed assuming that a utility would have a high likelihood of success that its depreciation rates would be approved as filed as it was part of the RC rate table approach.

Option 2: Omit the interim booking section: (Staff recommendation)

- Pro: No additional workload for the Commission in terms of reviewing that the adjustments are accurate using the approved depreciation rates.
- Pro: This option does not provide a solution to the delay issue that the utility identified, but avoids introducing problems associated with interim booking.
- Pro: The Commission has statutory timelines to follow which take care of the issue regarding long periods or delays of proposed depreciation rate approval.

5) Should the Commission allow utilities to implement special amortization?

Option 1: Allow utilities to use special amortization where all or a substantial portion of a property account or subaccount was retired earlier than anticipated and the reserve for the account is less than the amount to be retired "or in other circumstances when an amortization is appropriate". If the amortization period is less than or equal to two years, and the annual amount to be amortized is less than or equal to 2% of annual intrastate revenues of a carrier, the carrier may implement the special amortization upon written notice to the Commission (proposed by RC).

- Pro: The utility will have the opportunity to collect the remaining investment that was not recovered because of early retirernent of the plant.

- Con: The proposed conditions for special amortization is generally vague, except for the reason of early retirement.

- Con: This option allows special amortization "in other circumstances when an amortization is appropriate" placing little constraint on when a utility may employ special amortization.

- Con: The 2% level may not be an effective materiality threshold. For example, a carrier with $25 M intrastate revenues would be able to take $500,000 in special amortization for a specific piece of equipment or account. In Alaska, gross revenues for local carriers range from around $250,000 to $96 M.[3]

[3] Fiscal Year 2001 RCA annual Report.

- Con: The proposal does not prevent a utility from implementing multiple special amortization changes (each less than 2%) within a single year.

- Con: The utility may be able to recover investment imprudently retired without Commission approval.

- Con: The utility may be able to use this provision to effectively accellerate depreciation of its plant without Commission approval.

- Con: The provision might not be necessary given that use of remaining life depreciation "self-corrects" reserve imbalances caused by early retirement.

- Con: This option might be of greatest use in the event of a catestrophic event (e.g., fire, earthquake) in which case the Commission may wish to have detailed knowledge of how the utility plans to amortize its loss and how the amortization may affect local rates.

Option 2: Omit this section. (Staff recommendation)

- Pro: A section on special amortization is not necessary. The Commission has allowed utilities to amortize unrecovered investment upon reasonable proof.

6) Should the Commission adopt a new regulation for new class of property?

Option 1: Adopt RC's proposal:
When a local exchange carrier needs to establish a deprciation rate for a new class of property, it may adopt a depreciation rate in accordance with (b) or (c) of this section.

- Con: This option appears only applicable if the Commission adopts a rate table. Section (b) is no longer supported by the RC, which requires simplified selection of depreciation rates from a rate table.

Option 2: Omit the proposed regulation. (Staff recommendation)

- Pro: Option 1 is not necessary. It is a standard that a utility may propose its depreciation rate for an account based on a weighting of the depreciation rates that would apply to a new class or a subclass of property.

Appendix I. Summary of Comments and Reply Comments

- **Comments:**

ACS:

The determination of "actual plant lives" must include consideration of market dynamics and technological changes that have the tendency to shorten physical plant lives. To the extent that another governmental body has adopted industry accepted depreciation standards, they should be used [as] a test of reasonableness for ratemaking purposes.

The FCC has indicated that state commissions have discretion in formulating depreciation policy for setting UNE prices and that accelerated depreciation may be more appropriate for competitive markets.

ACS previously proposed the use of Internal Revenue Service (IRS) depreciation rates for Commission ratemaking purposes. To the extent that the IRS rates do not present the best option, ACS continues to support finding some government-sanctioned approach that might me used by the Commission as a test for reasonableness.

GCI:

The Legislature did not accept versions of HB111 that would have required the Commission to accept, for ratemaking purposes, the depreciation rates proposed by a LEC provided the underlying service lives were no shorter than the lives permitted by the IRS. These versions were opposed on the ground that the lives allowed by the IRS are not related to the actual useful life of plant.

HB111 Policy No. 5 requires the Commission to consider the actual, historical experienced service lives of equipment when setting new depreciation rates. The need to consider historical experience is demonstrated by the phrase "actual useful life of depreciated equipment and facilities." The policy requires consideration of the actual life of partially depreciated equipment still in service and fully depreciated equipment recently removed from service. The policy does not require the Commission to establish depreciation rates solely on historical experience, only to consider and given appropriate weight.

- **Reply to Comments:**

Alascom:

ACS' approach that the Commission use some form of financial depreciation lives based on ACS' actual practices – either lives reported to the IRS or the Securities and Exchange Commission (SEC) would violate federal law. A similar approach adopted in Illinois was struck down by the Federal District Court as contrary to federal law because depreciation, for

UNE pricing, must be based on a hypothetical efficient ILEC practices rather than the ILEC's actual practices.

ACS:

Opposes GCI's comments on depreciation. While admitting that Policy No. 5 does not require that depreciation rates be established solely on historical experience, GCI's proposed regulation only mentions historical experience. ACS has reviewed the availability of other benchmarks and has, to date, not found anything that would improve upon its draft regulations. For UNE ratemaking, the plant lives should always be shorter than the FCC guidelines.

GCI:

GCI agrees with ACS that to the extent that another governmental body (e.g. the FCC) has adopted industry accepted depreciation standards, they should be used as a test for reasonableness for ratemaking purposes. However, in its proposed regulations, ACS rejects the FCC depreciation lives, while GCI believes that the FCC lives provide the most appropriate standard adopted by another governmental body. ACS does not adequately recognize that Policy No. 5 requires the Commission to consider actual, experienced lives of equipment in service when setting depreciation rates.

RC:

The Commission's current approach to depreciation has resulted in substantial delays. The RC supports a streamlined method for calculating depreciation and proposed detailed regulations based in part on pre-approved rate tables, interim booking policy, and special amortization. The RC states that any method of depreciation must be "prospective" in nature as opposed to solely focusing on historical experience. GCI's proposal is almost entirely retrospective and has been disavowed by the FCC.

Appendix II. Summary of Proposed Regulations:

ACS:

Unbundled network element pricing will include a depreciation component that is based on the actual plant lives of the providing company. Actual plant lives will reflect the impact of technological change and the effects of competition. It is presumed that plant lives in competitive markets will be shorter than the ranges prescribed by the FCC for interstate services. Accelerated depreciation in competitive markets is deemed reasonable.

GCI:

A telecommunications carrier proposing to establish depreciation rates for any purpose shall include in its proposal an analysis of the actual service life of equipment and facilities in service and of any equipment and facilities

retired in the previous four years. In establishing depreciation rates for a carrier, the Commission will consider the actual service life of equipment and facilities either in service or retired in the previous four years, including the analysis submitted by the carrier and any similar analysis submitted by any other party.

RC[4]:

(a) General. Local telecommunications carriers shall use depreciation rates approved by the Commission to determine expense and provide for accumulated depreciation (also referred to as depreciation reserve).

(b) Simplified depreciation rate changes. If a local exchange carrier selects depreciation rates from within the approved ranges developed by the Commission for any or all of its property accounts, the carrier's selected depreciation rates may go into effect upon written notice to the Commission.

(c) Other depreciation rate changes. Any local exchange carrier requesting a change in depreciation rates not otherwise covered by (a) or (b) must obtain Commission approval. Any such change in depreciation rate shall be based on actual useful life of depreciated equipment and facilities. The RC also provided details for review and filing of depreciation proposals.

(d) Burden of proof. For proposed changes in depreciation rates, other than initiated by (a) or (b), the LEC shall have the burden of proof to show that depreciation or amortization expense is reasonable and in accordance with sound accounting and economic principles.

(e) Interim booking. An LEC may book proposed depreciation or amortization expense on an interim basis.

(f) Special amortization. A local exchange carrier may request special amortization under certain circumstances.

(g) New class of property. When a local exchange carrier needs to establish a depreciation rate for a new class of property, it may adopt a depreciation rate in accordance with (b) or (c).

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[4] For a complete detail of RC's proposal, please see The Rural Coalition Reply Comments, dated August 13, 2003.

INTRASTATE INTEREXCHANGE COMPETITION REGULATION CHANGES

R-03-3 (IXC Market Issues)

I. Background

In response to the Legislature HB111, the Commission opened Docket R-03-03 to review a variety of changes to telecommunications regulations. Most comments in Docket R-03-03 pertain to the local competition regulations. Only AT&T Alascom and GCI proposed changes to existing regulations addressing intrastate interexchange service. AT&T Alascom submitted proposed regulations regarding determinations of dominant carrier status and recommended equalizing dominant and nondominant carrier tariff filing requirements, sharing Carrier of Last Resort (COLR) responsibilities, creating an interexchange universal service subsidy, and relaxing reporting requirements applicable to dominant carriers. GCI also submitted proposed regulations regarding determinations of dominant carrier status, and suggested that the Commission decline to consider the issues of sharing COLR and an interexchange subsidy in Docket R-03-03. ACS commented generally that AT&T Alascom's tariff filing requirement proposal did not go far enough, and argued for rate deregulation in competitive markets.

II. Issues

A. **Dominant Carrier Status:** Current regulations applicable to interexchange carriers provide that the incumbent carrier (AT&T Alascom) is the dominant carrier unless the Commission changes that classification, and apply different standards on incumbents in several areas, including COLR, tariffing standards for retail and wholesale rate increases, financial reporting and accounting requirements, and reporting requirements applicable to service quality. The following discussion below focuses on issues raised in this proceeding and potential modifications to the regulations. These modifications shall be subcategorized on the basis of whether Staff believes that the issues should be resolved in Docket R-03-3, or tabled pending a detailed proposal from a member of industry. The section on Dominant Carrier Status (Part A) focuses on issues that Staff believes should be resolved in Docket R-03-3 to ensure compliance with HB111 mandates.

The overall issue presented regarding dominant carrier status is as follows:

How should existing interexchange market regulations be revised to advance HB111 principles and policies?

1. **Dominant Carrier Classification:** Since dominant carrier classifications are currently tied to incumbency, a means of determining dominant carrier status must be adopted.

Legal Cites

HB 111, Principle #3: The incumbent carrier may not be placed at a competitive disadvantage.

HB 111, Principle #4: Businesses that provide local and long distance telecommunications services shall be treated as fairly as possible

Existing state regulations (determination of dominant status)

3 AAC 52.363 (a) Upon petition or on its own motion, the commission will, in its discretion, determine whether an interexchange carrier has market power and, as appropriate, designate or change the designation of the interexchange carrier as dominant or nondominant.

3 AAC 52.363(b) Until changed under (a) of this section, the incumbent carrier is a dominant carrier, and all other interexchange carriers are nondominant carriers.

Option #1 *Identify through regulation a list of criteria that will be used by the Commission when determining IXC market power (GCI):*

In its determination of whether or not a carrier has market power, the Commission shall determine the relevant product market and the relevant geographic market and shall consider the following factors in the relevant product and geographic market: the market share of the carrier; the number and size distribution of competing firms; the existence and nature of barriers to entry; the availability of reasonably substitutable service; and whether the carrier controls any bottleneck or essential facilities. Control of bottleneck facilities, defined as sufficient control over some essential commodity or facility to be able to impede new entrants, constitutes prima facie evidence of market power.

Variance: GCI later indicated that its proposal would need to be revised to recognize that dominance should be determined by service. GCI did not indicate how its original proposal should be modified to implement this change.

Pro: Shift away from dominance based on incumbency.

Pro: Provides for a thorough investigation of a carrier's possible dominance and market power.

Pro: May prevent premature designation of a carrier as nondominant.

Pro: Focus on bottleneck facilities may be appropriate given that a carrier with bottleneck facilities typically has at least some ability to affect the supply of a service or competitive entry.

Con: AT&T Alascom argues that focus on bottleneck facilities perpetuates dominance regulation for an incumbent owning even a single bottleneck facility, and consequently AT&T Alascom may remain dominant even though it has absolutely no ability to exercise market power (AT&T Alascom Reply, p. 8)

Con: Fails to recognize that some limitations on dominant carrier's rates – such as geographical rate averaging – impact the carrier's ability to exercise market power.

Con: May be unnecessary and administratively burdensome for *de minimis* carriers and new competitors. As a result, it could be a barrier to entry if applied to those carriers.

Option #2: *Identify through regulation a list of criteria that will be used by the Commission when determining IXC market power, based on Option 1, but with different features (AT&T Alascom Variance of GCI Proposal)):*

In its determination of whether or not a carrier should be designated as dominant or non-dominant, ~~has market power~~ the Commission must first ~~shall~~ determine whether the carrier possesses market power. In making that determination, the commission shall determine the relevant product market and the relevant geographic market and shall consider the following factors in the relevant product and geographic market: [1] the market share of the carrier; [2] the number, ~~and~~ size distribution and capability of competing firms; [3] the existence and nature of barriers to entry in the market as a whole, [4] the availability of a reasonable substitutable service; ~~and~~ [5] whether the carrier controls any bottleneck or essential facilities affecting participation in a substantial component of the relevant market; and [6] the presence or absence of factors that restrain the exercise of market power, such as geographical rate averaging, voluntary or mandatory rate caps, and similar safeguards. ~~Control of bottleneck facilities, defined as sufficient control over some essential commodity or facility to be able to impede new entrants, constitutes prima facie evidence of market power.~~ If the Commission determines that a carrier possesses market power, before designating the carrier as dominant, the Commission must consider whether the threat of harm from such market power is sufficiently great to justify the costs that dominant carrier regulation would impose on the carrier.

Pro: Shift away from dominance based on incumbency.

Pro: Provides for a thorough investigation of a carrier's possible dominance and market power.

Pro: In comparison to the GCI proposal, AT&T Alascom proposal emphasizes the presence of effective competition rather than ownership of bottleneck facilities.

Pro: Improves on GCI proposal by (1) determining if control of bottleneck facilities affects the CLEC's market participation, and (2) considering factors that may indicate the presence or absence of market power.

Pro: Recognize that some limitations on dominant carrier's rates – such as geographical rate averaging – impact the carrier's ability to exercise market power.

Pro: AT&T Alascom has offered to cap its wholesale and private line rates at existing levels. Rate caps may provide some protection against rate increases for existing services in areas where it maintains a facilities monopoly.

Con: Does not recognize that carrier may exercise market power in one general service category, but not others (See Option #3 below).

Con: May be unnecessary and administratively burdensome for *de minimis* carriers and new competitors. As a result, it could be a barrier to entry if applied to those carriers.

Con: Evaluation of market power for the "market as a whole" may hide levels of material market power because the analysis occurs at a fairly high level.

Con: A competitor's "capability" to serve may not clearly represent whether competition is meaningful or effective.

Con: Could be a barrier to entry.

Con: It may be difficult to quantify the benefits of regulation so as to consider whether it is worth the "cost" to the carrier. For example, market power over private line rates may delay the availability of affordable Internet access in rural areas, and in that case the benefits of rural Internet access cannot be readily quantified.

Con: Rate caps might not provide adequate protection if the existing rates or rate structure is inadequate. For example, AT&T Alascom's existing wholesale rates were not updated to recognize that its network now contains DAMA satellite technology that reduces the need for double satellite hops and affects the costs of service. Rate caps on existing rates would also not necessarily be applicable to new or repackages services such as may be offered through special contracts or may develop as a result of changing technology.

Note: Likely eventual result is that there is no carrier declared dominant in the interexchange market for any service.

Option #3: *Staff's Alternative Recommendation – Adopt a regulation that states as follows:*

Dominant classification <u>for each general service category (Message Toll Service (MTS), private line dedicated service, and wholesale service)</u> is based on market power, which is determined by consideration of the following factors: (1) carrier's market share, (2) number, size distribution, nature, and capabilities of competing carriers, (3) the existence and nature of barriers to entry ~~in the market as a whole~~, (4) the availability of reasonably substitutable service, (5) the availability of competitive facilities; (6) the presence or absence of factors that restrain the exercise of market power, such as geographical rate averaging, rate caps, and similar safeguards, (7) and other factors that the Commission

may find relevant. The Commission's analysis of market power may be based on a review of the general service category involved or a review of the overall long distance market. (Combination of GCI/AT&T Alascom proposals, with Staff edits.)

Pro: Allows Commission to determine whether an IXC has market power with regard to each general service category, and treat the carrier accordingly.

Pro: Shift away from dominance based on incumbency.

Pro: Like the AT&T Alascom proposal, Option 3 emphasizes the presence of effective competition rather than ownership of bottleneck facilities.

Pro: Like the AT&T Alascom proposal, Option 3 improves on the GCI proposal by (1) determining if control of bottleneck facilities affects market participation by competing IXCs, and (2) considering factors that may indicate the presence or absence of market power.

Pro: Recognizes that some limitations on dominant carrier's rates – such as geographical rate averaging – could impact the carrier's ability to exercise market power for MTS.

Note: This pro is not applicable if the Commission waives geographical rate averaging as part of the proposal to allow bundling of local and long distance services.

Pro: Recognizes that a carrier may exercise market power in one general service category, but not others.

Con: Requires Commission to engage in dominant carrier determinations more frequently, and requires more review and monitoring of general service categories.

Option 4: *Staff recommendation - Adopt a new regulation that states as follows:*

Dominant classification will be determined under the following rules:

(a) Subject to Commission action under the provisions of subsection (c), any IXC with more than 60% of the statewide MTS market is deemed a dominant carrier in the MTS market.

(b) Subject to Commission action under subsection (c), any carrier with less than 60% of the statewide MTS market may be designated as a nondominant carrier in the MTS market.

(c) For all other services, an interexchange carrier that holds a facilities monopoly for intrastate interexchange service shall be deemed dominant for any services or group of services that employ those facilities.

(d) Notwithstanding subsections (a), (b), and (c), the Commission may conduct an investigation, either upon petition by an interested party or under its own motion, to change the dominant or nondominant status of any carrier for a particular service and change the carrier's status accordingly based on that investigation. In performing the investigation allowed by this subsection, the Commission will

determine whether an IXC has market power by taking into consideration the following factors: (1) carrier's market share, (2) number, size distribution, nature, and capabilities of competing carriers, (3) the existence and nature of barriers to entry, (4) the availability of reasonably substitutable service, (5) the availability of competitive facilities alternative(s), (6) the presence or absence of factors that restrain the exercise of market power, such as geographical rate averaging, rate caps, and similar safeguards, and (7) any other factors the Commission deems relevant to the issue, including the presence of material consumer complaints.

Pro: Threshold determination can be made almost immediately.
Pro: 60% threshold was used in FCC review of AT&T interstate dominance.
Pro: Allows the Commission to conduct a detailed market power analysis, if necessary.
Con: A standard that recognizes multiple dominant carriers may be more appropriate given the intrastate market structure.
Con: Con:

Option 5: *Eliminate dominance standard.*

Pro: Will eliminate disparate treatment of state's largest IXCs.
Pro: Current market may be sufficiently competitive so that review of AT&T Alascom's retail MTS rate increases is no longer required.
Con: Carriers without market power will be subjected to the same requirements as are imposed on carriers with market power.
Con: May not be appropriate given that AT&T Alascom retains a facilities monopoly for the provision of retail private line and wholesale services in certain areas.
Con: Other potentially necessary provisions that apply to dominant carriers (e.g., accounting, service quality, COLR) will have to be addressed through other rules.
Con: Does not allow the Commission to reimpose dominance standards on a carrier with market power unless done by Order.
Con: Does not allow Commission to apply dominance standards set by regulation to a carrier that exercise market power in one general service category, but not others.
Con: Not required by HB111 – only requirement is that dominance cannot be based on incumbent status of carrier.
Con: The FCC has retained jurisdiction over Alascom's wholesale services in the interexchange market.
Con: If the Commission decides to provide state support for IXCs, it may desire to closely scrutinize rate increases.
Con: If the Commission decides to reform intrastate access charges, it may desire to closely scrutinize rate increases of IXCs.

2. **Rate Increases:** With regard to retail services, regulatory requirements imposed on dominant and nondominant carriers are essentially identical for rate decreases, new or repackaged services, and implementing special contracts. In the wholesale service market., requirements imposed on dominant and nondominant carriers are essentially identical for rate decreases. Dominant carrier face more stringent regulatory requirements when filing for retail and wholesale rate increases, as well as new/repackaged wholesale services and special contracts for wholesale services. Additional tariff filing requirements imposed on dominant IXCs include: the requirement that it file billing and contract forms (3 AAC 48.230), supporting information (3 AAC 48.275), follow the uniform system of accounts (3 AAC 48.277), and comply with jurisdictional separations requirements (3 AAC 48.430).

Legal Cites

HB 111, Policy #3: All telecommunications carriers may unilaterally reduce consumer rates, subject to state and federal antitrust laws.
HB 111, Policy #8: In areas where significant competition exists between carriers competitors shall be allowed to increase rates under the same rules.

Existing state regulation (retail rates):

3 AAC 52.370(b): A certificated nondominant carrier shall maintain a current tariff of retail rates and all special contracts for retail rates on file with the commission. A certificated nondominant carrier may modify retail rates and implement special contracts for retail service without approval of the commission after 30 days' notice to the commission. A tariff filing by a certificated nondominant carrier must be submitted in accordance with 3 AAC 48.220, 3 AAC 48.240, and 3 AAC 48.270. A tariff filing by a registered entity must comply with 3 AAC 52.367 unless it is a special contract. A special contract filed by a registered entity must be submitted in accordance with 3 AAC 48.220, 3 AAC 48.240, and 3 AAC 48.270. A modification in retail rates must be consistent with (a) of this section.

3 AAC 52.370(c): The dominant carrier shall maintain a current tariff of retail rates and all special contracts for retail rates on file with the commission. The dominant carrier may reduce retail rates, offer new or repackaged services, and implement special contracts for retail service without approval of the commission after 30 days' notice to the commission of a tariff filing submitted in accordance with 3 AAC 48.220, 3 AAC 48.240, and 3 AAC 48.270. A rate reduction, new service, or repackaged service must be consistent with (a) of this section. A tariff revision by the dominant carrier to increase a rate is subject to the provisions of 3 AAC 48.200 - 3 AAC 48.430.

Existing state regulation (wholesale rates):

3 AAC 52.375(b): The certificated dominant carrier shall maintain a current tariff of wholesale rates and all special contracts for wholesale rates on file with the commission. The dominant carrier may reduce wholesale rates without approval of the commission after 30 days' notice to the commission of a tariff revision submitted in accordance with 3 AAC 48.220, 3 AAC 48.240, and 3 AAC 48.270. A tariff revision by the dominant carrier to increase wholesale rates, to offer new or repackaged wholesale services, or to implement special contracts for wholesale service is subject to the provisions of 3 AAC 48.200 - 3 AAC 48.442.

3 AAC 52.375(c): Except as otherwise provided in this section, a nondominant carrier shall maintain a current tariff of wholesale rates and all special contracts for wholesale rates on file with the commission. A nondominant carrier may modify wholesale rates and implement special contracts for wholesale service without approval of the commission after 30 days' notice to the commission of a tariff revision submitted in accordance with 3 AAC 48.220, 3 AAC 48.240, and 3 AAC 48.270.

Option #1: *Deregulate retail interexchange rates. (ACS)*

Pro: May eliminate need for interexchange market subsidy.

Pro: Without rate regulation or price caps, residential customers may see long distance rate increases in areas of the state where facilities–based long distance competition is nonexistent and unlikely to occur. Since rates would be deregulated, there would be no enforcement of the Commission's existing geographical rate averaging requirements.

Con: Commission will not be able to review rate filings for discrimination or predatory pricing.
Note: If geographical rate averaging requirements are enforceable, retention of geographically averaged MTS rates could act as a safeguard against discrimination and predatory pricing.

Con: In a deregulated market, it may be difficult to require carriers to pass through savings from access charge reform to consumers via lower long distance rates.

Con: Outside scope of HB111.

Con: Will likely result in urban/rural rate disparities (unless geographic rate averaging requirements are retained and enforceable).

Con: Will not allow the Commission to have any meaningful gauge by which to measure the reasonableness of the relationship between retail and wholesale rates.

Con: In areas where Alascom has the sole facilities, it could control the price of private line and data services. The geographic rate averaging requirement does not apply to such services.

Con: Alascom is eligible for private line subsidizes for services related to schools, libraries and rural health care. As a result, there may be need to regulate these services at some level.

Con: If the Commission decides to provide state support for IXCs, it may desire to continue to regulate IXC rates at some level.

Option #2: *Eliminate the existing provision requiring dominant carriers to file rate increases under a 45 day notice period with cost justification, and allow the dominant carrier to file rate increase requests under a 30 day notice period with no cost justification required. (AT&T Alascom)*

Pro: Will eliminate disparate treatment of state's largest IXCs.

Con: HB111 does not require the Commission to eliminate its dominant carrier policy. If the Commission believes a carrier no longer has market power, it may be better to declare the carrier as non-dominant rather than eliminating the dominant carrier rules. If the Commission retains dominant carrier rules, it will be able to deal with situations where a carrier possesses market power.

Con: May not be necessary given that the determination of market power may result in there being no dominant carrier in the IXC retail service category.

Con: Should the Commission determine that a carrier has market power in the IXC retail service category, it will have less time for initial review of rate filings for discrimination, predatory pricing, or reasonableness.

Note: Retention of geographically averaged rate requirement could act as a safeguard against discrimination, predatory pricing, or otherwise unreasonable MTS rates. This would not apply however to private line or wholesale rates.

Con: May be outside scope of HB111; all carriers may be declared nondominant under market share/power analysis and be subject to nondominant tariff filing requirements, if appropriate.

Option #3: *(Staff recommendation): Retain the status quo. Dominant carriers are allowed to reduce retail rates under same standards applicable to nondominant carriers, but dominant carriers must file rate increase requests under a 45 day notice period with cost justification.*

Note: If Staff's dominant carrier definition is adopted, there may be no dominant carrier in the IXC retail MTS service category. References to dominance in Commission regulations would only apply if a carrier was deemed to have market power.

Pro: Arguable complies with HB111 mandates by eliminating undue disparate treatment of IXCs – all carriers treated equally unless they exhibit market power.

-This approach could be viewed as addressing the antitrust concerns stated in HB111.

Pro: Does not result in unnecessary deletion of dominance standards that may be needed in the future based on antitrust concerns.

Pro: Should the Commission determine that a carrier has market power in the IXC retail service category, it will be able to review rate filings for discrimination or predatory pricing.

Note: This presumes that Commission retains jurisdictional separations/Uniform System of Accounts requirements.

B. **Competitive Parity:** Different standards currently apply to AT&T Alascom because of its current status as the incumbent/dominant carrier in the interexchange market – standards. In addition to the tariff filing standards stated above, requirements that apply to dominant carriers include COLR responsibilities, financial reporting and accounting requirements, and reporting requirements applicable to service quality, and service quality standards. Below is a discussion addressing these other requirements placed on dominant carriers.

1. **Carrier of Last Resort:** Should the Commission adopt one of the proposals on dominant carrier status that could result in there being no dominant carrier, it must amend its regulations that currently impose COLR responsibilities on the dominant carrier. The question is how to address this issue in a manner consistent with HB111.

Legal Cites

HB111, Principle #1: The public shall be protected.

HB111, Principle #2: The rates charged to the public shall be fair.

HB111, Principle #3: The incumbent carrier may not be placed at a competitive disadvantage.

HB111, Principle #4: Businesses that provide local and long distance telecommunications services shall be treated as fairly as possible.

Existing state regulation (carrier of last resort)

3 AAC 52.390(c) – A dominant carrier is responsible for providing intrastate interexchange telephone service as the carrier of last resort.

Option #1: Require shared COLR responsibilities (AT&T Alascom)

Note: Only the dominant carrier currently is required to comply with quality of service standards. The Commission may wish to apply quality of service standards, and possibly other regulatory requirements on any carrier that it declares to be a COLR.

Pro: Increases parity of treatment of competitors.

Pro: Shift away from COLR responsibilities based on dominance or incumbent status.

Con: AT&T Alascom's proposal to require shared COLR responsibilities is vague – no specifics are mentioned despite the variety of alternatives under such an approach.

Con: Unless COLR responsibilities were shared on a regional basis, requiring shared COLR responsibilities could be problematic because (1) only AT&T Alascom and GCI have the satellite capabilities that would enable them to share COLR duties, (2) AT&T Alascom and GCI satellite systems are interoperable.

Con: No specific proposal has been filed regarding sharing of COLR responsibilities.

Con: It is unclear how this proposal would work in areas AT&T Alascom holds a facilities monopoly.

Option #2: *Defer consideration of COLR to a separate docket opened to review COLR and related IXC issues*

Pro: Does not eliminate shared COLR as an alternative, but allows the Commission to develop a record on COLR.

Pro: Allows Commission to consider related interexchange policies that may implicate COLR; e.g., if the Commission adopts an interexchange carrier subsidy, it may wish to consider imposing COLR responsibilities on carriers receiving such subsidies.

Con: Commission will have to rely on dominance-based COLR rules pending completion of interexchange reform docket.

Con: The Commission has recently concluded a review of its IXC market structure through Docket R-98-1. It might not be advisable to expand the Commission's workload by opening a docket absent a clearer indication of an error or need for improvement in the existing regulations.

Option #3: *State that the Commission may consider sharing of IXC COLR responsibilities but only in light of a detailed proposal on the matter. [Staff Recommendation]*

Pro: Avoids a commitment to adopt COLR sharing without knowledge of the details or of the effect on the public.

Pro: Allows consideration of future proposals.

Pro: Does not require a regulatory change or the opening of a regulations docket at this time.

Option #4: *Make no declaratory statement of willingness to allow IXC sharing. No change in IXC COLR regulations.*

Pro: Simplest approach.

2. **Interexchange carrier subsidy:** AT&T Alascom has proposed that the Commission create an interexchange carrier subsidy to create incentives for investment in facilities-based interexchange service and to support high-cost interexchange facilities. AT&T Alascom does not request that this issue be

resolved in Docket R-03-3. AT&T Alascom would be satisfied if the Commission declared its intent to create an interexchange carrier subsidy, described the goals of such a fund, and directed Commission Staff to convene a workshop to develop a workable proposal within a specified deadline.

AT&T Alascom's proposal is to create a funding mechanism based on forward-looking costs that is equally available to all IXCs that construct Bush facilities.

AT&T Alascom also filed testimony from Docket R-98-1 that mentioned one possible means of implementing the subsidy program: compensate carriers for revenue shortfalls in providing basic voice service in Category 3 locations served by satellite. AT&T Alascom would fund the subsidy through an end-user per minute surcharge on long distance bills, and distribute funds to facilities-based IXCs based on market share of Category 3 billable minutes.

AT&T Alascom acknowledges there are several other means of implementing a subsidy program. Other possible policy issues related to the interexchange subsidy proposal include determining whether such a subsidy should be related to COLR responsibilities, and determining whether a subsidy should be provided in locations where there are duplicate interexchange carrier facilities. Below is a summary of legal authorities and available options.

Legal Cites

HB111, Principle #6: The development of a modern telecommunications infrastructure in the state shall be encouraged.

Existing state statutes (RCA authority to establish universal service fund)
AS 42.05.840: The commission may establish a universal service fund or other mechanism to be used to ensure the provision of long distance telephone service at reasonable rates throughout the state and to otherwise preserve universal service.

Option #1: *The Commission declares its intent to create an interexchange carrier subsidy, described the goals of such a fund, and directs Commission Staff to convene a workshop to develop a workable proposal within a specified deadline.*

Pro: Increases parity in treatment of largest IXC competitors; one carrier will no longer be forced to serve the states highest cost areas without additional compensation.
Pro: Separate docket would not be subject to the R-03-03 tight timelines.
Pro: Interexchange subsidy is not part of the HB111 considerations.

Pro: A separate docket would allow interested parties additional time and opportunity to comment and enable Commission to base a decision on a more complete record.

Pro: A separate docket would allow the Commission to closely review need for, cost of, and parameters of any potential subsidy.

Con: The Commission is committed to creating an interexchange carrier subsidy without allowing other interested parties to comment on the issue or firm knowledge regarding whether the subsidy is needed.

Con: If the Commission reforms its intrastate access charge policies, the extent and nature of any subsidy may be fundamentally changed as the basic costs for interexchange services would be fundamentally changed.

Con: Any subsidy may be expensive and there may be limited state resources to fund competing universal service objectives.

Con: The Commission recently considered interexchange subsidies in Docket R-98-1 and at that time chose not to adopt this option.

Option #2: *Do not state Commission intent to create an interexchange carrier subsidy, but rather defer consideration of the creation of an interexchange carrier subsidy into a separate docket opened to review the propriety and parameters of such a subsidy, along with related IXC issues.*

Pro: Separate docket would not be subject to tight timelines.

Pro: The interexchange subsidy is not part of HB111 considerations.

Pro: A separate docket would allow interested parties to comment and enable Commission to base a decision on a more complete record.

Pro: A separate docket would allow Commission to closely review need for, cost of, and parameters of any potential subsidy.

Con: Commission commits itself to the creation of an interexchange subsidy program without the benefit of input from other interested parties.

Con: If the Commission reforms its intrastate access charge policies, the extent and nature of any subsidy may be fundamentally changed as the basic costs for interexchange services would be fundamentally changed.

Con: Any subsidy may be expensive and there may be limited state resources to fund competing universal service objectives.

Con: The Commission recently considered interexchange subsidies in Docket R-98-1 and at that time chose not to adopt this option.

Option #3: *Decline to consider an interexchange carrier subsidy.*

Pro: It may be better to await the outcome of the intrastate access charge reform docket before considering the need for subsidy.

Pro: Changes in access charge reform could affect the profitability of serving rural Alaska.

Pro: Nothing prevents the Commission from directing its Staff to report on the costs of providing IXC service to determine whether subsidy may be needed and a docket opened for that purpose.

Con: If the Commission determines a subsidy is needed, this option delays implementation of such a subsidy.

3. Reporting Requirements (Trouble reports)

HB111, Principle #1: The public shall be protected.
HB111, Principle #3: The incumbent carrier may not be placed at a competitive disadvantage.
HB111, Principle #4: Businesses that provide local and long distance telecommunications services shall be treated as fairly as possible.

Existing state statute (service quality):

AS 42.05.291 (standards of service and facilities) requires each public utility shall furnish and maintain adequate, efficient, and safe service and facilities and allows the commission to adopt quality of service standards in conformance with standard industry practices, and require remedial action when it finds that the service or facilities of a public utility are unreasonable, unsafe, inadequate, insufficient, or unduly discriminatory.

Existing state regulation (trouble reports)

3 AAC 52.320 requires dominant carriers to report to the Commission information regarding instances where the quality of service it provides fails to meet specified standards for three consecutive months, as well as specific occurrences which have a significant adverse effect on toll network performance (e.g., failure of 25 percent or more trunks in any trunk group for a period of more than one hour). Pursuant to 3 AAC 52.385(a), this reporting requirement is waived for nondominant carriers.

Option #1: *Eliminate trouble report requirements for dominant IXC*

Pro: Increases parity in treatment of competitors; trouble reports will no longer be required of only the dominant carrier.

Con: Trouble reports allows the Commission to determine where additional maintenance or facilities upgrades are appropriate

Con: Commission will not have information on file to assess service quality by the COLR.

Con: As COLR, Commission should have information regarding outages

Con: If a targeted interexchange subsidy mechanism is adopted, Commission will have no information to determine locations where facilities upgrade is required.

Con: Under statute, the Commission is obligated to ensuring adequate service.

Option #2: *(Staff recommendation) Choose between the following alternatives:*

Impose trouble report requirement on all facilities-based IXCs that meet regulatory criteria (e.g., 25 percent retail market share or some other standard)

OR

Impose trouble report requirement on all facilities-based IXCs that are COLRs.

Pro: If a targeted interexchange subsidy mechanism is adopted, Commission will have no information to determine locations where facilities upgrade is required.

Pro: If shared COLR responsibilities are adopted, Commission will be able to monitor service quality of each COLR.

Pro: Increases parity in treatment of competitors; trouble reports will no longer be required of only the dominant carrier.

Pro: The Commission may better understand whether carriers with critical facilities are providing adequate service.

Pro: If the Commission determines that there is no nondominant carrier in the market, it would still be able to obtain trouble reports from the COLR.

Con: Carriers will incur expense of such trouble reports.

Con: The current record does not currently explore whether quality of service standards should be applied to non-dominant carriers.

Option #3: *Defer consideration of trouble report requirements into separate docket opened to review this requirement along with related IXC issues.*

Pro: A separate docket would not be subject to tight timelines.

Pro: A separate docket would allow interested parties to comment and enable Commission to base a decision on a more complete record.

Con: The Commission has recently concluded a review of its IXC market structure through Docket R-98-1. It might not be in the best interest to expand the Commission's work load by opening a new "broad brush" docket absent a clearer indication of an error or need for improvement in the existing.

4. **Reporting/Recording Requirements (Annual Reports/Jurisdictional Separations/Uniform System of Accounts)**

HB 111, Principle #1: The public shall be protected.
HB 111, Principle #2: The rates charged to the public shall be fair.
HB111, Principle #3: The incumbent carrier may not be placed at a competitive disadvantage.
HB111, Principle #4: Businesses that provide local and long distance telecommunications services shall be treated as fairly as possible.
HB111, Policy #1: There shall be fair payment by a user carrier for use of another carrier's equipment and facilities, including existing and newly constructed equipment and facilities.

Existing state statutes (just and reasonable rates)
AS 42.05.381 requires that all rates charged by a public utility for services furnished must be just and reasonable.

Existing state statutes (USOA/annual reports)
AS 42.05.451 (System of accounts and reports) allows the Commission to classify public utilities and prescribe a uniform system of accounts for each class of utility. AS 42.05.451 also requires a public utility to file a verified annual report of its operations. To satisfy the annual report requirement, GCI files the same annual report it submits to the Security and Exchange Commission. Other nondominant carriers file income statements and balance sheets. AT&T Alascom is required to provide more detailed (Form M) information.

Existing state regulations (jurisdictional separations/USOA)
State regulations require AT&T Alascom as the dominant carrier to follow FCC guidelines for the Uniform System of Accounts (USOA) (3 AAC 48.277) and follow jurisdictional separations rules in order to allocate costs and revenues among intrastate interexchange and local exchange operations (3 AAC 48.430). Pursuant to 3 AAC 52.385(a), this reporting requirement is waived for nondominant carriers. Both dominant carriers and nondominant carriers with more than 25 percent market share are required to file an annual capital program and planning statement listing capital improvements exceeding $15,000, along with technical planning statement (3 AAC 52.330).

Option #1: *Eliminate USOA and Jurisdictional Separations requirements for dominant IXC*

Pro: Increases parity in reporting requirements for competitors.

Con: If wholesale and other carrier-to-carrier services are based on embedded costs, and then the Commission would need the USOA to know what carrier's costs are. Unlike the local market, the Commission is not required to base IXC wholesale or interconnection rates on federal TELRIC standards.

Con If price caps in certain market segments are subsequently adopted, Commission will not be able to assess Alascom's rate of

return unless jurisdictional separations and USOA requirements are retained.

Con: If the Commission decides to adopt an interexchange subsidy based on forward looking costs and jurisdictional separations/ USOA are not retained, it may be difficult for the Commission to gauge the carrier's rate of return.

Con: If the Commission decides to adopt an interexchange subsidy based on embedded costs, jurisdictional separations and USOA information may be necessary to demonstrate those costs.

Con: Cost information may be required to allow Commission to ascertain reasonableness of AT&T Alascom's wholesale rates

Con: The Commission may wish to retain cost information to review reasonableness of private line service rates.

Con: Commission would not be able to monitor financial conditions of the COLR, and telephone markets statewide could be impacted if the COLR incurred financial problems.

Con: Without the USOA, the Commission may find it difficult to determine whether the COLR had changed its rate of investment, reduced its level of maintenance, or was experiencing an increase or decrease in revenues or costs from year to year.

Con: The USOA provides the Commission with information on the deployment of satellite and microwave technology in Alaska. This information may be of value to the Commission.

Option #2: *Impose above reporting requirements on nondominant facilities-based IXCs with sufficient market share (Staff variation of ATA, UUI proposal)*

Pro Increases parity in treatment of largest IXC competitors.

Pro: If a subsidy that available to all facilities based carriers is enacted, using the USOA and separations requirements may assist the Commission in targeting and ensuring appropriate use of support.

Pro: If Commission decides to adopt an interexchange subsidy based on each carrier's specific embedded costs, jurisdictional separations and USOA information will be necessary to demonstrate those costs.

Pro: Cost information under the USOA or a comparable system may be necessary to allow Commission to ascertain reasonableness of wholesale rates.

Pro: If the Commission agrees to shared COLR responsibilities, it may be in the public interest to require all COLR carriers to meet certain accounting standards.

Con: Existing nondominant carriers have not been required to maintain books in accordance with jurisdictional separations and USOA, and requiring those carriers to do so now will be cumbersome and expensive.

Option #3: *Defer consideration of the financial reporting and record keeping requirements into a separate docket opened to review these requirements along with related IXC issues.*

Pro: Separate docket would not be subject to tight timelines.

Pro: Separate docket would allow interested parties to comment and enable Commission to base a decision on a more complete record.

Pro: Separate docket would allow Commission to closely review need for annual reports, jurisdictional separations, and USOA information.

Con: Prolongs unequal treatment of all carriers in the interexchange market

Option #4: *(Staff Recommendation) Require that the COLR meet accounting standards. Amend 3 AAC 52.385(a) as follows:*

The application of 3 AAC 52.200 - 3 AAC 52.340 to nondominant carriers that are not designated as a carrier of last resort is waived except that a carrier that owns or controls interexchange facilities in the state and has more than 25 percent market share shall comply with 3 AAC 52.330. Any carrier designated as a carrier of last resort shall comply with 3 AAC 52.200 - 3 AAC 52.340.

Pro: This option may be necessary if the Commission changes its dominant carrier requirements or declares the COLR as non-dominant.

Con: This option may create an incentive for carriers not to become a COLR.

ELIGIBLE TELECOMMUNICATIONS CARRIER POLICIES
Docket R-03-03

I. Background

Carriers must obtain Eligible Telecommunications Carrier (ETC) status from the Commission to gain access to federal and state universal service funds. So far the Commission has granted ETC status to each incumbent local carrier, General Communication Inc. (GCI), and Alaska Digitel LLC (AkDigitel). Pending applications exist for Dobson Cellular Systems, Inc. (Dobson), ACS Wireless, Inc., and Matanuska-Kenai, Inc. d/b/a MTA Wireless.

The Telecommunications Act of 1996 (the Act) provides constraints on how the Commission must reach its decision on ETC applications. The FCC and the Courts have also interpreted federal policy as it applies to ETC decisions.

The Rural Coalition (RC) proposed extensive new regulations to set standards for when ETC status may be granted and what procedures should apply. Opposition was filed by Dobson and GCI, and to a limited degree ACS.

II. Relevant Legal Cites.

The following is a short summary of the relevant legal cites:

- **Section 214(e)(1) of the Act:** Identifies the obligations of an ETC.
- **Section 214(e)(2) of the Act:** Indicates that the state commission shall designate a common carrier that meets the requirements of 214(e)(1) as an ETC. Requires a public interest standard be met before the state may designate an additional ETC in an area served by a rural telephone company.
- **Section 214(e)(5) of the Act:** Defines the ETC service area for purposes of determining universal service obligations and funding levels.
- **47 CFR Part 54:** These are the Federal Communications Commission (FCC) regulations governing universal service. A number of these regulations set limits on State authorization of an ETC.
- **Texas Office of Public Utility Counsel v. FCC:** Landmark case in which the Court concluded that states may impose their own eligibility requirements, potentially precluding the FCC from setting mandatory ETC requirements on states.

III. Procedural Options

- **Option 1:** Through Docket R-03-03, adopt regulations of some kind outlining ETC policy.
  - Pro: The ETC process may be streamlined and made more efficient if regulations were developed.
  - Con: Docket R-03-03 is already very complicated.
  - Con: Some commentors argue that no party has met the "increased burden of persuasion" test for inclusion of this issue under the R-03-03 review.
  - Con: The FCC, through the Universal Service Joint Board is currently reevaluating its ETC policies and as a result any regulations developed in Docket R-03-03 may have a limited useful life.

- **Option 2:** Refer consideration of ETC regulations to a new docket.
  - Many of the Pros and Cons of Option 1 apply here.
  - Pro: Referring ETC issues to a new docket may make it administratively easier to evaluate ETC issues.

- **Option 3:** Take no action at this time. (Staff recommendation).
  - Pro: Given the potential change in federal policies, the benefits of setting ETC standards at this time may be short lived and may not outweigh the efforts of developing such new regulations.
  - Pro: Deferring action will allow the Commission to evaluate the ETC recommendation of the Universal Service Joint Board and possibly the resulting decision of the FCC before taking state action. Deciding ETC issues now may be premature.

IV. Policy Options:

Option 1 and 2 would only occur if the Commission decides to move forward to investigate ETC issues at this time.

- **Option 1:** Issue the RC proposed regulations for comment.
  - Pro: It is possible that further comments may make it easier to address criticisms of, and if necessary refine, the RC proposal.
  - Con: The RC proposal likely cannot be adopted in its present form as it contains features that may be inconsistent with federal law. For example:

    3 AAC 53.360(c)(3)(A)(viii) Under the RC proposal, the applicant must provide an explanation of any agreement for originating/terminating long distance calls *and equal access* to long distance carriers. However, equal access is currently not an ETC obligation or requirement. In the case of wireless providers, the

Commission may be precluded from requiring equal access capabilities as a condition for ETC status.

3 AAC 53.360(c)(3)(B)(iv). Under the RC proposal, the ETC applicant must describe any new or advanced services and a deployment schedule demonstrating when these services will be made available at a reasonable cost to consumers. However, advanced services are not an ETC obligation. It is doubtful the Commission could deny an applicant ETC status for failure to provide advanced services.

3 AAC 53.360(e): Under this proposal, prior to the Commission designating a second ETC in a rural area, the Commission must allow the incumbent carrier the opportunity to revise its rates to "reflect the underlying cost of providing service" by allowing deaveraging of rates. This provision could effectively prevent designation of a second ETC in a market for an extended period of time, and may lead to court or FCC challenge of the state's ETC authority.

The above are not the only controversial aspects of the RC proposal. A full discussion of the RC proposal has not been provided in the interest of brevity.

Option 2: Staff could develop an alternative ETC proposal for comment.

Option 3: Do not issue a proposal for public comment (Staff Recommendation consistent with Section III above.)

Summary of Comments

The Rural Coalition (RC) proposed extensive new regulations to set standards for when ETC status may be designated and the procedures that apply. Among other things, to grant ETC status in a rural area, the RC proposes that the Commission must find the applicant offers affordable rates, meets financial requirements, maintains an adequate quality of service, has no unacceptable "dead spots", provides incremental benefit to warrant funding, and furthers efficiency. The proposal identifies what must be filed in an ETC application, including proof of provision of equal access. Procedures for filing comments, effective dates, and determining application completeness are proposed. Special application requirements would apply to CMRS providers. The RC also proposes procedures for annual certification of use of funds by all ETCs.

As part of its proposal the RC would allow incumbent local carriers (ILECs) the ability to adjust rates under an expedited schedule *before* the Commission may designate a second ETC in a rural area. The RC proposal would allow such rural ILECs to deaverage rates. See proposed 3 AAC 53.360(e).

In reply, ACS stated that the RC proposal was overly detailed and potentially burdensome in execution. ACS however believed the proposal could be streamlined without sacrificing the "laudable objectives" that form the basis of the RC's recommendation.

Dobson cited several areas where it believed the RC proposal violated federal law. Dobson believed the RC's proposed ETC rules were unduly burdensome, anti-competitive, devoid of supporting legal authority, and lacking policy arguments supporting the proposal. Dobson stated the proposal would lead to undue delay and would render it virtually impossible for a competitor to achieve ETC designation.

Dobson argued that ETC rules should not be considered in Docket R-03-03. Dobson believed that the RC failed to meet the "increased burden of persuasion" test for administrative review as set by the Commission.

GCI stated that the RC proposed ETC regulations do not relate to any of the provisions of HB 111 and the RC did not meet its burden of persuasion that such matters should be addressed in this Docket. GCI believed that consideration of these issues would substantially increase the scope of Docket R-03-03 and delay its completion.

Section 214(e)

For convenience, the following is a detailed cite of Section 214(e) of the Act:

(1) Eligible telecommunications carriers

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received –

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) Designation of eligible telecommunications carriers

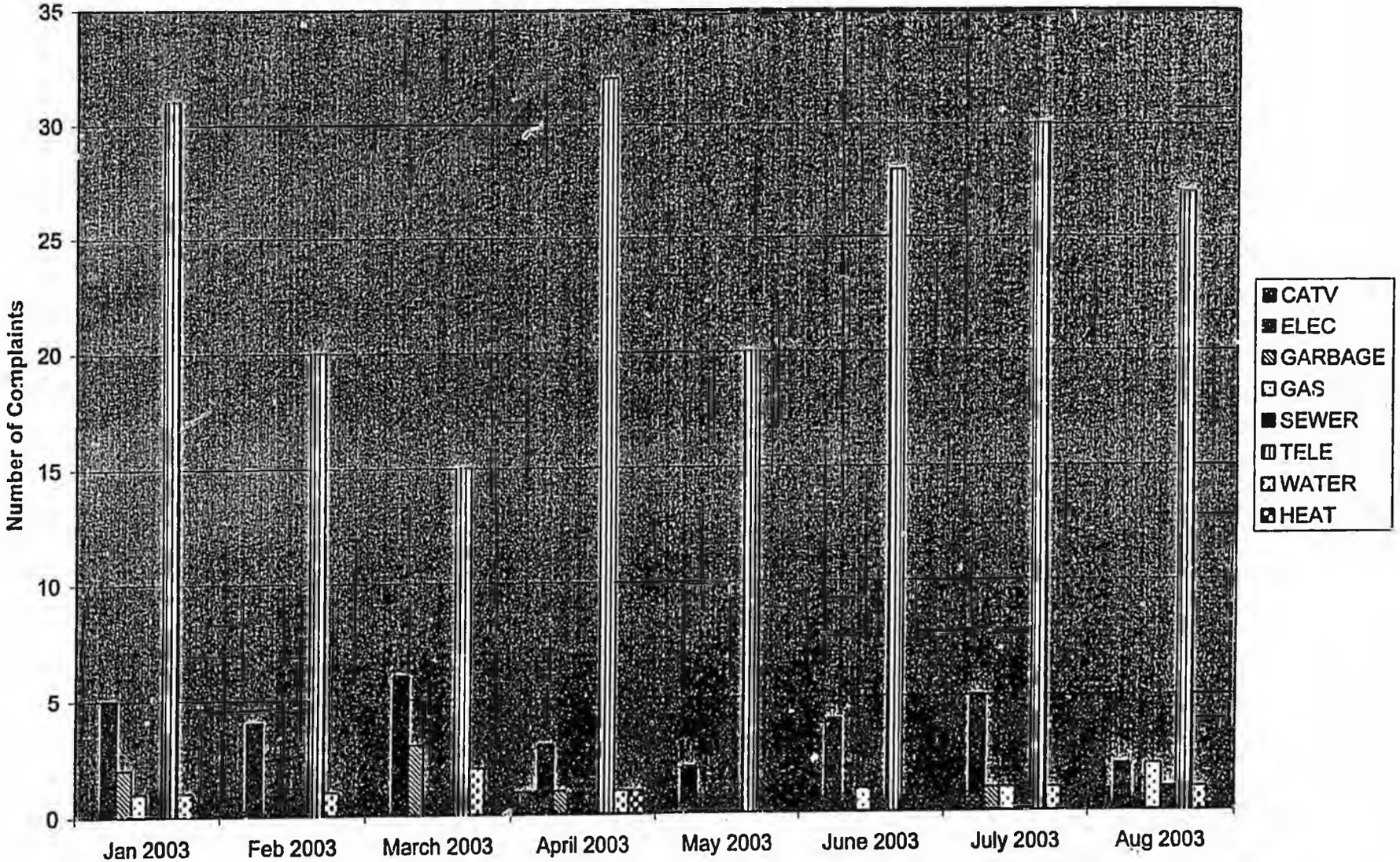
A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

(3) Designation of eligible telecommunications carriers for unserved areas

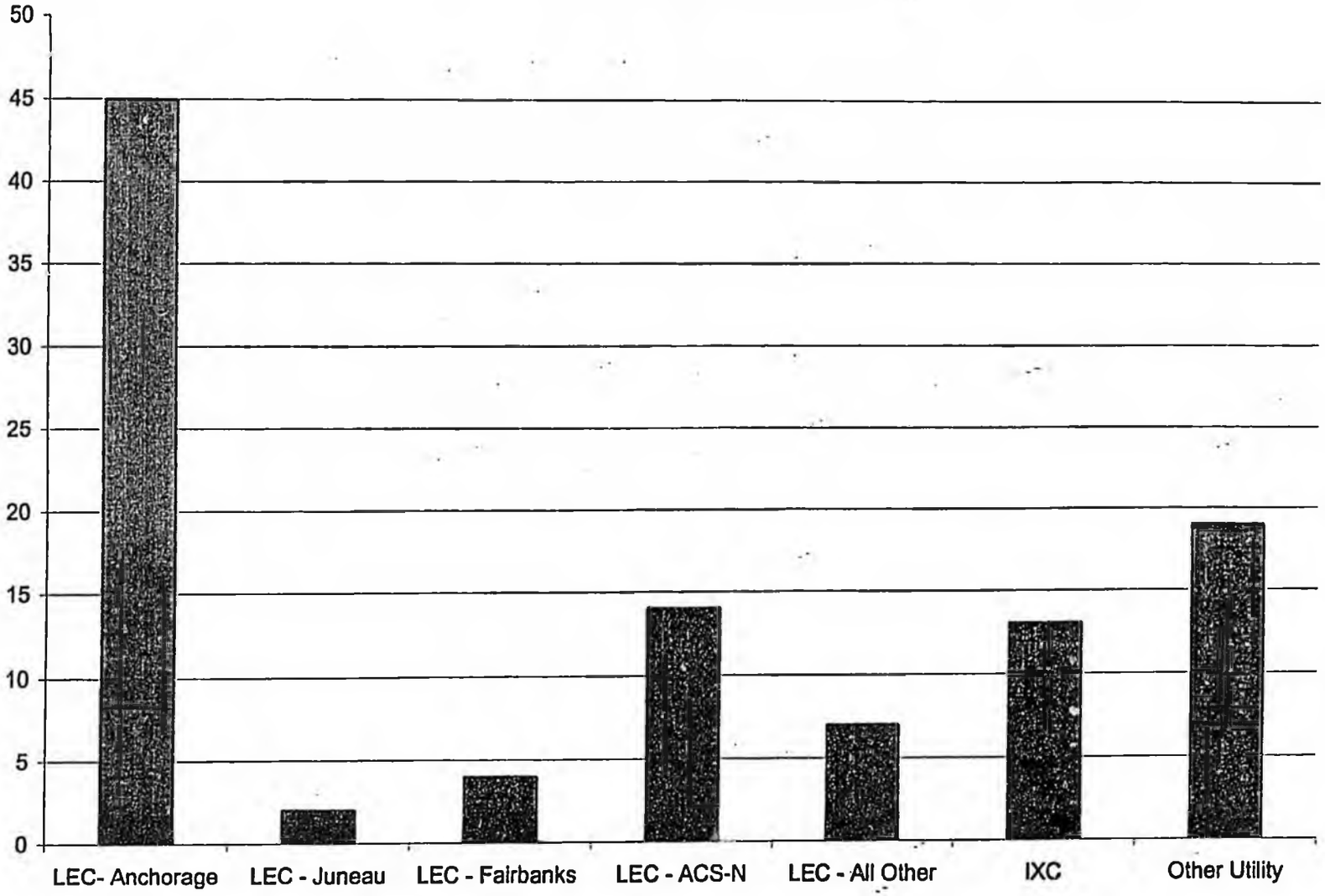
If no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254(c) of this title to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services or an area served by a common carrier to which paragraph (6) applies, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion

thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof. Any carrier or carriers ordered to provide such service under this paragraph shall meet the requirements of paragraph (1) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.

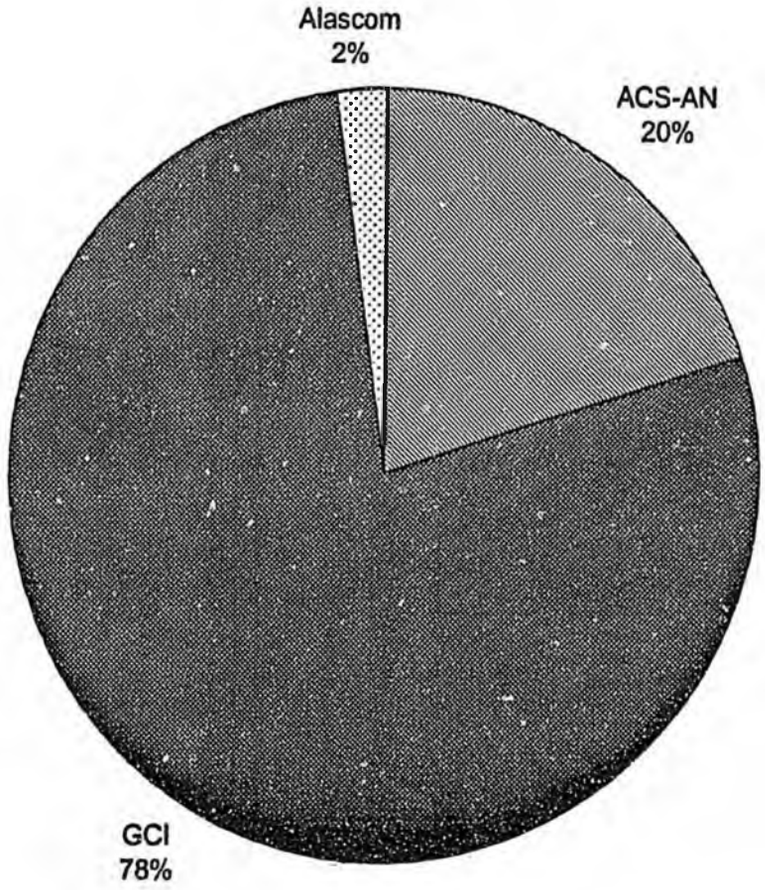
Complaints per Month by Utility Type



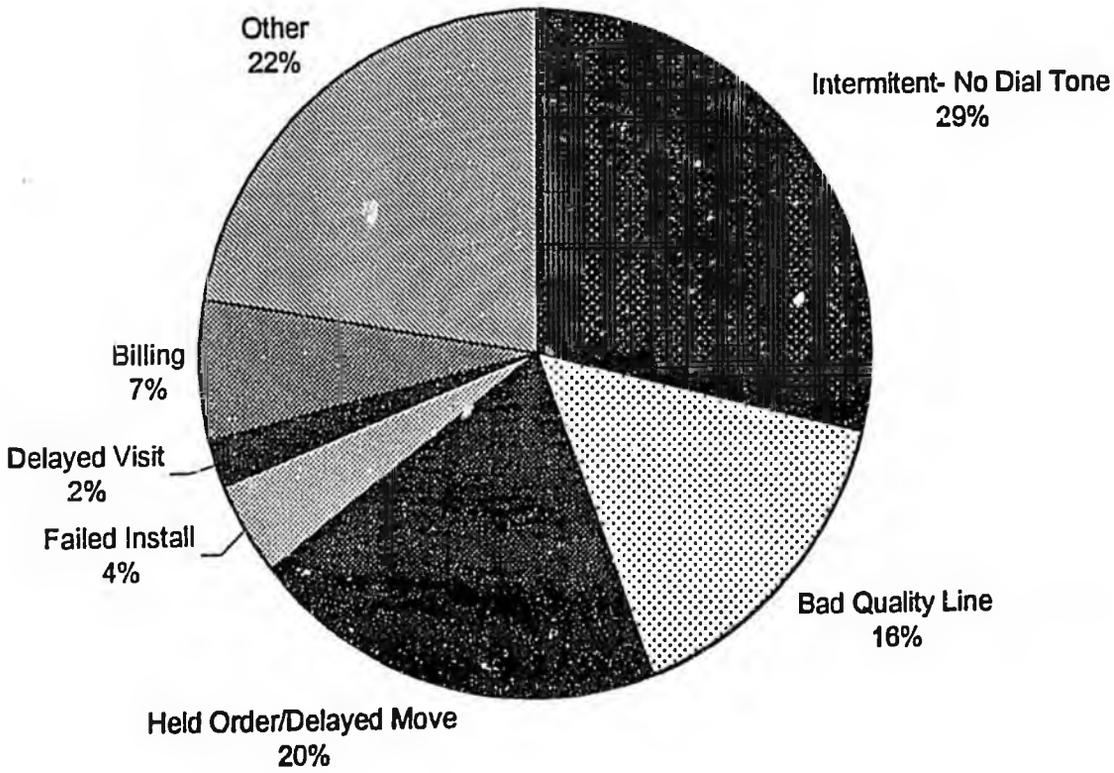
Complaints by Study Area and Type of Utility
June 03 to August 03



Anchorage LEC Complaints - Jun 03 through Aug 03



Type of Complaint
Anchorage Market - 6/03 thru 8/03



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STATE OF ALASKA

REGULATORY COMMISSION OF ALASKA

Before Commissioners: Mark Johnson, Chair
David Harbour
Kate Giard
James S. Strandberg
G. Nanette Thompson

In the Matter of the Commission Review of Rules and Regulations Governing Telecommunications Rates, Charges Between Competing Telecommunications Companies, and Competition in Telecommunications) Docket R-03-003

REGULATORY COMMISSION OF ALASKA
Anchorage, Alaska

VOLUME I
PUBLIC HEARING

September 2, 2003
9:00 o'clock a.m.

BEFORE: PAUL OLSON, HEARING EXAMINER

AND: MARK JOHNSON, CHAIR, RCA
DAVID HARBOUR, COMMISSIONER, RCA
KATE GIARD, COMMISSIONER, RCA
JAMES S. STRANGERG, COMMISSIONER, RCA
G. NANETTE THOMPSON, COMMISSIONER, RCA

APPEARANCES:

FOR THE RURAL COALITION: MS. HEATHER GRAHAME
MR. JEFFREY DILLEN

FOR AT&T ALASCOM: MR. WILLIAM SAUPE
MR. DAVID MILLER

FOR ACS: MR. TED MONINSKI
MR. DAVID SHOUP

FOR ALASKA TELEPHONE ASSN: MR. JIM ROWE

FOR GCI: MR. JIMMY JACKSON

FOR DOBSON CELLULAR: MR. MARK AYOTTE

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Larry Honchen Page 129

P R O C E E D I N G S

Tape 1

0015

(On record)

HEARING EXAMINER OLSON: All right. Good morning. We're on record in Regulatory Docket R-03-003 and this hearing is being held today pursuant to Order No. 3 which is dated June 11th, 2003. I'm Paul Olson, the Hearing Examiner, the full Commission is here. And in Order No. 1 of R-03-003 the Commission indicated that the -- because the Legislature had enacted legislation requiring that the Commission thoroughly review its telecommunications regulations regarding rates, charges between competing telecommunications companies and competition in telecommunications, they opened this notice of inquiry.

The notice of inquiry deals with the idea that the review must be guided by the principles set forth by the Legislature as well as the proposed regulations required by the Legislature must include provisions to implement nine policies that are set forth. In the order the Commission requested comments, written comments have been filed in this case and this docket by ACS, GCI, AT&T Alascom, Alaska Telephone Association, the Rural Coalition. Reply comments were filed by ACS, GCI, AT&T, Rural Coalition and Dobson Cellular.

In the e-mail that I sent to the people that had filed

written comments indicated the Commission's preference in going forward today would be to accept oral presentations by people who had not filed written comments, but people that showed up at the public hearing today wishing to make comments to the Commission. Once we take those individuals that wish to make oral presentations without having filed comments, then we're going to go through oral presentations by those parties who have filed written comments. ACS has indicated to me -- excuse me, in an e-mail, that the primary -- one of the primary presenters is going to be Howard Shelanski, he's going to be appearing telephonically and his availability is from noon until 3:00 o'clock this afternoon.

I indicated in the e-mail to the participants that the presentation orally will be limited to 40 minutes. It doesn't make any difference to the Commission how you use that 40 minutes, whether you have counsel that wish to make their presentation or whether you have other principals that wish to make part of that presentation or all of that presentation, it makes no difference, you use that time however you wish to.

The Commission is not going to entertain rebuttal today, in the sense that this is not an adversary proceeding, this is an informational gathering proceeding. The Commission has read your written comments, they'll obviously take into consideration your oral comments. To that extent they don't wish to engage into an advocacy situation against each other,

so we're not going to have rebuttal today.

Day two is going to be reserved for questions by the Commission, that's assuming that all of the oral presentations are completed today. If they are, regardless of the time that we complete them today, the Commission will recess and we'll begin again tomorrow at 9:00 to take questions.

Ms. Grahame, you had indicated in the e-mail that Larry Honchen was only available today, so if the Commission should have some questions for Mr. Honchen in relation to the Rural Coalition's presentations, then they'll consider taking those questions today.

Even in R dockets where it's simply information presentation there always appears to be some jockeying as to who gets to go first and who gets to go last with some sort of belief that whoever gets to go last somehow it's some greater impact on the Commission. I think that's incorrect and for lack of a better reason we have simply arbitrarily selected who's going to go first in the written comments with the caveat that any reserved presentation by Mr. Shelanski will come between 12:00 and 3:00. Yes, Mr. Saupe?

MR. SAUPE: I may have been derelict in not letting you know that one of our presenters from AT&T in San Francisco won't be available this morning. He and I were going to divide the time and so I would request your permission to allow us to go sometime after lunch.

HEARING EXAMINER OLSON: When.....

MR. SAUPE: We don't care about being last and having the greatest impact, but that would be convenient.

HEARING EXAMINER OLSON: Okay. When is the -- who is it and.....

MR. SAUPE: His name is.....

HEARING EXAMINER OLSON: .....when is -- what's the availability time?

MR. SAUPE: His name is David Miller, he is a senior regulatory attorney with AT&T in San Francisco and he's unavailable for the -- essentially for our morning.

HEARING EXAMINER OLSON: Similar time frame then, 12:00 to 3:00 like ACS?

MR. SAUPE: Yes, I believe he could be available then. Thank you. And, again, I apologize for not getting that to you on Friday.

HEARING EXAMINER OLSON: All right. Just so you are prepared to know how we're going to go, Rural Coalition's going to go first with their presentation after we get the walk-in comments. Alaska Telephone Association's going second, AT&T is going to go third with the reservation, Mr. Saupe, that Mr. Miller will provide some information this afternoon.

MR. SAUPE: Okay. So then you would like me to do my half of it this morning?

HEARING EXAMINER OLSON: If you like. I'll leave it up to

you, you let me know when we get to you, if you want to reserve it all for this afternoon that's—fine. And then ACS and same situation with ACS. I guess the -- my preference would be that if you have information you can provide this morning, to provide that information this morning so we don't waste the time this morning and then recess early and come back this afternoon. Yes, Mr. Moninski?

MR. MONINSKI: Ted Moninski for ACS. Given that Mr. Shelanski -- Dr. Shelanski will present the bulk of our presentation, the way that we have mapped it out at this point it would really be more convenient if we could do it all at one time with his going first. Again, I understand that the Commission has selected the order of presentation.

HEARING EXAMINER OLSON: Okay. Before we take oral -- yes, sir?

MR. ROWE: Mr. Olson, Jim Rowe with the Alaska Telephone Association.

HEARING EXAMINER OLSON: Yes, sir?

MR. ROWE: I imprudently took vacation last week and I'm unprepared to meet your time this morning, to be the second participant.

HEARING EXAMINER OLSON: You -- do you want to -- did you wish to put on an oral presentation today at some point? I mean, I guess my question is do you want to have the morning to get ready and say something this afternoon or.....

MR. ROWE: That would be wonderful if I may.

HEARING EXAMINER OLSON: .....do you want to wait?

MR. ROWE: Certainly I'm looking to go last, but that truly was not my intent. Thank you.

HEARING EXAMINER OLSON: All right.

MR. ROWE: If that'll work for you I'd appreciate it.

HEARING EXAMINER OLSON: Okay. It will. So now I have to do something less than just arbitrarily picking people. Okay. Before we take -- to see if we have any people that have walked in, I wonder if I can get for the people that are sitting at the counsel tables to indicate who's here and -- on the record and who's with you. Let's start with you, Mr. Shoup, Mr. Moninski and if you indicate who's with you, who you're representing, we'll just kind of go around and then we're going to take people that have other presentations.

MR. MONINSKI: Thank you, Mr. Hearing Officer. Good morning, Commissioners. My name is Ted Moninski, I'm here this morning on behalf of Alaska Communication Systems. We have two other people with me this morning, we may have any number of other people who have dialed into the bridge, I didn't hear that the bridge was turned up this morning and I'm not sure that I know that it is.

HEARING EXAMINER OLSON: All right. We'll check on that.

MR. MONINSKI: Okay.

UNIDENTIFIED VOICE: I didn't know we had one.

MR. MONINSKI: Yeah, I did circulate a bridge number based on the feedback that I received from the Commission. Hopefully, we do have one because our primary presenter will be on it at some point. At any rate with me this morning to my left is Mr. David Shoup, an attorney here in Anchorage who represents ACS in various matters before the Commission. To Mr. Shoup's left is Dr. Dale Lehman who is a professor of telecommunications management at Alaska Pacific University. And again we -- when the bridge is up we will have other ACS participants and I will introduce them at the point in time when we know that they're there.

HEARING EXAMINER OLSON: Okay. All right. Did you wish them to be -- I want to make sure, did you wish them to be available for all the presentations going to go forward this morning?

MR. MONINSKI: It was my understanding, Mr. Hearing Officer, that the bridge was going to be up from 8:30 this morning until 5:00 o'clock this afternoon on each day of the hearing, that's what I was told.

HEARING EXAMINER OLSON: Okay.

MR. MONINSKI: And that's what I told the ACS participants.

HEARING EXAMINER OLSON: Okay. Well, let's get the rest of the people that are here and then we'll take a minute to get -- make sure that we get them on telephonically, okay?

MR. MONINSKI: Thank you.

HEARING EXAMINER OLSON: Mr. Jackson?

MR. JACKSON: Good morning, my name's Jimmy Jackson and I represent GCI and I'll be making our initial comments. With me today is Dana Tindall, GCI's senior vice president for legal and regulatory affairs. When we get to the Commission question portion of the hearing we'll also be joined by at least Mr. Moderow who can -- who's much more familiar with the UNE rate issues than I am and will probably help handle questions on that topic.

HEARING EXAMINER OLSON: Okay.

MR. JACKSON: Thank you.

HEARING EXAMINER OLSON: Okay. Mr. Saupe?

MR. SAUPE: Yes, thank you. I'm William Saupe, I'm here on behalf of AT&T Alascom. With me at the table is Kristi Catlin who is AT&T Alascom's director of governmental relations. And as I mentioned earlier splitting the -- our time with me will be David Miller who's a senior regulatory counsel in San Francisco and he'll be speaking on the local market issues. I'll be talking about long distance issues.

HEARING EXAMINER OLSON: Okay. Thank you. Ms. Grahame? And, Ms. Grahame, after you've introduced yourself and who's with you would you just for the record indicate who it is that's part of the Rural Coalition that you're representing today?

MS. GRAHAME: Yes, thank you. My name is Heather Grahame, I'm a partner with Dorsey & Whitney in Anchorage, Alaska. With me at counsel table is Mr. Jeff Dillen who is also a lawyer with Dorsey & Whitney and a telecom lawyer colleague of mine. To my right is Mr. Honchen of Honchen & Uhlenkott and as Mr. Olson noted Mr. Honchen will not be available tomorrow, this is for a good reason, his daughter's getting married. And to Mr. Dillen's left is Susan Hardenbergh who is also with Honchen & Uhlenkott. In the audience I do see some -- at least one member -- two members of the Rural Coalition, one is Mr. Steve Hamlen who's the president of United Utilities and United-KUC. And I also see Mr. Bob Dunn who is head of regulatory affairs for TelAlaska, which is the holding company for Mukluk Telephone and Interior Telephone.

The Rural Coalition, for purposes of this docket, is comprised of the following companies, Interior Telephone Company, Mukluk Telephone Company, Ketchikan Public Utilities, Arctic Slope Telephone, Matanuska Telephone, OTZ Telephone Cooperative, Summit, Copper Valley, Bristol Bay, United Utilities, United-KUC, BushTel and Nushugak Telephone Cooperative. Thank you.

HEARING EXAMINER OLSON: Okay. Thank you. And Alaska Telephone Company Association, Mr. Rowe, we need to get you an extra microphone, I guess, and then you indicated there's somebody with you as well?

MR. ROWE: I'm Jim Rowe, director of the Alaska Telephone Association, I'll be presenting comments this afternoon on behalf of the Association. Thank you.

HEARING EXAMINER OLSON: Okay. Thank you. Is there anybody here from Dobson Cellular? Okay. I guess not. We're going to go off record for a minute and see if we can get your people up on the phone, Mr. Moninski.

(Off record - 9:17 a.m.)

(On record - 9:33 a.m.)

HEARING EXAMINER OLSON: Okay. We're back on record in Regulatory Docket R-03-003. We have everybody on the line now I guess. For the record we have Karen Brinkmann, we have Mr. Dan Lindgren, we have Mr. Howard Shelanski, we have Mark Ayotte on the line. The first three for -- on behalf of ACS and Mr. Ayotte from Dobson Cellular.

Before we take presentation from those who have already filed written comments, are there people in the audience or entities in the audience that wish to make an oral presentation to the Commission regarding this notice of inquiry? If you are, please, let me know and we'll make a microphone available for you to make your comments to the Commission. Okay. I see that there are no people that have walked in that wish to make any comments so, Ms. Grahame, you're on the hot seat.

MS. GRAHAME: Thank you very much. I'd like to start by saying that Mr. Dillen and I will be dividing the Rural

Coalition's oral presentation. I'm going to be discussing why new regulations need to be promulgated to govern telecommunications competition in rural Alaska. Mr. Dillen is going to be discussing the structure of and the policy behind the Rural Coalition's proposed regulations and he will be responding to the written comments already filed by some of the commentors in this proceeding.

I'd like to start by saying that the Rural Coalition has a strong interest in all of the issues in this rule making docket however it has focused its efforts here on those affecting rural areas and specifically the absence of rules governing telecommunications competition in rural Alaska. As the Commission knows no such rules exist and this may have been tolerable and fine while the -- while telecommunications competition was focused on Anchorage and was focused on UNE based competition that being where the competitor relies on the incumbent for access to customers. But in our view it is no longer sustainable in light of the arrival of significant competition in rural Alaska and significant competition arrived without a doubt last Friday when the Commission issued its order granting ETC designation to Alaska Digitel throughout MTA's service area. And the application of wireless carriers for ETC designation in rural Alaska is simply going to continue and I think we all know that judging by the fact that there are two pending additional applications now, one being by ACS

Wireless and another being by Dobson.

In an effort to avoid the kind of competitive and regulatory chaos over the last six years between ACS and GCI in Anchorage, we believe the Commission should promulgate regulations governing telecommunications in rural Alaska. Rules bring predictability and certainty, it benefits new entrants, it benefits the Commission and it benefits the incumbent rural companies. The promulgation of rules does not replace in any way the need for the Commission to adjudicate ETC applications on a case by case basis. The rules are primarily procedural in nature and they give notice to the new entrants of what is required, they provide certainty and predictability to the incumbents because it gives them the rules by which they -- gives them the rules that they need to follow to proceed with rural competition and it benefits the Commission by at least taking some of the procedurals off the table.

However, the rules that need to be promulgated are going to be quite different than those that are currently in place in Anchorage and now in Fairbanks and Juneau. And the main reason is competition in rural Alaska is not going to be UNE based. Competition in rural Alaska is not going to evolve over the need of a competitor to lease the incumbent's lines, rather competition is going to be between two or more companies, each with a stand alone network. And for that reason issues like

dominant and non-dominant carrier which are so intricately related to the need for the competitor to use the incumbent's network are simply going to be irrelevant.

In rural Alaska companies are -- competitors are going to establish their own stand alone networks for a number of reasons. Number one, it's less expensive to construct a wireless network than to construct a wireline network. Number two, construction of a wireless network means that a state commission cannot rate regulate the company and cannot require the company to file a certificate of public convenience and necessity meaning there is automatically much lighter regulatory treatment of a wireless carrier to begin with.

Moreover, creation of a stand alone network obviates the need for a competitor to first try and terminate a rural company's rural exemption and then to try to negotiate and then arbitrate an interconnection agreement. Those regulatory issues can take well over a year or more and significantly beyond that potentially to resolve. Construction of a wireless network enables a competitor to avoid all of those steps.

Moreover if a competitor does not have an interconnection agreement it means that additional competitors that come down the road don't have the ability to use the pick and choose rule to obtain easy access to the market. As many of you know the pick and choose rule allows CLECs to pick the terms and conditions of an existing interconnection agreement in order to

get into the market quickly, but if a company establishes a stand alone network the pick and choose rule does not apply.

And constructing a wireless network in rural Alaska, at least at this time, enables that wireless company to have access to Universal Service Funds.

So for all of these reasons we believe in nearly every instance competition in rural Alaska is going to be through a stand alone wireless network and is not going to be through the lease of an incumbent's network by a competitor.

The rural competition rules will also have to be different from urban rules because of the different nature of Alaska's rural areas from its urban areas. As we all know rural Alaska -- rural Alaska's communities are very small, they have very few access lines and they have very few businesses. The few businesses that there are carry the revenue stream for the incumbent local exchange companies.

And let me give you an example of how some of the proposed rules that have been proposed in this proceeding need to be looked at as applied to rural areas very, very carefully. And I'm not picking on GCI and I'm not advocating for or against the particular GCI proposal I'm going to discuss, but it is illustrative of how the application of a rule can be very different in rural areas.

GCI proposes that an area could be declared significantly competitive if CLECs collectively serve more than 20 percent of

the access lines. It is easy in some of Alaska's most rural areas for a CLEC to stay well below that 20 percent, yet take most of the revenue stream. And the way that would work is by a CLEC capturing two or three business customers in the rural area which would account for the vast majority of the revenue streams that help keep rates affordable in rural areas. And that -- and GCI's proposal may have some appeal to some, particularly as applied in an urban area, but it is vital that the Commission look at how that kind of a rule would be applied in Alaska's most rural areas and what it would do to affordability of the remaining customers' rates.

And the time to act is now. Wireless carriers are applying for ETC designation in rural Alaska and will continue to do so, we believe, at a pretty rapid rate as long as Universal Service revenues are available as they are today. But most importantly the rural companies need time to remove the implicit subsidies from their rates prior to the actual start of competition. And this is such a vital point I'd really like to spend a moment on it.

In rural Alaska Universal Service has been largely achieved through implicit subsidies. That means that the price of some services are priced well above cost in order for a company to charge affordable rates for the rest of its services in rural areas. And there are two -- at least two typical kinds of implicit subsidies that exist throughout rural Alaska.

One is called the bus/res subsidy, that's business to residential and the second is called geographic rate averaging which is also referred to as postage stamp rates.

In rural Alaska it has been the policy of this Commission and the APUC since the beginning of time, business rates are higher than residential rates in a given area even though it may cost the rural company largely the same to provide the service. In other words, in any given area it may cost the rural company the same amount to provide basic telephone service to a business as to a residential subscriber, but in order to promote Universal Service businesses pay significantly more.

The same is true of geographic rate averaging. That is in an area for a rural telephone company such as Interior Telephone Company, there are some communities that are much less expensive to serve than others. But Interior has postage stamp rates, that is its rates are the same throughout the service -- throughout the study area, they are geographically averaged so that the rates in the most expensive part of its service area are affordable.

Now that significant competition is about to take off rural companies have to have the opportunity to determine whether and by how much they need to rebalance their rates prior to the start of competition, meaning remove those implicit subsidies and change their rate structure. Now you

might say or you might be thinking why haven't the rural companies done this to date and the answer is it would have been a waste of resources and you wouldn't have wanted us to.

And in the absence of competition there's no reason to ask the smallest rural companies in the state to spend the very significant amount of resources that will be required and is required to rebalance rates and there's no need to have potentially dramatic changes in rates if it's not necessary and if it's not important. But once competition comes to a rural area those implicit subsidies have to be removed.

And I'd like to note that the FCC's 1997 Universal Service Report and Order addressed this issue and endorsed the continuation of implicit subsidies in rates until there was actual competition because implicit subsidies have long served the goals of Universal Service. And I'm relying on paragraphs 17 and 19 in particular of the May 1997 Universal Service Report and Order for those principles. However, if actual significant competition is about to take place in rural Alaska these implicit subsidies have to be removed and the companies need an opportunity to address this issue. And our rules provide the opportunity for a rural company to do just that in a reasonable time frame that does not unnecessarily slow down the ETC applicant.

Thank you and I'd like to now turn our presentation over to Mr. Dillen.

HEARING EXAMINER OLSON: Thank you. Mr. Dillen?

MR. DILLEN: Thank you very much. My portion of the presentation will deal with the structure of and the policies behind the Rural Coalition's proposed rules. And at the end I'd like to respond to some of the specific issues raised by other commentors with regard to the Rural Coalition's proposed rules in this proceeding.

So first with regard to the structure and the policies. The rules -- the proposed rules of the Rural Coalition can be broken down to about three major sections, the first being the amendments and modifications to the existing local competition rules. The second being new ETC rules and as part of those I would note that those rules encompass the actions that an incumbent LEC must take upon entry of a new ETC in a rural area. And third, the depreciation regulations which the Rural Coalition filed as part of its reply comments. And I'll take them in the order I've just described them.

The amendments to the existing local competition regulations. In response to the legislative policy number 4, the Rural Coalition's drafted a definition of a competitive service area that incorporates the various types of competition that are occurring throughout Alaska. This definition of a competitive service area is among the most important modifications that have been made to the local competition rules for at least two reasons.

It applies to all of Alaska, not just Anchorage as the current rules do, but secondly, it also recognizes the forms of competition most relevant to rural areas and as Ms. Grahame has explained, that's the entry of stand alone wireless networks through eligible telecommunications carrier designation. The definition of a competitive service area is also important because under HB 111 the legislative policies, the existence of a competitive service area becomes the trigger for equalization of rate flexibility and regulatory parity.

So the remainder of the Rural Coalition's modifications to the local competition regulations then are to insure that once a competitive service area exists the rate flexibility and the regulatory parity required by policies, specifically 6 and 8 of HB 111, can be realized for all competing carriers and all appropriate circumstances.

And you'll note that since the competitive service area now becomes the trigger for additional rate flexibility and regulatory parity concepts such as market power and dominance become less relevant. It's no longer required, if it ever was, to distinguish between dominant and non-dominant carriers in a rural service area and as a result the Rural Coalition has removed all reference to dominance throughout the local competition regulations.

I'd like to turn now to the ETC specific rules, the second sort of subset. It's clear that the competition, the

competitive entry into rural areas of Alaska is occurring by the designation of a second ETC. This is an actual type of competition that's occurring now and under HB 111 then this becomes the type of competition that has to trigger the regulatory parity and the equalization of rate flexibility.

Now my discussion today on the ETC specific regulations is largely informed by this Commission's order last Friday in the Alaska Digitel proceeding where the Commission granted ETC designation to Alaska Digitel. In that order the Commission reiterated its position that it intended to move forward on a case by case basis with respect to ETC petitions. The adoption of the Rural Coalition's proposed rules is not inconsistent with that approach.

The Rural Coalition agrees that each ETC petition must stand and fall on its own merits. The Rural Coalition's proposed rules are not trying to create a permit by rule or a check the box format or to sort of genericsize (ph) the process. The Rural Coalition realizes that an ETC entry will have specific and unique impacts in different service areas. But what the Rural Coalition's ETC rules do is provide a structure, a predictable process by which all the impacted parties, that being the petitioner, the Commissioner -- the Commission and the incumbent rural LEC can respond to an ETC application in a predictable, consistent and organized fashion.

As Ms. Grahame has discussed, it is absolutely critical that the rural incumbent LEC upon submittal of an ETC application be permitted the time to rebalance its rates through removal of implicit subsidies and through geographic deaveraging. This is important for at least two reasons, one so that the removal of implicit subsidies and the rebalancing of rates can be -- and the impact of those removals on the consumer rates can be assessed as part of the ETC application process. And secondly to provide the rural incumbent LEC with the tools to compete so the benefits -- the competitive benefits of a second ETC in the rural area, if any exist, can actually be realized.

Now, I'd like to turn now to the depreciation section of the Rural Coalition's proposed rules. These were drafted in response to legislative policy number 5, they incorporate the concept of actual life, but in addition they also attempt to streamline the depreciation process. All parties seem to agree that some form of preapproved depreciation rates could be valuable. The Rural Coalition proposes through its proposed rules that the Commission adopt a preapproved depreciation rate table.

As the starting point the Rural Coalition would suggest the FCC table on telecommunications accounts with some minor modifications in some of the accounts in light of Alaska specific conditions and I just note some of them that may be

relevant to modify, for example, motor vehicles, central office switching and outside plant. In addition, the Rural Coalition would suggest the addition of one account which is currently omitted from the FCC table which is that of buildings. But in general this adoption of a preapproved rate table will dramatically streamline the depreciation process.

For those companies that would like to propose a rate outside of the preapproved table, that carrier then would proceed through the standard process of filing a depreciation rate study for Commission approval. And in order to ameliorate some of the problems associated with the time lag of that approval, the proposed rules incorporate the concept of interim booking subject to true up upon final Commission decision since there can be a substantial delay in the time between when those studies are filed and when a decision is actually made upon it.

Well, that's the outline of the Rural Coalition's proposed rules. I'd like to respond now to just a few of the comments that were received on the Rural Coalition's proposed rules by other parties. ACS, GCI and Dobson Cellular all filed comments on the Rural Coalition's proposed rules. ACS' comments were generally favorable, but both GCI and Dobson Cellular raised some issues which I'd like to address.

A point by point rebuttal of every issue is impossible due to time constraints today, we would be pleased to respond to any lingering concerns the Commission has after the

presentations today through question and answer tomorrow or even by written response if that's an avenue the Commission would like to pursue. But just to hit a few of the highlights, both GCI and Dobson suggest that the ETC portion of the Rural Coalition regs have no place in this proceeding. Dobson, at paragraph 6 of its reply comments suggest that this docket is somehow limited to landline competition. Nothing in HB 111 limits this docket to landline competition, in fact, quite the opposite is true. The policies were generally formulated to cover a hard look at all the regulations covering competition in telecommunications which clearly can include wireless and wireline intermodal (ph) competition which is the actual competition which is occurring in rural Alaska. ETC regulations are required and they're required as part of this docket.

GCI raises some specific comments with respect to -- well, it raises some legal propositions and then suggests somehow that the Rural Coalition's rules are not consistent with those legal propositions. Well, the Rural Coalition agrees with some of the propositions GCI puts forward, what it disagrees with heartily is that any of its regulations are not in accord with those propositions. For example, GCI suggests that the Rural Coalition's proposed rules don't recognize the fact that the incumbent must remain the carrier of last resort, but a close reading of the rules, an appropriate reading I

would say, shows quite the opposite is true.

At 53.290(b) the Rural Coalition explicitly states that the incumbent remains the carrier of last resort. This is an example of a common error, trying to create inconsistency where simply none exists and we just suggest a close reading of some of these to ameliorate any remaining concerns.

Dobson's raised a number of arguments suggesting that the Rural Coalition's proposed rules somehow run afoul of the Telecommunications Act or FCC precedent. And each and every one of these arguments is simply incorrect. There's no legal impediment to this Commission adopting the Rural Coalition's proposed rules as drafted.

Again, a point by point isn't possible to go through in the time allowed, but I just -- four -- some highlights. We -- I would ask that the Commission approach Dobson's comments, reply comments, with some skepticism. One of the major premises underlying Dobson's comments is that this Commission lacks the authority to impose additional conditions on an ETC applicant in addition to those federally mandated ETC requirements. Dobson even quotes as authority for this proposition the Universal Service order, paragraph 135 specifically.

The Commission does, of course, have the authority to impose additional conditions as it's recognized most recently last Friday in the Alaska Digitel order. In fact, the exact

authority relied upon by Dobson to support its contention was explicitly overturned by the Fifth Circuit in 1999, this was the Texas Office of Public Utilities Council case which this Commission also referenced in its order last Friday in Alaska Digitel. I would note that's at 183 F. 3rd 393 and I point the Commission's attention to page 418 where the court had overturned that specific language cited from the Universal Service order in Dobson's comments.

Other authority relied upon by Dobson is also suspect, I mean, the RCC holdings decision and the Cellular South licensing decision are currently on appeal to the commission and therefore nonfinal from a standpoint of judicial review.

But the body of Dobson's text is a list of types of information requested from an ETC applicant to which it objects. Such information includes the explanation of agreements the carrier has with long distance carriers, a description of unserved areas the applicant intends to serve and a build out plan of how it might get there. And to the extent that the petitioner suggests that it can provide advanced services throughout a network to all requesting customers, an explanation as to whether those services will actually be provided at a reasonable cost.

Again, these are all clearly permissible information requests of an ETC petitioner, in fact, this Commission has requested all of these types of information from an ETC

applicant in the Alaska Digitel matter. And I would point the Commission's attention to their order in U-02-39, Order No. 5, much of which -- much of the items listed in the Rural Coalition's proposed rules are simply codifications of the information requested in that order. This is one more example of how regulations, structural regulations, may be beneficial putting all parties on notice, the next petitioner for example, of what types of information may be required by this Commission.

With that I will cede the floor back to Ms. Grahame.

MS. GRAHAME: Thank you very much.

HEARING EXAMINER OLSON: Does that complete the Rural Coalition's comments, oral presentation?

MS. GRAHAME: That does, although to the extent that the Commission has questions that should be addressed to Mr. Honchen particularly as related to depreciation, Mr. Honchen is available today and will not be available tomorrow.

HEARING EXAMINER OLSON: Okay. Thank you and we'll keep that in mind. Alaska Telephone is reserved until this afternoon so, Mr. Saupe, did you wish to put some oral comments of -- on this morning and then reserve Mr. Miller this afternoon?

MR. SAUPE: Yes, please.

HEARING EXAMINER OLSON: Okay.

MR. SAUPE: Good morning, Commissioners, Hearing Examiner

Olson. As I mentioned, Alascom's comments will be presented in two parts, first I'll speak this morning briefly about Alascom's three proposals for implementation of the Legislature's principles and policies in the intrastate long distance market and then this afternoon Mr. David Miller of AT&T will speak briefly about the pricing and resale issues in the local exchange market. Between the two of us we hope to take considerably less than the 40 minutes allotted to us. Tomorrow Mr. Miller, Ms. Catlin and I will all be available to answer Commission questions.

The first issue I'd like to discuss is the determination of dominance and non-dominance in the long distance market. Legislative policy number 2 makes clear that the fact of incumbency is irrelevant to the Commission's determination of whether an IXC is dominant or non-dominant. The current regulation however, 52.363(b) directly conflicts with that policy and needs to change. The debate in the written comments is over how best to change it.

In our written comments we've proposed a new regulation to guide the Commission in its dominance, non-dominance determination. We took as a starting point GCI's proposal which we thought was headed more or less in the right direction and we revised it to more accurately reflect the analytical model that the FCC has used in its dominance -- its decision that AT&T Corporation and AT&T Alascom are no longer dominant

in the interstate market with one minor exception and more recently to determine that the regional Bell operating companies should not be regulated as dominant carries when they entered the interstate long distance market.

As is often the case however, we believe that GCI's approach lacks subtlety and nuance and so we undertook to improve upon it, we've made several improvements to their proposal. Our draft regulation can be found at page 10 of our reply comments, I'd encourage the Commissioners to read along with the draft language while I explain the changes we made.

First, we reversed the presumption in 363(c) that the incumbent remains dominant until proven otherwise which we believe conflicts with policy number 2. Under our proposal the Commission would have 180 days to determine whether any existing long distance carrier should be designated as dominant.

The second important change we made was to explicitly mention important factors that constrain market power, the exercise of market power such as geographic rate averaging and existence of price caps. It should be obvious to everyone that geographic rate averaging effectively prevents a carrier from successfully raising its prices in any regional submarket where it might otherwise have market power because if it does so it's going to lose market share in the broader market and the higher density urban areas. Another constraint on the exercise of

market power can be rate caps, either voluntary or involuntary. Any dominant carrier analysis in our view must take these factors into account and that's why we believe they need to be mentioned explicitly in the regulation.

Another addition Alascom made to the dominance regulation is consideration of the capabilities of the competitors, not just their number and presence. The reason for this change seems obvious to us, it's more difficult to exercise market power if your competitor is financially strong enough to build its own facilities or has other market strengths such as other product lines that can be offered in a bundled package of services for example. So we would advocate inclusion in the reg of the consideration of the competitor's capabilities.

The next change we recommend to the GCI draft is reference to barriers to entering the interexchange market as a whole. The long distance market in Alaska is statewide, today there are no longer any legal barriers to entry by other carriers even in the highest cost, lowest density markets that Alascom serves. The lifting by the FCC just this month or last month in August of its Bush facilities restriction is certainly a factor that the Commission should consider in any -- this Commission should consider in any dominance analysis that it conducts.

As originally proposed the GCI draft regulation could have caused a carrier with a single so-called bottleneck facility

located out in an isolated area to be designated dominant statewide just by virtue of that one facility. Alascom added to its draft reg the requirement that bottleneck facility in order to be a factor in the market power analysis must be significant or substantial.

Consistent with that idea our draft eliminates the presumption in the initial GCI proposal that a single bottleneck facility should render a carrier dominant. That would be directly contrary to the approach the FCC has taken in its dominance analyses and we don't believe there's any legal or economic policy basis to include such an all or nothing concept in this Commission's regulations.

Finally, when we read the FCC's dominance orders -- when we read them it became clear to us that the FCC explicitly takes into account the costs the dominance regulation imposes on the dominant carrier and it weighs those costs against the purported benefits. Alascom strongly urges this Commission to incorporate direct reference in its regulation, any regulation that it adopts, to a cost benefit analysis when making its dominance determinations.

We think this is a reasonable, common sense idea that frankly we would expect you to apply in any event, but including it expressly in the reg makes sure that it won't be overlooked and it guarantees a carrier's right to present evidence on the subject of the cost that dominance regulation

imposes on it.

To summarize this issue we believe that our proposed dominance regulation is the best way for this Commission to implement legislative policy number 2. It's consistent with the FCC's approach in the interstate jurisdiction and it comports well with the legislative principles of fair treatment of all carriers and in particular elimination of unfair competitive disadvantages imposed on incumbent carriers such as AT&T Alascom.

At this point I'd like to turn to two other proposals that we have made to bring the IXC regulations more into line with the legislative principles and policies that were listed in the notice of inquiry.

The first proposal is one that we've made before and that is implementation of Alaska statute 42.05.840 which expressly authorizes the RCA to create a Universal Service fund quote, to be used to insure the provision of long distance telephone service at reasonable rates throughout the state, end quote. This statute was enacted approximately 10 years ago and no action has ever been taken to follow through on it.

Prior Commissions through their inaction have been content to allow Alascom to serve as the de facto Bush subsidy source. We believe it's long past the time when other parties should be asked to contribute their fair share through a competitively neutral funding mechanism that would support facilities based

Bush long distance service.

GCI's reply comments state that our proposed Bush support fund isn't supported by any of the nine legislative policies and shouldn't be considered at this time. We respectfully disagree. The proposal is supported as directly as it could be by an existing statute, the one I quoted, section 840 of 42.05. It's also directly supported by a number of the legislative policy -- or principles that are listed in the NOI and specifically among others I'd direct you to number 3 which says the incumbent carrier may not be placed at an unfair competitive disadvantage. Number 5 says the competition among telecom companies should be encouraged. Number 6 says the development of a modern telecommunications infrastructure in the state shall be encouraged. We think that a Bush long distance subsidy mechanism would help to promote each and every one of these goals.

As stated in our reply comments we'd be satisfied if one result of this docket were an order from the Commission clearly stating its intention to create such a fund as part of the Alaska Universal Service fund, describing the goal of the fund and directing the industry and/or the Commission Staff to convene an industry workshop to develop a workable proposal within a specified deadline to implement section 840.

Before concluding my portion of the presentation there's one final long distance issue I'd like to discuss and that is

the sharing of carrier of last resort obligations in the Bush. This issue is closely linked to the Bush subsidy concept I just described and it's actually supported by the same legislative principles. Right now the regulations provide at 52.390(c) that quote, a dominant carrier is responsible for providing intrastate interexchange telephone service as the carrier of last resort. Thus as the incumbent Alascom is automatically dominant and as a dominant carrier it is automatically the carrier of last resort. We don't believe that this inflexible linkage makes any sense 13 years after the advent of intrastate long distance competition. More importantly we believe that the competitive burden these regulations place on the incumbent is directly contradicted by legislative policy number 2 and the various principles I quoted a minute ago.

GCI suggests in its reply comments that although it may not be opposed to a sharing of COLR responsibilities, the issue should not be considered in this docket. I guess our question is when and where should it be addressed, it's not being considered in any other docket. According to the notice of inquiry this docket is supposed to be a thorough review of all rules and regulations governing competition in telecommunications. It seems like now is the time.

The dominance regulation and the COLR regulation are both anachronisms that conflict with the Legislature's policies and principles. It seems to us that this issue must be considered,

if not in this docket in a follow up docket, perhaps the same one that I just described that would consider the Bush support mechanism. I think the two issues are sufficiently related that they could be considered together in a follow up docket.

Otherwise our fear is that more years will go by, nothing is going to be done, we'll continue to shoulder the costs of being the only carrier of last resort, GCI will continue to enjoy the competitive advantage of unequal Commission regulation of its principal competitor. We don't think that's a good way to encourage facilities construction or improve service throughout the state.

So to summarize our position on the long distance market issues, we believe that legislative policy number 2 requires modification of the two existing regs that automatically link dominance status and carrier of last resort status to incumbency. After 13 years of vigorous and very successful competition -- and we've laid out some of the facts in our comments not necessarily to argue the merits, but to put our comments in context, but after all those years of successful competition we think that incumbency is now a meaningless concept in the long distance market and it should be expunged from the regulations.

The Legislature's principles and policies require the creation of a new scheme of long distance regs that treat competitors fairly and equally and that the regs should also

encourage rather than discourage new investment in long distance facilities throughout Alaska.

Thank you. That concludes my long distance portion of Alascom's presentation. As I mentioned this afternoon Mr. David Miller will be available to provide our comments on the local market issues. Thank you.

HEARING EXAMINER OLSON: Mr. Jackson, you good to go?

MR. JACKSON: Yes. I'm probably going to take my full 40 minutes, could we have five minutes before I get started?

HEARING EXAMINER OLSON: You bet. Let's take 10. Okay. Let's come back at right around 10:30, that'll give us plenty of time.

(Off record - 10:17 a.m.)

2260

(Tape change)

Tape 2

0015

(On Record - 10:30 a.m.)

HEARING EXAMINER OLSON: Okay, Suzie.

COURT REPORTER: We're back on record, and if you would check the people on line?

HEARING EXAMINER OLSON: You bet.

COURT REPORTER: Thank you.

HEARING EXAMINER OLSON: Ms. Brinkmann?

MS. BRINKMANN: Yes, here.

HEARING EXAMINER OLSON: Okay. Mr. Lindgren, are you there?

MR. LINDGREN: Yes, I am.

HEARING EXAMINER OLSON: And Mr. Shelanski left. I heard the little beep from the operator. And, Mr. Ayotte, are you there?

MR. AYOTTE: Yes, sir.

HEARING EXAMINER OLSON: Okay. Thank you. We're going to go forward now with Mr. Jackson.

MR. JACKSON: Thank you. I'd like to begin by confessing that I used to think that I write fairly clearly, not with any subtlety, but with some clarity, but after reading the reply comments in this matter, I recognize that just not be true, because to a very great extent what I read other people saying about our comments differed substantially from what I had intended to write. So what I would like to do today is to take some time to go through our proposals regarding each policy and explain what we proposed.

In doing so, I'd like to explain how our proposed rules will operate as a whole when combined with existing rules, and considering all the changes because I think at least some of the confusion about what we proposed was due to the fact that people were looking sort of narrowly at each individual proposal without looking at the entire set of regulations.

I'll also take time to address the comments of other

parties in reference to our proposals, and to address some of their comments, and also some of their affidavits. And I'll do this primarily by going through each of the legislative policies individually.

Before doing that, I want to address a general criticism that was levied by ACS, and that was their statement that in this proceeding we had taken a step backwards from our comments advocated earlier in Docket R-02-06. I went back and looked and compared what we said in the two proceedings, and the major difference that I find is that in R-02-06 we argued that a dominant carrier with less than 65 percent market share should, nonetheless, have tariff treatment exactly like a non-dominant carrier, while in this proceeding we proposed that a dominant carrier with less than 80 percent market share should have such treatment. So that was a substantial movement towards greater rate flexibility sooner than we had proposed in R-02-06, and it is not a step backwards, but in fact a step quite forward in terms of giving rate flexibility sooner.

The other major difference between the two sets of comments is that in R-02-06 we proposed carrier of last resort sharing rules that we did not include in this proceeding, but we've not abandoned those COLR rules in any way. We still stand behind them. We just did not repeat them in this proceeding because the Commission asked us not to repeat them in this proceeding, because they'd already been stated there.

As a last point before proceeding to the various legislative policies, I'd like to propose some standard or some questions that the Commission might ask as it considers the proposals of the various parties. As to any proposed regulation, I suggest that you ask the following questions and put them to the following test. Is the proposal consistent with the legislative policy? If consistent with the legislative policy, is the proposal in the public interest and it is the -- and is it the best alternative for implementing the legislative policy? And, third, is the proposal consistent with other controlling laws?

Now, to the policies. Policy number 1 is there shall be fair payment by a user carrier for use of another carrier's equipment and facilities, including existing and newly constructed equipment and facilities. GCI's position on this issue is that the Commission should adopt and embrace UNE rates based on total element long-run incremental costs, or TELRIC.

And there are two independent reasons that you should embrace TELRIC. The first reason is because TELRIC is the right answer to the question of what methodology is just, reasonable and fair for setting UNE rates. As GCI discussed at length in our initial comments, TELRIC is the proper methodology for pricing UNEs. Indeed, all of the benefits that are associated with a competitive market flow from pricing UNEs at TELRIC costs. If you don't use TELRIC, you won't get the

benefits the competition is designed to produce. The reasons and the explanations for this were set out in detail in the FCC's order that adopted TELRIC pricing, and we set out some of that discussion in our initial comments. I won't take the time to repeat it now.

The second reason is that TELRIC for UNEs is the law of the land, and it cannot be changed by ACS, the Legislature or by regulations. We commented -- GCI commented briefly on the decision in Illinois where the legislature tried to modify TELRIC. And AT&T did a very good in their reply comments of showing how the proposals of ACS directly conflict with the ruling in Illinois. We agree completely AT&T's specific analysis of ACS's proposals regarding TELRIC pricing, and we also include some similar analysis.

ACS posed the question of why are states tasked with setting interconnection rates if they must follow the FCC rules, but the answer to that is quite simple. Even after the rules exist, there's lots of work to be done to implement the rules, and the FCC passed that job on to you.

It's important to note that in discussing the FCC TELRIC rules, ACS's comments are 100 percent internally inconsistent. In its comments and reply comments, ACS states over and over again that existing FCC TELRIC rules can produce UNE rates that are fair and that resolve its complaints about rates being too low. But then it turns around and says that our proposal to

adopt the FCC rule on TELRIC is an attempt to lock in one and only one result, which is the result of paying (ph) thus far. And I want to cite some of their specific comments.

Quote, the Commission has ample discretion under existing FCC TELRIC rules to resolve the UNE pricing problem that were presented to the Alaska Legislature and again to the RCA. That's at reply of 25 to 26.

They also say, FCC rules have not freed us from the outcomes that have been experienced, and the FCC rules allow ample discretion to modify prior decisions on UNEs. Page 19 of initial comments.

Rates can be both TELRIC compliant and fair. Page 6 of initial comments, page 9 of reply.

And, additionally, UNE payments too low, but the Commission has ample discretion under existing TELRIC rules to correct the problem.

But then on page 9 of the reply, ACS says our -- GCI's proposal to adopt the FCC rule on TELRIC is an attempt to lock in one and only one result, the result of paying (ph) thus far.

These are contradictory statements, and ACS cannot have it both ways. If rates based on TELRIC rules can be both fair and TELRIC compliant, then our proposed rule would do absolutely nothing to stop that result from being achieved. And we suggest that you make the decision to achieve the proper TELRIC-based pricing using the TELRIC rules in the arbitration

proceedings that are before you.

What ACS is actually attempting to do is to adopt regulations that are absolutely inconsistent with TELRIC. As I mentioned before, it's clearly shown by AT&T in their comments, and also in our comments. We do not claim that there is one and only one TELRIC compliant rate. There is a range which would be upheld as just and reasonable, but it cannot be based on historical and embedded and non-efficient standards that ACS proposes and urges you to adopt.

The situation is similar with the proposals on fill factors. The proposed fill factors must be in accordance with the FCC regulations.

Policy number 2. In determining whether a carrier is the dominant carrier for the purposes of setting consumer rates, it is not relevant that the carrier in a competitive market is the incumbent carrier. The contrast in the positions of the parties on these two poli -- on these poli -- this policy is very stark. ACS and the Rural Coalition both urge you that in a competitive market, the Commission should immediately eliminate dominant/non-dominant regulation. On the other hand, the proposals of both GCI and AT&T provide more simply that a dominant/non-dominant distinction can continue, but the Commission cannot consider incumbency when it determines whether or not a carrier is dominant.

Both GCI and AT&T propose a list of criteria that should

be examined to determine if a carrier has market power, and those criteria do not include incumbency, which is what the Legislature required you to do. The proposal of GCI and AT&T are, therefore, much consistent -- much more consistent with the legislative language than is the proposal of ACS and the rural coalition.

The Legislature could easily have stated that no carrier would be treated as dominant in a competitive market, and that would have been consistent with their proposals, but that's not what the Legislature said. They just said, don't consider incumbency when you make your market power decision. Neither our proposals nor AT&T's include incumbency.

It's interesting to note here that AT&T's interest are pretty much the same as ACS's. Like ACS, AT&T is now considered dominant, and it wants that to change. So the fact that AT&T still supports a market power analysis is of some importance to your consideration.

There was some amount of comment regarding the specific criteria which we proposed, and that comment comes primarily from AT&T and ACS. I'll address that briefly, but there's not enough time to go into all the details. I think the specific criteria can get more comment in round two when you actually propose regulations after you've made the call on whether to go with the general approach recommended by GCI and AT&T, or whether to go with the approach recommended by the Rural

Coalition and ACS.

As to the AT&T comments, we agree with some of their modifications to the criteria that we proposed. They said in their comments and again today that we had not removed the presumption that the incumbent was dominant. And I didn't understand that comment. We intended to remove that. I talked to Mr. Saupe a little bit, and I think that maybe that came from the fact that our regs require within 180 days that you review the status of the dominant carrier to see if it should be changed. I did not -- we did not.....

MR. MILLER: Dave Miller.

OPERATOR: Is joining the meeting.

MR. JACKSON: We did not intend that to be a presumption one way or another that they would or would not continue as dominant, just said within 180 days you review, and you do it for the dominant carrier.

We didn't propose that you review every non-dominant carrier to see if their status could be changed, and there are two reasons for that. In the long distance market there's something like 100 non-dominant carriers, and I don't think you want to have a proceeding for every one of those to see whether or not their status should change. It would just be -- it would be burdensome. Besides that, the legislative policy talks about the incumbent and talks about incumbency and how that affects dominance, so to comply with the legislative

intent, it's really focused on the incumbent to relook at them and consider whether or not their dominant, but without considering incumbency when you make that analysis.

A couple of general comments in response to some of the interpretations that ACS had. The criteria that we list do not apply solely to incumbents. Yes, initially during the first 180 days you have to review the incumbent's status as I just explained, but pursuant to existing provisions of your regulations, the status of any carrier is subject to review at any time based on the motion of the party or on the Commission's own motion. So that would stay in place, and the criteria that we have proposed would then apply to whatever carrier it is that you're examining.

Second, no single criteria is dispositive. All of the criteria would be considered. ACS says that consumer choice, which is the one true test, ACS says we ignore that criteria, but one of our criteria is the availability of reasonably substitutable services. That's consumer choice.

Third, we agree that control of bottleneck facilities may be eliminated by UNEs, so that factor would not stand as an obstacle to an incumbent that provides UNEs appropriately.

The Rural Coalition also makes some statements that need to be addressed on this topic. They state that our proposal would maintain incumbents as a dominant carrier for an indefinite period. Again, I don't understand that claim. We

require a review within 180 days of the regs to decide whether a dominant carrier should be contin -- whether or not any dominant carrier should continue as dominant, and without considering incumbency. There are -- the Rural Coalition also says that the purpose of the distinction is really redundant because the Commission always has the power to prohibit or deny rate changes that are objectionable. And although the latter part of their statement is true, the very purpose of getting rid of -- the very purpose of finding someone non-dominant is so that tariff filings get much less review, that there's less need to review them, and they can go in effect without approval. So although, yes, you may have a reserve power to step in, sort of the purpose of making the determination is so you have to review the tariff to a lesser extent once you cross that.

The Rural Coalition also cites an FCC order regarding market power. This is at page 4 of their reply comments. And the Rural Coalition states that the FCC held that so long as the Telecom Act rules are adhered to, dominant carrier regulation is unnecessary and possibly counter-productive. That cite is misleading and does not stand for the proposition that the RC states. That case had absolutely nothing to do with the treatment of local carriers as dominant or non-dominant in their local service markets. Instead, and I quote from the very statement of Commissioner Ness which was cited by

the Rural Coalition, our order today clarifies the circumstances under which the interstate interexchange services of local carriers will be treated as non-dominant. That case had to do with local carriers providing a long distance service, not local carriers providing local service. It had to do with when local carriers should be treated as non-dominant for the provision of long distance services.

In Alaska, LECs providing long distant service through a separate affiliate are now treated as non-dominant. And the case cited by the Rural Coalition has nothing to do with the issues before you today.

Policy number 3, all telecommunications carriers may unilaterally reduce consumer rates subject to state and federal antitrust laws. Our approach to this policy was pretty simple and direct. For competitive markets, we wrote the existing regulations to specifically allow rate reductions that are not inconsistent with principles of antitrust law, and we added a similar provision to the regulations even regarding noncompetitive markets.

GCI stated that the policy does not address new terms and conditions that a utility might include with reduction, and we argued that the policy does not limit the RCA's right to address such terms and conditions. Those limitations which we mention in response to -- both the Rural Coalition and ACS argue that our proposal does not go far enough. And ACS stated

that a new market initiative almost always includes some new terms and conditions.

This is an instance where we may have contributed to the confusion by failing to explain how our proposed new regulation meshes with existing regulations There is already an existing provision in the competitive regs for both local and for long distance service that provides that even dominant carriers can offer new or repackaged services without approval of the Commission. For local services, that's 53.240(b). We did not propose to change that rule. So the right of the dominant carrier to offer new or repackaged services without approval would still exist.

However, long ago it was decided that offering a new or a repackaged service presumes that the preexisting prior service also remain in place, so the existing regs address the situation where you're adding a new choice without removing any of the choices of the customer.

What we were trying to address in our comments was the situation where a carrier might propose to lower a rate and simultaneously change a term and condition that goes along with the rate, filed in a way that the previous rate, coupled with the previous terms and conditions was no longer an option. It is possible that such a so-called reduction could actually be detrimental to the customer, because of the changed terms and conditions. Just, I mean, as an example, a tariff might lower

a rate for basic local service, but give you that rate only if you buy a suite of other services along with it, and sign up for a long-term contract. Now, if that's a new option, the existing regs would -- which -- if that's a new option which remains in place along with the old option, then it could be implemented under existing rules as a repackaged service without approval.

But what we were trying to address is if the old option disappears so that you no longer -- the customer no longer had the old option of the rate without that additional package of services. And what we're saying is in that instance, you have the right to examine the changed terms and conditions to determine if their detrimental to the custom -- to the consumers.

So the point of our proposals would not in any way inhibit new service packages because they're already allowed. For tariffs that do not qualify as a new service package because they eliminate a previous choice, the proposal would allow the Commission to review changed terms and conditions.

ACS also argues that GCI attempts to confer on the Commission authority that the Commission does not have, and that was by including references to state and federal antitrust laws. Here I can simply say read the legislative policy. It says that the Commission should adopt a regulation that allows rate reductions subject to state and federal antitrust laws.

The Legislature itself said that you're supposed to look at the state and federal antitrust laws. If they didn't want you to look at the antitrust implications, I don't know why they included that clause in this policy.

We don't suggest that the Commission take on the job of directly enforcing the antitrust laws, but we do suggest that you consider the antitrust principles of those laws. And that has actually long been a part of this Commission's functions of protecting against monopoly power, and utilities obtain some limited immunity from the antitrust laws because of the fact that you indeed consider such things.

Before moving to the next topic, the next policy, let me address what's somewhat of a side issue, but I think should be addressed, and that is the statements of ACS regarding the Commission's current process for tariff proposals in regulated markets, which according to the regulation do not require Commission approval. I guess it's our perception that the Commission's approach to these type tariff filings over the last -- and I'm talking about the long distance market and the local market, but going back about 12 years, you know, the Commission's approach has swung a little bit like the pendulum in terms of how much review the Commission has given such filings. And I think we'd agree with ACS that right now the pendulum has swung towards a level of review that is at the heightened end as opposed to the less heightened end.

The regs say that certain tariffs can be effective without Commission approval, but they also say that the Commission can, nonetheless, jump in to stop a tariff that's not just and reasonable. The way we view this is that the Commission's review of such tariff's should be relatively light, that affirmative action by the Commission is necessary only to stop the tariff, but not to approve it. And that the Commission jump in only where a significant issue is raised regarding the reasonableness of a tariff.

Policy number 4. A definition of a competitive service area shall take into account whether actual competition exists in an area. Regarding this policy, GCI would like to note an element of agreement. There seems to be agreement this policy requires determination of whether competition exists in specific area, and that, for example, an entire certificated service area cannot be deemed competitive based on competition in a portion of the area. I think there are two disagreements. The first is that both ACS and Rural Coalition propose that an area become competitive based on the existence of any competitive ETC, including a wireless ETC. We think that's a significant problem. I will have to confess to not having known about it or read the Alaska Digitel order yet. But several parties in that proceeding took the position that wireless carriers are now not really competing with local carriers, that instead the wireless carriers are essentially

competing against the wireless carriers, not really competing to replace wireline service. We agree with that, and we think that accurately describes the current situation.

If it does, and if wireless carriers, nonetheless, get designated as ETC, then the proposal of the Rural Coalition and ACS would essentially result in deregulations of I-LECs based on noncompetitive ETCs. We do not believe that is what the Legislature intended when it said that the definition of a competitive service area just consider whether or not there's actual competition.

The second disagreement is whether competition needs to be actual, meaning the consumers have the actual ability to switch their service, or whether it can be based on a possibility of competition. ACS relies on the existence of UNEs and whether markets are what is called contestable. While the RCA even proposes that service area be defined as competitive as soon as the rural exemption is lifted. The Commission lifted the rural exemption in the Glacier State study area quite a number of years ago. There's still zero competition in that area. So we don't think that approach captures what the Legislature meant by actual competition.

What we intended to convey in our proposal is the actual ability of consumers in an area to obtain local telephone service from an alternative provider who is actually providing service. Short of that, we do not think the actual competition

component of the policy is achieved.

Policy number 5. Any method of depreciation shall consider the actual useful life of depreciated equipment and facilities. As we explain, we read the words actual service life of depreciated equipment of facilities to mean that the Commission must consider the actual historical experience lives of plant in service. We proposed a regulation to that effect.

We were criticized for proposing a regulation that looks only at historical experience. We agree that other factors should be considered when you set depreciation rates, and that historical experience is only one factor. If you want to add more, we don't object, but you must keep the part that the legislative policy specifies, which is that you look at the actual useful life of depreciated equipment and facilities.

The more detailed proposal of ACS and the Rural Coalition may be options for the Commission to consider, but we think the details would probably be best done in a separate proceeding. And I will also say again their proposed policies do not address the legislative policy, which is that you absolutely must consider the historical experience.

The Rural Coalition's proposal in writing states that they support a range of depreciation rates. I discussed that with them after their comments this morning, and I think we're in agreement that any such tables should include a range of pre-approved lives, not pre-approved rates. And the F -- that's

what the FCC does, and I think that we're in agreement that if such a table were ever adopted, it should be on lives and not on rates.

Policies 6, 8, and 9, and because they're so long, I'm going to save time by not reading those, but all three of these policies involve rate changes in a competitive market, and I'll address them together. Frankly, this is where I think the decisions are the hardest, because we believe there is some confusion and inconsistency in the legislative policies.

But I'd first like to point out where we agree with ACS in interpreting these sections. It's a point where ACS says we disagree, but we actually agree. At page 17 of ACS reply comments they state, the initiative (ph) simply acknowledge a fact that ACS has repeatedly stated. Markets will evolve, deregulation should evolve with them. ACS believes that a limited level of deregulation is justified as soon as competition enters a market. Once competition has involved -- evolved to a significant level, that is to say, facilities-based competition reaching 75 percent or more of the customers, price and tariff regulations should cease. This approach is fully consistent with the legislative initiative.

We completely agree with the concept that the scope of regulations should evolve with markets, that a limited degree of deregulation is justified when competition begins, and that more deregulation is justified when competition reaches a

significant level. Our proposed regulations are in fact built on just this concept.

The difference between ACS and us is not in the concept. It's in how much deregulation comes with each step, and how you measure when you get to the significant competition state, and how you determine market power. ACS says significant competition exists as soon as 75 percent of the consumers have a theoretical choice. We say significant competition exists when at least 20 percent of the customers have actually exercised the choice. We believe that the legislative policies and policy in number 4 regarding competitive service area, focus on actual competition. That's the word that's in the policies.

ACS says you don't need to have any actual competition, just the possibility of competition. Dr. Shelanski explains the concept of a contestable market. That concept is that competitors could enter the market, that they're able to enter the market, and even if they have not actually entered the market, they nonetheless exer -- place some price constraint on firms already in the market. Dr. Lehman has a slightly different view, and his is that market power ends as soon as UNEs become available.

Now clearly those theories are embraced by some experts. There are other experts who would disagree and say that the word competition itself means that you have multiple

competitors, none of which are dominant, and that it takes such full competition to constrain prices in the market. We propose a standard between these extremes.

ACS criticizes our choice of 80 percent market share is arbitrary. But ACS proposes to draw a line when 75 percent of the customers have a choice. Their proposed line is no more or less arbitrary than ours. Both call for judgment by the Commission on when a market becomes competitive, and the line can be adjusted one way or the other based on your expertise.

I want to talk for a minute about our proposal for measuring market share and the purpose -- measuring market share for the purpose of determining whether or not the market -- the dom -- excuse me, whether or not the dominant carrier has fallen below the 80 percent level.

In reply comments ACS lambasts us for proposing that lines served by a CLEC using what is called total service resale should be counted as part of the ILECs market share. That's at page 18 of the ACS reply comments.

Let me explain the proposal and why. Total service resale works like this: say ACS sells a local service for $20 and they have a 20 percent discount. That means a CLEC can buy the package for $16 and the $4 difference represents costs such as customer service that ACS avoids. If ACS gets a rate increase to $25, then the wholesale rate automatically goes up also. With the same 20 percent discount, the wholesale rate would go

up to $20. Thus, the CLEC's cost has cone up from 16 to $20, and the CLEC almost certainly has to raise its price to consumers at the same time that the incumbent does. This is very different from the situation with competitive service provided over UNEs, because UNE prices are independent of the retail rate.

The difference was very clearly demonstrated when ACS implemented a local rate increase in Anchorage. AT&T, which relies on total service resale, had little choice but to raise its consumer rates right along with ACS, but GCI did not, because GCI relies on UNEs, not total service resale. Thus, it's our position that total service resale imposes little, if any, competitive pricing constraint on the ILEC.

ACS's reply comments essentially say that's a bunch of hooey (ph). But look at what their own witness says. Footnote 1 of Dr. Lehman's testimony clearly says that when he discusses the modification in retail rate regulation that are required by the Telecom Act, he is referring only to the provisions regarding UNEs, and not those regarding total resale service, because, in Dr. Lehman's words, total service resale does not eliminate the incumbent's retail market power in the same way that UNEs do.

The next issue is once you pass the point of some competition and then significant competition, how much rate flexibility should be allowed? And this is perhaps the most

important question, because I believe you will find when we get to that question, that the Anchorage, Fairbanks and Juneau markets will qualify for the significant level regardless of which standard you use.

And that is except for one factor which ACS completely fails to address, but which I think we have to wrestle with. And that factor is the termination of the rural exemption in Fairbanks and Juneau is still on appeal and a judicial decision could more or less upset the apple cart.

Dr. Lehman's affidavit supporting ACS's argument for rate flexibility is based almost entirely on the availability of UNEs under the terms of the Telecom Act. And he states that retail -- the need for retail rate regulation disappears by establishing markets for UNEs. But nowhere does ACS deal with the fact that UNEs could become unavailable in Fairbanks and Juneau based on the pending appeal of ACS. That's something that has to be faced, and it has to be decided how to treat ACS in Fairbanks and Juneau in this -- if this contingency comes true.

Our suggestion is that the flexibility which normally goes along with significant competition should not exist so long as the possibility of reinstating the rural exemption exists. Perhaps there's another way to look at it, another approach to be considered, but I don't think we can just ignore it.

Getting back to how much rate regulation goes along with

initial competition and then significant competition. ACS proposes complete rate flexibility based on seven days notice as soon as competition begins, and then detariffing, complete detariffing once the significant level is reached. GCI proposes, on the other hand, that the existing 30 day notice periods be retained, that flexibility be allowed for all but increases upon initial competition, and flexibility also be allowed for raises by the incumbent carrier, the dominant carrier at the point of significant competition.

Let me point out one unusual perhaps aspect of our regulations. Our regulations would actually provide two separate paths towards flexibility to raise rates. The first would be to be declared non-dominant pursuant to all the criteria which are set out the dominant and non-dominant distinction. The second path would be even without being declared non-dominant, if the market share falls below 80 percent, you also get the flexibility to raise rates. We proposed the latter bright line specifically to avoid the criticism that proceedings regarding dominance take too long and would delay rate flexibility for too long.

As I said, we believe the 30 day notice period should be retained. It has worked well in the long distance market. And the 30 day period is necessary for the Commission to weed out in rare occasions proposals that should not go into effect without review. All parties recognize that there's some such

instances. There's -- one of the policies specifically says the Commission can deny increases to protect the public. You have to know what's coming, and have at least a little bit of time to look at it to determine whether or not you should do that.

ACS presents the affidavit of Mr. McKenna to support the position in favor of detariffing. And if I can summarize his affidavit, it's that lengthy periods of review and justification will inhibit competitive market forces. And I think there are two points to be made in response.

First, in large measure, Mr. McKenna is addressing a situation that doesn't exist. Under any version of the rules, all competitors could introduce new service packages without approval and without support on 30 days notice. So the innovative packages that he talks so much about can be implemented quickly under any version of the rules.

Secondly, the 30 day notice period does not reduce or eliminate a carrier's ability to capitalize on its creative marketing efforts. On this point, I'd summarize my argument to say -- by saying that telecommunications products and services are not comparable to Tickle-Me-Elmo or pet rocks. Those are the only examples that Mr. McKenna cites where a 30 day head start would matter. In all of the other examples that he cites, Nokia cell phones, 1-800-Collect, Friends and Families, the first person to market advantage lasted for long periods of

time. Even according to his own testimony, it lasted for long periods of time.

We can see this in Alaska where AT&T's Alaska Airlines mileage program was introduced about 12 years ago, and they have continued using that to success for many, many years. The first carriers to market continue to get the advantage of that market and that it continue to get that advantage even with the 30 days notice.

It's doubtful that the 30 days notice even affects the advantage, because what the 30 day notice does is delay both carriers by 30 days, not just delay the first carrier by 30 days.

I have a few concluding -- that concludes my presentation of the specific policies. I have a couple of pages if I might which will address a few remaining topics.

First, I'd like to make a couple more comments regarding the affidavit of Dr. Lehman. As I said before, there is in the comments of Dr. Lehman with which we agree, or at least -- with which we agree at least in part. And one is his emphasis on the important of the availability of UNEs in creating a competitive market and constraining the incumbent's market power. We agree with Dr. Lehman that it's an incredibly important factor. We disagree slightly in that for Dr. Lehman it's the totally sufficient factor for constraining market power, while we would say it is absolutely necessary, but not

always totally sufficient into itself.

Another factor that we would address which isn't addressed by Dr. Lehman is that the UNEs have to be available at TELRIC prices to have the appropriate constraining effects. If UNEs are priced too high, then the ability for the competitor to provide services at competitive prices goes away. If you look at the formula in Dr. Lehman's testimony at paragraph 7 of his first affidavit, he has a formula there. If you plug in a UNE price that is too high, then it would be clear that no -- there would be no ability for a competitor to constrain the prices of the incumbent.

A couple of comments regarding the Rural Coalition. Their proposal brings in the concept of natural monopoly. That should certainly be discarded. One of the brilliant aspects of the Telecom Act is that it allows competition even if one part of the system, such as the loop, is a natural monopoly by requiring that portion to be shared with all competitors.

I also would like to repeat what we said in our reply comments, that the proposed rules on ETC designation, if they're to be considered, should be considered in a separate proceeding. Although they may be tangentially related to some of the policies, I think they're only tangentially related. The policies and proposals regarding ETC could itself have taken my full 40 minutes of time, and in fact I'm not even going to be able to address them at all. It is a big topic

which needs to be addressed.

My final comment has to do with AT&T's reply comments on the COLR bush subsidy issues. We continue to oppose this and said it in our reply comments.

I need to respond to one AT&T comment on this issue. And that is that they said, after GCI has cherry picked the most lucrative federally-subsidized customers in these locations, meaning the Bush locations, GCI and the other IXCs have no incentive to construct long distance MTS facilities. That statement is 100 percent contrary to the history of GCI in the long distance market over the past 15 years. That history has been a continuing fight by GCI to be allowed to build MTS facilities in these areas. And until recently, Alascom and the LECs advocated the prohibition upon our being able to build.

When this Commission -- the APUC initially adopted long distance regulations, GCI was prohibited from building in Bush locations. The FCC had a similar rule which we opposed. We brought many proceedings trying to get the rule thrown out. After a while, we came in and said, please, please, please, won't you please let us build in at least 50 locations as an experiment to show how good competition can work there for MTS, and over the opposition and over opposition of several parties, both this Commission and the FCC allowed us. After that, we continued to try to get the rule both here and at the FCC lifted, and it is only in the last month in which we've finally

been successful.

So during the past 15 years, our failure to build MTS facilities has been caused entirely by a legal prohibition, not by a lack of incentive. And we continue to have that incentive.

And although you may want to consider some of AT&T's comments regarding carrier of last resort and the Bush subsidy, the comments that they made in that regard are an inaccurate portrayal of history. Thank you.

HEARING EXAMINER OLSON: Thank you, Mr. Jackson. Mr. Ayotte, are you still on the phone?

MR. AYOTTE: Yes, I am.

HEARING EXAMINER OLSON: Did you wish to present an oral presentation this morning, or do you have issues regarding doing it this afternoon as well?

MR. AYOTTE: I have no issues. I can be completely flexible to accommodate anyone else's schedules.

HEARING EXAMINER OLSON: Okay. Well, if you're prepared to go now on behalf of Dobson Cellular, we're ready to hear you.

MR. AYOTTE: Very good. Thank you. For the record, my name is Mark Ayotte, A-y-o-t-t-e. I'm a lawyer with the law firm of Briggs and Morgan in St. Paul, Minnesota, representing Dobson Cellular System in this proceeding.

Dobson has, by way of background, we filed our reply

comments, and specifically we focused in on the Rural Coalition's proposed regulations.

Dobson is a commercial mobile radio services provider in Alaska. At present Dobson is the largest wireless service provider. Its licensed areas include Alaska RSAs 1, 2, and 3, as well as the Anchorage MSA, or metropolitan service area, and its licensed areas in Nebraska cover approximately 91 percent of the population of the state.

Dobson's focus and interest in this proceeding is somewhat limited in that we filled comments specifically addressing the Rural Coalition's proposed regulations as it relates to the ETC process. With respect to the Commission's review of its local exchange competition rules, Dobson has not provided any comment and takes no position relative to those proposals and comments that have been filed. For the most part, we don't because the resulting rules would appear to only be applicable to local exchange carriers and Dobson is not a local exchange carrier in Alaska or elsewhere.

However, Dobson's comments are interested -- are focused on the Rural Coalition's proposed ETC regulations in that Dobson has filed an application for designation as a federal ETC. The application was filed with the RCA on July 11th and is currently pending in docket number U-03-48.

Overall we believe that the Rural Coalition's proposed regulations really seek to shift the focus of this proceeding

from local competition among wireline carriers and the current status of the dominant/non-dominant carriers to the question of whether the carrier operates in a competitive service area. And I believe it was Mr. Dillen who emphasized that the definition of a competitive service area is key to their overall proposals.

In doing so, if you look at the proposed rules and the definition of a competitive service area, the proposal of the rural coalition deems it competitive if there are multiple ETCs designated in the area, and as a result of that, it would then relieve the incumbent carriers from any heightened regulation. We think that's inappropriate. We think the Rural Coalition is really using this docket, which is designed or should be designed, to focus on local competition. They're really using this docket as a spring board to promote some unduly burdensome and anti-competitive rules as it relates to ETC proceedings.

First and foremost, we don't think the Commission should consider those ETC rules in the context of this proceeding. The Commission's order noted that a party would have an increased burden of persuasion. It would need to identify specific policies and corresponding regulations and explain the issues if they seek to propose regulations beyond the focus of this proceeding.

Although I agree that nothing in HB 111 would seem to preclude consideration of Universal Service in ETC matters, I

think, however, it is clear, given the fact that the focus is intended to focus on the Commission's existing local exchange competition rules, and the nine legislative policies relating to those, that opening up this proceeding to a consideration of Universal Service and ETC requirements is far beyond the intended scope, and more specifically the Rural Coalition has not provided the necessary rationale and policy reasons to support, which are really the largest portion of their proposed rules.

To the extent the Commission considers it necessary or appropriate to evaluate the Rural Coalition's proposed Universal Service regulation, then they ought to be rejected. In most instances the proposed rules are unsound, and are contrary to law as it relates to a federal ETC.

I wanted to amplify Mr. Jackson's earlier remarks where he was commenting on this, and noted that the Rural Coalition's proposal seeks to implement deregulation of the incumbent LECs based on noncompetitive wireless ETCs. And that may very well be the case. Dobson's initial reaction, however, was that the Rural Coalition's proposed regulations were designed to serve a different purpose. What I mean is, the proposed regulations of the Rural Coalition are illusory. On the one hand they appear to seek to raise the bar for designation of a competitive ETC, including a wireless carrier, under the guise of promoting competition in rural areas, yet if you step back, the effect of

the Rural Coalition's proposals is that neither will be accomplished.

In other words, the proposed ETC rules of the Rural Coalition, are clearly designed to increase the bar and avoid any designation of any competitive ETC. Through their standards, through their proposed guidelines, they are seeking to prevent the designation of any competitive ETC, and particularly a wireless carrier who seeks to be an ETC. Yet when you go back to their definition of a competitive service are, and how if there is a competitive ETC designated, then the rural LECs are relieved of the additional regulatory burden. That's not going to happen either, because the proposed regulations as they relate to Universal Service and competitive ETCs, will not result in a competitive ETC. Therefore, they will not be promoting landline competition in any competitive service area, and the effect of which is, we're going to maintain the status quo. And that will not further any of the legislative policies of HB 111. Simply nothing will happen.

At a high level, I wanted to just sort of address some, but not all of the specific proposed regulations of the Rural Coalition in an attempt to illustrate where they are both unsound and in some respects unlawful as it relates to a federal ETC. But the background for consideration of any proposed regulations dealing with ETCs is that the Commission needs to understand that under section 214(e) of the Federal

Act, the state commission has been deputized by Congress to assist in making ETC designations. But that's the extent of the state commission's role with respect to a federal ETC. The state commission is to determine whether the applicant meets the criteria, the federal criteria, for federal ETC designation. And in the case of designating an additional ETC in an area served by a rural telephone company, the state commission is to make the public interest determination.

But in doing so, the state commission must act consistent with federal law, and must act consistent with the FTC's regulations and determinations with respect to designating a federal ETC. The state commission does not have the authority to add to, modify, or change any of the criteria that has been established by the FCC with respect to federal ETC designations and federal funding determinations. That is the function and the prerogative of the FCC, not the state commission.

And similarly, the state commission in acting to designate federal ETCs should not be imposing burdensome procedural or substantive rules in such a fashion that they would frustrate the federal goals of preserving Universal Service and promoting competition.

In that regard, I would note that section 253(e) of the Federal Act provides that nothing in the Telecommunications Act of 1996 affects the application of section 332(c)(3) as it relates to a commercial mobile radio services provider. Yet

when you look at the Rural Coalition's proposed ETC rules, what they really do is they seek to subject all applicants, including a wireless carrier, to some LEC-type regulatory requirements, and in so doing, although they propose to support those provisions from a perspective of regulatory parity, what they really seek to do is to turn the FCC's policy of competitive and technological neutrality on its head.

And this principle of competitive and technological neutrality is one that the FCC has adopted and has administered in the context of its federal ETC rules and decision. What that means is not that the regulatory status of all carriers have to be the same. That's not what the neutrality refers to, but rather what they -- what the FCC has recognized is that competitive neutrality will mean that some carriers will be regulated differently than others. In the case of a CMRS provider such as Dobson, it is subject to the FCC's jurisdiction and authority, and is not within the scope of the authority of -- the regulatory authority of the Commission. And imposing otherwise inapplicable requirements is not only unlawful, but would also serve an impossible hurdle and essentially prevent an entire class of carriers from being designated as ETCs.

In addition, when considering the context of any ETC rules or Universal Service issues which again we think ought not to occur in this proceeding, but rather if the Commission wants to

address them, should be addressed in an entirely separate docket, but in doing that, one needs -- the Commission needs to recognize and understand that the Universal Service provisions of the Act cannot be read to give the state commission authority to overcome state rate and entry prohibitions of a commercial mobile radio services provider.

Earlier this morning, I think it was Mr. Dillen who suggested that Dobson was not familiar with or did not give appropriate recognition to the Fifth Circuit's decision in Texas Office of Public Utilities Commission versus the FCC. In fact, we did and would encourage both the hearing examiner and the Commission to specifically review that decision to see what it did say and what it did not say. In that case, the Fifth Circuit actually held that the Universal Service provisions of the Act, primarily section 214(e) relating to the designation of an ETC, that those provisions cannot be read to overcome the prohibitions under section 332(c) of the Federal Act.

At issue in that case was whether a State could require a CMRS provider to contribute to state Universal Service funding, and the court stressed that in its interpretation that wireless carriers could be required to contribute to Universal Service funding, the court emphasized that they would not and could not interpret any portion of the Act to overcome the preemptive effects of section 332(c)(3)(A), which generally prohibit a state from regulating the rates and entry of a CMRS provider.

And the Fifth Circuit actually cautioned that prohibitions of section 332 needed to be respected both by the FCC as well as state commissions.

With that background, I wanted to provide just some further amplification and comment concerning the Rural Coalition's proposed ETC rule, and to highlight in several respects where the proposed rules are either inconsistent with established federal law, or otherwise are ambiguous as such, that they don't provide any meaningful level of predictability or certainty to either the applicant or to any potential intervenor.

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(Tape change)

Tape 3

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First, with respect to the Rural Coalition's proposed rule at 53.360(b)(2). And here, for example, the Rural Coalition is proposing that an applicant be required to demonstrate a quote, concrete intent, close quote, to serve an entire service area within a reasonably short period of time. That is a proposed standard which is inconsistent with the federal law governing ETCs. The FCC has determined on numerous occasion that an applicant for ETC designation need only show an intent and an ability to serve once it has been designated, and to make a commitment to meet reasonable requests for service over time.

I think a fair reading of the Rural Coalition's proposed rule in this regard suggests that it's really designed to create a barrier to entry and is otherwise inconsistent with the federal standard.

Similarly, under the proposed rule, and most of these come into play under the proposed regulation applicable to areas served by rural telephone companies, the Rural Coalition proposes that an applicant be required to demonstrate that its services will be provided at affordable rates. Now, affordability is a concept and a policy that certainly falls within the area of universal service, but affordability is not one of the criteria for federal ETC designation under Section 214(e), or the FCC's rules. And certainly the Rural Coalition has not demonstrated or suggested how any such determination of affordability would be made, either for an incumbent ETC or a competitive ETC. And certainly when you're talking about affordability, that seems to run dangerously close to the federal prohibition against regulating the rates of a CMRS provider as set forth in Section 332(c)(3)(a) of the Federal Act.

Thirdly, the Rural Coalition is proposing that an applicant demonstrate its financial wherewithal to provide the proposed services. Again, I'm not sure what financial wherewithal means in the context of the Rural Coalition's proposal. It would seem to suggest some form of a financial

fitness or financial competency test that has to be met prior to designation as a federal ETC. There again, assuming that one could understand the meaning of such a vague and ambiguous standard, financial fitness is not a criteria for federal ETC designation under Section 214(e) or under any of the FCC's rules and decisions.

Likewise their proposed rule in 53.360 seeks an identification of any unacceptable dead spots by an applicant for ETC designation, or any identification of inadequate service quality requirement. Again, those sort of undefined and vague and ambiguous standards do nothing to benefit the process. And in fact, with respect to the unacceptable dead spots set forth in the proposed rule, that is entirely at odds with numerous FCC rulings that have rejected those arguments by rural LECs. In fact, the FCC has consistently held, particularly in the case of a wireless carrier, that the applicant is not required to provide or to demonstrate that it can provide ubiquitous service at the time of its designation.

With respect to dead spots in the case of a wireless carrier, that is not only to be expected due to a variety of technological reasons, but the ultimate standard is whether the applicant will make a reasonable demonstration of its capability and commitment to provide the services. That is the appropriate standard, not the proposed rule by the Rural Coalition.

Similarly, the Rural Coalition proposed regulations here seek to get into the question of the annual certification regarding the use of federal universal service funding. They want to do that prior to the time of designation. Again, the FCC -- Section 254(3) of the Federal Act and FCC rules 54.313 and 54.314 deal with the question of the annual certification to the FCC and the universal service administrative company relative to the use of the federal universal service support.

The Rural Coalition seeks to expand that whole certification obligation to somehow include a requirement that any ETC applicant disclose publicly its specific business plans relating to development or expansion of its network and/or the use of federal universal service support. But such a standard not only seems anti-competitive in that if the applicant is really going to be the competitor to the rural telephone companies, I'm sure the rural telephone companies would like to have as much as information as possible in advance of that competition in order to respond.

But more importantly, it sets up almost an insurmountable burden for the applicant. At the time of applying one doesn't know where they will be designated. They therefore don't know how much they can expect to receive in federal universal service support, and to expect that they then have to somehow certify and demonstrate how they're going to use such support is getting far too speculative to be meaningful at the time of

the application.

Similarly, the Rural Coalition's proposed rules that seek an explanation and demonstration of agreements with long distance carriers, including a requirement that the competitive ETC provide equal access, One-Plus dialing, is clearly unnecessary in terms of the filing of the agreement with interexchange carriers, but also a requirement for equal access is inconsistent with, contrary to the FCC's rules and the FCC's determinations. With respect to equal access, equal access to interexchange services is not a supported service under the FCC's rules for any ETC. The supported service is access to inter-exchange service. The language of FCC rule 54.101(a)(7) by its terms does not impose an equal access requirement on any ETC.

Secondly, with respect to a CMRS provider, Section 332(c)(8) of the Federal Act prohibits a state commission from imposing an equal access requirement on a wireless provider. Thirdly, requiring equal access is simply unnecessary. If the rural LECs offer equal access to their end users, and if such a service is desired by a customer, then I guess the rural LECs will have a competitive advantage over a wireless carrier which does not offer equal access. Conversely, if the customers don't desire equal access and they're otherwise content with receiving a service from a carrier that does not provide equal access but simply provides access to an interexchange carrier,

then I guess the public is better served by having available to them a wider range of service offerings. We don't need to restrict their choices. Competition is about expanding their choices.

And finally, with respect to the equal access requirement, the FCC has recently rejected that and has determined not to add equal access to the list of supportive services required of an ETC. And that was determined in their July 14th, 2003 Order and Order on Reconsideration. The question of equal access as a supported service is obviously still the subject of debate and consideration by the FCC, but as of now it has not been required. And if it ever is to be required of a competitive ETC, or perhaps not required by an incumbent LEC, the FCC will be the one to make that determination. But as a result the Rural Coalition's proposal to require equal access of a competitive ETC is neither consistent with the federal law nor supported by any sound public policy consideration.

Similarly, the Rural Coalition's proposed rules requiring a detailed analysis of unserved and under served rural areas, and the submission of build out plans, is really an attempt to bring in some extra regulatory requirements under the guise of the public interest analysis which is otherwise required by Section 214(e)(2). In short, no state commission has ever required such a standard in designating a competitive ETC, including wireless carriers. The FCC has not required such

information as part of its designation of competitive ETCs, including wireless carriers. And what the Commission needs to recognize as it would if it were to look at the Rural Coalition's proposed rules, is that it cannot do indirectly that which it is forbidden from doing directly simply because it does so under the guise of the public interest.

Ultimately, that is a further downfall of the Rural Coalition's proposed rules. They seek to, by rule, define what the public interest would entail. And there I think the best policy is that no state commission has ever undertaken to predefine what it will consider as part of the public interest when designating a competitive ETC. It's almost a term that is not susceptible to a precise definition, and similarly, I'm not sure that the Commission would want to foreclose itself by seeking to promulgate a public interest regulation. What we would direct the Commission to consider, however, is the FCC's public interest analysis which it has employed when designating competitive carriers under Section 214(e) of the Act. Those comments are set forth in our reply comments are references to the FCC's rules and I won't undertake to belabor the record by reciting them now.

But in short, if the Commission considers what the FCC has said is the appropriate public interest analysis when designating a competitive ETC, and takes those standards and criteria and applies them to the Rural Coalition's proposed

public interest standards, one can plainly see that the Rural Coalition's comments are inconsistent with, and in fact designed to prevent the designation of competitive carriers.

Finally, I would simply note that -- no, actually second to finally. I would note that the specific portions of the Rural Coalition's rules relating to obligations and requirements applicable to a CMRS provider, or targeted specifically toward a CMRS provider, are equally objectionable from both a legal and a policy perspective.

Finally, in what is probably the most unsound aspect of the Rural Coalition's proposal is their proposed Rule 53.360(e), which is their suggestion that before the Commission can designate a competitive ETC that any such designation has to be contingent upon the incumbent LEC's first opportunity to eliminate implicit subsidies. Now, Ms. Grahame, I think earlier this morning, was commenting on the need to re-balance rural LEC rates to remove the implicit subsidies, the biz/res subsidy and geographic deaveraging before there can be competition. I think if the Commission wants to undertake a broader look at universal service then one needn't follow the other, but rather the Commission independently could go forward and take steps to remove those implicit subsidies without having to delay the designation of competitive ETCs.

The guidance from the FCC is that the implicit subsidies are not sustainable in a competitive market. That was

recognized as part of the '96 Act. And certainly, the implicit subsidy of geographic deaveraged rates, biz/res subsidies, access charge reform, and other forms of implicit subsidies can and should be addressed, and in its place the Commission wants the explicit universal service support to be able to sustain and promote universal service in high cost rural areas. But you certainly cannot -- or the Commission certainly should not give the incumbent LEC the power to delay the designation of a competitive ETC while the incumbent undertakes to develop cost studies and modify its rates and otherwise seek to remove the implicit subsidies that are currently in their rates.

If the members of the Rural Coalition are so intent on removing implicit subsidies they should be going forward now to undertake those things irrespective of doing it in the context of a competitive ETC docket. Such a proposed rule, it seems to me, merely serves to give the incumbent LEC the ability to substantially delay any competitive entry within its service areas and that is not a result which should be endorsed by the Commission. Thank you. And I'll be available to answer any questions from the Commissioners.

HEARING EXAMINER OLSON: Thank you, Mr. Ayotte. I think that's all of the oral presentations we can do this morning until we reconvene this afternoon. So we're going to reconvene at 1:30. And it's the same number to call in, that 1-866-465-1045 for the telephonic bridge. And then I'm not sure whether

you're on the phone or not, Mr. Ayotte, but the Commission has decided they're going to reserve questions for tomorrow. So did you get the bridge number to call in tomorrow?

MR. AYOTTE: Yes, I did. Thank you.

HEARING EXAMINER OLSON: Okay. So we'll reconvene at 1:30 and we'll call back at that number we'll get the rest of the oral presentations.

COMMISSIONER HARBOUR: Excuse me, Mr. Hearing Officer.

HEARING EXAMINER OLSON: Yes?

COMMISSIONER HARBOUR: Am I to understand that all of the witnesses are available for questions tomorrow and none are available only today?

HEARING EXAMINER OLSON: Other than -- only Mr. Honchen is available so the Commission will consider whether they have any questions for Mr. Honchen this afternoon. Otherwise the Chair decided that they would reserve questions for tomorrow for the other people that could be available.

COMMISSIONER HARBOUR: Thank you.

HEARING EXAMINER OLSON: Yeah.

MR. MONINSKI: Mr. Hearing Officer?

HEARING EXAMINER OLSON: Yeah.

MR. MONINSKI: Just to clarify Commissioner Harbour's question, Professor Shelanski will be available tomorrow, but again, within that same noon to 3:00 window.

HEARING EXAMINER OLSON: Okay. I mean if there's some

change the Commission will make that determination then. All right. We'll stand in recess. Thank you.

(Off record - 12:00 noon)

(On record - 1:30 p.m.)

HEARING EXAMINER OLSON: Mr. Lindgren?

MR. LINDGREN: I am here, thank you.

HEARING EXAMINER OLSON: Thank you. Mr. Shelanski?

MR. SHELANSKI: Yes, I'm here. Thank you.

HEARING EXAMINER OLSON: Mr. Ayotte?

MR. AYOTTE: Yes.

HEARING EXAMINER OLSON: Okay. I guess Ms. Brinkmann and -- Mr. Moninski, do you know whether Ms. Brinkmann was going to be back on?

MR. MONINSKI: It was my understanding that she was but she may have been momentarily delayed.

HEARING EXAMINER OLSON: Okay. You willing to go forward without her?

MR. MONINSKI: Um-hum.

HEARING EXAMINER OLSON: Okay.

MS. BRINKMANN: Sorry. This is Karen Brinkmann.

HEARING EXAMINER OLSON: Oh, there you are. Thank you.

MR. SAUPE: Is Mr. Miller on?

HEARING EXAMINER OLSON: Mr. Miller?

MR. MILLER: Yes. I am on the line.

HEARING EXAMINER OLSON: All right. Thank you, Mr.

Miller. Okay. We need to -- are you ready to go now, Mr. Moninski with Mr. Shoup? I was thinking we need to break somewhere around 3:00, so I'd like to get all of your presentations at one time as opposed to breaking, so if you're willing to go forward now then we can deal with Mr. Saupe, Mr. Miller and Mr. Rowe's comments after that if that's all right with you? Is that all right with you, Mr. Saupe?

MR. SAUPE: Yes, it is.

HEARING EXAMINER OLSON: Okay. Are we on the -- we are on the record, are we not?

COURT REPORTER: We're on record.

HEARING EXAMINER OLSON: Okay. Whoever is going to do their presentation, Mr. Moninski?

MR. MONINSKI: I will lead off, Mr. Hearing Officer and Commissioners, briefly, with just some introductory comments and a very short predicate. And in these comments I will explain to you the structure of our presentation.

As I've indicated earlier this morning, my name is Ted Moninski. I'm here on behalf of Alaska Communications Systems. I'd like to reintroduce our team, some of whom you have met before, others you have met only for the first time in this docket. And one other person that I don't think you're very familiar with. With me again today is David Shoup to my left, who is ACS's attorney in proceedings before the Commission. To his left Dr. Dale Lehman from Alaska Pacific University. Dr.

Lehman filed an affidavit as well as a resume with the Commission in this proceeding. On teleconference we have Dr. Howard Shelanski, who also filed an affidavit and a resume in this proceeding. Mr. Hugh McKenna was to be joining us and I don't recall that I heard him signing in. He had a delay this morning and couldn't join us. He may be here today.....

MR. McKENNA: I am here, Ted.

MR. MONINSKI: .....and he is here today. Mr. McKenna also filed an affidavit in this proceeding.

HEARING EXAMINER OLSON: Thank you. I wonder, before you go forward, if we could get his correct spelling on the record for Madam Clerk.

MR. MONINSKI: Sure. That's -- first name is Hugh, H-u-g-h, McKenna, M-c-K-e-n-n-a.

HEARING EXAMINER OLSON: Thank you, Mr. Moninski.

MR. MONINSKI: You bet. Joining us probably tomorrow via teleconference will be Mr. Jeff Tyson, who has testified before the Commission on behalf of ACS. Mr. Tyson is ACS's vice president of strategic planning. And again, probably will be joining us tomorrow. Also on teleconference earlier today and continuing this afternoon is Ms. Karen Brinkmann. Ms. Brinkmann has not filed any documents and -- affidavits or resumes in this proceeding but has been associated with ACS in our Washington, D.C. matters for some time.

I'd like to tell you just a little bit about Ms.

Brinkmann. She has been the legal adviser to former FCC Chairman Reed Hunt during the time when the 1995 legislation that became the Telecom Act of 1996 was under consideration. She has also served as the assistant chief of the FCC Common Carrier Bureau, the associate chief of the Wireless Telecom Bureau, and was with the FCC and was advising Chairman Hunt on the implementation of the 1996 Act, and participated in the drafting of the first and second reports in order in FCC Docket 96-98, which was the implementation of the local competition provisions of the Telecom Act. Ms. Brinkmann is admitted to practice law in the District of Columbia.

The structure of our comments today will be that of Professor Shelanski primarily, and perhaps with some assistance from Mr. Shoup, will use the bulk of our time today and will be speaking to the Commission about ACS's position and advocacy regarding unbundled network element pricing and the TELRIC rules that you've already heard discussed earlier today and have been the subject of considerable discussion in written filings. To the extent that we have time available, Professor Lehman and I will talk to you about ACS's position regarding regulatory relief, price deregulation and detariffing. And I did want to mention that -- and as Mr. Jackson I think said earlier today, there were hundreds of issues that we'd like to talk to you about if we had enough time to do that.

Given the limitation of time we're going to have to be

selective and we ask you only to not view that selectivity as any de-emphasizing of other issues that we've presented. We know that the Commission has given careful and thoughtful consideration to the written comments and we're looking forward to responding to the questions that the Commission may have regarding those other issues in the second day of this proceeding.

The brief predicate that I want to present to you today begins with a question. And the question is why are we here? In its comments GCI has indicated that ACS has consistently misinterpreted the intent of the Legislature. And then GCI goes on to remind us that the Legislature really hasn't made any decisions. It has expressly stated that it wasn't passing judgment on any of the prior decisions that this Commission has issued.

We don't agree that we have consistently misinterpreted the intent of the Legislature, but we do agree that the Legislature has not yet passed judgment on the many issues that were presented last year during the course of the legislature's consideration of House Bill 111. The Committee Substitute for House Bill 111, and I'll use the shorthand.

GCI went on to accuse ACS of bullying the Commission. I believe that was their word. And we were accused of that because we made reference to another piece of legislation that is still pending at the Legislature, the Committee Substitute

for House Bill 106. ACS doesn't believe that it is bullying the Commission, or that it has the ability to do that. ACS believes that a combination of, a careful reading of House Bill 111 and House Bill 106 answers the question what are we doing here. We're here because the Legislature confronted numerous significant substantive issues during last year's consideration of this Commission's reauthorization bill. And it hasn't resolved them all yet. It sent us to this proceeding. And it did so in a very unprecedented way.

I was thinking about in the 22 years that I've been involved in regulatory matters, if I've ever seen the Legislature send us into a rule making where the Commission was given six months to produce at least a preliminary result. If you'll remember the current statute on time lines would normally give you 24 and perhaps as long as 27. In this case we have six months. I don't think that our November 15th deadline is coincidental. I think we've been given that deadline because the Legislature anticipates that we will go through this exercise in good faith, with all of the effort that we can bring to it and then come back to the Legislature and report to the Legislature as to the results of that exercise in time for the Legislature to take up its further consideration of House Bill 106. It is not meant to be a bullying tactic. I assure you of that. It is a statement of fact and it explains the reasons why we're here.

We basically have summarized our position in our written comments. I won't repeat that now. The two main areas that seem to be the areas that have prompted the most response and perhaps the most questions from the Commission will be the issues of TELRIC pricing and the issues of regulatory relief. And as I've mentioned to you, I'm going to turn our presentation over now to Dr. Shelanski, who will give his initial comments on the questions of UNE pricing and TELRIC rules. Dr. Shelanski, if you would, please.

DR. SHELANSKI: Yes. Mr. Hearing Officer and members of the Commission, thank you very much. The purpose of my comments is to discuss what I believe to be the correct principles for applying for TELRIC and determining the forward looking costs of providing unbundled network elements in keeping with the FCC's TELRIC framework. And I'm going to try to explain why, under the FCC's rules, I think the RCA has discretion to implement TELRIC in a manner that provides rational economic incentives for ILECs and for CLECs, that is pro-competitive and fair, and that complies with the FCC's policy objectives and rules.

Now, I will discuss in particular why neither the FCC's rules nor economic principles require or make it sensible for the RCA to adhere to a completely hypothetical network model, divorced from the realities of ACS's network or the economic environment of the state of Alaska. I believe that such a

completely hypothetical model will do more harm than good, is actually contrary to the FCC's stated policy objectives, and can be improved upon while remaining forward looking and without relying on any of ACS's embedded costs whatsoever.

When the FCC enacted its TELRIC rule, it was trying to answer the question left open in the 1996 Act of what cost means in the context of pricing unbundled network elements. As the courts have made clear, Congress did not well define the term and gave the FCC broad discretion. The FCC chose TELRIC, a forward looking total incremental cost method, to balance two principal concerns. On the one hand the Commission did not want to allow ILECs to charge UNE prices that would reflect network inefficiencies and that would require CLECs to pay more for a network element than the element would cost in an efficient competitive market. And I think for that reason the Commission rightly rejected a definition of cost based on book costs, and therefore barred ILEC from expressly recovering their embedded costs or from using their embedded costs as the basis for UNE prices.

Now, on the other hand the Commission did not want to use -- to base UNE prices on the cost of a hypothetical leased cost most efficient carrier because in the Commission's own words in paragraph 683 of the first report and order, to do so would discourage facilities base competition by new entrants. The Commission was, thus, aiming for prices that would balance the

need for incumbents to be compensated at a fair measure of cost, but that would not embed inefficiencies that might exist in legacy networks.

I think that the Commission, in enacting TELRIC, and the prime paragraph in which they set forth the TELRIC principles in the First Report Order is paragraph 685, gave us several important principles that are instructive today. First, the cost on which TELRIC prices are based should not be unrelated to the efficient cost of the particular network for which UNE prices are being set. The Commission states in paragraph 685 that cost should be based on the most efficient technology in the incumbent LEC current wire center networks. That word the is extremely important. The Commission rejected, in paragraph 683, a broader standard, one that would be based on the most efficient technology available to the network or available to any ILEC.

And the Commission further emphasized in paragraph 685 this connection to the actual network being priced, that, quote, this bench mark of forward looking costs and existing network design must closely represent the incremental costs that incumbents actually expect to incur in making network elements available to new entrants. And the Commission goes on to say later in other documents, notably its briefs before the United States Supreme Court in Verizon against FCC, that despite the forward looking nature of TELRIC, quote, the costs

measured by TELRIC are nonetheless those of the incumbent itself.

So I think that the FCC is very clear about its policy. That was it is trying to do is not to subsidize new entrants nor to create a regime in which the costs of an efficiently behaving carrier are not recovered, but instead to look to an incumbent itself, to look at what efficient operation of that incumbent's network would be going forward, and to compensate the carrier for those actual forward looking costs. It is not trying to look at the incumbent's network and say well, there's some carrier some place else serving a different territory or with different kinds of cost inputs that is cheaper in its operations than you are, so you have to have that carrier's costs, or you have to model your costs based on the cheapest network that could possibly be built anywhere. I think it's quite clear that that's not what the Commission is doing. But that rather they're looking at a network, want to know what the most efficient way to serve that network and operate that network would be going forward, and to use those costs.

Now, there's several confusions that I think have arisen out of the Commission's discussion of TELRIC, and it's discussion of embedded costs. And one of the questions that comes up is well, how do we estimate the forward looking costs that TELRIC is supposed to compensate? Clearly they are costs that have not yet been incurred. And there have been a variety

of answers to this question. One of them has been to simply look at what the cheapest possible cost is for every aspect of operating a network that one can find somewhere out there in the world, and to build that cost into a model so that what you wind up with is a model of a hybrid efficient carrier.

I say a hybrid because it may borrow certain kinds of inputs from one network and other inputs from another network and a certain architecture from yet a different network. And to look around the country and say what are the cheapest costs, what are the best practices, what would be the ideal network that someone could build from scratch? That's one way to estimate the costs going forward. But I think it is in many respects unsatisfactory. It is based on pure guess work. It may deal with inputs that have nothing to do with the realities of the particular carrier whose network is being costed. And indeed, may have nothing to do with anything that that network has control over.

One example would be the cost of trenching for new lines. They may be very cheap in one part of the country and very expensive in another part of the country. And those expenses have nothing to do with how efficiently the carrier is operated. Those expenses have a lot to do with patterns of unionization and with the functioning of labor markets in different parts of the country. And no carrier, no matter how efficiently, could, say, in the high labor cost areas, achieve

the low labor costs of a carrier elsewhere. It wouldn't make sense to build those low labor costs from a different part of the country into a TELRIC network for a carrier in a different place.

Very similarly, switching costs. Switches are bought in different quantities by different carriers. To use the switching discounts from a major regional ILEC, a former Bell Operating Company, and to say that those are the switching costs that must be built into the model for a smaller carrier that buys fewer switches and gets lesser discounts, would again understate the true forward looking costs of the smaller carrier and to understate even those costs of that carrier operating as efficiently as a carrier its size could operate in the particular market.

So I think there are some problems with hypothetical models that one needs to be very careful of. As soon as one goes away from that and says let's build a model of costs for a network like the one that is before us, now the question of how to estimate the forward looking costs becomes a difficult one. One possibility is to look to what that network has actually been paying for inputs. For example, for switches, in recent purchases. Now, that may sound on the surface, and I think some people have characterized it as an embedded cost methodology. But it is not. And indeed, the FCC has agreed that it is not.

To look to the recent purchases of inputs as evidence of what future costs will be is a very different thing from looking to the recent purchases of those inputs for the purpose of compensating them in and of themselves. If we simply were to look at book costs and say well, the book costs or the costs on which we should base TELRIC, without thinking about it more, that would be clearly an embedded cost methodology that is inappropriate. But if one looks to recent purchases of switches and says we're not looking -- and say we're not looking at those to compensate them because those are the costs on the books, but we're looking at that as a piece of evidence as to what switching will really cost next year and the year after as this carrier goes forward replacing and expanding at the plant. That is a very different use of a past purchase. And it is not, I think, in any way an embedded cost methodology.

Indeed, the FCC itself, in explaining to the Supreme Court how TELRIC works, and this is just -- to give you some reference. I'm citing to the reply brief of the FCC in the Verizon against FCC case before the Supreme Court. What the Commission cited with approval in explaining to the court how TELRIC works, a case called AT&T versus FCC from the D.C. Circuit in 2000, which the FCC described in a parenthetical as a case in which, quote, a state commission, in setting TELRIC price for switching elements, looked to the prices of switches

recently purchased by incumbent. The Commission was using that as an example of how state commissions go about constructing the forward looking cost model, approving the use and giving us an example of one possible way of building this model, looking to prices of equipment recently purchased by the incumbent. Clearly the Commission did not consider that an embedded cost method. It's not. It's looking to the best evidence of future costs of the actual network.

All of the Commission's concern about tying TELRIC prices to the costs of the actual network, and weeding out inefficiencies while at the same time being realistic and hopefully compensatory of efficient forward looking operation, is I think entirely consistent with what economic principles would suggest is the correct approach to input pricing. Certainly one would not want to have forward looking UNE prices that create inefficient incentives. One would not want to have UNE prices that are too low for they would deter efficient construction of new facilities and they would induce inefficiently high usage of incumbent networks. I might add the prices that are too low will also negatively distort the network investment decisions of incumbent firms that are constrained to charge such high prices.

On the other hand, of course, if UNE prices are too high they may deter market entry and encourage wasteful investment in new plants by sending incorrect cost signals to new

entrants. The FCC has described such economic signaling as one of the central-purposes of the '96 Act. Quote, to bring meaningful competition to local telecommunications markets to ensure the efficient use of existing network facilities and to encourage new entrants to make economically rational decisions about whether or how to enter a given market. I think it's quite clear at that point that the Commission does not want UNE prices that are low just for the sake of getting CLEC into the market. They want UNE prices that are compensatory and based on efficient costs and that induce CLEC to enter the market in the manner that they can do so most efficiently.

Another area of confusion that has I think come up in TELRIC is whether a cost study or a model of costs for a network can contain existing network elements. Can it contain equipment, facilities, architectural design, that are in the currently existing network? Or must the network, except for the central office locations, be completely redesigned from scratch for the purpose of determining what efficient forward looking costs are? I think that the Commission has made clear that just because a network model or a cost model contains older equipment, some existing plant, that that does not disqualify it as a TELRIC model and does not make it an embedded cost model.

The Commission has fully recognized that, quote, a prudent firm would not replace a facility the moment a more efficient

substitute appears on the market. The Commission recognizes that firms replace equipment incrementally going forward. What is important is not that existing equipment not be used in the network, but that it not be overly valued in the cost model going forward. So if I have an old switch I might economically decide that it makes sense to keep using the old switch. But how I value that switch going forward, how I set the amount of switching costs to be depreciated going forward, that will be determined by the existence of new technology. Much the way the value of a used car declines when a newer model comes on the market, the value of an existing switch and the network will decline when better, more efficient technology becomes available.

That doesn't mean that it won't be lower cost, at least for a period of time, to keep using the switch you have rather than incurring the up front cost of buying a new one. But it does mean that the amount of book cost, if you will, or the amount of cost to be depreciated on a forward looking basis of that switch should likely decline and be disciplined by the existence of the new technology. But there's certainly nothing wrong and nothing embedded in the very particular meaning of the FCC's rules about basing costs on a network that contains some older plant.

The only thing that the FCC is telling us in its TELRIC rules is in valuing that network going forward do not rely on

the book costs of that older plant because those are embedded costs. But even older plants may have economic value going forward that it is fully rational to make use of. And importantly, that it is fully fair to recover. The forward looking economic value of existing plant should be recovered. And in the FCC's words, the fair market value of the existing network should be recovered on a forward looking basis. That is another way that they have, before the Supreme Court, phrased what TELRIC should mean.

So at least insofar as the TELRIC pricing is concerned, I think that the principles that are important to keep in mind are that the -- RCA is not in any way constrained to use a hypothetical cost model. It is not -- certainly not constrained to use any particular cost model. Indeed, the FCC itself, in a very recent decision just handed down on Friday, used a modified synthesis model for one part of a network and a company's own cost model for switching and transport components of the network. I think that makes very, very clear that different kinds of models are admissible under TELRIC and no particular model need be used.

The important thing is that the model fairly compensate the incumbent for its efficient forward looking costs, that the model be based on the realistic market situation of the particular incumbent being regulated, and very importantly that in estimating forward looking costs, the best evidence of those

forward looking costs be used. And that best evidence may well be recent purchases of equipment and not some hypothetically modeled cost based on inputs that come from outside of that incumbent's territory or that embed in assumptions that simply do not apply at all to the particular incumbent being priced.

I would just conclude by saying that getting the prices right is particularly important in Alaska. In its major business markets Alaska has a level of competition that is almost unheard of. There are just -- there are a few ladders that have the kinds of competition ranging from 20 to 40 percent that one sees in Juneau, Fairbanks and Anchorge. But it's extremely unusual. Also unusual about the situation in Alaska is that the leading competitive entrants have an enormous amount of network facilities by virtue of its principal line of business, that is, of being a cable carrier. So this is an area in which entry to the market has proven extremely feasible and where transition to facilities based competition is not only feasible, but underway.

Getting the TELRIC price signals correct will have two major benefits for Alaska consumers. It will make sure that the competitive entry that has been occurring, and that continues, moves in the right direction. Moves to more efficient facilities where it should, remains on the ILEC networks where it should. And very importantly, it will preserve the investment ability and incentives of ACS, the

incumbent in those markets, which now finds itself, more than almost any other carrier in the country, in the position of no longer being dominant and really finding itself in the true position of being a competitor in key markets. That would conclude my testimony today on that note.

HEARING EXAMINER OLSON: Thank you, Mr. Shelanski.

MR. SHOUP: I just have a couple things to add. The first is that I think TELRIC, for purposes of seeing how the FCC views it, has come out in a couple of places recently that the Commission may want to know about. One is in paragraph 680 of the recent finding and review order in which the Commission -- the FCC says the object of TELRIC is to establish a price that would exist in a market in which there is facilities based competition. I think that's an interesting comment in the finding and review order in light of GCI's kind of restricted view of TELRIC as exists in their reply brief.

The second and even more poignant quotation is from the FCC's reply brief in Verizon versus FCC, filed in April 2001. One of the quotes from that brief from the FCC was, quote, the costs measured by TELRIC are nonetheless those of the incumbent itself, close quote. It kind of lends weight to Professor Shelanski's view that we're not really dealing with just totally hypothetical costs, we're looking at costs of the incumbent adjusted to make them forward looking. And I don't want to say anything regarding anything really that Professor

Shelanski has said since he was the chief economist at the FCC in 1999 and 2000, and I'm just a lawyer in Anchorage, Alaska. Those are my comments. Thank you.

HEARING EXAMINER OLSON: Thank you.

MR. MONINSKI: If we could shift gears to the next area of our presentation which is to talk about regulatory relief in competitive markets, then I would invite Dr. Lehman to make his presentation.

DR. LEHMAN: Okay. All of the comments that you've received about regulation of retail markets agree that significant changes in retail regulation are appropriate in competitive service areas. The disputes are what are the triggers and the extent of such deregulation of competitive service areas. What is a competitive service area? I propose that retail deregulation should occur any time that UNEs are available or multiple ETCs are established. GCI has characterized my proposal as one that goes too far, too fast, and what I'd like to say in my few minutes to you today is that the danger is that this Commission will do too little, too late.

The basis of our position is that consumers are served best by choice and choice is maximized when they have unfettered competition between providers that are being treated equally, and ideally with as little regulation on them as possible. It's the availability of interconnection and cost

based rates, unbundled elements where they are necessary for CLEC to provide service, or the designation of multiple ETCs that undermine an incumbent's ability to sustain prices above competitive levels. That's the basis for deregulating such companies because they cannot raise prices above competitive levels on a sustainable basis under those conditions.

Now, it may appear that the cautious tack for the Commission to take would be to move slowly in this case, but I'd advise you against that. I think moving slowly will ensure nothing of the sort of the benefits the competition offers. Moving slowly will actually undermine the ability of competition to work. I'd note the following. Alaska's local markets are among the most competitive in the country, yet the retail deregulation lags that in many other states, in Alaska.

You've been offered some definitions of competitive service areas that rely on market shares. Market shares are a backward looking measure of competitive service areas. Choice is like cost, a forward looking concept. People have choices, they don't have to have exercised those choices. So asking that a certain percent of them have exercised the particular choice as proof of competition is a backward measure of competition. Competition is enhanced when people are given a choice regardless of how they exercise it, and it is the interconnection, unbundling requirements of the Act that enable consumers to have a choice.

Market dominance is an outdated relic of the past. It is a concept that served regulators well for a long time, but it is no longer appropriate in a setting when you have these provision of unbundled elements, interconnection at cost based rates, and designation of multiple ETCs that renders the concept of dominance unnecessary and actually ill advised because the danger is that you will hold on to some regulation of the incumbent carrier that is not applied to the entrant, and the only result of that can be to limit consumers choices. Make them less than they would be otherwise.

Not only does that call for treating the competitors equally, but I would advocate that you treat the competitors with a minimum amount of treatment. You can regulate them equally and make them require 30 days notice of changes. You could treat them equally and required seven days notice. I would say the least you can live with is the best. And the reason is that consumers are served best by carriers that are out there trying to satisfy consumers interests unhindered by Commission requirements. And that's the situation we find ourselves with under these conditions where competitors can offer consumers choices and the less you stand in the way of that, the better.

What I would say is that maximizing choice means you have to let go of something. I think the time has come to let go of regulating retail markets where you no longer need to regulate

them. If you're reticent because you are concerned that somebody's rates might rise and rise rapidly, the easiest tool available to you is to just have a maximum limit on what an annual increase in basic rates can be. That achieves the purpose of protecting consumers against something that you think -- you're afraid could creep through the cracks and doesn't distort the competitive process, at least distorts it minimally as opposed to carrying an artifact of regulation that is going to require lengthy proceedings in order to determine how much to allow an incumbent to compete with a entrance in markets where you've established conditions for competition to prosper.

So I would say don't do too little too late. Now is the right time to utilize what you've already put in place in wholesale markets and allow the retail markets to work unfettered. And that concludes my comment.

MR. MONINSKI: I have just one or two more items and ACS will have concluded all of its comments. There continues to be some confusion. Mr. Jackson alluded to it earlier today, and others I'm sure will, about the various proposals that have been made. And I'd like to clarify ACS's proposal for regulatory relief.

ACS proposes a continuum. We've talked about continuum in a number of different places. This is a regulatory relief continuum that syncs up with the competition continuum. At one

end of the continuum you have no competition. You have the ILEC, the dominant carrier, the carrier of last resort, fully regulated. Moving along that continuum you have the beginning of actual competition. Not even hypothetical, although our economist friends will give us a good argument for contestable markets as Mr. Jackson mentioned earlier.

But ACS's proposal doesn't look at hypothetical competition. It looks at actual competition. The beginnings of actual competition. But I've heard criticisms of that proposal to say ACS would ask the Commission to deregulate the incumbent at the outset of competition. That is not what we have proposed. ACS's has proposed, along this continuum, that at the beginnings of actual competition that you treat the incumbent as a non-dominant carrier. You change that designation when competition begins.

Now, if you look into the regulations that we've proposed, non-dominant carriers, under those circumstances, continue to file tariffs. We refer to them as notice tariffs in our regulations. They continue to come before the Commission. They continue to have matters that remain jurisdictional. The processes become expedited. We suggest a seven day notice as opposed to a 30 day notice. But we haven't deregulated the incumbent at the moment competition begins.

But we do suggest doing that down -- further down that continuum when we have what the Legislature refers to as

significant competition and what we have tried to define as significant competition. The definition that we offer to the Commission is a situation now where instead of just any form of competition, we now have facilities based competition. And yes, Dr. Lehman has pointed out the importance of facilities based competition in the whole dynamic that we have been discussing.

Facilities based competition, significant competition should then render price deregulation and detariffing in our proposal. And the trigger that we have offered is a facilities based competitor actually operating in the market with a competitive network that is capable of reaching 75 percent or more of the customers. Mr. Jackson points out is there something magic about 75 percent? Perhaps not. We use the number because it sounded like an overwhelming reach of the competitor's network. That when the Commission saw a facilities based competitor capable of serving 75 percent or more of the customers in a market, that that was a clear demonstration of significant competition.

The criticism of our proposal is that this is somehow theoretical consumer choice. In theory, 75 percent of the customers have a choice. I'm not sure I understand that when I think about the following. The competitor's own switch colocated in the incumbent's wire center, access under interconnection agreements to unbundle network elements at

reasonable prices, a certificate of public and convenience and necessity to allow that competitor to operate in the market.

When you think about all of those things, and the fact that the competitor's is actually offering service, advertising service, making that service available, in my mind that doesn't look theoretical to me, that looks real. And I believe that ACS's proposal for significant competition and the regulatory relief of price deregulation and detariffing would be appropriate under those circumstances.

That concludes our remarks. I would only mention, Mr. Hearing Officer, that while we will be available for the Commission's questions tomorrow and we're looking forward to them, again because there's so many areas that we have not been able to discuss today, Dr. Shelanski will only be available in that limited window between noon and 3:00, but I believe the rest of our participants, including Ms. Brinkmann, will be available for the bulk of the hearing. Thank you.

2700

(Tape change)

Tape 4

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HEARING EXAMINER OLSON: Thank you, Mr. Moninski. Mr. Saupe, did you wish to have Mr. Miller provide his comments now so you can even up your presentation?

MR. SAUPE: Yes, if Mr. Miller is on line and ready to go

that would work fine for Alascom.

HEARING EXAMINER OLSON: Mr. Miller, are you still there?

MR. MILLER: Yes, sir, I am.

HEARING EXAMINER OLSON: All right. And I guess we'll have you answer the question. Are you ready to go forward?

MR. MILLER: I'm ready to go forward, yes.

HEARING EXAMINER OLSON: Okay. You're on.

MR. MILLER: Okay. Thank you, Mr. Hearing Officer and members of the Commission.

I'm Dave Miller with AT&T. I'm an attorney here in the Pacific law region. And I've dealt with a number of TELRIC cases in California and elsewhere and I wanted to address legislative policies numbers 1, 5, and 7 specifically in the context of setting UNE prices.

I'm going to go over a lot of the same issues that Dr. Shelanski discussed. And we have a very different view of what TELRIC requires. In short, we believe that the proposals put forth by ACS are clearly inconsistent with TELRIC and should be rejected by the Alaska Regulatory Commission. Instead, we would suggest that the Commission focus its efforts in construing TELRIC in a context of a specific cost proceeding where concrete evidence can be considered specifically with respect to issues like fill factors and depreciation such that the ARC can make a decision in that concrete context instead of in a theoretical vacuum where there's speculation as to what

the regulation really means and whether it's consistent with TELRIC.

We also believe that it's basically unnecessary to pass additional state -- Alaska State regulations to provide guidance on interpreting the federal TELRIC standard because the FCC, you know, as Dr. Shelanski's discussion indicates has made a number of statements about what TELRIC means. There's sufficient guidance already on the meaning of TELRIC. The local competition order that established TELRIC is over 700 pages.

In addition as some of us have mentioned, in the recent Triennial Review order the FCC had provided additional information on the interpretation of TELRIC. And also as others have mentioned in the very recent order on the arbitration in Virginia which is the only arbitration that the FCC has done to actually set TELRIC prices, they applied their own rules to specific facts in the State of Virginia because the State of Virginia recused itself from that proceeding. In that decision they provided additional guidance on the interpretation of TELRIC.

In addition to that there's been court decisions interpreting TELRIC, and in particular, the United States Supreme Court which has provided extensive information on the proper interpretation of TELRIC. So it just is unnecessary and actually is somewhat of a dangerous endeavor to try to

interpret TELRIC and make sure that the regulations of the Alaska Commission would be consistent with the FCC's regulations.

In a nutshell, the main problem with ACS's proposed regulations is that they try in many different ways to focus on ACS's actual or embedded costs instead of the hypothetical most efficient forward looking costs which are required by TELRIC. And I basically disagree entirely with Dr. Shelanski's interpretation of TELRIC because I think it's very clear in the actual regulations and in the orders that have been issued by the FCC that embedded costs or actual costs are not to be considered unless they're shown to be forward looking and most efficient. And that's been shown in a number of different orders.

I know Dr. Shelanski went to some effort to find a paragraph or two in maybe a reply brief here and there that seemed to support his position, but if you look at the regulations and you look at the bulk of the guidance out there it's very clear, in particular the most recent stuff from the FCC, it's very clear that we're talking about most efficient costs and that's what TELRIC requires.

The regulations themselves require that TELRIC be based on forward looking costs and the FCC's regulations also require that those costs be based on the most efficient telecommunications technology currently available and the

lowest cost network configuration. Those are in regulations that we've cited in our comments and I won't provide you with the cites again here. But the only constraint on the most efficient telecommunications technology and the lowest cost network configuration is the location of the incumbents wire centers and the demand. Those are the only two constraints and the FCC has made that crystal clear.

So to some degree Dr. Shelanski is accurate in saying it's not completely hypothetical, but the constraints are only two. And those are the location of the wire centers and the location and the amount of the demand.

In other words, and this is how the FCC concludes paragraph 685 of its local competition order which was the paragraph that Dr. Shelanski cited to some degree. It says we, therefore, conclude that the forward looking pricing methodology for interconnection and unbundled network elements should be based on costs that assume that wire centers will be placed at the incumbent LEC current wire center locations, but that the reconstructed local network will employ the most efficient technology for reasonably foreseeable capacity requirements. So, again, they're talking about a reconstructed network that's supposed to be the most efficient forward looking network.

In its recent Triennial Review Order the FCC provided further guidance on this saying that -- here's a quote,

specifically TELRIC equates the current market value of the existing network of an incumbent telecommunications provider with the cost the incumbent LEC would incur today if it built a local network that could provide all the services its current network provides to meet reasonably foreseeable demand using the least cost most efficient technology currently available.

And you just can't get any clearer than that. And the reference is to what the ILEC's cost are are references to this language. This is what the FCC means by what the ILEC's costs are. So all the references to the cost of the ILEC, what that really means is the most efficient forward looking cost of the ILEC.

And the FCC regulations go on to specify that embedded costs shall not be considered in calculating the forward looking costs of an element. And it defines embedded costs as well.

I don't disagree with Dr. Shelanski that in some situations old equipment might be the most efficient equipment, but that doesn't mean you use old equipment. It just means you use the most efficient equipment and old equipment might be the most efficient equipment. It also might be the case that current contract prices are the prices that would get paid going forward, but that doesn't mean you also use current contract prices or prices paid in the past. Again, it's very clear, it's very simple it's the most efficient least cost

network. And that's what the FCC has said over and over again.

The incumbents have not been happy with this requirement and they challenged in court and that decision went all the way to the United States Supreme Court. And although Dr. Shelanski cites some briefs that were filed before the Supreme Court he interestingly ignores the decision itself which is, again, very clear that we're talking about the most efficient network. And the Supreme Court specifically addressed the argument that actual costs should be used instead of forward looking costs or TELRIC costs and said the following; as for an embedded cost methodology the problem with a method that relies in any part on historical costs, the costs the incumbents say they actually incur in leasing network elements is that it will pass on to lessees, that's the wholesalers, wholesale purchasers, the difference between most efficient costs and embedded costs. Any such cost is an inefficiency whether caused by poor management resulting in higher operating costs or poor investment strategies that have inflated capital and depreciation.

If these elements were priced according to embedded costs the incumbents could pass these inefficiencies to competitors in need of their wholesale elements. And to that extent defeat of the competitive purpose of forcing efficient choices on all carriers whether incumbents or entrants, the upshot would be higher retail prices consumers would have to pay. And that's

what the Supreme Court had to say about this argument that actual costs ought to be used.

They recognized that the federal act is a novel approach to rate setting which was intended to encourage local competition, to give competitors every opportunity to break into these monopoly local markets, to uproot the monopolies, that's a phrase the Supreme Court used, and to reorganize markets by rendering the monopolies vulnerable to interlopers. So it's very clear that we're supposed to look at the most efficient forward looking network, least cost network, and it is supposed to encourage competition.

Now, I'd like to address some of the specifics in ACS's regulations one of which is to begin with a rebuttable presumption of ILEC efficiency. In essence, what this would do would mean that you would begin by presuming that the ILEC's actual costs are efficient and, therefore, the actual costs equal TELRIC. Well, that's standing TELRIC on its head. It's, in fact, the opposite. You have to start with the forward looking costs and you don't assume that actual costs are forward looking costs.

Again, the regulations adopted by the FCC say it must be the most efficient telecommunications technology currently available and the lowest network cost configuration. This was confirmed in a recent Virginia order by the FCC which, again, said that the Commission's TELRIC rules require use of the most

efficient telecommunications technology currently available and the lowest cost network configurations limited only by existing wire center locations. So, again, that's the only limitation otherwise it's the most efficient, least cost.

And in that same order the FCC confirmed again that embedded costs may not be considered when determining the forward looking economic costs of the UNE. So this is very clear over and over again the FCC has said this.

And in that decision as Dr. Shelanski noted, the FCC rejected the loop costs model proposed by Verizon on the specific ground that that cost model started with Verizon's actual network and then attempted to make forward looking adjustments to that network. And the FCC found that was an inappropriate approach when compared to the approach used by the synthesis model which was to build a reconstructed network which obviously us much more consistent with all the precedence and the guidance I just discussed.

This issue was also addressed by the Illinois District Court in an Illinois ETC (ph) passed a law that required the Illinois Commerce Commission to use some of ETC's actual costs in setting TELRIC rates. The Illinois District Court found this approach was clearly contradictory to TELRIC. It eviscerated TELRIC and effectively repealed TELRIC. Oddly enough it was the same -- some of the same factors that are at issue here, fill factors and depreciation. And that decision

is discussed in our comments.

Dr. Shelanski, I don't think has read the more recent precedent because it makes clear another point that he appears to be mistaken on. And that is that the most efficient technology is not limited to technology that's actually deployed by the provider. And that's another provision that ACS would like to include in the regulations. Instead, the FCC Triennial Review Order clarifies TELRIC assumes that the value of an incumbent LEC's network is constrained by the most efficient technology available even if the incumbent LEC itself does not deploy or plan to deploy that technology. It can't get much more clearer than that.

So obviously that is the law of the land, the federal law requiring the most efficient technology whether or not the LEC deploys it or plans to deploy it. So it could be anything in use, anything that's available.

ACS's comments addressed a little bit the selection of a cost model indicating that use of the synthesis model would be inappropriate because the FCC made some comments about it being intended to be used for Universal Service and not UNEs. Well, that argument was rejected by the FCC recently in this Virginia arbitration which actually adopted the synthesis model for the loop portion of its proceeding.

It rejected the switching portion of that not because it found that the construction of the network was inappropriate,

but because they couldn't adjust the balance between new and growth switches which is an entirely different issue and not relevant at all to the claims that ACS has made regarding the synthesis model.

Now, specifically with respect to depreciation it's, again, the same theme. ACS would like to use its financial depreciation, its financial lives which are akin to its actual lives instead of forward looking lives. This was rejected by the Illinois District Court as we mentioned in our comments, and it also in the recent Virginia arbitration before the FCC was rejected when Verizon proposed using their financial reporting lives. Instead, the Commission decided to go with regulatory lives finding they were more appropriate for calculating UNE prices.

And the same basic -- basically can be said with respect to Policy number 7 applying -- relating to fill factors. Again, ACS would like to use their actual fill factors or their embedded fill factors. And again, this approach is entirely inconsistent with TELRIC. It's been rejected by the Illinois District Court as discussed in our comments and it also has been rejected by the FCC in the Virginia arbitration which rejected Verizon's proposal to use actual fill factors and instead it used the fill factors proposed by AT&T and WorldCom in that proceeding which were forward looking fill factors.

So the basic principle is pretty straight forward. TELRIC

requires the use of the most efficient least cost network technology and configuration in everything. And it does not allow the consideration of embedded, historical, inefficient, actual monopoly practices. ACS's proposed regulations are the direct opposite of TELRIC and would require the Commission to go in a direction that TELRIC does not allow. And, therefore, we believe they should be rejected by the Commission. And that's all I have.

HEARING EXAMINER OLSON: Thank you, Mr. Miller. I wonder, Mr. Miller, if I could ask whether you had specific paragraph references to the Triennial Report?

MR. MILLER: Yes, I do. The -- was there a particular quote?

HEARING EXAMINER OLSON: Well, you quoted a couple of different places. And I was just wondering whether you had those two paragraphs. And primarily the ones I was -- I remembered you talking about was a reaffirmation of what the FCC had said in the First Report and Order about the most efficient lowest cost network.....

MR. MILLER: Right.

HEARING EXAMINER OLSON: .....and I wonder if you have a cite for that?

MR. MILLER: Yeah, that quote I believe is from Paragraph 669 of the Triennial Review Order.

HEARING EXAMINER OLSON: Okay.

MR. MILLER: And I can provide quotes to that and as well as the Virginia decision if you'd like at any time.

HEARING EXAMINER OLSON: Okay. Actually the Commission has indicated if you have those specific reference they can obviously pull up the Virginia decision, but if you have specific cite to that if you could give that to us now so that will make an ease of reference.

MR. MILLER: Sure, you would like the cite for the decision or the paragraphs within the decision?

HEARING EXAMINER OLSON: For the paragraphs which you were citing.

MR. MILLER: Yeah, let me go back here and get those paragraphs for you. With respect to confirming the use of the most efficient technology and the lowest cost network configuration that was Paragraph 52 confirming that embedded should not be used and Paragraph 38.

Let's see, rejecting financial reporting life for depreciation is Paragraph 112.

The discussion of the synthesis model is at Paragraph 171 and thereabouts. There are some paragraphs around that that discuss it.

And fill factors are at Paragraph 247 to 67. And I think that's all of them.

HEARING EXAMINER OLSON: All right. Thank you, Mr. Miller.

MR. MILLER: If I missed any please let me know and I'd be happy to provide them.

HEARING EXAMINER OLSON: I think you've touched on the areas of which you were quoting from. Thank you, Mr. Miller. Mr. Saupe, is there anything further?

MR. SAUPE: Nothing further from us. We'll all be available tomorrow. In the morning I'll let you know Mr. Miller's availability. It may again have a gap or two in it.

HEARING EXAMINER OLSON: Or if you find out at the end of the day e-mail me or whatever and we'll make arrangements.

MR. SAUPE: Thank you.

HEARING EXAMINER OLSON: Okay. Mr. Rowe.

MR. ROWE: Thank you, Mr. Hearing Officer and members of the Commission. I do appreciate you letting me wait till afternoon for these comments and especially being the much coveted last spot. I noticed the attentiveness of the whole room in the afternoon after we've had our hastily eaten lunch and it's sitting there digesting. And it's really wonderful that we can hear a pin drop if anyone moved and dropped one. One welcome opportunity of being the last presenter here is you're going to be real glad to hear me 'cause you know there's nothing else after that, so I appreciate that opportunity here as well.

I'm Jim Rowe, the director of the Alaska Telephone Association. And the members of the association are all rural

ILECs. The Commissioners are in a thankless position. First of all, you get to hear the tedious testimony of all members of industry who thinks the most -- the sweetest sound in the world is talking for all the time they're allowed. I'll try to curtail mine to 39 minutes or so. If this were math there'd be an exact answer to what you're to do, but it isn't math and you've heard very diverse recommendations of what is right, what's wrong, how it can be done. And you're going to be able to come up with decisions that will be wrong in most everybody's eyes. And that's regardless of what decision you make.

The Telecommunications Act of 1996 is very convoluted. It's very hard to read. There was compromise there in Congress and it was really punt (ph) there in Congress, let's give it the FCC ad the states to figure out, so you've got a tough job there.

As Commissioners in the most rural state you serve the most fragile consumer base and you regulate industry in which failure is most likely to result in a vacuum rather than a substitute provider.

Here today because the Alaska Legislature took an interest we are bringing forth testimony telling you what you need to do. You've already read most of the quotes that you've been given by the presenters here today. Probably like some of them you have an opinion, whether it's right or wrong. You've got

two and a half months left to make your report to the Legislature. And though there was certainly no bullying there as already is in the record today I think the Legislature got some people's attention and I expect they might do that in the future. And I think it's a tough thing to present to the Legislature whatever report you have that's going to mollify all of them and certainly all the members of the industry.

I'll say as representative from my part of the industry we're not satisfied and we weren't satisfied with the doings of the Commission prior to the legislative session and during the legislative session and that's why we're down there talking with members. Probably our most significant issue of bringing forward during the legislative session was that of dominance, dominant carrier. Now we've heard today that's not related to ETC. I'll say they're not the same, but I think there is a relationship. Dominant carrier in my mind deals with the competitive environment. You don't have dominance if you don't have subservience.

ETC is really a Universal Service issue. It's there for money. If instead of the 1996 Act the 1995 Telecommunications Act had passed we would have had multiple carriers of last resort which when we discussed that with Senator Stevens' staff seemed like a pretty unreasonable thing. How many people can come in first? How many can be carrier of last resort? So anyway that one didn't pass, so instead we have new terminology

which is eligible telecommunications carrier and you're only eligible for one thing. You're not eligible to be carrier of last resort, you're eligible to receive Universal Service Funds for providing service.

The relationship between ETC and dominant carrier is in a competitive environment a new entrant probably wouldn't be fiscally responsible to come in and not ask for ETC funding for eligible telecommunications carrier funding. That is in the real world Universal Service funding which is to provide whatever the concept was of the Universal Service. And I'm not talking about schools and libraries. I'm not talking about rural health care. I'm talking about high cost support for areas where customers in the United States could not have affordable voice grade telecommunication service in their homes and businesses.

ETC and Universal Service, the issues my members bring before you today. We see from the decision last Friday that came out on Digitel which is just an example of a decision in Alaska, there are examples in other states as well, that wireless carriers as they should have come in and they're fiscally responsible for doing that saying we'd like to get a fund. We'd like the cornucopia to dump down in our yard. That cornucopia is Universal Service funding. If we just say ETC sometimes we forget that that's Universal Service funding. It's a limited fund, but that's not for a state commission

necessarily to decide or to worry about. Each of our customers pay into that Universal Service Fund on a national level.

We discussed parity when were down in Juneau at the end of the session, but we never asked -- ATA never asked for parity. We said we will retain carrier of last resort responsibility. We did that because we're out there serving our rural customers. We believe in the communities. We believe in serving the people. We were there serving when nobody else was. In many of those cases nobody else wanted to. We weren't there because there was Universal Service funding. We were there -- were only able to be there because there is Universal Service funding.

We asked for parity when a new entrant wanted to come in, wants to come in to the area that we serve, each individual company. That parity would be flexibility in rates. That parity would be flexibility in administrative reporting to this Commission. Parity is the same.

Competition has more than one entity striving for the same purpose or striving for the same market. Pardon me. Competition doesn't have one entity sitting unable to react while another entity reacts or acts until there's some level there. Parity competition happens as soon as a new entrant comes in. That's when we want parity. That's when we'll still want parity. We'll still retain carrier of last resort as we advocated down in Juneau and we'll still be looking for parity.

And I hope this Commission will look for that.

We estimate that the total number of customers served by the Alaska Telephone Association companies about equals that of GCI for local telecommunications companies which is smaller than that of ACS, so we're not serving by any means the largest number of customers in the state. We are serving customers who individually are every bit as important as any other one customer in this state. We have a very strong belief in service to those customers and quality of service in continuing to serve them.

However, the environment -- the changing environment that comes because of the Act, that comes from the FCC, that comes from our State Commission, that come from courts that have determined outcomes in other states' decisions, there's been a chilling effect on investment. And I assure you that the order that came out last Friday will have a more chilling effect on investment within the state. And this is investment in high cost rural areas. Those are the only places we're serving.

The Legislature was dissatisfied with what was the past Commission. Now we have a new Commission. These are not the same people, some of you are same individuals, but we have more individuals that have changed than were here before. And I certainly told the individual legislators this is a new Commission, we have to see their track record. I think now we're seeing your track record.

A comment I heard earlier today in testimony from the gentleman who represented Dobson referred to they had filed for special ETC designation. And I assure you the confusion already, I think, in multiple markets has talked -- as tried to determine what ETC is and the order that came out here Friday by the panel that sat on it talked about mobility being valuable. I'm not sure that was attentive (ph) Universal Service, but I'm sure it's valuable, that Lifeline supports it and now we can get that to people.

Commissioner Bob Rowe from Montana who sits on the Joint Board asked one of the panelists at the last Joint Board (indiscernible) meeting whether mobility should be one of the items in Universal Service. And I think it was a rhetorical question and was not responded to. I had no doubt that the gentleman from Dobson was correct when he said he asked for special ETC designation. I thought nothing else, but I have to look back and find out how special ETC designation is warranted.

It's a wonderful opportunity to be here in Alaska. I hope we keep being able to deliver quality service to our rural and many of us are rural customers.

I thank you for the time for my opportunity here to present some of the views from my association, for you putting up with my rambling remarks. Typically they're rambling, today they're even more so perhaps, but that's okay we'll have them

on the record somewhere. Thank you for putting up with all the facts that, unfortunately, are not going to be able to bring you to a perfect conclusion when this is over. And I thank you for your efforts that go forth trying to make the best decisions you can. And we recognize you're human. Thank you.

HEARING EXAMINER OLSON: Thank you, Mr. Rowe. We need -- there's a little bit of a Commission time conflict, so we're going to need to recess for 30 minutes. While we're gone and we're going to come back and Ms. Grahame and Mr. Honchen, some Commissioners have indicated they have questions for Mr. Honchen, so we'll take those up when we come back.

In the meantime I already know what Mr. Shelanski's schedule is and I assume is that the same for your other witnesses as well?

MR. MONINSKI: I believe most of the other witnesses will be available at any other times during the day. I believe Mr. Shelanski's window is the limited one.....

HEARING EXAMINER OLSON: The 12:00 to 3:00. And, Mr. Saupe, maybe while we're at recess if the parties could stay on the line you could check with Mr. Miler and find out what his availability is so that we could perhaps come up with a schedule to make the best use of Commissioner question time and your witnesses and your participant time tomorrow as well. If you would do that. So Ms. Brinkmann, Mr. Lindgren, Mr. Shelanski, Ms. McKenna, Mr. Ayotte, and Mr. Miller, if you'd

just hold on for a second before you hang up so that respective parties can visit with you we can try to get your availability for tomorrow, okay?

UNIDENTIFIED VOICE: Sure.

HEARING EXAMINER OLSON: And we'll stand in recess about 25 minutes. You want to just make it 3:30, round numbers? 3:30. And we'll come back and we'll deal with Mr. Honchen's questions.

MR. JACKSON: Do we need to vacate this room?

UNIDENTIFIED VOICE: No.

HEARING EXAMINER OLSON: No, you don't. Thank you. We'll stand in recess.

(Off record - 2:55 p.m.)

(On record - 3:30 p.m.)

HEARING EXAMINER OLSON: Okay. We're back on record. And the Commissioners have some questions for Mr. Honchen and we'll take him out of order because he's going to have a joyous occasion. Okay. And for lack of a better way of doing it we're just going to start from Commissioner Strandberg and go down the row here from left to right or your right.

INQUIRY OF LARRY HONCHEN

BY COMMISSIONER STRANDBERG:

Q This is a particularly pleasing microphone. Okay. I guess I just wanted to ask a couple of terminology questions with respect to the depreciation regulation. In

the new rules on depreciation item 3 triple I and 4 we talk about service lives and then in the line below we talk about useful life, remaining life and net salvage value.' Can you explain why we have different terminology between those two clauses, number one. And number two, does this regulation allow the different depreciation methodologies that a entity may want to suggest to us?

A Commissioner Strandberg, could I get a reference again to your questions, please?

Q Page 2 of the proposed regulation.

A Yes, I'm there. Thanks.

Q Okay.

A And once again, the questions, I'm sorry?

Q Can you explain the difference -- the terminology service life versus estimated useful life and remaining life between those two clauses. Is that correct language? Was that your intention?

A The language in sub 4 is correct. The -- and the reason the language is as particular as it is relates to essentially two methods of depreciation. One is the whole life method and one is the remaining life method of depreciation.

Q Uh-hum.

A Both of which are acceptable methods for depreciating the remaining plant balances. At the risk of getting too

technical let me take it to the next level if I might.

Q Okay.—

A Physically remaining life depreciation is a method of depreciation that's used to adjust either over or under depreciation earlier -- in earlier years so that account balances over the entire life of the asset come out to effectively a net zero. If your depreciation practices have been -- or your estimates have been more or less on the mark over time whole life depreciation methods are using, so the remaining life method is a method that's used as a true-up method or a true-up mechanism, if you will, in establishing depreciation rates. So the -- the proposed changes include both a change of your -- of your whole life as well as the remaining life of the asset. And of course, the net salvage value is a residual calculation that goes against your depreciable base so that you don't over recover the value -- the net value of the asset. I'm not sure if I've answered your question with respect.....

Q I understand.

A .....to that one. There was a second question as well.....

Q Yeah, and that was.....

A ....number 3?

Q ....does the current language allow remaining life and

whole life and implementation of either one of those methodologies?

A The intent is so that -- the intent is to establish depreciation lives, but not -- not to get to the level of detail of depreciation methods. So it would endorse both the whole life and remaining life concepts of depreciation.

Q Okay. And then the interim booking, I was quite interested in that concept. It certainly seemed innovative. Do you feel comfortable that that's going to work under our current approach for doing rate cases for companies as far as actually speeding up the implementation of new depreciation rates?

A I hope so. The -- two parts to the answer. With respect to a rate case most oftentimes during a rate case if a depreciation change or a depreciation study is involved it's finally adjudicated at that point, so that would be trued up. The interim bookings is for those periods in time that would be a non-rate case year that a company files its study has a depreciation rate change and is unable to implement it. The reason that I think it's so important that we do that is this; oftentimes we've had depreciation studies language for periods in excess of a year to two years before final approval has been granted. And if the depreciation rate changes were significant and

not made they become even more significant the next time depreciation rate changes have to be made because that imbalance that existed two years ago has gotten compounded over the two year lag period.

Q Uh-hum.

A So the idea is to get them implemented as quickly as possible so to eliminate adjustments that would be greater in the future. And the best.....

Q Right.

A .....method that we could -- we could think of to do that is in interim booking. Now what we found -- at least we-- -- we've done a lot of depreciation studies over the years for many of the telephone companies in Alaska. And we found that in most cases at least the studies that we've done there's -- there generally is not material differences between what we propose and what is ultimately granted. Granted that there are differences, but I think that they're generally immaterial in nature and the true-up mechanism is a far better solution than a two year lag.

Q So depreciation has always given me a headache. Today I don't have a headache. Thank you. But between rate cases we need to keep the books as accurate as possible. Is that one of your actions here to allow us on an interim basis to correct the depreciation rates that actually occur, and then at the time of the rate case we would

actually implement those new rates, is that what you're thinking? —

A You could implement them if there's an imminent rate case you could do it now or you could do it with respect to a depreciation rate change without an adjustment in rates. A depreciation rate change doesn't necessarily require a concomitant adjustment in rates although it's typically done that way so the companies don't over or under recover, but it doesn't necessarily have to happen. The -- and telephone companies in particular they -- typically a rate case will ask three -- two to five years depending on the company, but access charges are done annually. And in that case having an accurate reflection of your depreciation costs on an annual basis is quite important to the companies. And interim bookings would -- would help provide that.

Q Okay. And, you know, we had cooperatives and then we have investor owned utilities. Do these regulations work equally well for both of those....

A Yes.

Q .....approaches?

A Yes, they do.

Q Okay. All right. Thank you very much.

COMMISSIONER STRANDBERG: That's all I've got.

BY COMMISSIONER THOMPSON:

Q I want to better understand your concept that the Commission approve standard depreciation rates or ranges similar to what the FCC did. When you were looking at this, did you find in the FCC's proceedings a commitment on their behalf to review these depreciation schedules on a regular basis? In other words, is this something that's in a triennial or biannual review process or is it whenever they get around to.....

A Well, they -- .....

Q ....doing it again?

A .....they had. And I think the last rates that I saw that were promulgated were 1998, but I don't -- I don't expect that that's probably going to happen in the future. And that's probably something that if you were to incorporate an FCC table or an FCC like table for use in Alaska you would want to consider adopting a triennial review at the state level to update those -- update the tables because they would periodically, I think, require update. And I don't think we can count on the FCC for doing that because these changes came out of price cap regulation for large companies and I don't know whether they're -- they will be in the future kept current.

Q How much of a commitment of our time and industry's is this triennial process going to be?

A I don't expect it to be a major -- a major process at all.

We've taken a look at the depreciation rates for most of the rural companies in the state and for the most part the companies currently are -- with a few account exceptions fall right within the FCC ranges, number one. Number two, depreciation as an expense is zero sum game. And what I mean by that is you either get it now or you get it later, but you can't over or under recovery so it's just a generational issue or a time value of money issue. So from that standpoint the risk is -- is less important. I -- I'm reasonably confident that we could -- we could sit down and work out acceptable ranges with -- with little effort really. I just don't see it as being a major controversial subject for the smaller companies.

Q So would it be fair in starting that to assume that the FCC ranges -- or to use the FCC ranges almost as a default and say or a rebuttal presumption that this is what we would find reasonable and allow industry to present a case if they felt like any of those were unacceptable rather than starting from zero?

A My ideal proposal would be to take the FCC ranges as they exist now and.....

Q Uh-hum.

A .....within the time period that we have between now and final regulations are promulgated just determine if there's any of the accounts that need some.....

Q Uh-hum.

A .....tweaks to it. We've -- and there are a couple. I've contacted several of our clients, we've had several discussions on this issue, and I think there's two or three accounts that are at least worth discussing to determine whether or not some of the ranges are realistic or not, but I think in the absence if that's problematic, I would recommend to go forward with the table because even with the table by the vast majority of the accounts will fall within the ranges.....

Q Uh-hum.

A .....in the depreciation effort on both the part of the companies and of the review of the Commission would be -- would be minimized.....

Q Right.

A .....but it really makes sense to streamline the process for sure.

Q Okay. Thank you.

COMMISSIONER THOMPSON: That's it. I'm done.

BY CHAIR JOHNSON:

Q Mr. Honchen, there was -- I think it was in Mr. Jackson's statement, he made reference to the Rural Coalition's depreciation proposals and noted that there was a difference in terminology between service lives and rates. And I believe Mr. Jackson indicated that, in fact, if the

proposal that you're now putting forward relates to service lives it was something that GCI would support. Do you agree with that correction to the terminology?

A I -- I do. We -- the FCC table is a table of depreciation lives and that -- that is -- that is correct. Lives lead to rates and.....

Q Right.

A .....but lives.....

Q I just wanted to clarify that for the record.

A Lives is a more accurate representation.

Q Okay. Thank you. I have a couple of questions about.....

OPERATOR: Your conference call will end in 10 minutes.

CHAIR JOHNSON: Thank you for offering that.

Q I have some questions about the proposed special amortization subsection F. Is there -- and I actually have several questions. I guess philosophically what I wanted to clarify is there any notion from this proposal that this special amortization process would be used in any way to recover stranded plant as a result of competition? Is that the intent of this proposal to do that?

A That wasn't the intent of the proposal, although I believe it could be used for that purpose if the Commission were to allow a recovery of stranded investment if, in fact, it existed.

Q Or is it also fair to say that the reverse is true, that -- if the Commission did not choose to go down that way that -- additional language would be necessary to clarify it that stranded investment could not be covered through this process -- be recovered through this process?

A That's it's -- that would be entirely appropriate on.....

Q Okay.

A .....the Commission's discussion for sure.

Q Does the Rural Coalition have a view on how that issue ought to be handled or could be handled through this section if they find out they think it should be included or they think it should not be included?

A The whole -- the whole issue of stranded investment is a topic in an of itself. We've -- you know, we've had -- this goes back to R-97-12 where we actually filed several pages of comments on the issue of stranded investment. The difficulty of dealing with it now is we don't know to what extent it exists and how much of a problem it might or might not be. This is a mechanism that I'm not sure would -- would actually work for stranded investment if -- I'm just not sure how it could work because if a company does fall into the competitive environment regardless of what accounting procedures you set up his rates aren't going to be based on the accounting procedures or costs anymore, they're going to be market based. So it -- it

would be an accounting convention of -- without much significance frankly.

Q Secondly as to this subsection F, there's an a rate of two percent of the annual interstate revenues that establishes that's a rate. How is that two percent arrived at? Actually it appears in a couple of different places.

A That was my attempt at a materiality level. It could be one, it could be three, it could be whatever the Commission chooses, but we -- I wanted to get some level of materiality here and it was an attempt to your bench mark work (ph).

Q This may be a question for Ms. Grahame, and just generally philosophical for the Rural Coalition under this proposal is what happens if subsection D that pertained to burden of proof is stricken from the proposal? Does the proposal still work, does the Rural Coalition still support it if that were no longer included in the rule?

A Yeah, it's -- Jeff, do you want to answer, Jeffrey?

MR. DILLEN: The burden of proof provision, I think, could be stricken without violating or doing violence to the overall structure of this proposal. And I think it could still be supported in the absence of it.

CHAIR JOHNSON: Okay.

HEARING EXAMINER OLSON: Commissioner Harbour.

COMMISSIONER HARBOUR: Mr. Honchen, thank you for

clarifying. I have no other questions.

BY COMMISSIONER GIARD:

Q I love depreciation. They keep me off all the depreciation dockets. I was interested in your opinion about what the Legislature meant when they talked about actual useful lives?

A I'm really glad you asked that.....

Q Because in my opinion there's no such thing as the actual useful life, so I don't really know -- I mean I read what ACS and what GCI said, but you seem to be an expert.....

A I have a different.....

Q .....on depreciation.

A .....view as you might expect on it than GCI. My view of the actual depreciation life goes more to the method of depreciation than as to whether or not you look historically or prospectively. In other words, the actual useful life is a useful tool if you're looking at remaining life depreciation. You can't do a remaining life depreciation calculation without looking historically rather than the actual useful life, so my reading on it was just that and much different than the GCI reading.

Q When I read it I'll tell you that it seems to me that using actual useful lives just based on my experience as a CPA, use actual rather than useful life or financial life or any of the other estimates, that it would really result

in a much longer period of depreciation. We all know that buildings are frequently depreciated over 30 years and last 50 years, school district buildings, so do you think that was the intent of the legislation?

A I don't think it could be because in establishing depreciation rates you've got to use some estimates, whether they're engineering estimates or accounting estimates or planning estimates in terms of when you think the -- that asset will ultimately expire. And that requires some forward looking mechanism. Whether you use historical data or mortality data as your basis for doing that or other data that's all part of the depreciation analysis itself. But that's where I came down to the concept well, how -- how does actual lives actually work with depreciation in the context of what the Legislature said. And my analysis on that came back to a remaining life calculation versus a whole life calculation whereby the remaining live calculation must take into account what you've depreciated today. And that to me squared with what the Legislature -- what the language of the Legislature was in my reading.

Q I have a comment on the depreciation rate tables that you are proposing which seemed to be reasonable and logical thing to put forward for the state of Alaska which -- in which probably the assets do depreciate perhaps a little

quicker than they do down in Vermont where I grew up. And you also made a comment that you reviewed many of your clients' depreciation tables that exist currently under the RCA order and that they were similar in many ways, dissimilar in some, and that there were a few areas that you felt probably would need a revision. What were those areas I'm curious to know?

A The -- I've got some notes on this, but just without going to the specifics.....

Q I understand.

A .....of it, as I recall motor vehicles was one account for sure that -- that required a little more difficult look. Circuit equipment was an other that's -- in several instances that some of the circuit equipment that's being depreciated now in this state is being treat -- depreciation at a slightly higher rate than in other instances. And the third account was one of the -- one of the aerial or underground cable accounts.....

Q Right.

A .....which looked to be perhaps might be a little bit long in the lives. What was -- what was mysteriously missing was the buildings account. And that the -- the only explanation that I could come up with why the FCC doesn't have a buildings account per se is that these were large telephone companies in the Lower 48, they were all price

capped companies and most of those companies generally had their property in a separate subsidiary and the property is leased into the telephone company, so they don't have -- they don't have buildings assets. Most of their buildings are leased through their private real estate companies and, therefore, there's no need for one at that level. In Alaska most of the smaller telephone companies don't have that and they do have a buildings account. We'd have to establish a range for that account.

Q When we look at your burden of proof initiatives, when you talk about they need to show the burden of proof, is that really substantially different than the burden of proof that they -- that the proponent has now?

A No. I dont' think --.....

Q And just -- I didn't think so.....

A .....I don't think it is.....

Q .....either.

A .....no.

Q And then my last question was depreciation for some reason seems to cause heartache, I don't know why, it's a lovely thing, represents, you know, the opportunity for reinvestment. How do you feel -- how does the Coalition feel that the Commission....

OPERATOR: Your conference call has ended. Thank you.

Q .....does on depreciation overall. What is the general

feeling of the Coalition as it pertains to depreciation and the results of the reviews that we do on depreciation?

A The biggest concern that the Rural Coalition members have is the cost of depreciation studies, the frequency associated with the cost, and the lag time from the time the studies are filed until the time they can be implemented. Generally from a result standpoint aside from those issues they're relatively happy with where we are in depreciation. It's doing a reasonably decent job. And that's the -- what we're trying to cure with the streamlining regs that we have in front of you know are -- are those issues that are burdensome to the smaller companies that -- largely the cost issue and the preparation of a full blown study and a lag time in getting implementation 'cause that just perpetuates problems as a lag time lengthens.....

Q I didn't notice in any of the proposed regs really any discussion of the item that you.....

CHAIR JOHNSON: Could we go off record for just a second?

COMMISSIONER GIARD: Okay. I don't think they want to hear my questions anyway.

(Off record - 4:00 p.m.)

(On record - 4:20 p.m.)

HEARING EXAMINER OLSON: Okay. Mr. Ayotte, we are back on record and when we lost the conference call actually Mr.

Honchen was answering a question. And then before we got everything shut down there was also a follow up question by Commissioner Giard. I do need to ask you though whether you request that we play back for you now 'cause it's easier to deal with it now than to deal with it in the future, whether you want us to play back about five minutes of answer of Mr. Honchen and then follow up the question of Commissioner Giard or whether you just want to go forward with the discussion?

MR. AYOTTE: Perhaps if I could just have read back the Commissioner's question? I don't need to hear the earlier response.

HEARING EXAMINER OLSON: Okay. Well, the Commissioner has already indicated to me in case that should happen she doesn't remember the question, so we're going to go off record. And Suzie, you can do this, right? Okay. The in-court doesn't like but I'm going to do this, we're going to go off record and then I'm going to have her rewind, play it back the portion that we missed. I don't know how else to take care of this record. You're long distance and....

MR. AYOTTE: Then, Mr. Olson, just please proceed. That'll be fine. We don't need to go back on that.

HEARING EXAMINER OLSON: Are you sure?

MR. AYOTTE: Yes.

COURT REPORTER: I'll send him a page.

HEARING EXAMINER OLSON: Okay.

COURT REPORTER: I'll fax him the page.

MR. AYOTTE: Well, thank you very much. I appreciate the opportunity to participate telephonically, but I don't want to delay the hearing, so you can proceed.

HEARING EXAMINER OLSON: Okay.

COMMISSIONER GIARD: Okay. You'd like me to proceed?

HEARING EXAMINER OLSON: Yes.

BY COMMISSIONER GIARD:

Q Okay. The question that we've all been waiting for with bated breath, I appreciate you all sitting around, is about materiality. One of the surprises that I didn't see in the regulations -- or proposed regulations was any discussion really about materiality in depreciation. And I think it brought it forward in my mind when you were talking about the length of time that it takes to do deprecation study versus the result of the depreciation study which frequently according to you do not have significant material variances. Now I understand certain other depreciation studies there are results that are significantly different, but in terms of item number C on your regulations, other depreciation rate changes, could you talk a little bit about why you left the concept of materiality in those depreciation rate changes out of the picture? I mean 'cause I'll tell you that I was thinking that it would be interesting to look at materiality when a

de- -- when an entity wants to come in for a depreciation change and the depreciation change isn't material on its face or materially significant and we can decide how to determine that, then there should be or I think there could be some standards of materiality for depreciation that may make the process go a little smoother such that you really only focus perhaps on those areas where there is what we would consider and decide is a material component.

A Well, that's.....

Q But that was missing.

A Well, that's actually the intent of what we're trying to do with the whole notion of the depreciation tables. The tables themselves give a fairly decent range of lives for -- for most accounts. The sub C of the depreciation section deals with those areas where an account would fall outside of those ranges. And we expect that to happen minimally. We don't honestly expect that to be a frequent occurrence or for many accounts. So to that extent we were -- we were satisfied with to the extent that we're outside the range then we would -- we would only provide data and study information as it relates to those accounts that fall outside the range and why -- and why we believe it would be appropriate to adopt the rates that fall outside the range. With respect to the Commission action

on it that's another issue in terms of the materiality of those changes. And that's -- that can e- -- from our standpoint we're happy to provide the Commission with the information necessary to support and document why the changes -- why we believe the changes are appropriate even though they're outside the ranges. The Commission clearly has the discretion to the extent that those -- if those changes are immaterial or small or very close to the range to approve them quickly without hearing and under its discretion can do whatever level of review it finds appropriate. So we were quite comfortable not addressing materiality on the exceptions because one, we didn't believe there would be many exceptions, and to the extent that we -- there were we were more than happy to provide that information to the Commission.

Q So as you do the -- as you look at the simplified depreciation rate table, the rate table itself, as long as the proponent was within the range that's.....

A The rates could be automatically implemented. There would be no necessity to come to the Commission for approval.

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(Tape change)

Tape 5

0015

Q What about when you're talking about having the rates be

approved as December -- or whatever the rates are in place December 31, 2003, or conversely, someone could choose to adopt B, if there were a simplified rate table. The regulation really doesn't discuss the implementation of cha- -- if significant change. If your 2003 rate structure is significantly different from the tables that we identify and B you don't talk at all about any kind of implementation period where there would be a sudden change?

A The -- the intent was under A is to essentially grandfather approval of all the existing depreciation rates that are now in effect, that in most cases the companies have had a depreciation study or been through a rate case and depreciation rates have been actually looked at and reviewed and approved. There's probably a couple of exceptions where the companies are operating under inception depreciation rates and they've never been reviewed. That -- that was to be our starting point. In other words, from -- as of -- whatever the date is that the regulations go into effect, the depreciation rates that the companies have in effect at that time would be effectively approved rates. To the extent changes would be required on a going forward basis then that would happen under sub B or sub C of the new regulations.

Q Okay. The last question I have is do you truly believe

that the Coalition can get ACS and GCI and all the other parties to agree on an Alaska statewide rate table?

A I don't think we're that far away, frankly, you know, if you -- if you look at the comments or as we've looked at the comments it appeared to us that GCI and both ACS were coming a little bit closer to center. And I think even to the -- to the extent that we don't absolutely agree on all rates or on all categories this still goes a long way of minimizing depreciation studies on those questioned accounts. You know, we'd be happy to -- to live with that. And to the extent we have questions accounts we still streamline the process. We've eliminated two-thirds if not seven-eighths of a study. And we've got -- we've got procedures that allow us to implement those rates on a timely basis.

Q Okay. I'd like.....

A And I think those are all good things from that perspective.

Q I agree. There weren't -- that wasn't my last question. I know I -- my last question is whether you think that rate table should reflect for all Alaska an urban or -- and rural table?

A You know, they could. The -- it could easily be adopted for small rural telephone companies. There are -- there are good reasons to identify small companies from large

companies. We've contended on the -- on the competition regulations generally that were much different than the urban areas and need to be treated differently in the competitive environment for lots of different reasons. And this could easily fall into that category. And it could easily be set up on an access line basis. And companies that have access lines of fewer than whatever the number, 25,000 access lines, could adopt as principle. And that's easily -- easily put into the regulations. That would work for us.

Q Okay. Well, all my other Commissioners are shifting in their seats, so they obviously don't love depreciation as much as I do so I'll be done. Thank you very much.

A Okay. Thank you.

BY CHAIR JOHNSON:

Q I just wanted to clarify, Mr. Honchen, so from your last response is it your professional opinion that based on your experience of -- extended experience up here that one, there are differences in depreciation rates amongst the large companies versus small companies, and/or competitive environments versus non-competitive environments? That's sort of one question. The second question is do you believe that separate tables could be developed?

A I -- in answer to your first question I don't know if

there are differences between the two. I do know that it's been a contentious issue between GCI and ACS. I haven't reviewed the ACS rates recently to see where they fit as they relate to the rural telephone companies' rates which -- and lives which I have reviewed.

To the extent of carving the rural companies out from the urban companies I think that could easily be done, but it doesn't have to be done. Just from a -- as an administrative standpoint there's lots of good reasons, administrative ease and procedures that the FCC itself carved out large cap companies when it developed its tables, so there's -- there's no reason why we couldn't -- if GCI and ACS have particular depreciation issues that don't involve us, if we don't have a dog in that fight then we'd be happy to just carve out our issue and our streamline process if it works for us.

HEARING EXAMINER OLSON: Mr. Honchen, are you seeing a workshop process here possibly, a Commission sponsored workshop approach here to see if we could.....

A That would be -- that would be.....

HEARING EXAMINER OLSON: .....shag out these numbers?

A .....a good suggestion. That could -- that's a fine way of handling it.

HEARING EXAMINER OLSON: We're not intending to allow you all now to ask Mr. Honchen questions, but the Commission is

going to allow you to make comments on the discussion has gone on between his question and answer between the Commission and Mr. Honchen if you have comments. Let's start with Jimmy Jackson.

MR. JACKSON: I'll just very briefly. The Commissioner asked whether -- what realistic chance Mr. Honchen thought that there might be agreement. And they seem to be sort of focusing on the FCC lives. And for the most part we don't have major problems with the FCC lives. So if we're talking about using the FCC lives I don't think that there's, you know, major issues. As he indicated, you know, there may be a few accounts.

There are a few other areas of the regulations where we might think there needs to be a little bit of tweaking, but I think it is conceivable without making promises.

HEARING EXAMINER OLSON: Mr. Shoup, Mr. Moninski?

MR. SHOUP: Generally ACS supports the idea of a workshop. We support the idea of trying to develop tables. And we particularly support the idea of looking at them in terms of competition, competitive markets versus noncompetitive markets. We think it's a constructive idea we'd like to explore and see if it'll work.

HEARING EXAMINER OLSON: Mr. Saupe, any comments on the discussion?

MR. SAUPE: No comment.

HEARING EXAMINER OLSON: Ms. Grahame, any further comments?

MS. GRAHAME: No, thank you.

HEARING EXAMINER OLSON: Okay. Mr. Ayotte? I'm hoping you're not going to say I would have had comments if I'd heard the whole discussion.

MR. AYOTTE: I will pass. Thank you.

HEARING EXAMINER OLSON: All right. Thank you very much. Then before we retire for the day can I ask Mr. Saupe and anybody else whether you have figured out when your people would be available? I'm still assuming that everyone from ACS would be available except Mr. Shelanski from 12:00 to 3:00, he'll be 12:00 to 3:00 and Mr. Saupe?

MR. SAUPE: Yes, I inquired of Mr. Miller, he can be available Alaska time from 11:00 till 2:30 tomorrow. And I also spoke to Mr. Ayotte who's on the line and can speak for himself, but he told me that he could be available in the morning before the lunch break.

HEARING EXAMINER OLSON: Okay. Just give me a minute then. Suzie, let's just go off record for a second. I'm going to try to figure out if we can accommodate scheduling if we start at 9:00, then we have your people that aren't going to be available for questioning. And let's just see if we can work this out.

(Off record - 4;33 p.m.)

(On record - 4:38 p.m.)

HEARING EXAMINER OLSON: Okay. We're back on record. And, Mr. Ayotte, you're still there, right?

MR. AYOTTE: Yes, sir.

HEARING EXAMINER OLSON: Okay. Off the record we were trying to figure out the scheduling. We'll start up tomorrow at 9:00 o'clock. The Commissioners are going to try to keep focused on particular issues because the UNE issue, the discussion that involves Mr. Miller and Mr. Shelanski we really can't start that till noon our time. And so the Commission will deal with other issues other than the UNEs beginning at 9:00 and we'll go through all the questions of the various people we can. And if we have to break early, we'll break early and come back at noon or something. Okay.

And I take it it's okay, Mr. Ayotte, if you're not available for that UNE discussion because.....

MR. AYOTTE: Yes, that's fine.

HEARING EXAMINER OLSON: Okay. All right. Thank you then.

Thank you for your patience with telephonic problems today and appreciate your remaining there, Mr. Ayotte, so we could call you back. And we'll see you all at 9:00 o'clock tomorrow morning.

MR. AYOTTE: Thank you very much.

HEARING EXAMINER OLSON: Thank you, sir.

MR. AYOTTE: Bye now.

(Recessed-- 4:40 p.m.)

0310

CERTIFICATE

UNITED STATES OF AMERICA)
)ss.
STATE OF ALASKA)

I, Rebecca Nelms, Notary Public in and for the State of Alaska, residing at Anchorage, Alaska, and Reporter for R & R Court Reporters, Inc., do hereby certify:

THAT the annexed and foregoing Public Hearing in Docket R-03-003 was taken by Suzan K. Olson on the 2nd day of September, 2003, commencing at the hour of 9:00 o'clock a.m, at the Regulatory Commission of Alaska in Anchorage, Alaska,

THAT this Hearing Transcript, as heretofore annexed, is a true and correct transcription of the proceedings taken by Suzan Olson and transcribed by Meredith Downing, Lynn Hall and myself.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 4th day of September, 2003.

_____
Notary Public in and for Alaska
My Commission Expires: 10/10/06

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STATE OF ALASKA
REGULATORY COMMISSION OF ALASKA

Before Commissioners: Mark Johnson, Chair
David Harbour
Kate Giard
James S. Strandberg
G. Nanette Thompson

In the Matter of the Commission Review of Rules and Regulations Governing Telecommunications Rates, Charges Between Competing Telecommunications Companies, and Competition in Telecommunications) Docket R-03-003

REGULATORY COMMISSION OF ALASKA
Anchorage, Alaska

VOLUME II
PUBLIC HEARING

September 3, 2003
9:00 o'clock a.m.

BEFORE: PAUL OLSON, HEARING EXAMINER

AND: MARK JOHNSON, CHAIR, RCA
DAVID HARBOUR, COMMISSIONER, RCA
KATE GIARD, COMMISSIONER, RCA
JAMES S. STRANGERG, COMMISSIONER, RCA
G. NANETTE THOMPSON, COMMISSIONER, RCA

APPEARANCES:

FOR THE RURAL COALITION:	MS. HEATHER GRAHAME MR. JEFFREY DILLEN
FOR AT&T ALASCOM:	MR. WILLIAM SAUPE MR. DAVID MILLER
FOR ACS:	MR. TED MONINSKI MR. DAVID SHOUP MS. KAREN BRINKMANN
FOR ALASKA TELEPHONE ASSN:	MR. JIM ROWE
FOR GCI:	MR. JIMMY JACKSON MR. MARK MODEROW
FOR DOBSON CELLULAR:	MR. MARK AYOTTE

PROCEEDINGS

Tape 1 —

0015

(On Record - 9:00 a.m.)

HEARING EXAMINER OLSON: Okay. We're back on record in R-03-003 in a continuation of questions by the Commission and similar to yesterday Commissioner Strandberg is going to begin the questioning. So some of the questions, I understand, may be general in nature requiring, perhaps, responses from everyone, but it's up to the Commissioners how they're going to deal with the particular inquiry.

Commissioner Strandberg, please.

COMMISSIONER STRANDBERG: Thank you, Hearing Examiner Olson.

COMMISSIONER STRANDBERG: Well, I'm leading out the questions here, I want to state that my concerns are for us to develop as good a record as possible. We have, I think, some very good thinking and some very good writing before us. There are a number of proposals and they are widely differing certainly. And I do want to deal with the ACS proposed regulations this morning. I'm going to kick off on that and I'm not sure I'm going to get through all of my questions, but I will go for a while here.

And I wanted to talk with Mr. Moninski and with Dr. Lehman. And, again, the purposes of my questions are to make

as good a record as possible so that we can move forward on these issues. And so I'd like to start with Dr. Lehman. I was quite interested in your writings. And I want to start my line of questioning from the consumers' viewpoint there.

When I was reading here I was thinking continuously what is going to be the impact on the ratepayer. We have companies that are before us that are saying we have to change. We have to change our rules because times are a changing. So the first specific questions to you, Dr. Lehman, is you advocate that we should have competitive rules when there are -- when we have UNEs available.

Should we trust competitive forces immediately to protect the consumer or what sorts of protections should the consumers have if we adopt competitive rules, as you say, the minute UNEs become available?

DR. LEHMAN Yes, I do advocate deregulation as soon as UNEs are available. If I could put on my consumer hat for a minute 'cause I am a consumer as well, the fear is will the incumbent raise prices if there is nobody actually serving people using those UNEs --.....

MR. LINDGREN: Dan Lindgren, KPU.

OPERATOR: Is joining the meeting.

DR. LEHMAN: .....the concern is will the incumbent raise prices if there's the absence of somebody actually providing service to some percent of the market and I really don't

believe that that can happen, at least not raising prices above competitive levels. If the prices are below competitive levels, then under competition they have to rise. There's no way of preventing that. It's not sustainable to prevent that. But if the prices are raised above competitive levels the availability of UNEs ensure that a carrier can't sustain those prices and somebody else will serve the customer better.

So I actually think as a consumer I would feel more protected by knowing that both competitors or more than two in the market are able to compete without having their hands tied in any way, as opposed to regulations that tie one of the competitor's hand behind -- or at least one hand behind their back and mute the competitive effects on the other carrier that might serve in that market.

I don't see anything that prevents a carrier from using the UNEs to provide service and if -- you have to ask the question what would happen in the worse case scenario? What happens if prices are raised?

Well, if prices are raised, the UNE prices are sitting there available for an entrant to come in and make that unsustainable. So a price could -- somebody could try a price rise, but I don't think they can be successful if it is above competitive levels.

COMMISSIONER STRANDBERG: What effects do you feel your proposal would have on a consumer's ability to secure a

telephone in a timely fashion?

DR. LEHMAN: Well, I actually treated that -- the issue of providing service and exit from an industry differently. I mean, in an ideal world the cleanest thing would be to deregulate the incumbent entirely, but I think there are some special concerns about customers that the incumbent might not want to serve any longer.

We've seen it with deregulation of airlines and of railroads where both industries, certain communities were not worth serving and people pulled out and they lost service. And we've tried to enact policies in the air arena to prevent that from happening and we've been less than successful, so that is a real concern. And I did not advocate removing the carrier of last resort responsibility except to highlight that it is a problem.

In a competitive environment it really needs to be a shared responsibility, but I stopped short of saying that deregulation would include free right of exit, although in the economists ideal world that really would go along with deregulation, but that isn't what I proposed.

COMMISSIONER STRANDBERG: Okay, understanding you're looking at it from an economist's viewpoint perhaps. You talk about a contestable market, have you -- can you point us to another market where the presence of UNEs has allowed competitive rules to really go into effect effectively?

DR. LEHMAN: Well, one point of clarification, I don't believe I used the term contestable market. I think that was in Dr. Shelanski's.....

COMMISSIONER STRANDBERG: I'm sorry.

DR. LEHMAN: .....affidavit, but we're talking about the same phenomenon.

COMMISSIONER STRANDBERG: Yeah.

DR. LEHMAN: I don't know of another industry where we have taken the regulatory tact of unbundling requirements and the way the FCC has interpreted the term based on cost. I don't know of another example, so I believe this is -- it's unique as far as I can think of offhand and I think that calls for a fairly unique response, because the presence of those requirements in the Act mean different things for regulation of retail markets than we've seen in any other industry.

COMMISSIONER STRANDBERG: Well, you know, like in California and other parts of the nation there was massive deregulation and, you know, effectively a shift in paradigm and in many cases those programs (indiscernible - simultaneous speech).....

MR. McKENNA: Hugh McKenna

OPERATOR: Is joining the meeting.

COMMISSIONER STRANDBERG: .....ideas are sophisticated enough and mature enough to really work in the Anchorage area or.....

DR. LEHMAN: Well, specifically let's talk about California for a minute 'cause it shows the example of the need to recognize that retail and wholesale markets have a relationship. I mean, in California very crudely what they did was they regulate -- they continued to regulate the retail rates and they deregulated the wholesale market and so wholesale prices went through the roof for a variety of reasons and retail prices were still capped and you have massive problems. I mean, huge profits being made at the wholesale level, lack of service, you know, it -- they failed to recognize that retail and wholesale prices have a relationship.

In the particular context we're talking about here the relationship is that in the Anchorage market particularly, let's use that as an example, I see no way that consumers are not adequately protected by both the current regulations and the fact that there is a competitor quite willing and able to serve people. What we want is two competitors quite willing and able to serve people equally. That will be even more choice for consumers. So I'm looking for more choice for consumers, not less.

COMMISSIONER STRANDBERG: Okay. Have you thought about doing any economic modeling of the Anchorage market prior to instituting any sort of major paradigm shift just to see where things go or do you advocate just doing it?

DR. LEHMAN: I'm not sure what modeling would be

appropriate. I mean, it's -- I'd be -- you know, economists love to model so I'd be happy to think about what kind of models, but I -- like I was saying yesterday, I think the danger is of doing too little too late and I would hate to wait for economists to model. I mean, the FCC economists took six years to develop a synthesis model. We -- I don't think we can wait six years while we'd play with models.

The concern that you're raising is the one that we're going into somewhat unknown terrain, what will happen. And, I think, you can provide the assurance you need the way other states have done in their deregulation attempts which is to just limit the amount of an increase that can occur in one year or over a period of time that provides you with the safeguard that even though we're not sure how it will actually work, there is some protection in place. That's the simplest way to offer that protection.

COMMISSIONER STRANDBERG: Right. You know, we've been wrapped around the axle here pretty severely in our Consumer Protection Section with difficulties, various difficulties, not only associated with the rate, but also with just the provision of service. Do you have any comments on how we can stay out of that morass under which you propose?

DR. LEHMAN: I mean I've seen states where there are different organizations of how some office of Consumer Protection is organized. I don't have a strong opinion on

this, but my feeling from what I've seen is that if it is in an autonomous agency it probably works better than it being within the public utilities commission.

MR. MONINSKI: Commissioner, if I might also respond?

COMMISSIONER STRANDBERG: Certainly, Mr. Moninski.

MR. MONINSKI: It's my sense, and I think the data supports this, that the majority of issues that have come before the Commission by way of the Consumer Protection Section have dealt with at its core operational relationships between the ILEC and the CLEC.

What's being proposed with regard to regulatory relief in competitive markets is really on the retail side of the equation between LECs and end users, so those proposals I don't think will really affect those other issues, and ACS believes that as complex and difficult as some of those issues might be, that that is one of the safeguards that the Commission retains in a competitive market is to be able to have a place for consumers to come and bring issues to be resolved the way that we typically do them here, so from my perspective I would not see that changing in any material degree and would not advocate changing it in any material degree.

COMMISSIONER STRANDBERG: Thank you, Mr. Moninski and thank you, Dr. Lehman. Now I'd like to talk with Mr. Moninski. In your testimony on page 9 you speak in line seven.....

MR. MONINSKI: And this is initial or reply?

COMMISSIONER STRANDBERG: Yes, initial. You speak of basic residential service safety net approach. Line 7.

MR. MONINSKI: I have it (ph).

COMMISSIONER STRANDBERG: Can you tell me what you had in mind there, maybe a little bit more?

MR. MONINSKI: As we were developing our position in this proceeding and these comments specifically, we began to ask ourselves the very same questions that you were just asking Dr. Lehman that even though we really do believe that market dynamics and market forces will prove to be in the final analysis the best tool to produce public protection, that at the front end of this process there may be some misgivings on all of our parts and certainly on the part of the Commissioners as to whether or not you just flash cut to that kind of arrangement.

We kicked around the idea of a safety net for those customers who are least likely to be able to protect themselves in the marketplace and we think of those as residential customers for basic services. And we proposed the concept of -- I'm sure we didn't invent it, but we proposed the concept of a basic safety net for residential customers along the lines that Dr. Lehman mentioned, perhaps, limiting the amount of annual rate increases over some transitional period.

There was one that we had discovered in the state of Wisconsin where apparently the basic residential rate is tied

to the median income in the market and in Wisconsin, I guess, that data is available. I think the linkage is that it is one percent of the median income. Perhaps somebody did an affordability analysis and came up with that number, but those were just a couple of ideas.

I don't know that we have exhausted the universe of things that could be considered, but those were a couple that we thought would work and that we would at least propose to the Commission.

COMMISSIONER STRANDBERG: Okay. If we go with your detariffing proposal what sort of criteria would you see that we should employ to reenter the market if things are not working right, have you thought about that?

MR. MONINSKI: To some extent we have. To some extent that may need to be the subject -- we keep talking about workshops for any number of different things. That may need to be the subject of some further collective analysis and further decision making on the part of the Commission.

Clearly one of the things that I think you would want to look at, even though we have advocated that you don't have the jurisdiction to enforce antitrust rule, but you certainly have the wherewithal to keep those issues in mind as you monitor market performance. If you began to see things that consistently looked to you to be antitrust related, I think that would be something that might trigger some action on your

part.

One action that it might trigger is some referral of that issue to the appropriate enforcement agencies, but it could certainly trigger some response on the part of the Commission by way of seeing whether or not a market failure had occurred and, perhaps, bringing yourselves back into the equation.

Thinks like price leadership, if you saw prices rising on a consistent level getting beyond what Dr. Lehman mentioned as competitive levels of pricing and having all competitors going to those levels that would be something that you might be concerned about.

You might also use substantial, out of the ordinary, or extraordinary levels of consumer input that were bringing issues to you about something you mentioned, Commissioner, service quality, the ability to get service on a timely basis.

We will always have in anybody's network some reasonable level of that kind of activity. We're all human. The network are physical, things breakdown and so we're going to have those kinds of issues at some reasonable level. If they turned out to be unreasonable, if people were driving costs out of their network to be competitive in such a way that networks generally speaking were falling below acceptable levels, that may be something that would cause you to want to come back into the equation and assert some regulatory oversight.

COMMISSIONER STRANDBERG: I heard the wo-.....

DR. LEHMAN: Could I add something to that for (ph).....

COMMISSIONER STRANDBERG: Surely.

DR. LEHMAN: The -- GCI expressed a concern about the ongoing legal issues about some of the rural exemptions and I would think that it would be appropriate if there are significant legal changes that that might warrant a change in regulatory status. I would echo that I think workshops would be a good, sort of, forum in which to look at the alternatives, but certainly the Commission has to have the prerogative to go back in when there's significant changes or when conditions warrant it.

COMMISSIONER STRANDBERG: Thank you, Dr. Lehman, and that does bring me to the next question. On page 14, Mr. Moninski, you talk about public interest standards need to be developed to ensure that the objectives of the rural exemption are achieved and maintain. Any comments on how we would develop those standards?

MR. MONINSKI: Well, as you've already heard in testimony in this proceeding public interest standards developed at the front end of a process is a difficult thing to do and we acknowledge that. I actually think it would take a separate rule making for the Commission to undertake that exercise. Like in the case of identify multiple ETCs, there isn't any clear guidance yet either form the Act or from the FCC or from state commissions generally as to how to go about doing that.

I think that in the case of terminating the rural exemption the public interest component of that has also not been well defined. It may be that you cannot define with such specificity in a rule as to make further adjudications unnecessary. I think you still will perform some level of case by case analysis, but it would be really helpful to applicants and intervenors to have some idea of what the general boundaries of the public interest determination would be. I don't have anything substantive to offer in that regard, but I do think that separate rule making would probably be the right approach.

COMMISSIONER STRANDBERG: And maybe at this point I can solicit any comments from any of the other parties on that question?

MR. JACKSON: That particular question?

COMMISSIONER STRANDBERG: Yes.

MR. JACKSON: I think on that particular question our only comment would be that as Mr. Moninski indicated that because of the difficulty of developing such standards we think that they can actually be developed better in a case by case basis rather than trying to develop them in advance because developing in advance will almost always include, sort of, other factors that should be considered on a case by case basis, so I think probably you'll waste a lot of time in the rule making proceeding.

COMMISSIONER STRANDBERG: Any other comments on that? Mr. Rowe.

MR. ROWE: Can I be heard from here?

COMMISSIONER STRANDBERG: Sure.

MR. ROWE: I consider that in a public interest determination in bringing competition to an area you need to consider the sustainability of that competition, not that its -- the enter of it is deemed in the public interest, but that the sustainability of it and the sustainability of investment in the infrastructure for the people in the rural areas is going to be determining whether the public interest is served not that immediately there is choice, but in the future that there's going to be quality of service.

MS. GRAHAME: Yes.

COMMISSIONER STRANDBERG: Ms. Grahame.

MS. GRAHAME: For the record this is Heather Grahame on behalf of the Rural Coalition. As you know from our opening comments yesterday we think it's unlikely that in Alaska's rural areas at this point in time that there will be many challenges to the rural exemption because of the time it takes to terminate it, because of the subsequent need to negotiate and arbitrate interconnection agreements and the ability of subsequent competitors to use the pick and choose rule to step in the shoes of the initial competitor that spent the time and the resources developing those agreements and particularly

given the lower cost of developing a stand alone wireless network.

It is our position that public interest issues must be addressed, but our focus would be in the context of multiple ETCs and making sure that the rural ILECs have a chance to respond when a second ETC is designated in their area in order to protect consumers and ratepayers particularly outside the area where competition is initiated.

COMMISSIONER STRANDBERG: Mr. Moninski, I wanted to get into your tariff that's Exhibit A and I have some question -- I am keeping my questions under control so that my fellow Commissioners will have plenty of time so there is a finite amount of time.

On page 5 I wanted to ask you about this seven day notice tariff concept that you have. Ms. Arnett of our group does a sterling job in tariff review. Can you, maybe, talk to me about how you would envision that we would interact together? I mean, that's a very short time for a tariff to come through and for us to take a look at it. Do you think that's reasonable?

MR. MONINSKI: Yes, I do. I think it's reasonable in one -- from one perspective because that is one of the current time lines that we use for FCC tariff filings for local exchange carriers. If a local exchange carrier makes an FCC filing that does not raise rates those are submitted on a seven day cycle.

If they do raise rates, then it goes to a 15 day cycle.

Now, harkening back to my long distance days prior to the time that the FCC totally detariffed the long distance market, non-dominant carriers were making their tariff filings at the FCC on 24 hours notice and then the FCC actually took the last appropriate step and completely detariffed the IXC industry on the interstate side.

There are some presumptions that go along with using those kinds of abbreviated filing cycles. The presumptions mainly go to the degree to which a tariff filing will be evaluated, analyzed, that there would be interaction between Commission Staff and the parties. Clearly there is the opportunity to do those kinds of things when you're talking about a 30 or 45 day tariff review cycle and much less opportunity to do those kinds of things in a seven day cycle or even a 15 day cycle. The presumption is part of the advocacy.

The presumption is that we don't need the level of tariff analysis and review and interaction when we are talking about offers that are coming into a competitive market and this particular regulation only triggers when the Commission has determined that a market is competitive so that would be my response, is that it's been proven to be reasonable in another regulatory forum and the reasoning behind it, the rational behind it is sound in both jurisdiction. It is appropriate and it can work here in Alaska as well.

COMMISSIONER STRANDBERG: How can we handle, Mr. Moninski, the issue of discrimination between rate classes under a competitive market where there's many, many different offerings, conceivable promotional offerings, how can we assure ourselves that consumers across class are being treated fairly under your proposal?

MR. MONINSKI: One of the things to remember, I think, in responding to that question is that the statute that governs our behavior does not require absolute equality. The statute talks about unreasonable discrimination. And I think there's a number of ways for unreasonable discrimination to be identified.

Certainly one of the ways is the way that we do it now, we file on lengthy review cycles and Commission Staff has an opportunity to thoroughly look at the tariff and at least make some preliminary indications or findings from the Staff's perspective that something might be unreasonably discriminatory.

There are other ways for unreasonable discrimination to surface. It may not be the best example, but when I was driving down around town here recently I passed two gas stations. One gas station had a price for gas that was 10 cents -- a full 10 cents lower than the gas station that was right across the street. Is that unreasonably discriminatory, maybe, but what happened. A lot of people weren't going to the

gas station that had that 10 cents per gallon higher rate and the market resolved those discrimination issues. So the availability of substitutes and reasonable alternatives in the marketplace will police those kinds of things much more quickly that we could do through the regulatory process.

And finally, if -- again, if it still became an issue beyond what the marketplace was able to resolve, then I think the Commission would be hearing about these things by way of its Consumer Protection Office and if you heard it often enough I think you would step up and say there's a problem here, we need to look into it and you would do that.

COMMISSIONER STRANDBERG: Okay. On page 9 the definition of competitive local exchange market, item 6, you know, some of the ACS Companies have widely diverse exchanges. What would happen in your mind from a regulatory standpoint if a couple of your exchanges went competitive, but other exchanges stayed rural, I mean, how would we handle the costs? I mean, on the one hand we'd be regulating on a monopoly basis, you know, economically regulating and on another hand we'd be doing competitive market. How do we put a firewall in there?

MR. MONINSKI: It is ACS's advocacy that the determination of a competitive market be made on a location specific basis. We have, for example, in ACS of the Northland, just using the Glacier State study area as an example since there's no exemption and (ph) that study area has been terminated, we have

multiple locations, geographically dispersed locations and it's probably reasonable to assume that the entire study area will not become competitive simultaneously.

So, I think, our perspective was that we would go in and identify competitive areas for purpose of applying the relaxed regulation proposals that we had come up with.

Those locations within that study area that were not competitive, that didn't meet the test of paragraph 6 would continue to be subject to all of the other requirements that currently existed if they were, indeed, completely a de facto monopoly. If there was only one carrier in that market then the existing regulations, not the competitive regulations but the more routine, standard regulations would apply to those -- to tariff filings for those locations.

We do have today tariff filings that we have made -- it's a fairly new phenomenon, but we have made tariff filings that identify locations specifically where certain offers are going to be available. And we found a way to work through the mechanics so that that will happen and I don't think that that will be an issue.

If you're talking about broader issues of rate cases and how you would do a rate case where you had a mixed bag of competitive and noncompetitive locations, I'm not sure that -- I'm not sure that ACS has been able to think about rate cases beyond the current proceedings that it is in right now, so I

don't know that I've got any good answers for you in that regard.

I do have a lot of confidence in the ability of accounting and financial folks to be able to segregate those kinds of things and make a presentation to you if one would be needed to establish some overall rate proceeding, if one were to happen. Again, it's -- it's hard to think about that beyond the horizon of the cases that we're in right now.

COMMISSIONER STRANDBERG: Okay. Thank you, Mr. Moninski. And I did want to, mindful of the time, ask one or two questions of the Rural Coalition defining (ph) their regulation. And I wanted to thank you for putting an extensive amount of time in on a very, if I might say, thorough regulation. And, I guess, my first question is in just -- in looking at the requirements for -- that you proposed for competitive entry they seems -- it seems to be really a high barrier for someone to hurdle in order to go into competition in these rural areas and, I guess, I'm looking specifically on page 8 concerning the ETC designations. It just seems like a really, really high barrier for us to levy on someone who wants to go into competition especially since our statute, you know, tells us really to -- that competition is good. Can you respond on that?

MS. GRAHAME: Yes, let me first say that we drafted these -- well, let me ask Mr. Dillen to respond and then I'll follow

up.

MR. DILLEN: Our intent behind these regulations certainly was not to put a burden in anyone's way. Again, I'd like to distinguish between entry here and access. The ETC designation is, sort of, access to the Universal Service funds and not actually to a market.

COMMISSIONER STRANDBERG: Right.

MR. DILLEN: But the requirements here, this was constructed through the types of considerations that the Commission had already put forth in previous ETC designations, those being in the Alaska Digitel Case in U-02-39(5) and these were just to be representative. Again, this list could it be tightened up, could it be shortened, could it be amended, certainly. The ones that I would point to that we have particular interest in would be, for example, Item J.

This is really one of the linchpins which is taking into consideration the impact of the re-balancing of the ILEC rates on consumer rates prior to ETC designation just to see what the consumer impact would be once the ILEC reacts to that ETC petition, but among these others, again, we were just trying to get a representative list in place. The concept was to get a structure out, not to put a burden in anyone's way.

MS. GRAHAME: Yeah, if I might follow up on that. The Commission under HB 111 has a very short time in which to react. Similarly, when the Commission issued its opening order

in this docket the parties had a short time to react. We recognize that if we want -- we being the Rural Coalition, if we want the Commission and the parties to give serious consideration to our proposed regulations we felt we had to get them out as soon -- in the opening round in order to give the parties an opportunity to comment.

And certainly if we had had a little bit more time these would have been, you know, perhaps, a little bit tighter. In looking at them now we can see some edits we would like to make, but at the end of the day what we wanted to do is to put out a concept. Can these be changed, can these be altered, absolutely, but it's the concept that we were trying to get across.

And as Mr. Dillen said a lot of the factors on page 9 was actually -- were actually pulled from Order No. 5 in your Digitel order, so, in fact, the wording in many of these is identical. So we were not trying to put forward a barrier to entry. We were simply trying to codify the kinds of information that this Commission had requested of Alaska Digitel, requests that we thought were reasonable.

COMMISSIONER STRANDBERG: Okay. Thank you very much. Mindful of the time, I have many more questions, but I think I will turn it over to other Commissioners and I may be back. Thank you.

HEARING EXAMINER OLSON: Mr. Ayotte?

MR. AYOTTE: Yes.

HEARING EXAMINER OLSON: Sometimes we forget people that are appearing telephonically. I don't want to forget that the Commissioners have given opportunities to comment and if you desire to comment you should speak up and let us know, okay?

MR. AYOTTE: Thank you.

HEARING EXAMINER OLSON: Okay.

COMMISSIONER THOMPSON: I want to start by following up on a couple of Commission Strandberg's questions. The first one you answered, Dr. Lehman, you said that the greatest fear was a price raise. I'm not -- don't we also have another responsibility -- or isn't there also another fear that we have in this market and that's the one that was evidenced last summer by the proceeding that Commissioner Strandberg also referenced where consumers are in a position where they're not able to switch because of poor relations between the CLEC and the ILEC. I mean, is a price increase really the greatest fear that consumers have or is it not being able to make the choice that they want because of poor relationships between the companies?

DR. LEHMAN: I think the greatest fear in terms of a deregulation of retail service proposal is of a rate increase. I think that's the bottom line to be concerned about.

The -- that does not mean that there's not a major concern about the functioning of wholesale markets and it's under

federal law this Commission has a role and a responsibility to ensure that where UNEs are necessary that they are provided and provided at an appropriate level of quality of service. So that concern doesn't disappear if you deregulate retail rates. If anything it accentuates the fact that that is a responsibility and why that's there.

COMMISSIONER THOMPSON: So then would it be fair to say that your suggestion that the existence of UNE rates should be the basis for us to reduce our level of regulation in the local market, presumes that customers can switch easily between carriers, between providers?

DR. LEHMAN: I think if they can't then you're in violation of what the law has charged you with doing. I mean, the wholesale market has to function properly. The fact that there may be a potential that it will not function, I don't think should come into play in terms of what kind of retail regulations. You know, you can't based retail regulation on the hypothetical possibility that it won't work right and if it doesn't work right you have a direct responsibility already and even under my deregulation proposal to fix that.

COMMISSIONER THOMPSON: Yeah. Well, I think we have some experience here that you may not be familiar with about it not working right. And don't you think if it's a presumption that the markets are going to be functioning, that we would have a responsibility first to make sure the rules are in place so

that the market does function and consumers can make choices before we back-off in terms of review?

DR. LEHMAN: I think availability of UNEs implies that they -- I mean, what I mean by availabilities is that they can be utilized.

COMMISSIONER THOMPSON: Okay.

DR. LEHMAN: Potentially one of the issues that, you know, if you were considering how would -- under what conditions would deregulation, sort of, be back -- would you turn your back on it and go back in and regulate, that also would be an appropriate trigger if the wholesale market ceases to function properly,.....

COMMISSIONER THOMPSON: Um-hum.

DR. LEHMAN: That certainly would be an appropriate time to re-regulate retail markets. In fact, that gives very good incentives for incumbents to keep that market working right.

COMMISSIONER THOMPSON: Okay. That was one of the questions that was asked of ACS that I wanted to give the other parties a chance to comment on and that is what triggers do you think are appropriate for Commission intervention? When do we need to get involved again if we adopt this proposal by ACS, what triggers do you think are appropriate for Commission intervention?

MR. JACKSON: We may both have comments, but Ms. Tindall will begin.

MS. TINDALL: Well, first of all, I'd like to back up a little and just address what I think from an economic point of view has to underlie ACS's proposal.

I would agree with Dr. Lehman that the availability of UNEs would constitute deregulation, but for a few things. When you talk about competition and market forces resolving competitive issues, you're essentially hopefully talking about an almost perfect competitive market where there are a number of entrants, there are no barriers to entry, there are no barriers to switching. Customers literally have free choice and can move freely between providers.

Anytime you're talking about deregulating 'cause you're going to let competitive forces take over, you have to take into account whether or not those presumptions are true, whether or not consumers do have free choice, whether or not there are a number of providers, whether or not the market is functioning as close to perfectly as possible. And if it's not you have to make allowance in regulation for where there's imperfections in the market.

So I do disagree strongly with Mr. Moninski that the issues of consumers not being able to freely switch as we had this summer is a separate issue from whether or not there should be deregulation upon the availability of UNEs, because the precursory to deregulation is you only deregulate as far as the market's functioning clearly.

So in answer to your question directly, I think it's very difficult once you have deregulated to step back in and turn back the clock and start re-regulating again. I think it's incumbent upon regulators to only deregulate to the point where the market is functioning the way the market is supposed to be functioning.

And I also have an issue with the 75 -- the UNE availability to 75 percent of the market because that essentially means there's 25 percent of the market then that don't have a choice and how do you account for them. So I don't think there is a good way to come back in and start regulating one you started deregulating. I don't think there are good triggers for re-regulation.

If you're talking about triggers for stepping in and knocking heads 'cause people aren't following existing rules, those would be violation of rules, but you can't but the genie back in the bottle and so it's incumbent upon the regulators to, you know, ensure the market is functioning the way it's supposed to be functioning prior to deregulation.

MR. JACKSON: And if I can add since I'm a lawyer somewhat more legalistic response. The final policy which you've been directed to implement is that the Commission may deny any rate increase to protect the public. And along the lines of what Ms. Tindall said I think you give that away if you follow the ACS proposal. You have no opportunity.

You don't even know about the filing before it goes into effect under their significant competition level. And there's really no difference between their significant competition level and their competition level because one's in a majority and the other at 75 percent and you're almost always going to be at 75 percent immediately, so you would have no authority to deny the rate increases so you would be giving away the power which I think the Legislature said you should exercise.

And I agree with Ms. Tindall you can't put the genie back in the bottle. And it is important to focus on increases 'cause that's the only place where we really have a difference with ACS.

In terms of our -- I mean, under today's rules the only time that there's a difference in the standards to the two companies is in the case of rate increases. And why does GCI have the position it does? I mean, you know, in lots of ways the best thing that can happen to us is for them to raise their rates. You know, they raised their rates in Anchorage and we got a lot of market share out of that. You know, alternatively we could have gotten more money out it by raising our rates, so -- I mean, you know, that's a good thing for us in lots of ways if they raise their rates.

But we do think there's some very significant public interest issues involved in a market which isn't fully competitive allowing them to totally raise their rates with no

review by you whatsoever. It does create the -- I mean, the tie which has been mentioned between the availability to switch and the rate increase -- I mean, that was one of the events that really precipitated one of the crisises regarding customers switching over is because, you know, that whole issue has, sort of, had its peaks and valleys and one of the peaks was so many customers wanting to switch over after the increase and they weren't able to.

So, I guess, just summing up I think it's contrary really to one of the policies to implement that proposal and I would agree that you can't put the genie back in the bottle 'cause you don't even know what's happening under the significant competition level.

And you also have all your other issues. Commissioner Strandberg mentioned deregula- -- or discrimination. Geographic rate averaging, how are you going to enforce that rule. I mean, ACS says get rid of it, but we don't think that's a good idea, so if you're going to keep it, how are you going to enforce it if you detariff and there are other issues.

How are you going to deal with proposals like the CMEC which you have. Will they be able to implement a CMEC with absolutely no notice or seven days notice under their proposal? I guess our answer is you just shouldn't go there.

COMMISSIONER THOMPSON: Does -- excuse me, I want to hear --.....

DR. LEHMAN: Could -- could -- could I add to that or not? No.

COMMISSIONER THOMPSON: No, not right now.

DR. LEHMAN: Okay.

COMMISSIONER THOMPSON: Does AT&T or ATA or the Rural Coalition have any responses to that, on appropriate triggers for reinvolvement by the Commission in the market? I hear silence.

MS. GRAHAME: I have --.....

COMMISSIONER THOMPSON: Okay.

MS. GRAHAME: This is Heather Grahame. I have one minor comment. And that is rather than identify -- I understand why you're asking the question and maybe one way to handle it is to simply include in the proposed regulations a clause whereby you reserve the power to change the regulatory environment if it is not -- if the market evolves in a way that is adverse to the public interest. That way you're reserving as much power to yourself as you want and you may need, because that way you aren't limiting yourself to specific circumstances.

COMMISSIONER THOMPSON: I'm thinking about how that works as a practical matter. For us to get involved in setting new rules means we open an R docket. It could take a year. That's not effective response to a market -- our changing market condition. How does it really work? And this question goes back to ACS. You talk about us getting reinvolved. Explain to

me as a practical matter how we can effectively reimpose regulation on an area in the market that's been deregulated?

MR. MONINSKI: I think in some respects it follows what Ms. Grahame just said, this Commission has in the past on a case specific basis deregulated certain things. You have deregulated, for example, voice mail. You have deregulated billings and collections agreements, but in every one of those instances that I'm familiar with you have specifically and expressly in your orders reserved the right of the Commission to step back in and typically using the language step back in, in the event that that unreasonable discrimination has been detected.

COMMISSIONER THOMPSON: But those were not circumstances when that regulation -- when our authority was being exercised pursuant to specific language in a regulation such as you've suggested. In other words, if we adopt your proposal we would have to go through another R docket to change the rules.

MR. MONINSKI: I don't think so. I think Ms. Grahame points out the appropriate procedural way to do that which is to include in your regulations some express reservation of jurisdiction to deal with specific issues that you think you might become concerned with which would then, I think, avoid the need for subsequent rule making.

COMMISSIONER THOMPSON: Okay, all right. I have one other follow up question to your -- one of your responses to

Commissioner Strandberg and he was asking you about the seven day and you acknowledged that the FCC uses 15 days for rate increases. I was going to ask why -- why do you think the 15 -- the 7/15 day split is not appropriate for us? Why should we review even rate increases under a seven day rule?

MR. MONINSKI: I'm not sure if I mentioned it or not, but these are dominant carrier rules at the FCC. The dominant car-- LECs at the FCC making their access filings are declared dominant in their markets.....

COMMISSIONER THOMPSON: Um-hum.

MR. MONINSKI: .....and under these dominant carrier rules you have seven days for rate decreases, 15 days for rate increases. What we're proposing in ACS' draft regulations would be at the point where a market is deemed competitive, even though we haven't reached that level of significant competition, that the ILEC in that market would be designated as non-dominant and, therefore, that.....

COMMISSIONER THOMPSON: Okay.

MR. MONINSKI: .....distinction would get us there.

COMMISSIONER THOMPSON: If we presume that all carriers are treated equally in those markets and as Dr. Lehman said, our greatest fear is rate increases, why shouldn't we allow 15 days to review rate increases and seven days for other proposals?

MR. MONINSKI: That's certainly an option. In a relative

world a 15 day cycle is better than a 30 day cycle. Our ongoing belief is that the market will discipline the participants, especially when it comes to things like rate increases.

And I think that we have heard in this hearing and in these pleadings about how ACS implemented an interim rate increase for Anchorage and that's true and GCI has told you repeatedly what happened as a result of that. Has ACS gone back and scratched its head about that decision? I'm sure that it has and hopefully when we get to the point where rates can either over time or by virtue of rate cases that are pending become truly re-balanced, I think a lot of those issues will get resolved. We haven't come in and asked you for another one after the first one.

COMMISSIONER THOMPSON: Okay. I want to ask all of the parties some questions about the bundling restrictions. And I'll start with ACS because it was -- I think the issue was raised first in their testimony, but I'm giving everybody fair warning that I'm going to be interested in comments from everyone on this. I'm not sure I understand clearly what bundling restrictions ACS is asking for relieve from and so I'll start by having you state that clearly. What is it that you're -- which regulation do you believe is now applied unfairly to ACS that should be lifted?

MR. MONINSKI: That's actually a pretty easy one, ACS

believes that it is under a certificate condition that was imposed by virtue of the -- first by virtue of the certification of the former ATU Long Distance Company and later that -- those conditions were readopted and, in fact, reimposed in Anchorage for all of the ACS Companies once ACS became the acquiring entity. It is, I believe, only a restriction on the on the bundling of local and intrastate long distance services, but that is -- that's the restriction that we are attempting to address by virtue of the draft regulation that is before you.

COMMISSIONER THOMPSON: Okay. If that's the restriction, bundling intrastate long distance and local service, how would we reconcile a proposal that eliminated that bundling restriction with geographic rate averaging or are you proposing that that concept should be dispensed with as well?

MR. MONINSKI: That -- it is our advocacy that for purposes of LEC and LD bundles that you waive the provision of the regulation that requires intrastate long distance rate averaging. It is ACS's position that as a matter-of-fact long distance rates have already been deaveraged. I recognize that you have a regulation in place.

We probably all have a tariff that appears to be compliant with that regulation, but the simple fact is when you take a look at how special plans and programs and offers have come into existence and how they've been marketed as a de facto matter long distance rates have already been deaveraged.

The proposal that we make for waiving the deaveraging regulation as it would apply to bundles, I don't believe would do any further harm or any more serious harm to the Commission's regulations than already exist today.

COMMISSIONER THOMPSON: Okay. I'm interested in the other parties' comments on relief of -- or whether or not we should waive in the case of local and intrastate long distance the bundling restriction and the impact of that -- your answer on geographic rate averaging?

MR. JACKSON: I'll just be (indiscernible) front table I guess. I would agree with Mr. Moninski that the only restriction that exists is regarding instate long distance and local, that's the only bundling restriction. It is -- in their certificate it is effectively also applied against us through the geographic rate averaging rules, so I don't think we are -- I don't think we are any or maybe a slight degree more free to bundle than they are in that context.

I would have to hear Mr. Moninski's specific examples, which I didn't, in support of his belief that there's already effectively been geographic rate deaveraging. I don't think I would agree with that or at least I'm certainly not aware of any facts that would make that the case.

And we do not support the waiver or the repeal of the rule against geographic rate averaging. We think it is -- had beneficial effects and that it should be maintained and, you

know, there's -- people always like to use the cream skimming word, but for a LEC like ACS that operates almost as a long distance company that operates almost exclusively in the -- in the -- or as a long distance company operates almost exclusively in the urban areas, that's essentially what it would allow them to do would be to ignore the rural markets and market their bundled products in the Anchorage, Fairbanks and Juneau areas.

COMMISSIONER THOMPSON: I know AT&T is going to have something to say about this.

MR. SAUPE: Well, we do have a concern and we've expressed it over the years that local companies with substantial market power or in many cases monopoly power not be allowed to leverage that by making a bundle with instate long distance. That gives them an unfair advantage in competing with us in the long distance market that we can't replicate and so that's why we fought so hard to make clear that those anti- -- that specific anti-bundling restriction continued to apply to ACS.

We also continue to support geographic rate averaging. We think it's been effective and it's -- should be continued and agree with what's implicit in your question that if that bundling restriction is lifted it would undermine geographic rate averaging for the reason Mr. Jackson just said that in the urban areas there could be these linkages that would give discounts to people unavailable to people in the rural

communities where the bundled isn't offered.

COMMISSIONER THOMPSON: Um-hum. Well, maybe that does not have to happen, but I can't figure out how we would be able to prevent it.

MR. SAUPE: Yeah, I can't either.

COMMISSIONER THOMPSON: Okay. Does ACS believe that the local, intrastate long distance bundling restriction is applied significantly different to ACS than to the other companies in the state?

MR. MONINSKI: It is my recollection that when some other LEC affiliated long distance companies were being certificated that a similar anti-bundling provision was applied to them. In that regard I think the former ATU and now ACS has been treated similarly as other ILECs that were spinning off LEC affiliated LD companies.

GCI, the LEC, does not have a similar restriction other than the, sort of, ancillary restriction that's imposed by geographic rate averaging.

It's interesting to note in the case of AT&T, AT&T although it probably shouldn't be remains the dominant instate long distance company and it has an affiliated LEC. Kind of the reverse situation. There is no restrictions on bundling that have been imposed on AT&T that I'm aware of, so there certainly are some differences between ACS relative to CLECs, but I believe ACS has been treated the same way as other ILECs

have been treated.

COMMISSIONER THOMPSON: One of the -- I'm going to move on and talk about, again to all parties hopefully eventually, concerns about market domination. One thing -- one issue that's raised by the proposal and I don't know that it's been raised as much by any of the parties in their comments here, but it's certainly something we heard about during the Legislative hearings last year was a fear that if we remove all regulatory oversight from the market we'll go from -- basically from one monopoly to another. And I'm wondering if any of the parties have an opinion about when -- is that a concern we should have? Should we do anything actively to ensure that doesn't happen? When should we become involved again or what market indicator should we be monitoring to make sure that we don't -- once the -- all regulatory oversight is removed go from one monopolist to another?

DR. LEHMAN: As with your earlier question I certainly think if it did go from one monopolist to another that would be an appropriate reason for the Commission to step back in.

I guess you have to ask is it more likely that you would move from one monopolist to another in the current environment or under the proposed ACS deregulation proposal and I think the current environment bears that potential much more. If two entities are free to compete in the some way then one will win out over the other if they are really better at meeting

consumers needs.

In the present environment it's not that clean. You know, we can't tell whether that's been the conclusion that consumers reached or whether it was a conclusion reached filtered through a variety of different regulatory treatments that are not symmetrically applied. And so I think the worse temptation is in the present environment to put the Commission in the position of managing the market shares which would not be a competitive outcome.

It would ensure you always have more than one provider, but, I mean, we've seen 40 -- we saw 40 years of airlines deregulation premised on the idea that the regulatory body should keep all of the carriers afloat and it didn't serve consumers well.

So there -- I have no idea if unleased whether one or more providers would end up in the market, but that would certainly warrant you stepping back in, but you'd know the reason why one survived and the others didn't.

COMMISSIONER THOMPSON: The Rural Coalition used the term natural monopoly in its testimony so I'm presuming that that carries with it some underlying belief that such a market exists. Do you think that is just -- were your comments specifically and exclusively directed to the rural areas or to some of the other markets that are not competitive?

MS. GRAHAME: Well, the -- the reference to a natural

monopoly was simply an example of a factor for the Commission to consider in determining whether any area in particular might be competitive. And I believe that's the only place we referenced that and we have no objection to removing it.

COMMISSIONER THOMPSON: Okay, all right.

MR. JACKSON: Could I.....

COMMISSIONER THOMPSON: Go ahead if you have other comments about that.

MR. JACKSON: Go ahead.

MS. TINDALL: I can't state strongly enough how much we believe this issue is a red herring. There is no threat at all that one company will go out of business to be replaced by another that has been put forth on the record. There's no evidence. There's been a lot of assertions, there's been a lot of hand wringing, but there has been no evidence put forth.

Indeed, from all things that we can tell ACS is getting stronger every day, at least that's what they tell their shareholders. And, in fact, what happens if ACS were to declare bankruptcy some day is they reorganize and they come out stronger and probably debt free and a tougher competitor or else they sell their company to someone else.

This of all the things the Commission has to worry about in moving to new regulations for deregulating a competitive market should be the least of its worries. It is absolutely a red herring and GCI plans to present evidence in some of the

Commission's other dockets on why we believe it to be a red herring.

MR. JACKSON: And just very briefly just on the natural monopoly issue and I mentioned this yesterday, I mean, at least under some interpretations, perhaps, the wireline, local loop is a natural monopoly at least in some areas and one of the things that the telecom enables is to have competition in all the other elements of the service even though the loop might be a natural monopoly in some areas and that's what UNEs are all about so that it, sort of, overcomes the possibility that maybe the UNE is a natural monopoly.

COMMISSIONER THOMPSON: Okay. I want to move on and ask for some more specific comments about tariff reviews and in ACS' regulations and in several of the others -- I know there were comments yesterday at the hearing about the differing levels of Commission review of tariff filing over time, want I want to understand is what the parties -- I'm assuming that everyone would -- or that all parties would believe that we should review tariffs filed by any party consistently. That we should apply the same rules to everybody.

The record should reflect that I'm seeing nods all around, okay. If we're going to do that what rule should we be applying? If we're going to have seven days to review tariffs we're not going to be reviewing them the same way. What should we be looking at them for?

And I'll throw out some ideas and you can say yes or no and add anything else you might think is appropriate. Now some of the things we review tariffs for are discrimination, another possibility in a competitive market is anti-competitive provisions and we're back to geographic rate averaging, too. I mean, that issue is implied in tariff review. There is implications in different filings on if there -- if geographic rate averaging is something that we -- a policy we continue, it's a policy that we may or may not have to review reflected in tariffs, so what are we supposed to be looking for in seven days?

MR. MONINSKI: Well, I'll start since it was ACS's seven day proposal. It was difficult for me to be one of the persons that nodded his head to the question that you asked should all tariffs be treated the same or should all tariffs be evaluated the same.

COMMISSIONER THOMPSON: But you did.

MR. MONINSKI: Well,.....

COMMISSIONER THOMPSON: Are you taking it back?

MR. MONINSKI: No, I'm adding a qualification. I think that all tariff filings of similarly situated providers in the same market should get the same review. I do believe that.

COMMISSIONER THOMPSON: Okay. Define that term?

MR. MONINSKI: If, for example, AT&T and GCI and ACS make a tariff filing in Anchorage I believe that those filings

should all be subject to the same standards of review.

COMMISSIONER THOMPSON: Okay. Does that -- does it matter whether it's a retail market tariff, a wholesale market tariff, a long distance tariff?

MR. MONINSKI: Yes.

COMMISSIONER THOMPSON: Okay.

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(Tape Change)

Tape 2

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MR. MONINSKI: Yeah, it -- I mean, right now -- and I guess I should qualify it further, right now I am talking about, and these regs are basically addressing, the filing of local tariffs, local retail tariffs, not local wholesale tariffs which I concur would need to be handled via a separate procedural path. And long distance tariffs as I think about it because I believe that the long distance market is competitive at this point and I don't believe that we have any dominant carriers in the long distance market that -- even on a statewide basis, I believe that all those LD tariffs should be evaluated the same way. But I would think though that the standard of review for tariffs in Anchorage for example would be different than a tariff that ACS might file today for Kenai where there is no competition. And I'm comfortable with that distinction.

And the reason why I think seven days works or the reason why one day-worked at the FCC was that there was a presumption that goes into deferring to the marketplace to do some of the things that the FCC used to do and that this Commission currently does do. I do think that in seven days you can make a determination as to whether or not there is any egregious or unreasonable discrimination in the tariff. I don't know what kind of rate averaging issues there would be in local tariffs, there would be in LD tariffs.

The other thing too is that even in the case of FCC tariffs, FCC tariffs under the 7 day rule or under the former 24 hour rule, they were allowed to go into effect. It didn't necessarily means that the FCC simply had its 24 hour shot and if it didn't find anything it walked away, we had a number of tariffs that were filed over a period of years where the FCC allowed the tariffs to go into effect subject to an accounting order or in -- which would be an analogue to this Commission's interim approval and then we had to go back over a period of time and true that tariff up and you might be subject to refunds. And those kinds of issues continue to exist. So I think that there are tools out there that would allow this Commission to get offers into the marketplace quickly without necessarily having to completely abdicate its responsibilities for those tariffs.

COMMISSIONER THOMPSON: Okay. In that answer I heard

discrimination, I didn't hear anything about noncompetitive provisions. If your competitor filed a tariff that said custom -- we're saying, you know, customers only have to pay $1 a month for phone service, but if they switch to another carrier they owe us, you know, 100 at the end of the month, is that something we should look at?

MR. MONINSKI: Yes.

COMMISSIONER THOMPSON: So you would add noncompetitive provisions to part of our review?

MR. MONINSKI: I would, but with -- but I wouldn't change anything else that I've said so far. I think that if somebody puts a tariff out there that says what you just characterized it to say I think there's going to be a lot of customers who are going to take a look at that and say no way and they either won't subscribe to that tariff or they'll become offended by it and that -- and being offended will cause them to go to the other providers.

COMMISSIONER THOMPSON: Okay.

MR. MONINSKI: I think the marketplace will discipline that kind of behavior.

COMMISSIONER THOMPSON: Okay. What does everybody else think about what we should be reviewing tariffs for in 7 days or 15 or whatever?

MR. JACKSON: And if I -- I want to start by partly agreeing with Mr. Moninski and the same caveat, I mean, your

existing rules for the competitive markets say that certain tariff filings can go—into effect upon 30 days notice without Commission approval. So I think that those regs very definitely contemplate a different something that you apply in noncompetitive rules so I'll agree with Mr. Moninski to that extent. We -- obviously we don't agree with the 7 day, but, I mean, I'll set that sort of aside and say in whatever period of time you have what should you be looking for. And I think the things that you mentioned are correct, it's anti-competitive provisions, discriminatory provisions, provisions that violate geographic rate averaging and there are probably some others, but those are the only ones I think of.

COMMISSIONER THOMPSON: Okay. Anybody from the back table?

MS. GRAHAME: Yes, the Rural Coalition's regulations provide for 30 days, not seven and they provide for, you know, tariff filings to go into effect within 30 days with the normal caveat that the Commission can set them aside in the event of unreasonable discrimination, unreasonable disadvantage or prejudice are the normal things that the tariff folks look at.

COMMISSIONER THOMPSON: Okay.

MS. GRAHAME: Seven days -- frankly, while I -- we very much appreciate why ACS has put seven days in its regulations, 30 days give competitors a chance to look and to complain and to raise issues if they see them and gives the Staff a little

bit more time.

COMMISSIONER THOMPSON: Okay. All right.

MR. MONINSKI: Commissioner, I just wanted to mention to you that I think Mr. McKenna is on line, he did file some testimony here that would follow this line of questioning if you had any questions for him.

COMMISSIONER THOMPSON: Well,.....

MR. McKENNA: And I'm here, Ted.

COMMISSIONER THOMPSON: Okay. Well, if you have any comments in response to the question just asked, feel free to offer them.

MR. McKENNA: Okay. The very last thing that I would have added to the list of things for you to look at would be Lifeline kind of considerations.

COMMISSIONER THOMPSON: Uh-hum.

MR. McKENNA: I would say that needs to be looked at as well.

COMMISSIONER THOMPSON: Okay.

MR. McKENNA: So with those four elements I think that's complete.

COMMISSIONER THOMPSON: Okay. Thank you.

MR. SAUPE: Commissioner?

COMMISSIONER THOMPSON: Uh-hum.

MR. SAUPE: Ms. Catlin would like to respond on behalf of AT&T to that question.

COMMISSIONER THOMPSON: Okay.

MS. CATLIN: AT&T Alascom believes that the tariffing rules probably do need to be changed in some way to levelize (ph) them and it would need to be -- they need to be changed based on a couple of different factors, the market, whether it's IXC or local and then within those markets how access tariffs are treated relative to retail tariffs. Now we believe that a seven day rule is a bit short for local, we are fairly comfortable with 30 days for either local or long distance.

COMMISSIONER THOMPSON: Uh-hum.

MS. CATLIN: For local the reason that it's difficult for us is because we do provide service to our local customers via total service resale.....

COMMISSIONER THOMPSON: Uh-hum.

MS. CATLIN: .....and that is a rather short period of time for us to respond. We're not completely opposed to it, but for us 30 days is better.

COMMISSIONER THOMPSON: Okay.

MR. McKENNA: Is it useful -- this is Hugh McKenna, is it useful for the Commission to specify in this conversation that you're talking about instances of price increases, as Ted Moninski mentioned before that is price decreases are a whole different class of consideration?

COMMISSIONER THOMPSON: Well, that's the distinction that's been made in some of the comments and not in others.

And I think we'd -- I don't know if you were on line earlier, but when we started this line of inquiry I asked Mr. Moninski why he thought the distinction that the FCC created was not appropriate for this market. Do -- is that something you think we should look at when we're making new rules, have a different rule for price increases as opposed to decreases or price increases and anything else?

MR. McKENNA: Well, you know, that's my sense and I hope, Ted, that doesn't make me inconsistent with your point of view, but it almost seems by definition that for things which give greater competitiveness which are price decreases that they would seem to call for less scrutiny than price increases.

COMMISSIONER THOMPSON: Okay. Go ahead.

MR. McKENNA: Ted, do you agree?

MR. SAUPE: If I could just reiterate, as a total service reseller it doesn't matter whether the price is going up or down. Our issue is a little different from yours, we have to scramble to get our systems -- get notice to our customers, to make changes within a very short period whenever the wholesale provider makes a change regardless of what direction it's in. So that's our concern.

COMMISSIONER THOMPSON: Okay.

MR. McKENNA: Okay. And, you know, I think Ted has further stated that this only applies in cases where markets have already been determined to be competitive.

COMMISSIONER THOMPSON: Yeah.

MR. McKENNA: So I understand the point to be in competitive markets should price decreases be permitted for rapid review, my sense is yes.

COMMISSIONER THOMPSON: Okay. My next question is a very specific one. On page 32 of your testimony, line -- it's the second -- first sentence that begins on that page. It says retail rates and access rates should be allowed to move toward cost. Are you -- my question is are you suggesting that access rates are not now based on cost?

MR. McKENNA: Who was the question directed to?

COMMISSIONER THOMPSON: Mr. Moninski.

MR. MONINSKI: The proposal that we've put forward for regulatory relief, price deregulation, detariffing applies to retail rates and special access rates.

COMMISSIONER THOMPSON: So should this be special access rates in this sentence?

MR. MONINSKI: Yes.

COMMISSIONER THOMPSON: Okay. Then it makes more sense. Okay.

MR. MONINSKI: And I apologize for the omission.

COMMISSIONER THOMPSON: Okay. I just -- later on in that paragraph you discuss Alaska Universal Service Fund and this is something that AT&T has proposed use of that fund to support transport or long distance as well. A question for AT&T on

that, in your proposal you also suggest that accounting requirements and they're couching your testimony as relief from dominant carrier requirements and I'm looking at page 4 where you had a list of the specific requirements that you want to be relieved from including performance reports.

How in my mind should I reconcile a proposal that would allow the state Universal Service Fund to fund the cost -- additional cost of transport -- higher cost of transport presumably to some of the rural areas with a proposal that says don't make us use the uniform system of accounts, have us report less? I mean, is the Universal Service support going to be based on something other than costs, how are we going to keep track of what payments should be made if we don't have accounting information?

MR. SAUPE: Well, I'll start and I'll let Ms. Catlin continue. As we've conceived this subsidy support it would be based on cost and there would be a need to demonstrate the cost differential in some fashion. Right now we are subjected to these accounting requirements and other obligations as dominant carrier that GCI for example as a non-dominant carrier isn't subject to. Under our proposal the fund would be equally available to all competitors,.....

COMMISSIONER THOMPSON: Uh-hum.

MR. SAUPE: .....it's not -- it wouldn't be, you know, what I facetiously referred to as an incumbent's relief act, it

would be competitively neutral, available to anyone.....

COMMISSIONER THOMPSON: Uh-hum.

MR. SAUPE: .....who builds facilities in Bush areas. So presumably some method of accounting for those costs would need to be developed. In the past we have proposed forward looking costs and that could require a cost model, the only one we have available is now probably very stale, but GCI did a.....

COMMISSIONER THOMPSON: Uh-hum.

MR. SAUPE: .....forward looking cost model and that would be something that could be considered in the workshop, how to reconcile those concerns. But the historical costs that we're now required to account for aren't necessarily -- wouldn't necessarily be the basis for the subsidy that we've requested which we've proposed would be based on forward looking costs.

COMMISSIONER THOMPSON: Okay.

MS. CATLIN: The -- all I would have to say to that is yes, our initial sizing of the subsidy we exclusively used a filing GCI made as to their costs of deploying their DAMA network and that was the most efficient competitor model and we were looking at it from a forward looking model as close as we could get to what the FCC had recommended for looking at LEC UNE costs.

COMMISSIONER THOMPSON: Okay.

MS. CATLIN: It's -- okay.

COMMISSIONER THOMPSON: On the subject of that proposal,

what does GCI think about the necessity for use of the state Universal Service Fund support transport, GCI or the Rural Coalition whose members have long distance affiliates as well?

MR. JACKSON: Would you repeat the question, I just.....

COMMISSIONER THOMPSON: AT&T has proposed.....

MR. JACKSON: Yeah.

COMMISSIONER THOMPSON: .....again in this proceeding that we use the state Universal Service Fund to support some of the high costs of offering long distance in rural Alaska and they've argued that they were -- have been unable to make investments because of the cost differential. What does GCI think about this?

MR. JACKSON: We, I don't think, support a Universal Service Fund for long distance. If there's a problem with long distance that issue can be addressed much better by the Commission taking up the access charge reform docket which has been sitting around for a long time now. I guess I'm going to complain a little bit and I apologize before I do so.

I pretty seriously considered bringing up access charges in response to policy number 1 that's set out by the Legislature 'cause it talks about payments to carriers being fair. We tried to take a very narrow view of what was going to be accomplished in this docket and to be very narrow. I sort of think in a way we're losing out because we made that choice because I think some other people have gone much further afield

from the specific proposals in the Legislature. So I wish I had brought up access charges and said that they're unfair as the dickens and you need to deal with them. And that would do a lot more to promote competition and reduce the cost of service to the Bush areas than probably a subsidy could.

COMMISSIONER THOMPSON: Okay. Does Rural Coalition have.....

MR. JACKSON: And.....

COMMISSIONER THOMPSON: Oh, go ahead.

MR. JACKSON: .....Ms. -- I'm sorry, Ms. Tindall may want to add.

MS. TINDALL: Let me just say -- take out his he doesn't think we support it, we don't support it. And.....

COMMISSIONER THOMPSON: Okay.

MS. TINDALL: .....I agree we need access charge reform.

COMMISSIONER THOMPSON: Okay.

MS. GRAHAME: I don't think I'd like to take a position at this time. The Rural Coalition has taken a position on this issue in the past, I think it was in R-98-01 and.....

COMMISSIONER THOMPSON: Uh-hum.

MS. GRAHAME: .....we wrote those comments five years ago and I just don't remember what our position was exactly and it may very well have changed since then due to, you know, the changed environment. So I.....

COMMISSIONER THOMPSON: Okay.

MS. GRAHAME: .....don't think I want to take a position at this time.

COMMISSIONER THOMPSON: Okay. Fair enough. We've been going for an hour and a half do you want to take a break?

HEARING OFFICER OLSON: Sure.

COMMISSIONER THOMPSON: Okay. Go ahead.

MR. SAUPE: Commissioner, can I make one quick comment.....

COMMISSIONER THOMPSON: Uh-huh.

MR. SAUPE: .....on the access reform which is that we strongly support it, we absolutely would love to see it come forward. It doesn't necessarily solve the problem that we've talked about because either through some sort of Commission mandated rate reduction to reflect the reduction in access or through competition we'd be back in the same pickle where the rates would be competed down to a penny or so above access.

In order to continue to compete in the high density urban areas we would need to meet those prices. That would require us to continue to serve at below cost prices in the 150 or so locations where we continue to have the only facilities and so it wouldn't solve our problem. It would -- it's long overdue and it's necessary, but it's not directly relevant to the concern we've raised.

COMMISSIONER THOMPSON: Okay. ACS also has a long distance affiliate, do you have a position on that use of state

Universal Service Funds to support long distance service?

MR. MONINSKI: I thought about raising my hand, but our position is probably not as clearly defined as what you heard from GCI and AT&T. We do have a long distance affiliate, at this point in time, melded into the question of fairness and cost recovery to the provider has to be the issues of the impact on consumers. I've said this to this Commission before that when you take a look at a consumer's bill these days and you add up all of the various surcharges that are out there, state and federal, things become extremely difficult for end users to comprehend and to cope with.

And if we're now talking about an Alaska Universal Service Fund bump that might be related to supporting Universal Service for the IXC markets, we could be talking about a fairly substantial end user surcharge that would flow through the process that is normally used to recover AUSF support. And I'm concerned about that and I think the Commission needs to be concerned about that too and to consider that in the context of the comments that you've heard today.

I'm not arguing that AT&T hasn't raised an important issue that we need to think about, but I think we need to have that -- those end user consumer issues on the table at the same time. ACS LD does not have a specific position on the need for AUSF support, it would certainly be an active participant if this Commission were to move in that direction and consider it

further.

COMMISSIONER THOMPSON: Thank you. Okay.

HEARING EXAMINER OLSON: Let's come back about 10:50, and we'll go off record and we'll take a recess.

(Off record - 10:34 a.m.)

(On record - 10:55 a.m.)

HEARING EXAMINER OLSON: We're back on record for continuing Commission questions by Commissioner Thompson.

COMMISSIONER THOMPSON: And I've got one follow up on the Universal Service proposal from AT&T that I wanted to ask before I forget. Your -- on page 7 you talked about proceeds being distributed based on market share of billed minutes in those areas. My question's a practical one, how do you keep track of that information and is that something that the companies keep track of in a standard way?

MR. SAUPE: I'm not sure of the answer to that question, certainly as to how other companies keep track of it and.....

COMMISSIONER THOMPSON: How does AT&T keep track of that?

MR. SAUPE: It would help to have Ms. Catlin here and perhaps others.....

COMMISSIONER THOMPSON: All right.

MR. SAUPE: .....to know for sure. Yeah, that was the proposal that we floated a couple years ago, there are other ways it could be -- there are other ways it could be handled, you know, specific construction subsidies could be provided for

facilities construction for example. You know, there are other possible ways to solve the problem, but.....

COMMISSIONER THOMPSON: And Ms. Catlin is just walking in the door so we can.....

MS. CATLIN: Yes.

MR. SAUPE: If you could repeat your question for her?

COMMISSIONER THOMPSON: In your testimony on page 7, AT&T suggests that the proceeds for that Alaska Universal Service Fund support for long distance could be distributed based on market share of billed minutes in rural areas. And my question is how do you keep track of that information, is there a standard way amongst or between companies that that information's compiled?

MS. CATLIN: There isn't a standard way that it's complied. At this point we don't have access to those minutes, however there have been new regulations promulgated that I believe require all carriers to file their minutes at the end of the year so that would be one method if my understanding of that requirement is correct.

COMMISSIONER THOMPSON: When you say you don't have access to those minutes that's because that's something the LECs keep track of, right?

MS. CATLIN: Well, we don't have access to other carrier's billed minutes, we have access to our own.

COMMISSIONER THOMPSON: Okay.

MS. CATLIN: And then with respect to LEC billed Alascom minutes, I believe we can get those also. So the bill -- we know we have the minutes we bill and I believe I can have access not to the customer information, but to the billed minutes for my field (ph) customers.

COMMISSIONER THOMPSON: Okay. Do any of the other parties have comments on whether that's an appropriate way, appropriate measure for distributing funds, appropriate thing to track, market share of billed minutes?

MR. JACKSON: I'd just briefly -- I guess I suspect it has at least the potential of some major disputes. As you know there are -- have been some pretty major disputes recently regarding measurement of access minutes. Those disputes I would say are growing rather than diminishing and I think you could have some similar disputes regarding billed minutes.

COMMISSIONER THOMPSON: Uh-hum. Ms. Grahame.

MS. GRAHAME: The Rural Coalition agrees with Mr. Jackson.

COMMISSIONER THOMPSON: Can you explain to me why the potential for disputes -- or I don't know if you agree that -- he's characterized them as growing, why is that happening?

MS. GRAHAME: Jack? If the Commission permits I'd like.....

COMMISSIONER THOMPSON: It would be helpful if he understands and can explain it to me.

MR. JACKSON: Well, since I said it was growing can I just

answer that first and certainly.....

COMMISSIONER THOMPSON: Well, yeah, okay. You can answer it and then give him a chance to think about his answer. I'm sorry. Okay.

MR. JACKSON: I get.....

COMMISSIONER THOMPSON: I'm being indulged.

MR. JACKSON: Thank you. I -- the reason I think growing is because we're coming up with and more disputes, in fact, we're seeing more and more disputes because we're analyzing the reporting of traffic more carefully than we had in the past.

COMMISSIONER THOMPSON: Okay.

MR. JACKSON: As -- with 800 traffic it is frequently very difficult to determine jurisdiction and it is very easy to disguise the jurisdiction. Even someone who is trying to report 100 percent honestly there are some estimates that have to be made and there's some difficulties in doing it perfectly particularly with 800 traffic and that's even if you're trying to do it perfectly. There are also enormous incentives to cheat because of the enormous difference between state and federal.....

COMMISSIONER THOMPSON: Uh-hum.

MR. JACKSON: .....access charges.

COMMISSIONER THOMPSON: Okay.

MS. GRAHAME: And I'd like Mr. Rhyner who's the president and chairman of TelAlaska to respond to your question,

Commissioner Thompson.

COMMISSIONER THOMPSON: Okay. Thank you.

MR. RHYNER: Actually I was going to respond to your question as the chairman of the Rate Development Committee for the Alaska Exchange Carriers Association and I think Mr. Jackson did a fairly decent job of defining the issues and the problems.

COMMISSIONER THOMPSON: Okay.

MR. RHYNER: 800 traffic is a major issue and that's the routing of traffic and I think you're fully aware that we're already.....

COMMISSIONER THOMPSON: Uh-huh.

MR. RHYNER: .....in the process of doing an audit on AT&T.....

COMMISSIONER THOMPSON: Uh-hum.

MR. RHYNER: .....at the moment so there is a growing concern with the reporting of minutes of use.

COMMISSIONER THOMPSON: Okay. Thank you. And I appreciate my colleagues' indulgence. I will acknowledge that is a bit off track, but.....

MS. CATLIN: Commissioner Thompson, I'd like to respond to that also. I -- AT&T Alascom believes that at least after this audit we will all know more about some of the difficulties with reporting that we have seen and therefore we don't view it as growing, we view it as hopefully shrinking as we identify the

problems.

COMMISSIONER THOMPSON: I want to ask next everyone generally about a question that most of the commentors offered a proposal on which is what standard we should use to determine a market competitive? And what I'm interested in is hearing your comments on each other's proposals. There was market share percentages proposals, Dr. Lehman had one for either UNE -- availability of UNEs or ETC designation.

I read and understand your individual proposals, what I'm interested in is your comments on everybody else's, why they wouldn't work or which ones you think might have some merit or which part of them. And the other overall question -- and I'm going to rattle on more than I should, which is another suggestion has been made that we should have a multi-part test that might be applied differently in different markets, do you think that works, are there some tests that are going to be more appropriate for the smaller rural markets that are perhaps not appropriate in the urban markets?

MR. JACKSON: I'll start, I guess.

COMMISSIONER THOMPSON: You're brave, go ahead.

MR. JACKSON: And let me make a slight clarification for ours. Our -- for the competitive service area we do not have a market share criteria, our market share criteria comes in at the significant competition level. My comments regarding ACS' standards would be that -- and I guess that I could also

address the competitive market area definition and the significant competition.....

COMMISSIONER THOMPSON: Uh-hum.

MR. JACKSON: .....distinction. I think that there's really no difference between their two proposals, one is a majority and one is 75 percent. And in most cases the amount of time that it's going to take to move from a majority of the people having a choice to 75 percent of the people having a theoretical choice is, you know, going to be measured in days or weeks or something. It has to be -- happen so fast that it's sort of insignificant. So that's what I see as the problem there.

We think significant competition really means that, you know, a lot of people out there are exercising their choice, we think the, you know, competitive service area would come into being as soon as someone is in the entire market offering service to all the people in the market, the customers have an actual choice.

COMMISSIONER THOMPSON: So offering service to everybody in the market so how does that mesh with the Rural Coalition's ETC designation, that's one of the requirements?

MR. JACKSON: The ETC issue is -- and particularly for wireless carriers, I believe is an incredibly difficult and complex issue. And I think that if it's going to be considered it truly deserves a docket all of its own. And that it's going

to be difficult to deal with until some of the federal actions take place. —

Dr. Lehman and Michael Burke (ph) and I were having a conversation about this over the break and, you know, it is a problem in all sorts of ways and I don't -- if you're dealing with wireless ETCs as the source of competition, even though I don't believe they're competing and our position is they're not actually competing with the wireline, there probably are different criteria necessary, a different set of criteria.

The -- I think -- the Rural Coalition also proposes that as soon as a rural exemption is lifted that it be deemed a competitive service area which, you know, as I think they also acknowledge the rural exemption -- after you lift the rural exemption you have to go through the interconnection arbitration and negotiation and then after you've gone through that you need some long period of time for anybody to actually start servicing. So under the best of circumstances I think there's a long period of time between when a rural exemption's lifted and when the competitor's actually providing service. I do not think that's a good criteria for the definition of a competitive service area.

COMMISSIONER THOMPSON: Okay.

MS. GRAHAME: I'll weigh in next. Let me first say that we reviewed GCI's criticism of the Rural Coalition's definition of a competitive service area with respect to the rural

exemption and we wouldn't have any problem adding the additional language and where the CLEC is actually providing service. We think that makes sense.....

COMMISSIONER THOMPSON: Okay.

MS. GRAHAME: .....and we don't have a problem with that. So I don't think you and I have a disagreement on that, Jimmy. The Rural Coalition advocates the use of a multi-part test to be applied to different areas, we think that's a very good idea because we do think competitive entry is going to proceed very differently depending on whether an area is -- I'm going to say urban or rural.

That does beg the question though of what is urban and what is rural and we would advocate defining a rural area using an access line count and I don't have a suggestion with me today as to what that might be. I would like to confer with the Rural Coalition members about that, but we think that that would be a useful definition.

COMMISSIONER THOMPSON: If you're going to count access lines what happens when a wireless carrier's in there, are you going to count the wireless lines as well or just landlines?

MS. GRAHAME: I think -- my off the cuff thought on this without conferring with the Rural Coalition members was to use a landline access line count.

COMMISSIONER THOMPSON: Okay.

MS. GRAHAME: The Rural Coalition has looked at the

definitions of the competitive trigger of both ACS and GCI and we have, you know, concerns about each of those as applied to rural areas. With respect to ACS', the trigger is really potential consumer coverage and that doesn't work.....

COMMISSIONER THOMPSON: Uh-hum.

MS. GRAHAME: .....in a rural area for the reasons I discussed in my part of the Rural Coalition's opening comments yesterday. If a wireless carrier can serve three businesses in a very small rural area it doesn't matter if they can serve only 25 percent of the area,.....

COMMISSIONER THOMPSON: Uh-hum.

MS. GRAHAME: .....they don't have to serve 90 percent, they will very significantly effect the economics of providing affordable service in a rural area particularly those that have geographically disparate local exchange service areas. Secondly, we don't know how ACS measures consumer coverage, we don't know how you measure that. Third, there has to be a regulatory process we suspect under ACS' proposal whereby a carrier is changed from being identified as dominant to non-dominant and as a practical matter it takes so little time for a wireless company to get into a rural market and to capture a customer or two or three that our fear is that the necessary regulatory time to address those issues would really be too late. Fourth, we don't see as applied to a rural market the wisdom or the need for retaining the dominant, non-dominant

distinction. And, finally, in the ACS proposal there's no opportunity for a rural company to say to you within a certain number of days here's the effect on consumer rates, what are we going to do about it. And I -- and we want you to have that information as part of the public interest test and if you've had a chance to read our regs you'll know we propose doing it within a relatively short period of time. But those are our principal concerns about the ACS test.

With respect to the GCI test it retains the non-dominant distinction for what appears to be 180 days and that's simply way too long a process. Secondly, there's no mention of -- again there's no opportunity for an ILEC to get -- to bring information to you regarding the effect on consumer rates. And, finally, with respect to the significant -- or significantly competitive area which would require CLECs to acquire more than 20 percent of the market, again that's just not -- we don't think that's realistic as applied to rural areas.

COMMISSIONER THOMPSON: Okay. Thank you, Ms. Grahame.

DR. LEHMAN: I'll jump in next then.

COMMISSIONER THOMPSON: Uh-huh.

DR. LEHMAN: GCI correctly recognizes that the real test for competitive service area should be does the incumbent exercise or does any carrier exercise market power. What I don't think is correct is that there's any linkage between

market share and market power, I think it's a step in the wrong direction to be looking at market share as a backward looking measure of what has already happened when the focus should be on consumer choice before it happens and enabling that choice to be maximized. So I guess my reaction is that a measure -- a trigger that depends on a market share measure is just not appropriate for the environment that we have.

MR. MONINSKI: And if I could I'd like to correct one mischaracterization about ACS' proposal. As I've said before ACS proposes an evolutionary regulatory relief scheme and its definition of competitive market does not rely on the provision of facilities based competition. So, for example, in Anchorage had things gone differently and had AT&T entered the market first before GCI, AT&T has entered its markets at least to date on a total service resale basis. Under ACS' proposal once AT&T was in the Anchorage market on a total service resale basis where the majority of customers in Anchorage could select AT&T as its provider, that would trigger the first level of relief that ACS proposes.

And so it is -- where Mr. Jackson suggested a moment ago that there's no real difference between the first point on the continuum and the second I would disagree with that. There -- depending upon how competition enters the market there could be a significant difference if competition comes in first on a resale -- total resale basis and then later evolves to a

facility basis.

COMMISSIONER THOMPSON: Okay. Can you address Ms. Grahame's concern about how you define or how you measure consumer coverage in the context of your proposal?

MR. MONINSKI: Consumer coverage on a total service basis is pretty issue to measure.

COMMISSIONER THOMPSON: Uh-hum.

MR. MONINSKI: The total service reseller comes in and simply purchases everything you have available off of your tariff and it is able to cover 100 percent of the market almost immediately.....

COMMISSIONER THOMPSON: Uh-hum.

MR. MONINSKI: .....on a total service resale basis. On a facilities basis there may have to be some showing that would be presented to the Commission. Anchorage might be a little more complicated given that it has multiple wire centers. In other markets where they're served by a single wire center it would be quite easy. If a facilities based competitor co-located a switch in that wire center and had access via an interconnection agreement to UNE loops, one would presume it would be loops throughout the market and it would be pretty easy to determine whether or not the 75 percent threshold had been made.

Dr. Lehman reminded me that too that included in our definition of facilities based competition is the UNE platform

version of facilities based competition, there again where a competitor could access your switch and all of your loops, I think it would be an easy thing to come in and demonstrate for the Commission that 75 percent or more of the market is being covered.

MR. JACKSON: Can I make a small technical point in response to that?

COMMISSIONER THOMPSON: Go ahead.

MR. JACKSON: There are a lot of instances where even though you're co-located at a switch you do not have access to the loops at that switch.....

COMMISSIONER THOMPSON: Uh-hum.

MR. JACKSON: .....and that's because of field electronics.

COMMISSIONER THOMPSON: Uh-hum.

MR. JACKSON: And so I'd have to amend Mr. Moninski's point a little bit there, is you don't -- there -- in some markets this is a lot more true than others, but in Fairbanks it's very, very true that even you're at the wire center you don't get access to many of the loops there. UNEP (ph) does resolve that problem, but UNEP is.....

COMMISSIONER THOMPSON: Uh-hum.

MR. JACKSON: .....itself a controversial topic and.....

COMMISSIONER THOMPSON: Uh-hum.

MR. JACKSON: .....subject to possible -- some constraints

in the future. So I'll just make that slight clarification.

COMMISSIONER THOMPSON: Okay. Thank you.

MR. SAUPE: Well, as to local market definitions I'd like -- if you could remember to ask the question to Mr. Miller. I would make one factual point, our total service resale in Anchorage has only been residential, it's never been business. So it doesn't necessarily undermine Mr. Moninski's theoretical point, but as a factual matter you may raise the question as to whether that makes a market fully competitive.

The other observation I'd make is in general I believe we support a graduated approach, I'm not sure we're here today to give you a percentage or an actual -- but the thing about market share, it shouldn't be the only test, but it does give you some indication of whether somebody can actually do it and is doing it and that consumers really have choice. And there are impediments to getting service out and you might theoretically have someone who's certificated, but either through lack of cooperation by the ILEC or for other reasons or their own incompetence maybe they're not actually out there offering a valid choice to consumers and, in fact, there continues to be a carrier with market power.

Which brings me to the long distance market and our definition of dominance which we would be happy to live with, it's a multi-factor test, market share being only one of the factors that you would consider. The test doesn't include a

specific bright line, but it is a factor that can be considered for the reason I just mentioned. So I would just reiterate our support for a multi-factored test of market power which I agree with Dr. Lehman is the essential question.

COMMISSIONER THOMPSON: Okay. Thank you. In ACS' regulations they propose that customers be informed about choices and changes in rates and tariffs by posting on websites, internet web pages. Not everybody in the state and not everybody even in Anchorage has internet access, do you think that's an effective way to provide consumers with information, what other -- what else should we do to make sure that competitive market functions effectively by making sure customers have access to the information they need to make an affected (ph) choice?

MR. MONINSKI: That is our proposal, Commissioner. Without being unduly critical of current procedures, ACS believes that website positing while not perfect as you suggest will reach far more consumers than the current process of advertising tariffs in newspapers of general circulation. But the reality is -- having said that, you know, that perhaps was -- is offered as a surrogate for newspaper publication which is a better approach, it was offered because that was the approach that the FCC used when it detariffed the interstate long distance market.

But the simple fact of the matter is that it will be this

kind of notice that will most likely get the attention of consumers and we all use it, we all use media advertising to do that and that's how information will get to the consumers will be by virtue of direct contact from sales people, marketing staff, mass media advertising and things of that nature.

COMMISSIONER THOMPSON: Does anybody else have any comments about the effectiveness of web notice versus what we do now or.....

MR. McKENNA: Yeah, I'd like to make a comment, this is Hugh McKenna. I would reinforce what Ted just said, it's in the company's interest to have maximum possible coverage and communications with potential consumers. And I don't think anyone is suggesting that the web coverage alone's enough, I think what Ted just said is that it's in the company's interest to have maximum possible exposure of the idea and it will use commercial means to do that.

COMMISSIONER THOMPSON: Okay.

MR. JACKSON: I guess just -- notice is certainly a problem and I guess I don't even have an opinion of whether the newspaper ads or the web is more effective. But our concern isn't going to be getting notice to customers of the new innovations that the companies want to tout, the issue that you're really faced with is how the customer's going to get notice when there's a $3 increase as opposed.....

COMMISSIONER THOMPSON: Uh-hum.

MR. JACKSON: .....to all these benefits. So I think citing the full page newspaper ad isn't really very helpful to the question that's before you which is, you know, when it's things which are adverse to the customer as opposed to things which are big benefits to the customer.

COMMISSIONER THOMPSON: Well, your answer fed into my next question which is when the state of Oregon started a couple -- I think it was Oregon, a couple months ago a -- on the -- their regulatory commission's website a chart that compares offerings from different companies. It's a place, even though it is web based as well, where consumers can go and find out the basics of all these different services and make comparative choices on the theory that markets function best effectively if customers have the information to make a choice.

I'm wondering if the companies would be supportive of us developing a tool similar to that to help customers get the information they need to make effective choices, is that a more appropriate regulatory role than requiring publication of ads in newspaper that people may or may not read to provide what in my mind might be more useful information allowing a comparison?

MR. MONINSKI: Well, I certainly don't disagree with what Mr. Jackson said a moment ago that full page advertisings for new and innovative products and offers are the best way and we do other kinds of things in our rates and terms and conditions that maybe wouldn't even justify that kind of advertising

approach, how do we get that information out to the public. I would still argue that web site advertising is an improvement over today's method of noticing.

I don't think ACS would be troubled by the suggestion that you mentioned or something similar to the Oregon plan, but as always the devil's in the details. We do this in our companies, we take a look at our offers and our tariffs and we put them side by side and very often we find similarities and very often we find significant differences. And it occurs to me that it may be difficult to put together a matrix that would clearly, carefully and accurately describe side by side comparisons for those various offers. Conceptually though I don't think we would have a problem with it.

COMMISSIONER THOMPSON: Okay.

MR. JACKSON: The consumer advocate in Maine gave me a copy -- and it's a separate agent, separate.....

COMMISSIONER THOMPSON: Uh-huh.

MR. JACKSON: .....agency, gave me a copy of their periodic newsletter that has such information.....

COMMISSIONER THOMPSON: Uh-hum.

MR. JACKSON: .....for long distance companies and rates. And I guess I have to agree with Mr. Moninski in theory it's a great idea, but it will be very difficult to keep current and accurate comparisons. And in certain markets, you know, what's good for one customer is not necessarily good for -- or what's

best for one customer is not necessarily best for another customer because.....

COMMISSIONER THOMPSON: Uh-hum.

MR. JACKSON: .....tariffs are tailored to particular customers with particular calling patterns. And so if you could do it accurately and with enough detail I think it would be a great idea, but.....

COMMISSIONER THOMPSON: Okay.

MR. McKENNA: And you know another notion which could work, it's a -- it is that -- it is only customers that are affected by an increase in the carrier they currently have, I think that's the concerns here, it's not whether your neighbor gets a rate increase that's not known and that somehow damages you, it's consumers that actually have that service. So if an incumbent were required to alert its own customers of an upcoming increase with some time (indiscernible) advance, that would adequately cover, I think, your concern.

COMMISSIONER THOMPSON: Okay.

MR. SAUPE: I was just going to reinforce what Mr. Moninski and Mr. Jackson said, I think it's a good idea. What I have in mind is in the business section of the paper there's an interest rate table usually.....

COMMISSIONER THOMPSON: Uh-hum.

MR. SAUPE: .....that -- interest rates are a little more easy to compare on an apples to apples basis I think. Just

looking at mileage plans for example, how do you compare X miles per dollar on three airlines versus six miles per minute on two different airlines, I mean, it would be a daunting challenge to keep it on a consistent, comparative basis, but the concept is a good one.

COMMISSIONER THOMPSON: Okay. A couple times -- and I think it's Mr. Lehman that mentioned it today, the possibility of limiting our -- exercising our regulatory authority to limit increases by some standard over time. And I think you said yesterday, Dr. Lehman, that this -- we as a state are remarkably behind in terms of method of rate regulation while we may be ahead in terms of competition. In order to figure out -- to do the calculations like they do in price cap markets about where to start and where to set the standard, isn't there a presumption of some basic cost information?

DR. LEHMAN: Well, I think you -- there's two separate parts to your question, I mean, the limit on the amount of increase the states have provided information on -- which were mostly in the northeast United States, these are states that already had price caps and they have recently gone to more deregulation of retail rates,.....

COMMISSIONER THOMPSON: Uh-hum.

DR. LEHMAN: .....but said there would be maximum increases. So -- but your question seemed to apply more to the initial putting in of price caps and as far as I'm aware pretty

much they were grandfathered from the current prices in those states, there was no new cost study done to determine a starting point for prices. Virtually every state I'm aware of that put in price caps said what were your current rates and the only thing is we will now abandon rate of return regulation and now adopt those prices.....

COMMISSIONER THOMPSON: Uh-hum.

DR. LEHMAN: .....for whatever service baskets like basic service we're looking at and the increase will be dictated by some inflation factor, some productivity offset.....

COMMISSIONER THOMPSON: Uh-hum.

DR. LEHMAN: .....and some mechanism like that. I don't think any state employed a new cost of service study to determine where its prices should start.

COMMISSIONER THOMPSON: Did your suggestion in your testimony that a bypass or how -- what I would characterize as bypassing price cap regulation and say instead don't bother with that, just tell the companies that can't increase more than a certain rate?

DR. LEHMAN: I think the answer's yes, I think it bypassed that, but I think some of the earlier questions, you know, if -- if you have a carrier that has some areas that are deemed to be competitive under my.....

COMMISSIONER THOMPSON: Uh-hum.

DR. LEHMAN: .....trigger and some areas that are not

competitive, this is -- there is this issue about how you're going to keep these separate accounts for wire centers let's say or communities that are competitive and those that are not.

COMMISSIONER THOMPSON: Uh-hum.

DR. LEHMAN: And I guess as an economist I don't have quite the amount of confidence that those accounting records would be easy to separate,.....

COMMISSIONER THOMPSON: Uh-hum.

DR. LEHMAN: .....I mean, a natural alternative would be adopt price caps at that point for the noncompetitive markets because that insures that prices would not rise in the noncompetitive areas, but would not require detailed accounting of what is the cost of serving this particular community as opposed to the other communities that the carrier might serve.

COMMISSIONER THOMPSON: Okay. Do the -- I'm probably putting you on the spot with something you haven't discussed with your client again, but what -- Dr. Lehman's answer suggests that we may have to change the method of regulating companies in the rural markets because if they have affiliates that serve in competitive markets to price cap regulation, do you have any thoughts on that?

MS. GRAHAME: No.

COMMISSIONER THOMPSON: Okay.

MS. GRAHAME: I don't and as you know the Rural Coalition is comprised of quite a few companies and that would be

something I would need to discuss with them first.

COMMISSIONER THOMPSON: Okay.

DR. LEHMAN: Actually I would add to -- I would amend my own answer. In case of rural companies I think that there's a host of additional issues you need to look at in terms of changing the form of regulation. I think that's a substantive issue and it deserves a lot more attention.

COMMISSIONER THOMPSON: Okay. I've got a real specific question for AT&T, it's -- it comes out of -- on page 8 you reference the Vasconi affidavit that was filed sometime ago originally. Do you know -- and the answer's probably obvious from what the testimony doesn't state, but do you know if that number has changed, the 7.3 million or a little bit over 18 cents a minute?

MS. CATLIN: We have not received any additional cost information to make that analysis.

COMMISSIONER THOMPSON: Okay. I want to ask all the parties again about another topic that was raised or suggested by the ATA's comment, which is service quality regulation. Do we have a different obligation -- we meaning the RCA, have a different obligation to monitor quality of service in this market if we decide that prices are something the competitive market's going to control. Are -- is quality of service something the competitive market is also going to control or should we adopt some baseline standards or some other form of

regulation to insure that customers continue to receive quality service? I'll ask ACS first.

MR. MONINSKI: I think as a general proposition markets will control quality of service issues in much the same way that they will control pricing issues. Having said that there was a place in, I believe, ACS' reply comments where it was talking about the change of status of AT&T to non-dominant and the implications of that change of status. And one of the things that we said is while we fully support that change of status there may still be some concerns on the part of the Commission in terms of setting that baseline or establishing some minimum level of network performance that you still might want to impose on a going forward basis. That concept would be as valid in the local market as it is in the LD markets or at least our comments in that regard apply to both.

The only thing that I would suggest though is that to the extent that you determine to do that and that you impose some minimum level of network performance that it be imposed on all participants. That is not the case in the long distance market today and it probably should be. So if minimum standards are a good thing and in the public interest and they are a good thing for all of the participants in the market.

COMMISSIONER THOMPSON: Okay.

MS. TINDALL: I think that while it's true that if a market is close to perfectly competitive and very robust with

providers fighting to serve every customer then you don't have to worry about quality of service standards. I don't think that's the situation we have yet in Alaska and so I think it is fair to worry about quality of service standards. And like -- you know, this is an area where the dominant, non-dominant distinctions were useful because the Commission could insure itself as long as there was a dominant carrier that there was some standard bench mark.

I think this issue for us becomes like the carrier of last resort obligations that as market shares move closer together and there's not a distinction between carriers in a given market then you want to move toward parity or outright parity in requiring whatever service standard you require. But I think that.....

COMMISSIONER THOMPSON: Okay.

MS. TINDALL: .....there's a definite role for the Commission in maintaining service standards at this point.

COMMISSIONER THOMPSON: Okay.

MS. GRAHAME: On behalf of the Rural Coalition we very much believe that you should have quality of service standards, we believe there should be parity. Certainly when you're comparing however wireline to CMRS, there are differences and there are some standards that CMRS providers cannot meet at this time and obviously the quality of service standards should reflect that, but we do believe that there should be quality of

service standards for many reasons. Two that come to mind immediately are number one, the importance of telecommunication service in rural Alaska.

As we all know in this room it is a critical link for people in rural Alaska and the communications system has to work and for that reason we think there's a really strong public interest reason to have quality of service standards here. Moreover, when a carrier receives Universal Service Funds we believe that what comes with that is a commitment to provide a minimum level of service in terms of service quality.

And I would note that in your Digitel order issued last Friday, you know, you reserved the right to issue quality of service regulations.

MR. SAUPE: In the long distance market I would agree with Ms. Tindall's comment that there should be parity and equality of standards, we don't oppose a baseline of standards and we're content to live with the quality of service standards that currently apply to us so long as they're applied on a competitively neutral basis.

COMMISSIONER THOMPSON: Okay.

MR. ROWE: And certainly ATA is interested in quality of service standards. We think if just a competitive environment and I suppose we could sell a lower service at a lower price or offer it as an entity out there and there would be customers that would take that. And part of that is because they don't

have perhaps the finances that people who take the more robust service might be able to take and they might feel that just to have access to the system they would accept it. And yet it would probably in a public interest determination, I would hope, fall below the level that you would want the public to have. So I think it's necessary for the body representing the public interest to determine some quality of service standards and what is good for the public.

COMMISSIONER THOMPSON: Okay. Thank you.

MR. AYOTTE: Mr. Olson, this is Mark Ayotte, it's difficult for me to determine who's going next, but I would like to respond to the Commissioner's comment at this.....

HEARING EXAMINER OLSON: Go ahead, this is a good time.

MR. AYOTTE: Thank you. Mark Ayotte on behalf of Dobson. I simply wanted to relate that the question of service quality standard regulation was raised in the context of a competitive market as part of the local competition consideration. One of the earlier comments again tried to shift this question into the wireless arena and particularly into the ETC status for a wireless carrier. And I think that simply illustrates the point that questions with respect to service quality regulation of a CMRS provider are so much more difficult, broad and challenging issues, more so than the question of do we need service quality regulation in a competitive market.

There are some compelling issues of federal preemption

and, you know, depending upon what one means when they talk about service quality regulation, there may very well be limitations on the state commission's ability to impose service quality regulation of a wireless carrier either directly or within the context if granting an ETC designation. The comment was made that in the recent Alaska Digitel order the Commission reserved its ability to consider wireless service quality standards in the future. Ultimately I think that was based on as stated in the Alaska Digitel order that there was no record of evidence demonstrating that the standards are needed.

So, again, I don't think that issues relative to wireless service quality or questions relative to service quality in the context of designating a competitive ETC are necessary or appropriate to consider in this docket.

COMMISSIONER THOMPSON: Thank you.

MR. AYOTTE: Thank you.

COMMISSIONER THOMPSON: I'll pass the mic to my colleague to the right.

CHAIR JOHNSON: I think I'm going to try to organize my questions on the basis of a company with some opportunity to respond. I thought I'd start with AT&T and I apologize, I'm going to sort of jump around a variety of topics.

2600

(Tape change)

Tape 3

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There's references in both your initial comments and your reply comments about the carrier of last resort obligation and AT&T's interest in providing for some mechanism or some preference for sharing of that responsibility. What is AT&T's notion of what mechanics of that might be? What proposal -- 'cause I note that your comments did not include anything along those lines. What specific mechanics or what specifics would you provide to flesh that out?

MS. CATLIN: Well, what we would conceive is a sharing by location within the state. There are some opportunities for -- there are hub and spoke, for instance, locations where it would be most efficient to have one carrier serve a cluster of communities and based on their DAMA technology, for instance, because there are two facilities based carriers that this would apply to. It would be GCI and Alascom. And our DAMA technologies, for instance, don't talk to each other. So there would be certain groups of communities that could be split in terms of the responsibility for serving. That does not mean that one or the other carrier would withdraw. It just means that the responsibility for carrier of last resort would go to one or the other carrier. And this would result in a roughly equal splitting of the responsibility based on communities throughout the state. That's our conception.

Now it could be -- we'd like to see this actually worked

out through a workshop where all of us could have input as to how that could happen.

CHAIR JOHNSON: Okay. Mr. Jackson.....

MS. CATLIN: But it's location.....

CHAIR JOHNSON: Oh, excuse me.

MS. CATLIN: .....by location.

CHAIR JOHNSON: Okay. Mr. Jackson.

MR. JACKSON: Yes, just briefly. Carrier of last resort can arise in two different contexts. One is if someone wants to withdraw from a given location and then the other is if there's a new location that doesn't have any service and who is it that you're going to make serve there. The latter, I think, has only occurred one time in the last 20 years having to do with Chisana so I mean, you know, we could spend a lot of time talking about that issue, but it happened once in 20 years, so it may not serve a lot of time.

The other issue has to do with when you're allowed to withdraw. In the context of R-98-01 we did make some changes to -- I'm looking at Ms. Kenyon hoping that she'll shake her head and say I'm right because my memory is a little vague. We made some changes to the standards under which someone could withdraw including when a non-dominant carrier with more than a certain percentage of the market withdraw. So I think we already have addressed that at least to some extent, and to the extent it was thought appropriate when that issue was

specifically considered on its own. So we don't know of any other modifications.

As you indicated there's not a specific proposal. And so we don't know of a proposal we would support at this time. And it seemed to have been addressed in R-98-01 at least to some extent.

CHAIR JOHNSON: Okay. Ms. Grahame, no comment?

MS. GRAHAME: No, no position.

CHAIR JOHNSON: Okay.

HEARING EXAMINER OLSON: Ms. Catlin was trying to say something.

CHAIR JOHNSON: Oh.....

MS. GRAHAME: As applied to the IXC market.

CHAIR JOHNSON: .....sure.

MS. CATLIN: Just to note, there are certain locations where Alascom is obviously the only carrier, so to split those locations even though they are the highest cost and lowest density locations would be difficult. We're not proposing to spin off some of our facilities at this point, but what we are looking at is where GCI has already built out in certain locations for them to take that responsibility.

CHAIR JOHNSON: At the risk of repeating it, I know we went round in response to Commissioner Thompson's question, but, Mr. Saupe, could you state AT&T's statement -- or position relative to the ACS's detariffing proposal again for my

benefit? Do you have specific comments on the (indiscernible) mechanism or the duration, the time elements that are involved in that?

MR. SAUPE: I believe it's in the local competition docket where a seven day rule has been proposed. It may actually have been in ACS's rate case. I'm not remembering precisely. I believe we have said that we could live with a seven day notice period, but that a one day or anything shorter would be impossible for us in our position as a total service reseller to react and that we could get caught in a squeeze if, ACS, for example, were to announce a retail rate increase -- and let me back up and always distinguish -- and I'm sure this is in everyone's mind, retail and access markets. Access markets are -- we're not talking about there. Those should be -- those are monopoly markets that should remain regulated in our view.

In the retail market though, if, for example, ACS were to implement immediately a 20 percent rate increase to us and we didn't have ample time to adjust our systems and our billing and our notice to our customers to respond, we could find ourselves squeezed because our rate is a discount off of their retail rate. And so we need at least enough notice to react. And that's our concern.

And I believe we're on the record a saying that we could do that with difficulty in as little as seven days.

CHAIR JOHNSON: Okay. Do you believe -- is the AT&T

position the same as to local and the IXC markets? Do you foresee, you know, should there be differences between the two markets or to what degree should the notice requirements be different?

MR. SAUPE: Well, I'll try and answer and Ms. Catlin can either kick me or correct me when I finish, but I would think so long as we're -- you're in a competitive market and you have similar conditions that you could have similar relaxation of the noticing.

MS. CATLIN: I would agree with that.

CHAIR JOHNSON: Okay. Thank you. I'd like to -- I have a question and it pertains to your proposal, I think it's in your reply at page 10, where you -- and let me go to that myself. You had made some modifications, some suggested modifications to GCI's proposals regarding the determination of dominant versus non-dominant. And there's a reference in subsection D to voluntary or mandatory rate caps. What is the position of AT&T in terms of this Commission writing into regulation rate caps, or do you believe that those need to be considered and adjudicated on a case by case basis?

MR. SAUPE: Well, we're not proposing here necessarily that you develop rate cap regulations. What our thought is if you were doing a dominant non-dominance analysis of AT&T Alascom, for example, in the interexchange market, one factor you would consider in your determination of whether we have

market power that could be abused would be factors like geographic rate averaging which constrain our ability to raise rates. And, further, in markets that aren't geographically averaged like the private line market our stated commitment not to raise rates and to impose a rate cap that could then be taken into consideration along with the other factors that are listed in this regulation in deciding whether we're dominant. Does that make -- does that -- I didn't.....

CHAIR JOHNSON: No, I think I understand what you're saying. I guess what I heard you saying is you'd prefer this matter be taken up on a case by case basis in the context of the factors that are listed here.

MR. SAUPE: Yes, with.....

CHAIR JOHNSON: Yeah.

MR. SAUPE: .....these guidelines or similar.....

CHAIR JOHNSON: Right.

MR. SAUPE: .....guidelines.

CHAIR JOHNSON: Right.

MR. SAUPE: And this isn't the perfect regulation, but we believe that this list of factors are relevant in determination of whether we have market power.....

CHAIR JOHNSON: Right.

MR. SAUPE: ....which is relevant to whether we're dominant.

CHAIR JOHNSON: Right.

MR. SAUPE: And one of those factors would be whether we would voluntarily agree not to raise our rates in markets that aren't otherwise constrained by geographic rate averaging.

CHAIR JOHNSON: Okay.

MS. CATLIN: However, if you were willing to write a regulation that would say we cap our rates, there is geographic rate averaging and we are non-dominant we'd be more than open to that as well.

CHAIR JOHNSON: Finally, and this may be a question for Ms. Catlin. It's more of a broader question. Section 2 House Bill 111 which is the reason why we're here today, it could be argued that the primary drivers in the formation of section 2 related to competition in the local exchange market. Do you believe that that's an appropriate reading of section 2 or do you believe that this is the responsibility of this Commission to review competition in telephony regardless of which market we're talking about, be it local or IXC? Do you believe that there's any limitation here? Do you believe that this Commission opens itself up to criticism if we venture too far into changes to IXC regulatory patterns?

MS. CATLIN: I believe that the policy 2 applies to both local and long distance. I think that we should be reviewing both markets relative to the competitive nature of the market.

CHAIR JOHNSON: Maybe I could ask the other parties if they have an opinion on that subject if there are.....

MR. SAUPE: Before you could do.....

CHAIR JOHNSON: Oh, go ahead.

MR. SAUPE: .....could I just elaborate a little bit?

CHAIR JOHNSON: Sure.

MR. SAUPE: I mean divining legislative intent is -- you know as a lawyer difficult and perhaps impossible task. I would acknowledge that the voices that were crying the loudest probably were at the Legislature were addressing local issues. But if you look at the way the statute is worded there's no distinction and, in fact, the language is very broad in terms of your direction to review all telecom rules and regulations and to apply these policies and procedures. So it's our strong position that these directives to you apply equally to the long distance market.

MS. CATLIN: And I was there and I was one of the voices.

CHAIR JOHNSON: Could I just ask for the parties.....

MR. SAUPE: She was just more polite than some of the others.

CHAIR JOHNSON: Yeah. Could I just ask the parties what their view on that subject is? And, Heather, why don't you go ahead.

MS. GRAHAME: It's the Rural Coalition's position that HB 111 was intended to address competition in all telecommunications markets. We read the language of the bill -- we read the actual words and there's no limitation. And we

read this as the Legislature saying we want less heat in all markets. -

CHAIR JOHNSON: Mr. Jackson, Ms. Tindall?

MS. TINDALL: At the time the committee that wrote HB 111 locked itself away and wrote these provisions there were proposed amendments by both ACS and AT&T Alascom and I believe the ATA, so in all fairness I would have to say that I think the intent was to cover both long distance and local.

CHAIR JOHNSON: Mister.....

MR. MONINSKI: I generally concur with everything everybody else said. Clearly the preponderance of issues that were being discussed, I think, at the Legislature were related to local markets. There were other issues related to the LD market and I think the language of the legislation is clear that we are looking at all markets and I believe it's appropriate for the Commission to do that.

MR. AYOTTE: Commissioner, this is Mark Ayotte on behalf of Dobson. When speaking in terms of all markets I'm assuming that that's limited to local and long distance and not overly broad to also include the wireless market.

Simply by looking at the language of HB 111 and the policies that are referenced each of those policies includes either references indirectly or by implication to unbundled network element, consumer rates, methods of depreciation as well as certificates of authority. I think by negative

implication those are not broad enough to include consideration of wireless market insofar as the Commission is preempted by federal law from regulating the rates or entry of a CMRS provider. So I just wanted to make that point for clarification when considering all markets. I think it's limited to probably local and long distance on the landline side. Thank you.

CHAIR JOHNSON: Your Section 332 objection is noted.

MR. AYOTTE: I try to note it every time I get a chance. Thanks.

MR. ROWE: Mr. Chairman, I'll add my comments for ATA to that.

CHAIR JOHNSON: Sure.

MR. ROWE: As I was there and I remember the initial amendments that were put in in the subcommittee, one of them certainly dealt with AT&T's concern for dominant carrier status. And, yes, I would say Ms. Catlin's voice might have been the small still one in the room at some times, and I think the ILEC voices were raised significantly high. Fortunately, it won't be the members of industry that have to make a report on November 15th, so it's up to this group that we're addressing today to come up with the interpretation of the intent of the Legislature. But I would think you'd be remiss if you left out the local issues.

CHAIR JOHNSON: If people don't mind running over by five

minutes I can probably be done here in 10 minutes, if that's okay. with the parties.

Mr. McKenna, are you still present?

MR. McKENNA: Yes, I am.

CHAIR JOHNSON: I had a question. I was reviewing your affidavit and there's considerable discussion in that affidavit about your analysis and experience with detariffing and the interexchange markets. And there's further discussion in the affidavit about your analysis and experience in cellular markets.

MR. McKENNA: Yes.

CHAIR JOHNSON: I guess as I read your affidavit I did not notice specific discussion of experience as it pertains to detariffing in local markets. Could you comment on that, please?

MR. McKENNA: Yeah, I'd be happy to. Certainly in local markets I think I did comment in mentioning that I consider Ted Moninski's suggestion that 75 percent of consumers can be addressed with a valid offer and a competitive one, that I think that supports competitive market entry, and I would consider that to be a competitive market.

CHAIR JOHNSON: Okay. That's certainly your view. But I was wondering in terms of if there's other experiences in terms of detariffing at local levels around the country that you're familiar with that you'd care to relate to us?

MR. McKENNA: Well, you know, I wasn't speaking specifically them, to other situations with the local market. What I was trying to do was to bring more of a marketing sense to the discussion. Discussions I have had with ACS have mentioned to me that there's the potential for some things which to a marketing kind of person, which I am, are really quite surprising and unorthodox and not competitive.

And what I'm thinking about are a couple of particular things, one is it's a rarity in the extreme in a competitive market situation to share as much data with your competitors as is shared in the cases we're talking about here. I've heard discussions of is seven days adequate, is 30 days adequate. When I look at other even telecommunications situations, and I'm thinking now with AT&T which is not local for purposes of this discussion nor is the wireless piece, but instances of sharing of competitive information that far in advance would be almost unheard of. So when I hear discussions of the amount of information sharing in what is already determined to be a competitive market by some set of metrics, and I understand we're trying to determine what those are, I'm really quite surprised with the length of time we're talking about in a competitive environment. And those are the points I was trying to make.

CHAIR JOHNSON: Okay. I guess I have a series of questions for ACS and they're in no particular order and I

apologize for kind of jumping around here in a lot of different directions. Relative to your notice tariffing proposal and there was questions, my colleague had some questions about shortened time review of tariff filings. The question I had is how would special contracts be covered or would they be covered under this proposal or would they be excluded from Commission review all together?

MR. MONINSKI: Just to bring us to a good jumping off point, ACS has proposed the use of notice tariffs in those competitive markets where all of the participants are now non-dominant. Notice tariff filings continue to be jurisdictional to the Commission. They're filed as we propose on a seven day notice cycle. It was ACS's and it is ACS's intent that special contracts be treated the same as mass market generally available tariffs for purposes of notice tariffing.

CHAIR JOHNSON: I guess I'm going to hold another question. We'll see if we have a second round of questioning later. I'm just aware of the time, I don't want to hold anybody over. I may come back to that a little bit at some point.

Mr. Moninski, do you have -- does ACS have an opinion on the proposals of the Rural Coalition relative to certification of eligible telecommunications carriers in the regulations they've generated?

MR. MONINSKI: If I could just ask for clarification?

With regard to the Rural Coalition's proposed regulations.....

CHAIR JOHNSON: Correct.

MR. MONINSKI: .....for that? ACS reviewed that, reviewed those regulations. The only opinion we have is basically the same comment we put in our written comments. We fully understand the Rural Coalition's reasoning for making the proposals that it has made. We endorse that reasoning. The only issue that I was that I personally found the proposed regulations to be lengthy. I did find it a little bit difficult to see how all the pieces integrated. That may simply have been a function of not having had the opportunity to work with them yet. It may also suggest that even though the same objectives that the Rural Coalition was attempting to achieve could be achieved by virtue of a more streamlined approach to that process, but beyond that we support the substance of it.

CHAIR JOHNSON: Do you believe that we should be considering the Rural Coalition's ETC proposal in this docket? Is it appropriate for the Section 2 House Bill 111 analysis?

MR. MONINSKI: That harkens to an earlier question that you asked also. And I guess our view is that the Legislature has sent this Commission as I said yesterday on an incredibly abbreviated time line with a fairly specifically defined mission. And my guess is simply producing the results associated with that mission within the time line that you have

is challenging.

I don't believe there's anything in the legislative mandate that would preclude us from considering other issues. We ourselves thought about raising the shared carrier of last resort concept that we first surfaced in R-02-06. Having looked at everything that needed to be discussed in this proceeding it just didn't seem practical to do that. But I don't believe it is precluded. I just think it's a pragmatic judgment on our part and the Commission's going to have to make similar pragmatic judgments as to the number of issues it can actually address given the scope of the proceeding and the time it has available.

And so my answer is in short, no, I don't believe it's inappropriate to consider the Rural Coalition's proposals. It may be difficult given the limitations that you have.

CHAIR JOHNSON: Okay. Do the other parties have a view on that? I think I know what Ms. Grahame feels. Mr. Jackson?

MR. JACKSON: Yes, we do have a view. I would emphasize a lot of the same points that Mr. Moninski did, and would say that the Legislature is not going to fault you for doing more than they required you to do. But at the same time in your Order No. 1 you put some pretty clear guidelines that said we don't want you to go beyond what the Legislature required and if you do you're going to have sort of a big hurdle to overcome to get us to consider that.

And I would say that's where the ETC rules fall. And it would be better done in another docket because it isn't required by the Legislature and it is going to be very difficult and time consuming to include that piece. I mean we didn't even begin to address the merits of their proposal. And if it comes out as part of the proposed regs in this we would have extremely lengthy comments on the specifics of their proposal.

CHAIR JOHNSON: Mr. Ayotte?

MR. AYOTTE: Yes, thank you, Commissioner. Not only do I agree with the remarks that the Rural Coalition's proposed Universal Service rules don't meet the guidelines and the limitations established by the Commission in Order No. 1, and for that reason should not be considered. And similarly, for the reasons that Dobson set forth in its written comments.

We think that many of the proposals are inconsistent with federal law. Now that I've had a chance to read the Alaska Digitel order it's pretty clear from that decision that the Commission has considered and rejected the merits of many of the RCA's proposals. And they are items which require a lot of thought and consideration and input both from a legal and a policy perspective, which I think is really far beyond the appropriateness of this proceeding and everything else I've heard is on the Commission's plate for consideration.

And if anything, even if necessary to consider them it

should certainly be done in a separate docket with full notice and a full opportunity for parties to consider, evaluate, provide thoughtful comment in the context of a separate proceeding.

CHAIR JOHNSON: Okay. Mr. Saupe?

MR. SAUPE: We don't take a specific position on this that's any different than has already been expressed.

CHAIR JOHNSON: Mr. Rowe?

MR. ROWE: We do take a position. And my members are spending time on nothing more important than the ETC designation right now. With the filings before this Commission requesting ETC designation and those that are probably pending in light of the decision that came out last week I think these are critical issues. I don't think the order the Commission put out precluded consideration of this. And I think it's paramount that you consider it.

CHAIR JOHNSON: Okay.

MR. ROWE: Thank you.

CHAIR JOHNSON: Maybe I could get to Ms. Grahame and just pose the final question. And I know I'm right at the point where I said we're going to break. I'm going to have some more questions maybe later down the road here, but, Ms. Grahame, maybe you could finish up. Can you tell us whether you believe that the Rural Coalition has discharged their burden of convincing this Commission that it ought to somewhat expand

this proceeding to encompass the proposals that you've made?

MS. GRAHAME: Yes, I—think we have. I have to say I don't think the question is whether or not we've met our burden to convince you to expand. I think that the issues relating to local competition are the issues in this docket. The heat and the chaos in the market since 1996 has been focused on Anchorage and it's been focused on the competitive battles between GCI and ACS. And, frankly, if there had been more thought given at the start of the process back then there would be much less chaos now. And given the fact that Alaska is slated to get over $88 million in Universal Service Funds this year I think we'd be deluding ourselves to think that there won't be any more ETC applications. I think this market is going to be flooded with them. And my concern is that the rural companies together with the ETC applicants are going to be tying this Commission up in knots if we don't have some regulatory structure here. So I don't think the issue is whether or not we've met our burden to expand what is in HB 111. I think we're there. And I think it would be a real mistake to not address these issues right now.

I would also note, I mean, we're at the NOI stage and, you know, go ahead and publish our regulations and we'll get the comments and we'll red line them and I think you will come out with some workable regulations at the end of the day.

I would finally note, I'd like to echo something Mr. Saupe

said yesterday which is if not now when? We addressed these issues, you know, back in R-97-12 especially relating to the need -- well, I'll just say in R-97-12 some of the issues we've raised in our comments here, were raised and we've asked for some sort of -- we've asked to have these issues resolved from a regulatory perspective.

In R-02-06 which dealt with local competition you excluded issues relating to Universal Service and ETC. And my question is if not now when? I mean these issues really are pressing and we really are trying to bring some structure to the resolution and I think it would be a mistake to carve them out. Thank you.

HEARING EXAMINER OLSON: The Commission intended on breaking from noon till 1:00. When we come back at 1:00 we're going to deal with the UNE issues 'cause that's when Mr. Shelanski and Mr. Miller are available. Mr. Miller is only available till 2:30 Alaska time. Mr. Shelanski is available till 3:00. And I suspect there'll be some recess after that, but the Commission has a lot of other questions still in other areas, but we're just going to take UNE to accommodate the witnesses that are available by phone. Okay. We'll stand in recess till 1:00.

(Off record - 12:10 p.m.)

(On record - 1:00 p.m.)

HEARING EXAMINER OLSON: Telephonically, please.

MR. McKENNA: Hugh McKenna.

MS. BRINKMANN: --Karen Brinkmann. Sorry. Go ahead.

MR. McKENNA: This is Hugh McKenna.

HEARING EXAMINER OLSON: Okay.

MS. BRINKMANN: Karen Brinkmann.

MR. MILLER: Dave Miller (indiscernible).

HEARING EXAMINER OLSON: So it's Karen Brinkmann, Mr. McKenna. Mr Shelanski, are you there?

DR. SHELANSKI: Yes, I am.

HEARING EXAMINER OLSON: Is Mr. Lindgren there? No. Is Mr. Miller there?

MR. MILLER: Yes, I am.

HEARING EXAMINER OLSON: Mr. Ayotte there? No. Is there anyone else there that I haven't said?

MS. PIGEON: Tina Pigeon from GCI.

HEARING EXAMINER OLSON: Okay. Thank you, Tina.

(Off record comments)

HEARING EXAMINER OLSON: Okay. What scheduling determinations have you made so that you can -- you want to tell the parties?

(Whispered conversation)

HEARING EXAMINER OLSON: All right. Let's go on record.

COURT REPORTER: We're on record.

HEARING EXAMINER OLSON: Okay. Commissioner Johnson just indicated that there's a Commission conflict for one or two of

the Commissioners, so as a result of that we have to quit at 3:00 today so we're going to go straight till 3:00, recess, start up again tomorrow morning at 9:00. And I guess that sensibly (ph) goes along as we need to go to finish all the questions and comments that may be involved. Okay. And we're venturing into the UNE area now and I don't know whether the Commission wants to start over or just want to start or stay where you are with Chair Johnson and continue on from there, I guess. If you're ready? Unless you want to start. I can go back to Commissioner Strandberg and stick him on the hot seat.

CHAIR JOHNSON: Go to Commissioner Strandberg.

COMMISSIONER STRANDBERG: I'm always at least it appears like I'm the person on the pole here. This particular part has certainly been well briefed and we have been about this for shall I say a number of years concerning the UNEs. I do not have extensive questioning on it, but I do have a number of questions mainly I'm hoping to as Commissioner Thompson does so well, to make the record as good as we possibly can to help in our decision making process.

And I do have some initial questions for Dr. Shelanski.

DR. SHELANSKI: Yes, Commissioner.

COMMISSIONER STRANDBERG: And they relate to his testimony, so -- and that's on page 10 of 17, Dr. Shelanski, is it Shelanski, sir?

DR. SHELANSKI: Yes, that's correct.

COMMISSIONER STRANDBERG: Okay. And it relates to contestable markets.—

DR. SHELANSKI: Yes.

COMMISSIONER STRANDBERG: And I guess my start up question is in a contestable market do you see the need for an active consumer protection for the retail customer?

DR. SHELANSKI: Well, if the consumer protection takes the form of retail rate protection as opposed to other kinds of protection that might put in play, as a general matter in a contestable market I think that the case for retail rate protection is greatly diminished because of the negative effects that retail regulation can have on the development of competition moving forward.

And at some point there's a trade off between getting the kind of.....

HEARING EXAMINER OLSON: Excuse me, Mr. Shelanski.....

DR. SHELANSKI: Yes, sir.

HEARING EXAMINER OLSON: I don't know if they've got you on a speaker phone or what, but could you get a little closer to the phone or speak up a little bit louder. We're having -- all of us are having a little trouble picking you up.

DR. SHELANSKI: I'm sorry. Is this better?

HEARING EXAMINER OLSON: That's much better. Thank you.

DR. SHELANSKI: Okay. I apologize. I think where there is a contestable market the case for retail rate regulation

diminishes because of the trade off that can occur between regulation on one hand and getting the kind of competition developed that truly makes regulation unnecessary. And there's always a difficult point when the market is not yet perhaps vigorously competitive, but it's still competitive enough that there is entry occurring and there is -- and the market is contestable by new entrants who want to get in.

At that point the competition that is already in the market and the contestability reduces the market power that the incumbent or one of the other competitors actually in the market might have. And one has to call in -- one has to ask seriously whether the cost of regulation and the possible deterrence to new competitors the regulation might cause is in the best interest of consumers. So where markets are truly contestable I tend to think that the case for retail rate protections of consumers is weak.

COMMISSIONER STRANDBERG: You know, Dr. Shelanski, we're where the tire meets the pavement here. And we do have a consumer protection section where in years past we've had -- excuse me, sir, some fairly significant numbers of consumer complaints in this market. And you know, this is a serious question. I'm not flip at all, but where the tire meets the pavement it's -- I hear what you're saying from a theoretical standpoint, but from a practical standpoint where we are having to make decisions about this, do you have any experience with

other markets where the transition -- where one was able to transition to competition and to bring the consumers through so that they're not harmed?

DR. SHELANSKI: Well, here in California we've, unfortunately, had some very hard lessons in exactly that question of how to transition and mostly in our energy markets, not in our telecom markets. And one of the things that has been emphasized here and that we have learned is that the most important thing in terms of bringing consumers through is to make sure that the competition that is the basis for deregulating is truly in existence and truly can persist.

So in terms of protecting consumers down the road or immediately I think that the emphasis should be on ensuring that the correct competitive incentives are in place. I really fear that on the retail side a transition certainly almost -- or almost always imposes some kinds of costs for a period on some consumers. The question is whether that transition is bringing the market to a better place where most consumers will be better off and the market as a whole will be better off.

And my concern about persisting with retail rate regulation of a binding kind is that short term complaints from consumers might diminish. Long term the entry into the market is not what it could have been and we're not even talking terribly long term. I mean one, two, three years. And we wind up with a market that is persistently regulated rather than one

that really becomes truly competitive.

One of the markets that some states considered regulating, although there were difficult jurisdictional issues that arose, was the cell phone market. And I certainly think it would have been a terrible idea to regulate the cell phone market when there were only two or three providers in some of those markets on the grounds that rates were not coming down as fast as people hoped. Service quality was not improving as fast as people had hoped. Because that rate regulation would have limited the speed of entry and the speed of digital conversion of the two to three additional cellular providers that came into most U.S. markets. So I think that there are examples of the trade off and sometimes regulatory forbearance particularly where competition is truly developing as it is in several of Alaska's major markets is despite the evidence of some short term pain on some consumers the better course.

COMMISSIONER STRANDBERG: On page 16 of your comments the sentence once the direct and indirect costs of rate regulation are factored in consumers will often be better off under an unregulated duopoly than under a duopoly in which one of the firms faces retail price regulation. Can you again -- can you explain to me how we can assure that -- or how we answer a disgruntled consumer in our consumer protection section giving a call to us with difficulty getting a phone?

DR. SHELANSKI: Okay. I mean certainly if the difficulty

is being connected, is getting service at all, I don't really see that as a retail rate regulation issue. And there may be need for consumer protections of the kind that ensure that at very least a consumer will be served, that it's not possible for somebody to go unserved.

I don't -- I would be very surprised if the kind of -- that kind of complaint would be persistent or growing in a market.....

MR. LINDGREN: Dan Lindgren.

OPERATOR: Is joining the meeting.

DR. SHELANSKI: .....in a market where there are two competitors aggressively seeking to provide service. Certainly there will be small numbers of accidents, lost orders, those kinds of happen in a fully regulated market. But I don't see how retail price regulation would resolve that problem where you have two firms aggressively seeking to serve the customers in the market. I don't quite see how that would solve the problem.

And my concern is it actually could make the problem quite a bit worse to the extent that a third provider beginning to enter on the fringes of the markets who would eagerly jump in to serve anybody who was getting a delay in service would if retail prices were depressed be a lot less likely to be entering the market at least on a broad scale.

COMMISSIONER STRANDBERG: Thank you for your comments.

DR. SHELANSKI: Thank you, sir.

COMMISSIONER STRANDBERG: Now, I'd like to questions on the proposed regulations that ACS has. Should those be directed to Dr. Shelanski or should they be directed to you?

MR. MONINSKI: The regulations relative to UNE pricing?

COMMISSIONER STRANDBERG: Yes, sir.

MR. MONINSKI: I'd be happy to respond to specifics and mechanics of those regulations, but I think the other experts would be better to respond to the theories behind them.

COMMISSIONER STRANDBERG: All right. Well, I guess I wanted to go right to my question which is on page 7 of the regulation (b)(1). And in that regulation you proposed that we would use the FCC's hypothetical network standard and will presume the existence of the most efficient technology actually deployed by the providing company. Do you think or did you mean that to be the efficient ILEC standard that we dealt with earlier? Was that your intention to write that into that regulation, or is this something different than that?

MR. MONINSKI: I'm going to give you a very short answer, Commissioner, and then I'm going to ask Mr. Shoup to weigh in.

COMMISSIONER STRANDBERG: Okay.

MR. MONINSKI: We probably -- I would ask that we be careful about semantics. We have been using buzz words and I want to make sure I don't use the wrong buzz word relative to this regulation.

COMMISSIONER STRANDBERG: Absolutely.

MR. MONINSKI: More important is the actual standard that we're talking about as opposed to how it's being labeled. I'm not sure I could specifically answer your question about whether this is the hypothetical ILEC or the hypothetical carrier or hypothetical network. I've heard all of those used, but the essence of the standard is that it relies on the most efficient technology deployed by the providing company. And, Mr. Shoup, if you have anything else you want to add?

MR. SHOUP: Commissioner, this is not the old standard that this Commission has since rejected, the efficient ILEC standard. This is really the FCC's hypothetical network standard.

COMMISSIONER STRANDBERG: Uh-hum.

MR. SHOUP: And it's slightly different. For some clarification, in the Triennial Review order there is some discussion of this. And it's in paragraph 670 of the Triennial Review Order where the FCC says when they're talking about the most efficient equipment available they're assuming that that means somebody in the market and there was somebody in the competitive area has deployed it. And that's really what we're more getting -- we're getting closer to that with this proposed regulation.

In fact, in the Triennial Review Order itself which just came out there is an entire discussion of what TELRIC means and

it begins on paragraph 668, but two paragraphs in they talk about what they meant by that.

COMMISSIONER STRANDBERG: So the legal support for that is where?

MR. SHOUP: Paragraph 670. And the FCC has also talked about what the hypothetical standard means in paragraph 683, 684 and 685 of the First Report and Order. If all those paragraphs, 683 through 685, the First Report and Order and 670 of the Triennial Review Order together with the remaining paragraphs in the Triennial Review Order beginning at 668 which discussed what they mean by the TELRIC standard, I think that's what we're trying to get to with this proposed regulation.

COMMISSIONER STRANDBERG: Okay. Need to know what you were doing there, so all right. Another question, and perhaps, Mr. Moninski, you can field this. GCI claims that we cannot legally require a CLEC to provide the equivalent of ILEC interconnection services given the provisions of 47 CFR 51.233 of the Federal Rules. Do you agree or not agree?

MR. MONINSKI: Again, you prefaced your question by declaring it to be a legal question. And I may not be the most competent person to try and answer that, and I'll defer to Mr. Shoup.....

COMMISSIONER STRANDBERG: Okay.

MR. MONINSKI: .....with this introduction. And that is I understand GCI's argument to be a Telecom Act argument. Under

the Telecom Act you are not able to do that.

ACS takes the position that under state law such authority does exist. And if I can remember the citation off the top of my head I believe it is AS 42.05.311 subject to check. And, Mr. Shoup, if you have anything to add?

MR. SHOUP: We disagree with GCI, but to explain exactly I would have to go back and look at this section of the regulations again. But I understand that they're relying on 51.233. If I could take a second and look at it I could answer that question in a few minutes perhaps.

COMMISSIONER STRANDBERG: Sure. Okay.

MR. SHOUP: And, Commissioner Strandberg, if I may, Karen Brinkmann may have something to say about this 'cause I think she is on the line and I don't know....

COMMISSIONER STRANDBERG: Okay. I would.....

MR. SHOUP: .....this may be something she knows about as well.

COMMISSIONER STRANDBERG: All right. Ms. Brinkmann.

MS. BRINKMANN: Yes.

COMMISSIONER STRANDBERG: Do you have any comments on that?

MS. BRINKMANN: Thank you. It is Alaska Statute 42.05.311 I think that ACS relies on. While Section 251 of the Act and the FCC's rules do prohibit the FCC for say from imposing 251(c) obligations, unbundling obligations in particular on a

CLEC until such time as certain findings are made and (indiscernible) a CLEC should be regulated as an ILEC. There is, nevertheless, -- there are other states obligations are certainly preserved under the statute. And we have numerous examples of state, rate and entry regulation, access to facilities regulation that are certainly not preempted by the '96 Act that have nothing to do with unbundling obligations under 251(c). And I believe the type of access that you're referring to that ACS advocates in GCI's facilities is, frankly, more similar to the right of access to utility poles, ducts, conduits and rights-of-way under Section 224 of the Act which very clearly is not preempted by 251.

And so the right of access to GCI's facilities I would suggest would be -- as long as we're not seeking access to UNEs pursuant to 251(c) of the Act would not be preempted.

COMMISSIONER STRANDBERG: Does GCI have any comments on that?

MR. MODEROW: Mark Moderow for GCI. We feel that the regulation that you cited as well as the language in the First Report and Order absolutely precludes the imposition of Section 251(c) requirements on a CLEC. It can't be any clearer. The requirements of 251(a) and (b) would apply to them. And I think Ms. Brinkmann cited to the pole and right-of-way, it's a separate provision that would also apply to them. But the 251(c) obligations by federal law are impermissible to be

imposed on a CLEC but for one circumstance. And that is on an order from the FCC-and in our comments we say this very carefully that the Commission in this context is the FCC. If the FCC were to declare a CLEC an ILEC for these purposes and there is actually a procedure to do that in the federal regulations, then they could be applied -- or they could be imposed in a reciprocal manner, but federal absolutely precludes it. It has actually provided a mechanism for it to happen in an appropriate circumstance.

MR. JACKSON: And, Commissioner, I'll just add. We actually quote the reg on page 25 of our reply comments. And at least as to 251(c), I don't know, this seems to be so crystal clear that if we can argue about 251(c) it simply proves we can argue about anything no matter how clear the rule.

COMMISSIONER STRANDBERG: Okay. Well, let me move on. I would like to go to the comments of ACS page 18 and the hypothetical carrier versus the hypothetical network discussion. Explain to me how this is relevant to what we're doing?

MR. SHOUP: This is relevant in the sense that the Legislature asked the Commission to -- in one of -- in number 1, the first of its nine policies, to ensure that there shall be fair payment by a user carrier for the use of another's equipment and facilities including UNEs. And I think it falls

within that general proposition that the Legislature wanted the Commission to look into that subject matter. And using this standard would ensure that we move more toward fairness. I suppose that's ACS's position. The -- I think if -- based upon the paragraphs from the First Report and Order and the Triennial Review that I cited earlier what we're -- what ACS is trying to do is to have us all move toward more what the FCC intended about these hypothetical versus -- all the hypothetical network standards. And that's our intent.

COMMISSIONER STRANDBERG: You know, there was discussion yesterday and I wanted to ask you folks, there's just been many different decisions on these definitions of TELRIc and here we have yet another cut at it in these proposed regulations. If we have such a strong federal definition and there's so much ground that's already been covered why are we going into this area in our state level regulations when there's every possibility we could, you know, get into lawsuits? Just tell me your rationale on why we're doing this?

MR. SHOUP: To the extent, Commissioner, that -- I don't think ACS is asking this Commission to establish regulations that would define TELRIC. It's our position that TELRICs already been defined by the FCC more than once actually.

What we are proposing though, is regulations that are within the federal definition of TELRIC to make it more clear where these parties should be heading in order to enhance

competition in these markets.

COMMISSIONER-STRANDBERG: That's all I've got. Thank you.

COMMISSIONER THOMPSON: I want to start with proposed regulations. What is a reasonably anticipated forward looking cost?

MR. MONINSKI: Once again I'll take an initial cut and invite others to join me. A reasonably anticipated forward cost is the cost that you can expect the provider of facilities to actually incur on a forward looking basis. It is not a purely hypothetical cost. It does rely on a review of the most current actual costs that the provider has incurred as those most recent current actual costs can be adjusted for future identifiable changes. Things like inflation and other -- I hate to use the word known and measurable, but it's the only thing that I can come up with. Other kinds of changes that can be identified that could be applied to current costs.

The notion of forward looking costs has to be based on something. We've heard a lot of arguments that say it can't be based on actual cost. It can't be based on embedded costs. You can't derive forward looking costs by looking at those things. We continue to ask ourselves if we can't use those things to derive the actual forward looking costs or what is referred to here is the reasonably anticipated forward looking costs, then what do you use to base that on. Because the TELRIC standard requires that you use forward looking costs,

nobody argues that, it's how to get there.

And this proposal -- this language suggests that it is appropriate and TELRIC compliant to begin with the most recent costs and adjust them for future events. Mr. Shoup.

MR. SHOUP: Commissioner, I would defer to Professor Shelanski and Karen Brinkmann who I think are experts in this area.

DR. SHELANSKI: Commissioner, this is Howard Shelanski. I'll make a couple of comments on this. In paragraph 685 of the First Report and Order where the FCC really for the first time fleshed out its TELRIC idea. The Commissioner said that the -- the Commission said that the bench mark of forward looking costs should most closely represent the incremental costs that incumbents actually expect to incur in making network elements available to new entrants.

And it sounds to me tnat the proposed regulatory standard in Alaska is very, very close to what the FCC was saying in its First Report and Order. That the idea is not to come up with a cost that is so divorced from where the incumbent will be as to not serve the purposes of TELRIC in signalling what the correct mode of competition and competitive entry should be, but rather, the cost model should try as much as possible to mirror and to anticipate what the incumbent as the Commission says actually expect to incur. And this is something that the Commission has more recently in its briefs to the Supreme Court

reiterated that the cost measured by TELRIC should be those of the incumbent itself.

So I think that the reasonable -- reasonably anticipated language really does go to the kind of evidentiary question that Mr. Moninski alluded to. What kinds of model inputs, what kinds of evidence and data are most likely to be the best predictors of what a particular ILEC acting efficiently into the future will incur as costs.

COMMISSIONER THOMPSON: Now I understood your testimony yesterday, Dr. Shelanski, to suggest that we should be looking at the actual expenditures of the incumbent to -- as a predictor of future costs, doesn't that presume that the incumbent is going to share that information with other parties -- to this Commission and other parties to the proceeding?

DR. SHELANSKI: Well, look, I think there's no question that any cost data that is relied upon as evidence needs to be as the FCC has recently said verifiable. And I would presume that to the extent possible. And there, unfortunately, are a lot of confidentiality agreements with benders on them, but those -- I imagine there are ways to get around them.

Certainly the information has to be accurate and fairly verifiable. I would never question that. Assuming that to be the case then, you know, I think that -- and as the FCC has found, recent cost evidence, that is costs that have already been incurred can, nonetheless, be assuming that they can be

proven and verified to some degree, extremely good evidence. Not necessarily conclusive evidence, not to say that the inquiry should stop with book costs, but they can be good evidence of what forward looking cost inputs should be.

In fact, it's interesting that the FCC in its recent Virginia arbitration order expressly approved a switching and transport model that Verizon used that used past cost data the company incurred from 1996 to 2000, but prior to the period for which the UNEs were going to be priced. That's one piece of evidence that is ILEC specific based on real costs. In that case it was verifiable. That was the Commission found to be very useful, in fact, better than the MSM model for those inputs in proving what the forward looking costs were most likely to be for efficiently operating Verizon's network.

COMMISSIONER THOMPSON: A representative from ACS a minute ago argued that the regulations they have proposed we adopt for UNE pricing are consistent with TELRIC or consistent with the FCC's directives. I wanted to give GCI and AT&T the opportunity to tell me if they agree with that statement or not. And that let you know that I'm thinking of not only the recent order but of the Verizon order from -- or decision from the Supreme Court and others. Are these regulations consistent with the applicable law on this issue?

MR. SAUPE: I would ask David Miller who I believe is on the line to respond for AT&T on that question.

2700

(Tape change)

Tape 4

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MR. MILLER: Thank you. This is Dave Miller. We believe, as I stated yesterday, that the regulations proposed by ACS are not consistent with the TELRIC standard, and are not consistent with the more recent pronouncement of what the TELRIC standards means by the FCC. In particular, one example is subsection B1 which was discussed a little bit earlier which says that the Alaska Commission must presume to use the technology actually deployed by the providing company. And as I indicated yesterday, in the Triennial Review Order by the FCC, it expressly says that the most efficient technology available is the most efficient technology available, even if the incumbent LEC does not deploy or plan to deploy that technology. So I think that's a clear and direct contradiction.

I think throughout these rules, there is the implication that actual costs should be looked to, if not exclusively, at least as a starting point or as some type of significant evidence in the case. And I agree that at some time -- as some -- in some cases, in some situations, the costs that may be in a particular incumbent's contracts could be relevant, but I think the FCC has made clear over and over again that actual costs are not the right place tc start. In fact, the FCC and

the United States Supreme Court have shown that they're very skeptical that the claimed actual costs of incumbent telephone companies actually are their actual costs, and there have been a number of proceedings on that issue as well.

And in the FCC's Virginia arbitration order, which was touched on by Dr. Shelanski, they rejected Verizon's loop model for the express reason that it started with Verizon's actual embedded network.....

COMMISSIONER THOMPSON: Um-hum.

MR. MILLER: .....and then tried to make forward adjustments from that starting point. It found that the preferable approach was the use of the modified synthesis model which started with the forward looking network. And forward looking network is supposed to be the most efficient, least cost network with a few constraints, such as the location and the quantity of the demand, and the location of the demand, and the location of the wire centers.

Now, the reason that they didn't adopt the switching model, or the switching portion of the synthesis model was because they didn't have a mechanism to adjust the balance between new and growth switch prices. It wasn't because it's -- it wasn't because Verizon's switching model started with their embedded costs. They didn't decide that issue on that point. So I think the FCC guidance is still clear that it's preferable to start with the most efficient network and to use

most efficient, least cost considerations throughout.

And if I could just take a moment to clarify one thing I said yesterday, I provided a cite for the quotation that I had from the Virginia arbitration order that embedded costs may not be considered, which is the -- you know, that is the direct language from the FCC regulation, and the language the FCC has used over and over again. I said that was from paragraph 38, and I doublechecked that. It's actually from paragraph 37, so I wanted to correct that. Thank you.

MS. TINDALL: I'll make a brief statement, and then Mark's going to answer the legal issue.

It's interesting to me that Mr. Moninski talked about trying to be careful of semantics, because it seems that what is going on here is that ACS is cobbling together a series of buzz words in the hope of backing into the result it wants. You can call it a hypothetical network standard, you can call it a hypothetical carrier standard, forward looking costs are talking about the long run. And in the long run, it's a very specific and concrete economic principle. In the long run there is no set technology. It is presumed that the carrier is free to chose the most efficient technology. It is presumed that the carrier is free to have the most efficient operations.

If you will, if you want to think about the long run, view a company with a huge drawing board in front of them, and their job is to put together the network or the company that is the

lowest cost possible with existing technology that's out there today. Not technology that that carrier has deployed. We're talking about a whole new world. It's the long run. Everything is variable in the long run, and that's what we're talking.

Now, the FCC has laid two caveats on that. There are only two fixed inputs to this long run that they're talking about, and those are that wire centers of the existing carrier are still placed in the same place, and demand is the same. Other than that, it's assumed you can change anything you want to put together the lowest cost, most efficient network, company situation possibly.

Go ahead.

MR. MODEROW: I guess to build on that from a practical standpoint, the arguments we've -- that I've dealt with since 1996 have always been based on one sentence in paragraph 685 of the first Report and Order where I'm sure there's a lot of people at the FCC would like to take back two words, actually -- or one word, actually, because none of the other language fits with that literal use of that sentence. And they've al -- and the ILECs have consistently tried to distinguish the decisions made about forward looking costing in the Universal Service proceeding from any proceedings that that involved UNEs.

That is over. That little crack was plugged last Friday

in the Virginia arbitration order where they expressly said, we know that we made these statements about an efficient carrier in the Universal Service proceeding, but they very specifically -- and it's at paragraph 39 where they first mention it, they very specifically said, the forward looking concepts that we express in the Model Platform Order, where they adopted the -- now we're calling it the MSM, and the Inputs Order where they discussed how a company should be -- how the costing should be viewed, that they made in the Universal Service docket are directly applicable to UNEs.

Now, take that in looking and going back to the question, hopefully, for instance, in the previous question about this presumption that ACS wanted in section 1. Well, there are very specific presumption regulations in the federal regulations now. They don't say anything about what an actual -- this actual carrier has. They say that if some other carrier has used this technology somewhere in their network, it will presumed (sic) to be technologically feasible. So if you past this one, you're directly contradicting presumptions that are already contained in the federal regulations.

To go to the current one that we were speaking of, this company's actual cost, that implies two things: the price they pay for something. Now, that's varied, because of the long-run analysis that Ms. Tindall gave. But a very important component of the rates is their operations cost. And if you only

consider their current operations costs those only appertain to the current network. They're generally expressed as expenses per amount of investment in given equipment. Well, the equipment that's being operated to develop in their words, current actual costs, isn't necessarily the equipment that will be utilized in the forward looking long run network.

So I agree that some current costs and some current operating expenses are directly relevant to what's possible. But to pass a standard here that says you're always going to start there in some cases is almost impossible to disentangle the operations of an efficient carrier with an efficient network, and to somehow forward look them from what we could sometimes characterize as an inefficient monopoly-driven carrier operating yesterday's network.

So there are huge practical problems, and we feel that these regulations and those types of things actually step on the forward looking concepts that the FCC requires.

COMMISSIONER THOMPSON: I've got a couple of follow-up questions for ACS, and I'll ask the shorter one first. If we're to look at the most efficient technology deployed, does that include technologies deployed by other carriers for determining ricing, in ACS's opinion?

MR. SHOUP: Commissioner, it does include technology deployed within the carrier's market. As paragraph 670 of the Triennial Review makes clear, that is the assumption underlying

TELRIC. Paragraph 670, which I noted Mr. Miller yesterday cited 669, but he neglected to cite 670; 670 says, quote, in the competitive assumed under TELRIC, we assume, and it's the competitive market, not a competitive market, in the competitive market assumed by TELRIC, we, I guess meaning the FCC, assume that the most efficient technology currently available will be deployed by at least one carrier, and that the value of all competing networks, and the prices for elements of those networks, will be constrained by the value of the most efficient network.

So, yes, I think the answer is we're looking at one market, and we're looking at what's deployed in that one market. And I think that's what paragraph 670 says.

COMMISSIONER THOMPSON: When you say -- use market in your discussion of paragraph 670, do you mean the ACS Anchorage local market? What market are you talking about?

MR. SHOUP: I guess I'm talking about the same one that the FCC is talking about. They're talking about the competitive market. In 670 of the Triennial Review, the FCC said, the objective of TELRIC is to establish a price that replicates the price that would exist in a market in which there is facilities-based competition. In other words, they're looking forward to assuming there is competition in this market, what would the price be then. Obviously the idea is you can't use embedded costs from the old regulated utility

days.

COMMISSIONER THOMPSON: And if.....

MR. SHOUP: But the market is where there is actual competition.

COMMISSIONER THOMPSON: I understand. I want to know what your interpretation of what the FCC means of the market, the competitive market in paragraph 670 is?

MR. SHOUP: Our interpretation is that means, for example, in the Anchorage proceeding, the Anchorage market.

COMMISSIONER THOMPSON: Okay. Okay. And the other follow-up question is probably for Dr. Shelanski, which is, although it may be for other ACS witnesses, I don't want to preclude anyone. If we are to accept ACS's proposal for -- or why should we accept ACS's proposal on what I say is basically a rebuttable presumption of ILEC efficiency? What -- why should we believe that the network that the ILEC has deployed now is the most efficient?

DR. SHELANSKI: Well, I think that the question is, you know, going forward, and in light of -- since we're going to price the network going forward, are they making investment decisions that are the right ones? Are there recent switch and other investment decisions, ones that we would presume to have been the best possible at the time?

When you have a carrier that's been operating under the competitive pressure in its core markets that ACS has been

operating under, with no ability to successfully pass through any costing efficiencies that it would incur, at least not to a degree that could ever offset the extra costs that they'd incurred, I think there's good reason to think that this is a company that has been trying hard to get its costs down, to get its service quality up, and to make sure that it does not lose yet more customers to GCI. So the competitive pressures that ACS has been under have been ones that would make me think that it would be certainly irrational on their part to have incurred any costs they didn't need to incur in recent investments, and certainly going forward, that they would have no incentive to operate their network and to make deployment decisions that aren't the least cost ones in a long-run way.

COMMISSIONER THOMPSON: How does you answer factor in other elements that might influence an incumbent's investment? For example, the availability of capital?

DR. SHELANSKI: Well, I mean, my -- I think that that's wrapped up in my answer. Certainly an incumbent has to do the -- do its best, and make its best investment decisions given how available capital is. But if anything, the availability of capital would reinforce my answer. Capital becomes scarcer and more expensive in a competitive market. Anybody looking to provide capital to ACS can't ignore the success that GCI has had in the markets where ACS makes its money. And that makes capital harder to attract, and puts ever more pressure on ACS

to make absolutely the best investment it can.

Every dollar becomes a dollar that has a lot of opportunity costs. If it's invested in the wrong place, there may not be another dollar to invest in the better place, so investment decisions in a competitive situation, because of the increase in cost of capital, become all the more critical to the incumbent carrier. And so the capital market situation is one that would make me even more strongly believe that ACS has incentive to be efficient going forward.

And it's interesting that while one certainly has to be very careful about simply presuming that an incumbent has always made the most efficient decisions, when all that we're looking at for setting forward looking costs are recent purchases, or purchases of equipment that is the same as the most efficient that is available going forward, we're looking at a time window during which the carrier has had quite a bit of incentive to act efficiently. This I would note was -- has been an element of a number of proposed cost orders, not all of which have been assumed in their entir -- excuse me, approved in their entirety in various states or by the FCC.

But I would note that to the extent that those kinds of assumptions were built into Verizon's cost model in the Virginia arbitration, and to the extent that Verizon was trying to use its recent behavior and recent investments as evidence of forward looking costs, the Commission said something very,

very interesting. In paragraph 49 of the Virginia arbitration order, the Commission states flatly that absolutely none of the models suggest -- submitted in the proceeding, and none of the models under consideration were inconsistent with TELRIC. Paragraph 49 is very clear. None of the models that we're reviewing here today, whether we accept them or not, are inconsistent with TELRIC.

And so it is not inconsistent with TELRIC where the -- either because of price caps or because of competition, a carrier has -- had incentive to invest efficiently, to look at that investment behavior and the costs that results from it as good evidence of what forward looking costs will be.

COMMISSIONER THOMPSON: I'm interested in comments from the other parties involved in this UNE debate about whether they believe that it is safe for us to presume that the ILEC is making efficient cost decisions because they operate in a competitive market.

MR. MILLER: This is Dave Miller with AT&T. I think this issue is a little confused in the sense of I'm not sure exactly what decisions are being referenced. If this is supposed to refer collectively to the decisions made in the past five years or so, I think the answer is no. If it's meant to refer to just the decisions that were made yesterday, then it's really -- it's not the complete picture of a network.

You couldn't build a network from just a few decisions

that were made to augment a loop here or a loop there. But the main point is, if it's collec -- if it's a collective assumption and you're supposed to build your TELRIC prices out of those collective assumptions, I think the answer clearly is no, because the value of their network is not what they paid for it in the past. It's not what they've spent on it in the past regardless of whether they were trying to be efficient at the time or not. It's the same as a computer or any piece of technology on the market. What you paid for it doesn't mean that's what it's worth.

It's -- essentially, what TELRIC tells you is we're going to look at the replacement value of that network, and the replacement value is going to be least cost, most efficient replacement, because that's what somebody would pay for it. They wouldn't pay for decisions that turned out to not be, five years later, the most efficient decisions. There's no way to know that in advance at all times, but I think the answer's clearly no, if you're meaning to look collectively at the decisions made in the past. And I don't think you can build a TELRIC price by looking at only an instant of time, a decision made in one instant of time.

And if I could, I'd like to address the issue that the replace -- that the equipment, the available equipment is only the equipment that's available in that market. I -- or in use in that market. And I do not think that that is what the FCC

was saying in the Triennial Review Order, because if you go back to the regulatory language, it talks about available equipment. And an ILEC, any incumbent is not just limited to, in terms of availability, to equipment that is used by some other carrier in their territory. Obviously they can buy equipment from all over the world, and they often do.

And in addition to that, in the Virginia arbitration order, the FCC found that integrated digital loop carrier was forward looking technology, because it was being used by Verizon in California, not in Virginia. So they weren't constraining themselves to a particular market in that arbitration, so I think that demonstrates their intent with respect to the Triennial Review Order.

COMMISSIONER THOMPSON: Um-hum. Okay.

MR. MILLER: And actually one other point while I have the floor here. I agree with Dr. Shelanski that the FCC did not go out of its way to make a finding that the model it was disapproving was fundamentally inconsistent with TELRIC, but they also did not find it was consistent with TELRIC, and they also found that the modified synthesis model was more consistent with TELRIC, and I think that's an important point, because.....

DR. SHELANSKI: Actually, if I could just respond to that, the FCC did expressly say they were not inconsistent. I mean, they -- that was a finding. It's in paragraph 49.

COMMISSIONER THOMPSON: Pardon me, I couldn't hear the paragraph you referenced.

DR. SHELANSKI: 49 of the Virginia arbitration. I mean, I think they did -- I mean, I don't want -- I just want to refer you to the paragraph to draw your own conclusions from the language, of course.

MR. MILLER: Well, they say -- actually the language is, we do not find any of the cost models before us fundamentally inconsistent with forward looking pricing principles. So they found they weren't fundamentally inconsistent. But they also found that the modified synthesis model was more consistent because it used a hypothetical network and did not use as a starting point the embedded network characteristics that Verizon had proposed.

MS. BRINKMANN: I think that was only for the loop pricing side. This is Karen Brinkmann.

MR. MILLER: That's correct, it was for the loop portion of the model. The switching portion of the model, they chose Verizon's, because they could adjust between new and growth (ph) switches, not because they found it was more appropriate to start with an embedded network.

COMMISSIONER THOMPSON: Okay. Thank you.

MS. TINDALL: Okay. I think the question was, should we presume that an ILEC's costs -- make a rebuttal presumption that they are the most efficient. And I think that Dr.

Shelanski's position as I understood is that ACS has been operating in a robustly competitive market for a number of years, and so at this point, because they have no hope of passing those costs on, then one must assume that their costs are efficient.

The fallacy of that argument is that trying to pass those costs on is exactly what ACS is trying to do here today. And as long as there's hope, there's costs. So, you know, I think by trying to limit the market to Anchorage by trying to say the most efficient technology deployed by that providing carrier, which is what their regs say, and I think they're backing away from those a little now, is exactly an effort to pass along inefficient costs. If the ILEC's costs are truly efficient, and the most efficient costs, as a rebuttal presumption, then there should be no problem with using a forward looking model that doesn't start with their costs. They should be indifferent.

COMMISSIONER THOMPSON: I thought I heard Mr. Shoup say something a little bit different, but maybe I didn't. When I was asking you about -- we were talking about 670 I thought I heard you acknowledge that the CLEC's cost should be used if those were more efficient?

MR. SHOUP: I think that's what paragraph 670 says in this sense. 670.....

COMMISSIONER THOMPSON: Well, just a minute.

MR. SHOUP: Okay.

COMMISSIONER THOMPSON: You don't need to go back there again, but did you -- were you intending to limit that by saying in that jurisdiction? In other words, just by your discussion of the Anchorage market?

MR. SHOUP: Yes.

COMMISSIONER THOMPSON: So you think it's just the most efficient technology employed in that specific market, or.....

MR. SHOUP: Yes, because the language in 670 talks about prices being constrained by competition in the market.

COMMISSIONER THOMPSON: Okay. This is really putting you on the spot, because.....

MR. SHOUP: That's all right.

COMMISSIONER THOMPSON: .....it's only been out since Friday, but I don't know if you had a change to look at the language in the Virginia arbitration order that seems to suggest a different analysis.....

MR. SHOUP: There are two.....

COMMISSIONER THOMPSON: .....of this.....

MR. SHOUP .....things about the Virginia arbitration order, Commissioner. First is I haven't had a chance to look at it, so I.....

COMMISSIONER THOMPSON: Okay.

MR. SHOUP: .....would defer to others on that point. But the second thing is I am told I think by Karen Brinkmann, that

the Virginia arbitration order specifically says it is not to be used as precedent anywhere else. The FCC I think said that. And that's what I've been told. I have not seen it myself. But I think that's -- I've been told at least that's in there.

So if we assume that the FCC meant what it said when it said that, and then we look at the First Report and Order of the Triennial Review, and the Verizon case, I think they all point us to the same place.

COMMISSIONER THOMPSON: All right. I understand your position.

DR. SHELANSKI: Commissioner, this is Howard Shelanski. I have a couple of cites that I'd be happy to provide you in the Virginia order that bear on this point, and I would just say paragraph 32, which talks a little bit about the lack of a need to have a perfectly efficient network model, and paragraph 51 in which the Commission at least reiterates and makes reference to its comment -- its caution about using nationwide inputs in a cost model. And the arbitration order also refers to paragraph 685 of the First Report and Order.....

COMMISSIONER THOMPSON: Um-hum.

DR. SHELANSKI: .....which I think has the most direct bearing on Mr. Shoup's point, because that paragraph, paragraph 685 of the First Report and Order says that costs should be based on, quote, the most efficient technology in the incumbent LEC's current wire center location. So they seem very clearly

in paragraph 685 to be referring to the particular incumbent LEC and the most efficient technology in that LEC's incumbent wire center locations, and especially when taken together with paragraph 683 and 684, I think that that's a very strong statement about what the relevant universe is for looking at the most efficient technology.

MS. BRINKMANN: And this is Karen Brinkmann. I would just direct your attention to one other cite in the Verizon order, although again it is limited to the facts of that particular case, the Commission does say that it's appropriate -- this is paragraph 136 of the Verizon arbitration decision. It is appropriate in the Universal Service context to use nationwide figures, but it's preferable to use Verizon-specific inputs when calculating UNE rates for Verizon, because it's reasonable to expect the relationship between the Veriz -- investment and expenses, it be different for Verizon than it is for other incumbent LECs.

I think that's consistent throughout the FCC's orders that while they do want to look at a hypothetically efficient network design, they are focused on the market of the particular carrier in which it operates.

COMMISSIONER THOMPSON: Okay. Thank you. I've got one more question to follow up on something responsively that Dr. Shelanski gave to Commissioner Strandberg, where I thought I heard him acknowledging that there might be a role for the

regulatory agency in a competitive market to assure that customers had service. My question is, does that role include customers having a choice of providers? Do we get service by -- does the customer get service by whoever they want, or just any service?

DR. SHELANSKI: Commissioner, that's an extremely hard question. I think it would depend on the structure of the market. In my view, if there is a robustly competitive market, something like what you happen to have in Anchorage, it would be certainly unfair and a disadvantage to put a service requirement, something like a carrier of last resort requirement on only one of the two carriers, because then the one that did not have that obligation would have every incentive to shy away from less profitable customers.

And so some mechanism that would ensure that customers that nobody wants to serve are serve may under some circumstances be necessary. Competitive markets don't always serve every customer, and given the public and social value of telephone service, we may want to make sure that there's no such market failure.

But whether that customer needs to be able to chose between two different carriers is something that I'm a lot less certain of, and so one possibility would be to say that all carriers in the market must offer service to all customers. That would be one answer to it.

Another possibility would be randomly to assign customers to carriers that are operating in the market as customers that they must carry in a carrier last resort kind of way. There are a couple of different solutions to the problem. The one solution that I think is the least good is one that says that the incumbent, just because they're the incumbent, should have all such obligations, because it would put them in a competitive disadvantage.

COMMISSIONER THOMPSON: Thank you. Mr. Johnson?

HEARING EXAMINER OLSON: I thought we better put on record at least, we keep referring to the Virginia Order, and no one has ever cited what the number of the order is, and it's FCC -- it's Federal Communications Commission DA03-2738. It was released on August 29, 2003, and it has to do with CC dockets number 00-218 and 00-251. We're just calling it the Virginia Order, but we better have something on the record so we know what we're talking about.

CHAIR JOHNSON: I just have two, and hopefully I can get them posed properly. I guess, first of all, I wanted to follow up on an analogy or explanation offered by Ms. Tindall. And I guess I would start by putting it to GCI, and I'm not sure how -- if you may want to respond to this, but since it does build on her analogy, if we're going to talk about a hypothetical network, you know, one in this giant -- and I'll ask the parties to give me a little latitude here, where we have a huge

board that we're going to draw up a network, and I'd ask the parties to make just one additional assumption, that we've eliminated all the difficulties in transforming what we imagine the design ought to be to reality, if we eliminated all of those, that is, you draw a line on the board, and it's actually created in the market place, in the real world.

It seems to me that under that scenario, if we draw a hypothetical network utilizing the ILEC's existing wire centers, that there is a moment in time after we've drawn the lines, after we've drawn the circuitry, that that information, if it's built the moment the lines are drawn that when -- there's a moment in time when that becomes historical, when that represents some cost. And I guess my question, starting to GCI, is there not a moment in time when we have to look at actual historical costs in a network, or do we always -- is it always hypothetical? How do we get from the hypothetical network to that moment in time when we measure costs for inputting into a model to compute UNE prices? That's -- I guess that's my question.

MS. TINDALL: Do you want me to start with that?

CHAIR JOHNSON: Sure.

MS. TINDALL: I think the moment in time that it becomes historical costs is, you know, the moment in time when you have -- when the next technology or the next operating system, or the next way of doing something has come along and is cheaper.

The long run -- when you're talking about the long run, it is always hypothetical, you know. It is always the most efficient way of doing things.

CHAIR JOHNSON: But backing up, isn't there a moment in time though where you have to -- there's a snapshot, a still photograph of costs?

MS. TINDALL: If you go ahead and you build that network.

CHAIR JOHNSON: Under my analogy, that's the way it works, yeah.

MS. TINDALL Okay. If you go ahead and build that network, you're no longer operating in the long run. You've built your network, it's now -- that is -- it may be the most efficient network possible, but you're no longer talking about the long run. You can use those costs if they also match a new hypothetical long run where all variables are -- all inputs are variable. But it is a -- it's an economic concept that is hypothetical.

MR. JACKSON: If I could say that, I think a dif -- the same -- if I can say same thing a slightly different way, I think your construct is accurate so long as the new and more efficient alternative hasn't been developed yet.

MS. TINDALL: Right.

MR. JACKSON: But un -- but as soon as the new, more efficient alternative develops, then it is no longer the long run. So if your moment in time comes so quickly that the new

and more efficient thing hasn't been developed, yes, it is -- then there's no difference between the embedded and the long run at that point. But as soon as the more efficient thing comes along, there is a difference, and the long run is what applies.

CHAIR JOHNSON: So just so I'm clear though, is it GCI's position then that there is a role for historical actual costs in the computation of UNE rates?

MS. TINDALL If there is proof that a historical cost is the most efficient cost possible, then I would say yes. Do you disagree with that, Mark?

MR. MODEROW: Well, I guess I'm the guy that dealt with this on a practical basis, trying to come up with the evidence. And it's wrong to say what has been spent in the past is irrelevant. It would be wrong to say that what has been spent in the past is subject to complete exclusion. The question is, is it a valid data point for predicting the future. There's been some talk about switching rates. Almost all of these numbers that were developed as inputs by the FCC in their inputs order, which gives a long history of how they came up with it, usually started with some sort of current pricing, some sort of an analysis of past pricing, if for no other reason than to discern trends. So, I mean, it kind of gets to the snapshot idea.

Yes, at the end of your proceeding, you have to set a cost

based on the lines you draw on the map, so for that moment in time, and for the demand that's reflected on that map, and for the prices that would appertain at that time, it's a snapshot, and that's how you set your rates.

Now, the next time you as a Commission -- I'm being practical here. I'm not an economist saying tomorrow it changes. I'm saying, you see it again in five years, and in five years there's going to be a new map, there's going to be new technology, there's going to be new assumptions. And some of the operating efficiencies will have been captured. Some of them will still be there.

You've got to remember we're building a hypothetical model. Perhaps the best statement of what the Supreme Court thinks we're doing at least, is in the dissent in the Verizon case at the Supreme Court, and the dissenter, who always has the freedom to say anything he wants, because it's not precedent, merely said, it's a completely hypothetical network. It's operated by a completely efficient carrier, and it's the price until you get to it again.

CHAIR JOHNSON: Does -- maybe I'll go this way. Mr. Miller?

MR. MILLER: Yes.

CHAIR JOHNSON: Would you like to respond to that?

MR. MILLER: Well, I basically agree with what was just said, which is that you do -- because of the nature of cost

proceedings, you do have to set your prices based on cost at a particular point in time. And once you do that, and time progresses, then I guess in some sense those costs are out of date. But I guess I don't see that that principle gets you to the point of assuming that historical costs are relevant.

But if I may, I'd like to put -- maybe just give an example of what I think the issue of forward looking costs is in this context, and that would be an example where you in the past built a particular route using copper feeder, and it cost you $10,000. If today you could build that route using fiber feeder, and it would only cost you $5,000, then the forward looking most efficient cost is $5,000, not $10,000 because you spent that in the past. And that's how this principle comes into play. And I think looking at some concrete examples helps eliminate some of the confusion.

CHAIR JOHNSON: Mr. Moninski.

MR. SHOUP: Commissioner, I think that all of this answered by the FCC. We would agree that you have to look -- let's assume -- assuming your hypothetical, you draw the network tomorrow, or you draw the network today, you put the lines down and look at it. Those are costs you have to look at. Otherwise, how do we know that anything relates to reality.

We all would agree that a hypothetical network will never be built, but if -- knowing that, if you look at what the FCC

has said about this, that this bench mark of -- this is paragraph 685. — This bench mark of forward looking cost and existing network design most closely represent the incremental costs that incumbents actually expect to incur in making network elements available to new entrants suggests, and together with paragraph 680 of the Triennial Review Order that says the objective of TELRIC is to establish a price that replicates the price that would exist in a market in which there's facilities-based competition.

When you put those two things together, it doesn't sound like what we're talking about is we're off into space somewhere so that if some gizmo is put into place in Singapore, but would not for economic reasons be put into place in Anchorage, Alaska, that that's what we should assume. And the reason for that is because the FCC has consistently said, all we're really doing is creating a hypothetical network that looks at what the prices would be if there was competition, not at a mis-market (ph). You know, where -- what would it be -- we're not going to let you charge whatever you want.

In the case of Mr. Miller's hypothetical, if you could do it cheaper today, we would be doing it cheaper today. We've been faced with competition now since 1996, or in early 1997. So what we're talking about in the case of your hypothetical draw the lines on the map makes perfect sense.

You know, we're talking about -- we've existed in a very

fiercely competitive market, the most competitive market in Anchorage, in the United States by a factor of two for -- now for several years. Knowing that, of course we would look at what we would do to build it in the most efficient way today.

CHAIR JOHNSON: I guess this leads to -- and I appreciate that. I think this is an interesting discussion. I thank the parties.

I guess my only remaining question is, I guess I'll put it -- start with Mr. Shoup, and to the extent you want to have Professor Shelanski respond, you've suggested in your submissions, ACS's submissions that we adopt a way of looking at the world, if you will, as it relates to UNE pricing, and you've made citations to the Triennial Review Order and also to the First Report and Order. Are you aware of, and are you prepared to cite to the Commission today orders and decisions of other jurisdictions that have adopted the proposal that you're advancing to us here today?

MR. SHOUP: Commissioner, I'm not prepared to do that today, but I certainly would be prepared to do that.....

CHAIR JOHNSON: Do you.....

MR. SHOUP: .....in the near term.

CHAIR JOHNSON: Do you believe that those decisions exist?

MR. SHOUP: Yes, I think that my review is that commissions around the United States have taken various views of this. And the reason for that is because the term cost in

47 USC 252 is just not defined. The Commission appears to have left it open to wide interpretation by state commissions, and that's what's happened.

CHAIR JOHNSON: I guess as a lawyer, I guess my response to that is it seems to me if you wanted me to be persuaded, that you would have cited the cases and decisions in the course of your brief. Is there.....

MR. SHOUP: I think the.....

CHAIR JOHNSON: Is there a reason why you didn't, or.....

MR. SHOUP: The reason that we didn't is just because I think the FCC language is pretty clear on its face. If -- I understand people can argue about it from all different sorts of directions, but as I was told in law school, if you've got a statute over here, and a statute over there, and a statute some place else, the first thing you try to do is read them all together and have them all make sense. And I think this body of law does that.

CHAIR JOHNSON: Okay.

MR. SHOUP: But I'd certainly be prepared to supplement the record.

CHAIR JOHNSON: I think it would be appropriate if you have some cases that are specifically on point that adopt the proposal or close analogs of it that you're proposing -- you're suggesting to the Commission here, that you submit those to us. And obviously serve the other parties, and I don't think we

need to have a war of briefs as to the applicability of decisions, but I'm just saying that if there are other jurisdictions that have adopted the ACS approach, I'd like to know about them.

MR. SHOUP: We'd be happy to do that.

CHAIR JOHNSON: That's all I have.

HEARING EXAMINER OLSON: Commissioner Harbour.

COMMISSIONER HARBOUR: I like this system starting from the left, but I do have a few questions. I want to first thank the commenters as well as previous speakers have. I want to also thank Representative McGuire who I think we heard a little earlier labored one weekend night along with many of you in this room, or some of you in this room, to construct a model whereby the Commission could come to some decision on these issues, and I think that the next day, if I recall, to my colleagues, I did have a chance to comment to the committee. And my comment was as Mr. Moninski's was today, it's a pretty rapid time frame, but to the extent that a time frame is imposed that's different than statutory time frames, that does put some limits on what can be covered.

And I noticed today some discussion has been -- has come up about what can be embraced, what can be covered in the time available, and with the resources available. So I give that background to show my appreciation for all the effort that's going into this.

During the session, I might also recall that legislators who had other important matters before them, including the State budget and other objectives, were encouraged to respond to many, many parties in a very brief period over many, many complex issues, and I think all of them that I became acquainted with wished to improve the competitive environment for all of the players. They heard a number of good ideas and bad ideas from many advocates, and they struggled to put the complex issues into their proper places.

I think the result of that exercise was that the Legislature became more acquainted with some of the detailed work that this Commission has to do, which is another good outcome. So I look at this as a wonderful opportunity for addressing the issues.

I want to move now to -- there's so much to do, so little time, but let me go to Mr. Jackson, and I'm going to be referring to the opening briefs as opposed to the replies to begin with. And I'm trying to limit myself to a few matters with the time available.

You mentioned distorted investment decisions on -- investment decisions could be distorted if an ILEC made a -- let me rephrase that. You mentioned distorted investment decisions based on embedded costs on page six. You know, part of this -- part of the struggle that I'm experiencing is the struggle between chains of logic on the one side, and also

putting that into the perspective of federal mandates, law, and rules on the other. So something that a party might believe to be perfectly logical, that also has to be put into the broader puzzle, the mosaic that is within the jurisdiction of the Federal Government as well. So that's part of the tension I think I'm experiencing as a relatively new member of the Commission.

But I want Mr. Jackson and his team, why wouldn't investment decisions be distorted, this switches the subject on you a little bit, if an ILEC made a capital investment, and on day one the CLEC got it for a cost at which it could be efficiently purchased in the future, if the incumbent had to reclaim capital investment via a normal depreciation rate over a number of years, and what if then on day five the CLEC announced it was abandoning that provision capital investment and moving its customers to another technology.

In such a circumstance, should the CLEC have a responsibility for the remaining term of the depreciated cost caused by provisioning that CLEC? If the CLEC continued under current law to be economically unregulated, should its new technology that allowed for that ILEC stranded investment be made available to the ILEC through economic regulation? So there are two questions there.

First, should the CLEC have a responsibility for the remaining term of depreciated assets that were stranded, and,

secondly, if there were a new technological platform that enabled the stranding, should the ILEC then have access to that and under what conditions?

MR. JACKSON: I'll make a stab and perhaps Ms. Tindall or someone else may want to follow up. I think there are a lot of things implicit in your question.

Although the allegations regarding constructing something for the CLEC and it then becoming stranded have been floated about, that's actually somewhat of a difficult situation to imagine. ACS, even if they did, for instance, build lines to a customer that initially chose GCI, there may be every chance in the future that that customer may switch back to ACS. So unless ACS is going to abandon the possibility that they're ever going to serve that customer, I would not even look at that as stranded investment. In this.....

COMMISSIONER HARBOUR: I don't mean to interrupt, but I'm aware of that argument. And what I was referring to was the situation not where the customer remained available to a competitor, but where the customer actually switched to a new technology, thus stranding the copper.

MR. JACKSON: Well, even if the customer switches to a new technology, ACS always has the opportunity to win that customer back and put them back on their system. In the same sense that I may shop at Safeway today, and I may shop at Eagle tomorrow, or I may shop at Fred Meyers the next day, I can always go back

to the other one and decide to use the investment that they have made, whether it be between Home Depot and Lowes or -- whatever.

So I do not think that that plant is stranded in the classic econ -- in the classic regulatory construct. Beyond -- so what you would then be moving to I think is a situation where you have two parallel systems that the customers have an alternative of jumping back and forth between the two system.

One of the very purposes though of the TELRIC pricing is so that an appropriate decision can be made as to whether or not to construct that alternative network. And if it is priced too high, that gives an added incentive, and an inappropriate incentive to construct the alternative system where it might in fact benefit both carriers to have sharing.

COMMISSIONER HARBOUR: I do want to give opportunity.....

MR. JACKSON: Do you want to add something?

COMMISSIONER HARBOUR: .....for a little discussion but.....

MR. MODEROW: I would note just one thing. In the Triennial Report Order, there is the -- and I believe it's finally published in the Federal Register. I'm not sure it's effective yet. There is a new rule that an ILEC does not have to construct new facilities solely for the CLEC that are likely to be stranded. In other words, they still have to put in the drops to get to customers in the circumstance that Mr. Jackson

has talked about, so that there would be two parallel systems.

But they don't have -- they now no longer have to build, for instance, a major transmission facility to our switch that only we would use, and that we would say in a year, I'm sorry. So that -- you know, this truly sunk loss never recovered and never have the possibility of recovering, has been taken out in most circumstances by the Triennial review order.

COMMISSIONER HARBOUR: I appreciate that supplement. Tomorrow when there's more time, one of my questions for all of the commenters has to do with effect of Triennial review on any of the aspects -- or any of the issues brought up that we haven't addressed so far. Mr. Moninski, Shoup, or.....

MR. SHOUP: Commissioner, I think you raise an interesting point. And the point to me really goes to the question of risk. The way we are situated today in this market, and in all of the markets in Alaska, is the ILEC bears the risk of construction. The CLEC doesn't have any of that risk, because it can come in and rent a loop today and get off of it tomorrow, exactly the hypothetical that you pose. It's interesting that cost of capital, as you heard Dr. Shelanski talk about it, is affected by that. It costs us more to go out and borrow the money to make those construction decisions and to do that construction than it did in a noncompetitive environment. And yet the risk that is born by the CLEC is zero. They can come in, rent the loops, decide the next day

not to rent the loops.

And in this market it's particularly -- your question I think is particularly on point, because GCI has publicly announced that it's going to move everyone onto its cable network. It's going to take all of its telephone customers onto its cable network, and off ACS's system in the very short near term. It was five years, it -- now it appears it's closer to three years that they're plans are to do that.

So that will create a lot of stranded investment, and regardless of Mr. Jackson's hypothetical that, well, he could shop here today and there tomorrow, it is inconceivable that with the market share that they have now in this -- in Anchorage, in excess of 40 percent of this market, that when they move everybody onto their cable system within three years, we're not going to have huge stranded investment. And given that, it's inconceivable that we're going to have 60 or 40 or whatever the number ends up being, percent of the market, come back to us so we can pay off those assets. It's just not going to happen.

COMMISSIONER HARBOUR: Okay. And I appreciate that argument. It was articulated in your filings. I want to just ask once again, the answer to my two questions was no on both counts, is that true, Ms. Tindall?

MS. TINDALL: I'm not sure we got to your second question. What was the.....

COMMISSIONER HARBOUR: It had to do with the supply and access to an ILEC of the new technology if, and under a regulated format, if equipment were to stranded to get there.

MS. TINDALL: To follow up on your first one, and then to answer your second one specifically, let me just point out that GCI is building a cable telephony network. We are incurring a lot of risk in doing that. I think we face the same risk that ACS faces in building today. Those customers will go back and forth. I'm glad that ACS is conceding their customer base to us, but I have a feeling they won't do that for long.

In answer to your second question, GCI in another docket before this Commission has proposed that we would open up our network to ACS on the same terms and conditions, or to any other carrier, that we experience in our unbundled network element contract with ACS. As a legal matter, we don't feel that the Commission can require us to do that, but we are willing to step up to the plate and volunteer to do that. And we have done so. So the answer to your second question would not be no, it would be yes, I think, if we've got it phrased right.

COMMISSIONER HARBOUR: I think -- I thought it would be good to introduce that subject in this proceeding since telecommunications generically was named in the legislation.

Let me go back and talk to you about -- not talk to you, but ask you to talk to me about the word reasonable. I love

the word reasonable. We've addressed reasonably anticipated forward looking costs a little earlier, and on Mr. Moninski's filing on page seven, later defined it as -- really as embedded costs, current costs adjusted for the future. I know that we've approached this from many different directions.

Let me just -- let me read from you -- for you the District Court decision that's been referred to by several of the commenters enjoining the Illinois telecom legislation. There are a number of paragraphs I could have chosen, but let me at random go to the point that we're dealing with primarily today. In part the decision quotes the Commission.

It says, the TELRIC of an element should be measured based on the use of the most efficient telecommunications technology currently available, and the lowest cost network configuration given the existing location of the incumbent LEC's wire centers. In calculating the TELRIC, the incumbent LEC's embedded costs may not be considered. Is that trumped by the Triennial Review in your opinion?

MR. SHOUP: It is absolutely.

COMMISSIONER HARBOUR: What's your opinion on that?

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(Tape change)

Tape 5

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COMMISSIONER HARBOUR: Does the Triennial Review

trump.....

MR. MODEROW: No, I think that.....

COMMISSIONER HARBOUR: .....that precedent is -- really is only the latest in a series of similar statements, and rulings.

MR. MODEROW: We feel that the Triennial Review affirms that statement. I mean, a plain reading of the Triennial Review.

COMMISSIONER HARBOUR: Okay.

MR. MODEROW: There are little pieces.....

COMMISSIONER HARBOUR: Here we are. Okay. So why does it affirm the statement briefly, and then why does it -- is it contradicted by the Triennial Review? Go ahead.

MR. MODEROW: The Triennial Review basically only touched on TELRIC in two brief statements, and it's about 15 paragraphs long. The FCC, number 1, said that we've opened a TELRIC proceeding, and therefore we aren't going to undergo any sweeping changes, we aren't going to undergo any -- we aren't going to take any major detours in TELRIC. So the TELRIC that was in force and was enforced by that court is the same TELRIC. They did comments on two issues, cost of capital and depreciation. But they did not in any way reverse course on what TELRIC means.

And then the Verizon order, of course, actually takes it farther. The recent -- or Virginia Order, I'm sorry, actually takes TELRIC further. It couldn't be further from the.....

MR. MILLER: If I could just address that?

COMMISSIONER HARBOUR: Who's speaking, please?

MR. MILLER: I'm sorry, this is Dave Miller with AT&T.

COMMISSIONER HARBOUR: Thank you.

MR. MILLER: Yes, paragraph 669 of the Triennial Review Order says, and I quote, TELRIC equates the current market value of the existing network of an incumbent telecommunications provider with the cost that the incumbent would incur today if it built a local network that could provide all the services it current network provides to meet reasonably foreseeable demand, using the least cost, most efficient technology currently available. It repeated the fact this is supposed to be the least cost, most efficient network.

And it has a footnote after that which indicates that there's only one additional constraint on that requirement, which is that the network must take as a given the existing wire center location.

So I think in the Triennial Review, the FCC clearly reaffirmed that least cost, most efficient requirement. That's the requirement that was taken up through the Eighth Circuit all the way to the United States Supreme Court, and the FCC fought to preserve that requirement before the Supreme Court. They succeeded, and the Supreme Court affirmed that requirement.

It has been reaffirmed by the FCC in the Triennial Review

Order, and there is an equivalent quote in the Virginia Arbitration Order, so there is absolutely no question from a legal perspective that the requirement is least cost, most efficient.

MS. BRINKMANN: And this is Karen Brinkmann. I was.....

COMMISSIONER HARBOUR: Excuse me, let me just ask Mr. Miller, your opinion is that the Illinois decision stands unchanged from the Triennial Review? Indeed, the Triennial review supports the Illinois decision?

MR. MILLER: Yes, that is my position.

COMMISSIONER HARBOUR: Okay. Before we go on to the next, I just -- I heard someone else trying to come in, but I had promised Mr. Shoup.

MR. SHOUP: Commissioner, I would refer to Karen -- defer to Karen Brinkmann, if I may?

COMMISSIONER HARBOUR: Karen.

MS. BRINKMANN: It's just a minor point, but I think it's important. I don't think Mr. Miller is suggesting that the Triennial Review did anything to change the TELRIC standard that the Commission had previously adopted, and I hope that's clear. The paragraph he read from is followed by a paragraph in which the FCC as Dr. Shelanski quoted, stated we assume the most efficient technology currently available and deployed by at least one carrier.

And again we're just -- the FCC summarizes its TELRIC

standard in the Triennial Review Order, but did not change any of the pricing sections of its TELRIC standard, except with respect to cost of capital and depreciation, which I understand have been discussed elsewhere. So I just wanted to clarify that Mr. Miller is not suggesting that the Triennial Review Order what changed -- the TELRIC standard was changed in the Triennial Review Order. I don't believe it was.

MR. SHOUP: And if I may amplify on that, Commissioner? Ms. Brinkmann is pointing paragraph 670 which talks about what currently available means. And what they talk about there, as I've said before, is currently available, somebody's deployed it in the competitive market. And I think that together with paragraph 669 helped to clarify it perhaps what the Virginia court -- or what the Illinois court was saying.

But in addition to that, the Verizon decision, the U.S. Supreme Court looked at this issue and affirmed the FCC's view of what TELRIC means, and said, you know, it deferred to the FCC and said, TELRIC means, you know, what the FCC is saying that it means. And that being the case, I think that the District Court of Illinois, you know, while I -- while the decision may or may not contradict the Triennial Review, I think the U.S. Supreme Court is taking the view that the Supreme -- that the FCC is entitled to the first cut at what does all of this mean, and has affirmed that cut.

And in addition to that, there are several places in the

Verizon opinion itself that I think serve to contradict GCI's position on this. For example, at pages 32 to 33 of the Verizon opinion, the Supreme Court said, but TELRIC does not assume a perfectly efficient wholesale market, or one that is likely to resemble perfection in any foreseeable time. You know, I think all of these authorities are pointing us to the same place, which is you're looking at the market that you're in, and that the FCC's version of TELRIC, what it thinks TELRIC means is correct.

DR. SHELANSKI: This is Howard Shelanski. If I can just follow up very briefly, if you look at the Verizon against FCC decision by the U.S. Supreme Court, and the pin (ph) site I'm thinking of is 535 U.S. at 504, the Supreme Court makes clear that it does not -- that TELRIC does not require an assumption of a perfectly competitive -- or perfectly efficient market. And the FCC builds on that at paragraph 32 of the Virginia Arbitration Order where the FCC says in applying the UNE pricing rules, we are mindful of the Supreme Court's finding that TELRIC does not require an assumption of a perfectly competitive -- or perfectly efficient market.

And I think the FCC has really been quite consistent on this. And I'm a little concerned that what I heard about imagining an ILEC sitting at a blank slate updating its networks to be perfectly efficient every time there's new technology. The FCC has never accepted that vision of TELRIC.

I don't think anyone can point to a cite where the FCC has accepted that version of TELRIC. I do know what the FCC has said about that idea, and I'm quoting from their reply brief to the Supreme Court at pages seven to eight. They say the incumbents assert that TELRIC assumes that a carrier would scrap its existing network and rebuild a new, more efficient one every time an advancing technology occurs. That's what we heard earlier presented as a picture of what TELRIC required.

Well, here's what the FCC says, quote, TELRIC assumes no such thing. TELRIC instead rests on the more rational economic assumption that as new, more efficient equipment becomes available, the value of older, less efficient equipment will be effected. And I think to the extent that the Illinois decision is adhering to a very rigid idea of a blank slate, new technology network that's constantly updated, it is that decision that is at odds with the FCC, not ACS's proposal.

COMMISSIONER HARBOUR: Yeah, I -- it's seeming to answer the point you just made on page 21 of Illinois, the court said, when a federal statute is enacted to expressly preempt a field and procedural mechanisms are elaborately set forth, state acts inconsistent with either the standard or procedural federal law cannot stand. Dr. Shelanski?

DR. SHELANSKI: Yes. I mean, you know, I am not familiar enough with what happened in Illinois to understand what the procedural concerns would have been, and, you know, it may well

be that there was a procedural objection.

COMMISSIONER HARBOUR: Okay. Yeah. If I may, and I'm mindful of Commissioner Giard here, Dr. Shelanski, on -- yesterday you helped us understand your view that the hypothetical model was inappropriate. The hybrid TELRIC forward looking prices have nothing to do with what a LEC has control over, nothing to do with how effectively a particular carrier is operating. You used a good example of switches bought in different quantities by different carriers. Wholesale prices paid by big carriers should not become the base cost for smaller carriers. All of these exercises in logic to support a view that hypothetical models are inappropriate.

How does the Commission square that with ACS's proposal under (b)(1) that in selecting a pricing model for unbundled network elements, the Commission will use the FCC's hypothetical network standard?

DR. SHELANSKI: Yeah.....

COMMISSIONER HARBOUR: Do we square that by the modifiers that follow.....

DR. SHELANSKI: Yeah, I mean, I.....

COMMISSIONER HARBOUR: .....that make it less than a hypothetical network by being technology that's actually deployed by the ILEC?

DR. SHELANSKI: Yeah, I mean I think that what I meant,

and I hope I didn't misspeak yesterday, I think there's substantial agreement amongst all the parties that any model of forward looking costs will be to some degree hypothetical. It's predictive. It's modeling things that have not yet occurred. So I guess my objection is to a model that is purely hypothetically least cost. In other words, let's put together what in an ideal situation, looking at everything that's available nationwide, would be the most ideal network. My objection was to that kind of very purely hypothetical model.

I think that to the extent what we're modeling are forward looking costs, and not merely dressing up book costs, which is, of course, prohibited by the commission, the question is how realistic and how accurate can we make that predictive model. It will still be hypothetical, but the kinds of qualifiers that ACS puts in place strike me as being -- of aiming towards the Commission's goal of trying to model, in the Commission's own words, the actual costs that the incumbent will in fact incur operating efficiently in the future.

COMMISSIONER HARBOUR: I guess what.....

DR. SHELANSKI: So there's qualifying.....

COMMISSIONER HARBOUR: .....will be -- excuse me, Dr. Shelanski. I guess what we're going to be wrestling with is the hypothetical, most efficient network model that -- you know, that is imposed, and within which ACS says we have flexibility. One struggles with how to put modifiers on

federal mandate, and that's exactly where we are is struggling with that. So-I appreciate your elaboration.

I know that GCI and others had more to comment. The reason I'm sort of moving ahead and not trying to be impolite is because I know that there was a 3:00 p.m. deadline for some of the witnesses, and they're going to be turning into pumpkins. So I would invite anybody else subject to the view of the colleagues who wish to further comment and who are here tomorrow that -- to go ahead and take the time when my turn arises again, and I'll return to this. Thank you for your forbearance. Commissioner Giard.

HEARING EXAMINER OLSON: Commissioner, before you go forward, Mr. Moderow, I guess just so I understand the record, you said there was a new rule that came out as a result of the Triennial Review indicating that ILEC has no obligation to construct new facilities purely to serve the CLEC. Is that contained in the Triennial Review or is that a rule that's coming out later, or.....

MR. MODEROW: No, it's within the order, and I believe there was actually a rule promulgated. And I will provide the cites tomorrow.

HEARING EXAMINER OLSON: Great. Thank you. That's.....

MR. MODEROW: I'll look it up tonight.

HEARING EXAMINER OLSON: .....what I was asking about. Thank you. Excuse me, Commissioner.

COMMISSIONER GIARD: Okay. Who's available tomorrow, because I'm not going to be done in six months I can assure you.

MS. TINDALL: We are. We are.

MR. SHOUP: Commissioner, I believe we are. Karen, are -- I think Karen Brinkmann may be available tomorrow, but I'd have to check. I know Professor Shelanski, I don't -- I do not believe is, but I would have to check with him.

DR. SHELANSKI: I'm available on the same schedule that I was available today.

MR. SHOUP: Oh, he would be available at noon to 3:00.

COMMISSIONER GIARD: Okay.

MR. SHOUP: And, Ms. Brinkmann, are you available tomorrow?

MS. BRINKMANN: Within the same time, I sure am.

MR. SHOUP: All right.

COMMISSIONER GIARD: Okay. Then my questions are primarily for ACS, so I want to respond to -- or ask you a statement that Ms. Tindall made, which was that you are backing away from your prepared regs. Are you backing away?

MR. SHOUP: No, we aren't.

COMMISSIONER GIARD: Okay. Then I'm going to spend five minutes talking to you about actual costs. Do you believe that efficiency is a key criteria in the establishment of UNE pricing?

MR. SHOUP: Yes, in the economic sense of the word efficiency.

COMMISSIONER GIARD: Okay. Is ACS an efficient carrier?

MR. SHOUP: Yes, it is. We've been operating in a highly competitive market for many years. We have no choice but to be efficient.

COMMISSIONER GIARD: So what proof can you give that you're efficient?

MR. SHOUP: In an economic sense?

COMMISSIONER GIARD: In a financial and economic sense.

MR. SHOUP: I suppose it would require an economist to give you all of that sort of proof, or maybe a CPA, but an examination of ACS's purchases since the advent of competition, and a comparison of those prices, in other words construction and purchases of equipment type prices, and comparison of those prices with what GCI has spent for similar construction in the same time period, since the advent of competition, I think would give you a very clear view of that.

GCI has done a couple of construction projects in same time period using the same sort of technology deployed by ACS. And those costs and our costs together would give -- I think give you a very clear picture of that.

COMMISSIONER GIARD: Okay. When we talk about efficient.....

MR. MONINSKI: Commissioner?

COMMISSIONER GIARD: Sorry.

MR. MONINSKI: I'm sorry. I just -- in direct response to your question, ACS has prepared, but I do not have it with me today, a chart that we developed a short while ago that compares the cost of provisioning that ACS incurs with other companies around the country similarly situated. And I'd be happy to provide that to you. And a chart that demonstrates the high level of efficiency that ACS has achieved relative to those other companies.

COMMISSIONER GIARD: Okay. Then that would beg the question, pulling it out a big further to look at what the market is saying about ACS's efficiency. So if you're going to provide documentation, Mr. Moninski, regarding ACS's efficiency in relation to other ILECs, then I would want to step back and also take a look at what the market is saying about your -- the results of your company operations as opposed to those other company operations.

Because really the true test, or maybe one of the true tests of efficiency, or of an efficient performer in any given market, my limited opinion, is what your stock performance is, what your cost of capital is, what your union agreements are, and what efficiencies you've made in those areas that point to significant improvement. And would you say that ATU was efficient?

MR. SHOUP: Commissioner, I'd have to defer to Mr.

Moninski, because I don't have any experience with ATU.

MR. MONINSKI: And although I am a former ATU employee, I don't recall having seen the kinds of data that I referenced to you a moment ago relative to ATU, so it would be hard for me to answer that question.

COMMISSIONER GIARD: But I would assume again based on anecdotal information, having just been employed by the Municipality of Anchorage, that there is a preponderance of belief that government-owned utilities and government-owned enterprises do not operate as efficiently as privately-held ones. And I believe back when ACS was acquiring ATU, there was some discussion in the initial stock portfol -- or offerings, that ACS was going to bring ATU from an inefficient carrier to an efficient carrier position, and that that was the value that ACS was bringing to its stockholders.

MR. MONINSKI: And I'd be happy to see whether or not those kinds of comparisons exist, and if they do, I'd be happy to share them with you.

COMMISSIONER GIARD: Because the challenge that we have, and I'm not opposed intellectually to using actual cost as a foundation, but it creates for you a very high standard to say that you are an efficient carrier today, because the concept is based on forward looking. So if you say you're forward looking today, how are you going to be -- or efficient today, how are you going to be more efficient tomorrow, and prove it? Because

your costs are then going to be based on how much more efficient you are tomorrow.

Mr. Moninski, you said that it's actual costs adjusted for known and measurable changes. So I would think -- how -- my question would be, how far ahead forward looking is ACS in its strategic.....

(Phone beeps)

COMMISSIONER HARBOUR: Are we dead?

MS. BRINKMANN: Is that it?

COMMISSIONER GIARD: How many years out does ACS go in strategic planning?

MR. MONINSKI: And as I indicated early on, I had hoped that Mr. Tyson might be available. He would be the person who could answer that question. And I'll get the answered for you.

Obviously we -- when we are doing UNE rate making exercises, we're doing it in anticipation of a particular life of an agreement, and I would assume that the horizon that we're working with is the expected life of that particular agreement. I don't know how that matches up with ACS's strategic planning horizon. They may be the same, but they may be different. And so there's some reconciliation that might have to be done in that regard.

COMMISSIONER GIARD: Well, your regs are based on, to the best of my reading, and from what I hear today, they're based on, you know, actually deployed by the providing company in

item number 4, anticipated forward looking costs included, cost of labor and materials using the providing company's current actual costs adjusted for future changes. So when you establish those kind of standards for yourself, you know, the proof needs to be presented to us that you can then -- that we can rely on those. And as an experienced auditor, you know, that bar is pretty high from my perspective.

You have established a very high bar for yourself in saying that you're efficient, and having to prove that you're efficient today, and that your business plans and strategic planning indicates that you are even more efficient tomorrow, and that we should use those tomorrow costs adjusted for your plans. So I hope Mr. Tyson will be available tomorrow when we need to really talk about this, because this is what you desire. Okay. I'm done.

(Whispered conversation)

HEARING EXAMINER OLSON: If we operated like we did today, we'll start again at 9:00 because the Commissioners stopped their questioning on other areas in order to pick up the UNEs. And if we operated again like we did tomorrow instead of mistakingly giving you the impression that we were going to work through lunch, from 12:00, which I apologize if I did that, but actually I thought we were, we'll do the UNE's beginning at one, which would be consistent with what we did today, so we'll just have two hours for your people that are

going to be available.

Mr. Miller? Is Mr. Miller going to be available tomorrow?

MR. MILLER: Yes. Yes, I'm still here.

HEARING EXAMINER OLSON: Mr. Miller, will you be available during that time frame as well tomorrow, that -- at Alaska time, one to three, something like that?

MR. MILLER: Yes, I will.

HEARING EXAMINER OLSON: Okay. Good. Then we'll expect the parties to have you all call in. My understanding is that tomorrow the number changes again, and it's 1-8 -- Suzie, the in-court, will correct me if I'm wrong, but I think it's 1-8.....

(Whispered conversation)

HEARING EXAMINER OLSON: Okay. We're going back to the old way.

(Whispered conversation)

HEARING EXAMINER OLSON: Okay. Well, I should finish my thought. The number that I was provided, we were provided when we started yesterday, that the call-in number for the bridge tomorrow was 1-866-465-1045. Is that correct?

MR. MILLER: Yes.

COURT REPORTER: (Indiscernible).

HEARING EXAMINER OLSON: All right. The in-court has a different number, so I'm going to have the in-court give you the other number, and I have no idea whether you have to have a

password tomorrow or not. So let me find out what the other number is, so if one doesn't work, you'll get it on the other. And if you don't get on either one of them, call ACS. No, I'm sorry, just joking.

COURT REPORTER: The other number I have is 1-907-465-1100.

HEARING EXAMINER OLSON: Did you get that?

UNIDENTIFIED VOICE: 1100? That's not a toll-free number.

HEARING EXAMINER OLSON: Okay.

COURT REPORTER: And I have a password.

HEARING EXAMINER OLSON: And if for some reason you -- nothing works, call us at the Commission, 907-276-6222, tell the receptionist you're not getting through. We'll call you. Yes, Mr. Saupe?

MR. SHOUP: Just to clarify, we're going from 9:00 to noon tomorrow, and then.....

HEARING EXAMINER OLSON: No, actually I was going to tell you we're going back to the old way. We're going to start at nine. We may break early for lunch, like 11:15, 11:30, but we're going to start the UNE at noon, because the Commission has to break shortly for a tariff meeting at 1:30. It won't take very long, but, you know, because tomorrow was the last day it was scheduled, we'd certainly like to get the UNE discussion done, so let's make sure we start that at 12. If we finish early, fine. We can take up other things, but let's

start at noon with UNE, so come at nine, figure on we're going to -- unless -- I hope nothing changes. Come at nine, figure on we're going to take an early lunch, 11:15 or something, 11:30. We'll come back at noon and start UNEs. If we don't -- if we finish all the UNEs and there's still other questions on the other areas, the Commission will continue to go on with the other questions. Is that confusing enough for you?

MR. SHOUP: We're starting UNE as noon.

MR. MONINSKI: Precisely.

COMMISSIONER HARBOUR: Are we off the record?

UNIDENTIFIED VOICE: Yes.

HEARING EXAMINER OLSON: No, we're not. Okay. We're going to go off record. Thank you very much. Appreciate your patience today. We'll see you tomorrow.

(Recessed - 3:08 p.m.)

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C E R T I F I C A T E

UNITED STATES OF AMERICA)
)ss.
STATE OF ALASKA)

I, Rebecca Nelms, Notary Public in and for the State of Alaska, residing at Anchorage, Alaska, and Reporter for R & R Court Reporters, Inc., do hereby certify:

THAT the annexed and foregoing Public Hearing in Docket R-03-003 was taken by Suzan K. Olson on the 3nd day of September, 2003, commencing at the hour of 9:00 o'clock a.m, at the Regulatory Commission of Alaska in Anchorage, Alaska,

THAT this Hearing Transcript, as heretofore annexed, is a true and correct transcription of the proceedings taken by Suzan Olson and transcribed by Meredith Downing, Lynn Hall and myself.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 5th day of September, 2003.

_____
Notary Public in and for Alaska
My Commission Expires: 10/10/06

26

STATE OF ALASKA
REGULATORY COMMISSION OF ALASKA

Before Commissioners: Mark Johnson, Chair
David Harbour
Kate Giard
James S. Strandberg
G. Nanette Thompson

In the Matter of the Commission Review of Rules and Regulations Governing Telecommunications Rates, Charges Between Competing Telecommunications Companies, and Competition in Telecommunications) Docket R-03-003

REGULATORY COMMISSION OF ALASKA
Anchorage, Alaska

VOLUME III
PUBLIC HEARING

September 4, 2003
9:00 o'clock a.m.

BEFORE: PAUL OLSON, HEARING EXAMINER

AND: MARK JOHNSON, CHAIR, RCA
DAVID HARBOUR, COMMISSIONER, RCA
KATE GIARD, COMMISSIONER, RCA
JAMES S. STRANGERG, COMMISSIONER, RCA
G. NANETTE THOMPSON, COMMISSIONER, RCA

APPEARANCES:

FOR THE RURAL COALITION:	MS. HEATHER GRAHAME MR. JEFFREY DILLEN
FOR AT&T ALASCOM:	MR. WILLIAM SAUPE MR. DAVID MILLER
FOR ACS:	MR. TED MONINSKI MR. DAVID SHOUP MS. KAREN BRINKMANN
FOR ALASKA TELEPHONE ASSN:	MR. JIM ROWE
FOR GCI:	MR. JIMMY JACKSON MR. MARK MODEROW
FOR DOBSON CELLULAR:	MR. MARK AYOTTE

PROCEEDINGS

Tape 1

Log 0015

(On Record - 9:00 a.m.)

HEARING EXAMINER OLSON: We're on record in R-03-03. Mr. Ayotte, Mr. McKenna, can you hear us okay.

MR. AYOTTE: Yes, I can.

MR. McKENNA: (Simultaneous speech).

HEARING EXAMINER OLSON: Okay. The Commission is going to continue on with its questioning from yesterday. It's, sort of, the non-UNE questions. We'll start taking that up at noon.

UNIDENTIFIED VOICE: Sounds good.

HEARING EXAMINER OLSON: And the Commission has already arranged who is going so they're going to take off here.

MR. AYOTTE: Mr. Olson, could you, please ask the Commissioners -- or identify the Commissioners since I'm not able to see them when they speak.

HEARING EXAMINER OLSON: I'm sorry, it's Commissioner Strandberg, Commissioner Thompson, the Chair of the Commission is Commissioner Johnson. It's Commissioner Giard and Commissioner Harbour. I had to skip one because I was having a blank. I'll hear about it later, but that's who's present. The Chair is Commissioner Mark Johnson and then the rest of the Commissioners are all here as well. I apologize, I should have introduced them to you before.

MR. AYOTTE: Well, Mr. Olson, I'm aware of who they are, it's just I'm never able to tell who is speaking when they start asking their questions.

HEARING EXAMINER OLSON: Oh, okay. Well,.....

MR. AYOTTE: But that's all I wanted.

HEARING EXAMINER OLSON: .....then we'll make them do today what we make everybody in the audience do, tell you who they are and who's talking when they start talking.

MR. AYOTTE: Thank you.

HEARING EXAMINER OLSON: That's a fair request, but seeing as how I don't know who is going first this morning they're going to have to do that any way.

CHAIR JOHNSON: Are we all ready?

HEARING EXAMINER OLSON: We're on the record.

CHAIR JOHNSON: We're on the record?

HEARING EXAMINER OLSON: Yeah, we've been joking on the record.

CHAIR JOHNSON: Oh, that's not a good idea. Three questions, Mr. Moninski,.....

HEARING EXAMINER OLSON: This is Commissioner Johnson, by the way.

CHAIR JOHNSON: Thank you, Mr. Olson. Yesterday during the question and answer period Mr. Jackson from GCI made reference to a proposal that ACS has made in another docket, a currently opened docket. I would ask us to think

prospectively, we're not dealing with that docket here in front of us today, but we're thinking solely prospectively, and the reference was to the CMEC charge.

And the question that I have for you is under your proposed detariffing rules would the CMEC charge fall underneath those rules and are there aspects of that, that -- how would you foresee that happening or not happening under your proposed detariffing rules, is that a possibility?

MR. MONINSKI: In addition to Mr. Jackson's comments yesterday, I believe, GCI made a similar reference to CMEC in it's written comments. Basically the nature of the comment was if you let ACS and others do what ACS is proposing, here's what they're going to do. They're going to go out and put a CMEC into the marketplace.

ACS's response to that is very clear. CMEC as it's been proposed in another proceeding, and I certainly don't intend to advocate the merits of CMEC, CMEC as it was proposed in another proceeding can only be implemented if ACS is a fully regulated entity.

Think about the practicalities. Suppose the price deregulation detariffing proposal that ACS has put forward were to be adopted by the Commission, so now no LECs in competitive service areas are filing tariffs and ACS wants to implement a CMEC.

Theoretically, I guess, ACS could implement a CMEC on its

own customers in that circumstance. Once again, I would suggest to you that if its own customers believe that they were being required to pay a surcharge that other customers were not being required to pay, they would likely, quickly gravitate to the provider that was not charging a CMEC.

It would be impossible, as a practical matter, for CMEC to be imposed on non-ACS customers. We would go to GCI or to AT&T and say we've got this great idea we want to put a CMEC on your customers and we want you to bill and collect and remit those dollars to us. I don't think it would take much imagination to figure out the answers that we would get from GCI and AT&T in that regard.

The only basis for the implementation of a CMEC is the fact that ACS is currently regulated. It is only this Commission that would have the authority to allow the CMEC to be implemented in the manner that it has been proposed.

If CMEC is a bad idea, if CMEC is something that as a matter of public policy or fairness or somebody's notion of what a competitive market ought to look like, if it's inconsistent with those things, the resolution to that problem is the adoption of ACS's proposal in this docket and that is to price deregulate and detariff ACS and all of the other LECs that are operating in this market.

CHAIR JOHNSON: Do other parties have comments on this? Mr. Saupe. Or not, I.....

MR. SAUPE: If ACS came to us and proposed a CMEC we would consider it in good faith, but I think his prediction of our answer is probably accurate.

I don't think it's a tariff issue exactly. I think that they could not impose a charge on our customers through their tariff.

CHAIR JOHNSON: Mr. Jackson, anything further on this subject?

MR. JACKSON: I guess I would only wonder what the situation would be while we were in ACS's proposed seven day notice period tariff where, in fact, there would be a tariff that might -- just as there is now, such that they could propose on seven days notice the exact same thing that is proposed in the other docket and where there's essentially no chance for Commission review because of the time period.

CHAIR JOHNSON: Mr. Moninski, ACS proposes that carriers should file notice tariffs as we discussed and then ACS proposes that non-dominant carriers that make notice tariff filings would not have to comply with 3 AAC 48.270. That relates to tariff advice letter formats. Given this change what minimum information would have to be included in a non-dominant carrier notice tariff filing? And is that explained anywhere in your proposed regulations?

MR. MONINSKI: I'll start with your last question first. I don't think it is explained anywhere in our proposed

regulations or in our comments and your question certainly suggests that there may be the need for some further explanation.

Even to the core of the question, the reason for including the waiver from or exemption from Section 270 of the regulations is that provision of the regulations that requires that the filing party present customer impact and revenue impact, that is, those two items are required by Section 270. Those were the items that ACS was hoping to have waived as part of its notice tariffing proposal.

We did not and do not proposed structural changes to the actual tariff filing. The kinds of narratives that might normally be presented, the tariff sheets and the formats used for the tariff sheets that would normally be presented, we're not suggesting waiver from that. Given that it probably does require some further clarification and, perhaps, even some redrafting of the proposed regulations, but the focus of the waiver or exemption request was on those two elements of 270, customer impact and revenue impact.

CHAIR JOHNSON: Thank you. That's all I have.

COMMISSIONER HARBOUR: Thank you, Commissioner Johnson. I'd like to start out by asking all commentors and expert witnesses, and maybe an answer could follow if not available now, what research is available showing the effect of wireless use on the wire network? Is there a direct correlation between

the use of wireless and the disuse of the service area's wired network?

It would be helpful for me to incorporate into our consideration, studies or research that commentors may have for which we at the Commission could obtain from NARUC or NRRI.

I'm Commission Harbour, by the way, before I embarrass myself by not making an identification.

Does anyone want to respond to that?

DR. LEHMAN: Well, I recently looked at this question and the best I can tell the best and most recent work that is available comes out of Berkeley and there was a study that they published recently that focused -- it was very well done 'cause they focused on the question of access to the network as opposed to use of the network 'cause what we see is a lot of minutes certainly going from the wireline to the wireless network, but they wanted to know is it a substitute in the form of access to the network.

And, I believe, the summary of their findings is that there is relatively little evidence of substitution for primary lines, but secondary lines has got a lot more substitutability. This study was, sort of, nationwide. I don't think there is any geographic dimension that talks about different kinds of areas or different states, but, I think, you can get -- I can get you the address -- the web address for that. It's available on line, but.....

COMMISSIONER HARBOUR: I would appreciate that.

DR. LEHMAN: .....that's the best study that I've seen.

COMMISSIONER HARBOUR: If anyone else has any information along those lines?

MR. SAUPE: I don't have good quantitative information. I would just point out that as a factual matter the long distance calls that are carried by cell carriers are carried on landlines that are purchased wholesale from the long distance carriers, so to the extent long distance calls are made by wireless users there is a reduction in retail minutes, but there are still wholesale minutes that the landline carriers are carrying.

COMMISSIONER HARBOUR: Okay. To me this is a valuable area and I appreciate your going with me on this.

Let me ask this, would any commentor or witness disagree that if the cell, if the wireless displaced the use of the network, the cell would be a direct competitive threat, would that be arguable?

MS. GRAHAME: We would agree with your contention completely. And this is Heather Grahame for the Rural Coalition.

COMMISSIONER HARBOUR: Thank you. Would any commentor argue that if there is minimal impact of cell use in displacing the wire network that the two technologies still compete?

MR. DILLEN: This is Jeff Dillen for the Rural Coalition.

And, yes, even in the absence of complete displacement, I think, direct competition, the intermodal (ph) between wireline and wireless can clearly occur. And in particular, I would suggest in the ETC context because then there's direct competition then for those nine supported services.

If there isn't then, of course, there shouldn't be multiple ETCs. Even if there isn't replacement, let's say, and there's a secondary line situation there's still competition for access minutes, for example. And if we want to go back.....

COMMISSIONER HARBOUR: How do you respond to Mr. Saupe's suggestion that those minutes are still paid for at wholesale at least in an ID capacity?

MS. GRAHAME: That's the IXC and not the LEC, so they'll.....

COMMISSIONER HARBOUR: Right. That's what I -- in the long distance capacity, yeah.

MS. GRAHAME: That's correct. So that may be.....

COMMISSIONER HARBOUR: So to the extent that second lines are displaced by cell phone it would be a direct threat to the LEC?

MS. GRAHAME: That is correct.

COMMISSIONER HARBOUR: Okay.

MR. JACKSON: Commissioner, if I can make a couple of comments to your questions. And I want (ph) to agree with Mr.

Saupe, although, I think, in general they're not going to be buying wholesale minutes. They're going to be leasing a facility in most cases. The cellular company would lease an actual facility so they would have the facility for the long haul traffic and they wouldn't be paying on a per minute basis. It could vary in situation to situation, but at least in a lot of situations they'd be buying a facility.

And I don't think this is what you're talking about when you say competition or displacement, but I would emphasize as Mr. Saupe said that, I think, that the cell phone is to a large extent displacing long distance calling on the IXC network and that also has a significant impact on the access charge regime.

Now, I mention those 'cause I think they're important. And no, I don't know that they're really within the ambit of your question because if you're just looking at the cellular as how it competes with the LEC we would agree that there's not much competition there, but there are certainly some other impacts on your entire bailiwick which would be important to comment on.

COMMISSIONER HARBOUR: Okay. I really do respect specifics and that's why I'm trying to get into this. And I have a note here that Western Wireless' comments in the Joint Board proceeding on ETC designation has a study that's responsive to the question, so one area that would -- you know, it could probably be argued that statistically there may be a

difference in displacement, Lower 48 as opposed to Alaska or in Alaska urban as opposed to rural. --And particularly when you get to second lines is the second line displacement issue in rural Alaska as big an issue as it is in urban Alaska?

So, I just -- I raise these questions because they ultimately relate to the word competition that we've discussing and the definitions that are being used. So any specific, statistical information that's available that commenters would like to provide I'd really appreciate reviewing.

MR. AYOTTE: Commissioner Harbour, this is Mark Ayotte.....

COMMISSIONER HARBOUR: Oh, I was going to (ph) -- yes, please (simultaneous speech).....

MR. AYOTTE: .....if I could just take a moment to comment as well.

I think your questions are good ones and specifically I'm not aware of any good, reliable statistical information to provide and, I think, in part it's because of the difficulty of the question. When you speak in terms of competition does (ph) wireless provide a competitive alternative to landline carriers depending upon how you want to define competition will dictate the answer.

Certainly consumers having a choice of service providers is competitive. So if they have a choice between wireless and landline service and the consumer can decide what services or

what service provider best meets that consumers needs then that provides some competitive pressures in the market.

However, when you start trying to analyze and correlate use of the network, I think, that begs a different question and you really have to break it down into categories of how the consumer is utilizing either the wireline or the wireless type service.

For example, if the wireless customer is utilizing his or her wireless service to only call other wireless customers then that impacts the landline network, but I think human nature tells us that won't be the case. Wireless customers tend to make mobile to land calls and to that extent the landline network is continued to be used because it's the back end of that call just as if the customer had been making a landline to landline call.

So the impact on the network or displacing minutes of use on the network I think is an entirely different question from a broader, more general question of is wireless competitive or provide a competitive alternative to consumers.

It's really -- and similarly with respect to the secondary line question if the landline customer subscribes to wireless service as an additional line then ultimately it's going to depend upon the use made of that customer or by that customer of the landline service.

I don't think you can simply conclude that because the

customer purchased wireless service that therefore there's a diminution in use of the landline network. That may not be the case at all.

It's going to depend upon the individual reasons and decisions and use by the consumer and I don't think anybody can measure that or quantify that without interviewing every customer who might fall into those categories. So I'm not sure that your questions are susceptible to any form of a statistical analysis as you're requesting.

MR. McKENNA: Commissioner, this is Hugh McKenna, I'd like to offer an opinion.....

COMMISSIONER HARBOUR: Please, Mr. McKenna.

MR. McKENNA: .....and, you know, you'll recall yesterday I say that I come from the marketing side and I'm more of a market research expert.

I see routinely in looking at the market research studies statistical data that report reductions in LEC lines, which are landlines, as impacted by direct substitution with wireless service. And the major research houses like Yankee and groups like those down in the Lower 48 have a great deal of physical data that say that exact thing. I don't personally have it to offer, but it's available for you to review. We could arrange for some mechanism (ph) to provide it to you.

And there's a second perspective, too, I'd like to offer.....

COMMISSIONER HARBOUR: Excuse me, let me just stop there. I've invited all commentors and witnesses to provide whatever information they can to help us -- help me in this decision process, so no need to ask if I'd like it, I'd like it.

MR. McKENNA: Well, where I was going with that is Yankee Group would charge for one of their research reports. And if you would like for someone -- Ted, tell me if I'm getting out of line here.....

COMMISSIONER HARBOUR: Okay. I guess -- I guess that -- yeah, I guess, if there's information that's available in open studies, if it's available by an internet link or if any commentor or witness wishes to produce it, that decision is yours and I appreciate that.

MR. McKENNA: I understand. And I'd like to.....

COMMISSIONER HARBOUR: And -- and by (ph).....

MR. McKENNA: .....a second -- a second perspective, too, if I could to this discussion because I do forward looking work when it comes to landline, broadband services as well as wireless ones, I think the trend which I would recommend to the Commission that you should look at is -- that will develop in the future, it's not going to be so much substitution of second lines with wireless service, it's more going to be a direct bifurcation of serving mechanisms into broadband vehicles which will be landline and they'll be DSL and they'll be cable modem kind of things which will serve more data applications in a

home and well in all likelihood always remain landline unless WiFi develops further.

And there's a second use which is more voice oriented which is a consumer saying that for all of their voice service they'll retain a wireless phone and use that primarily for voice and have a wireline service for data and internet. The market research that I read says that's where the whole market will go in the next five years. That's just for your consideration.

COMMISSIONER HARBOUR: Thank you. And to me the importance of this relates to the definition of competitive areas as well as some other issues we've talked about. Having owned a cabin in Seldovia, I have a wireline. I also carried a cell phone. Now, it may be that some people in rural settings will think well, if I go hunting I can take my cell phone, I don't need to have wireline at home at all.

What I'm seeking is, is there any information available other than the generality it's a threat, see what I'm getting at? So.....

MR. McKENNA: I would offer -- this is Hugh McKenna again, that the response that I would offer is that they will need wireline for internet. If you find most -- if you find people that say they really don't care that much about internet then they might go with wireless.

MS. TINDALL: Commissioner, this is Dana Tindall. I think

this doesn't go directly to your question about research, but rather the presumption about the type of competition that will develop. And as a competitor the way we look at a market is we require a number of different technologies to have in our tool bag to serve a market. And in any given market there's probably going to be a variety of methods of service.

In some places high speed wireless might be the best way to go, but in that same market area within that same rural study area there will be wireline, there will be alternative landline services and there will still be a need for UNEs. So I have to disagree with the contingents of the Rural Coalition on what type of competition will develop and also the contingents of Mr. McKenna, because every market's different and as a competitor you try to find the most efficient method of service for a given customer. Thank you.

COMMISSIONER HARBOUR: I appreciate the general comments and the opinions. I -- as you can tell by the line of questioning I know it may be difficult to obtain or largely unavailable, I'm looking for any kind of facts or statistics that would help in the process if I could. Okay. And as you -- I'm not trying to be impolite, I'm trying to move as quickly as I can.

Yes, ma'am, Ms. Grahame.

MS. GRAHAME: Yeah. Commissioner Harbour, whatever we have we will get to the Commission. I would note though that

rural Alaska is so unlike areas where studies are being done that I don't think it's likely that we're going to find something directly on point.

In addition, I think, it's the -- to the extent studies have been done, I suspect they will not take into account the effect of access to Universal Service Funds and so a study done, you know, in a Lower 48 city that shows maybe people between the ages of 18 and 26 are giving up their landline phones in lieu of their cell phones, may not be the kind of inf- -- which I certainly think is happening and I think there are people in this room today who have done just that.

Nevertheless, I think, the real issue -- or what you're looking for is probably not available because what you really want to know, I think, is what is likely to happen in rural Alaska so that -- to help you with the definition of a competitive service area and those studies are not going to take into account ETC, the availability of Universal Service dollars.

COMMISSIONER HARBOUR: Thank you. And I realize it may not be possible in all rule making to make every decision based on facts, but I hope you appreciate to the extent we can we should seek to do that.

I'd like to turn to Mr. Moninski, page 3 of the ACS regs under Exhibit A. You're proposing that an incumbent become non-dominant when a wireless service is designated ETC. How

about if a wireless carrier is -- does not seek an ETC designation? And I assume that that's covered on page 7 where a competitive service is defined as competition of any type which would incorporate wireless with or without ETC, is that correct?

MR. MONINSKI: The last statement that you made is correct. The definition of competitive service area subsumes competition of any type.

COMMISSIONER HARBOUR: Okay. So if -- and not necessarily looking at just the areas you serve, but certainly the areas that the regulation would undertake to control, a competitive service area would evolve even with entry of a non-ETC cell phone service that served only a portion of the service area, is that correct?

MR. MONINSKI: The definition of competitive service area that we have proposed indicates actual competition capable of serving at least 50 percent of that market. So there would be at least some factual determination as to whether or not a non-ETC wireless carrier was able to serve 50 percent or more of that market.

COMMISSIONER HARBOUR: Okay. So ACS believes that -- getting back to the earlier discussion, that -- forget ETC, that the entry of a wireless competitor into a LEC's area if it has a signal that covers 50 percent of the area it deems that a competitive area?.

MR. MONINSKI: Yes.

COMMISSIONER HARBOUR: On day one of the certificate of the entry?

MR. MONINSKI: On day one of the actual provision of service.

COMMISSIONER HARBOUR: Okay. Which could be day one of both actual provision and certification, too, if (ph).....

MR. MONINSKI: If a network were deployed simultaneously with certification. Although I'm not sure we're certificating wireless carriers any more, but.....

COMMISSIONER HARBOUR: Right. I'm sorry, right, yeah.

MR. MONINSKI: If that were the case I would still answer yes to your question.

COMMISSIONER HARBOUR: Yup. Let's look at page 8. While I appreciate that ACS is focused probably more on -- for purposes of this discussion on its urban service area, we have to consider the impact of all areas acknowledging though that in the past we have set separate rules for Anchorage, for example. But in defining significant competition as a facility based competitor capable of serving 75 percent of community customers, would this include, say, in a community of 300 people a pay phone facility at a general store that's available to everybody?

MR. MONINSKI: When these regs were being drafted I did not -- and I was the primary drafter, I did not include that

scenario as one that would trigger the significant competition definition. And it's one that I guess we can all including the Commission, think about, but that was not part of what I was contemplating.

My thought process was actual networks being deployed. They could be wireless networks, they could be wireline, they could be cable telephony networks, but these were networks that were being deployed as opposed to a single calling station constituting that kind of competition.

COMMISSIONER HARBOUR: Good, thank you. Ms. Grahame, on -- I'm going to ask you about page 4 of your proposed regs and if Mr. Rowe wants to comment or others, then that' fine, too. The competitive service areas occur when there are multiple carriers?

MS. GRAHAME: Multiple carriers that have been designated ETC, not multiple carriers. So even if a rural market has three cell phone providers that is not a competitive market under our definition unless at least one of the wireless carriers has been designated an ETC. Similarly a pay phone would not qualify under our definition.

Under our definition with the amendment we made yesterday or the day before, it's a competitive service area only until you have another certificated LEC actually providing service or until you have multiple ETCs designated.

COMMISSIONER HARBOUR: Good. Does multiple -- it's not --

I don't think it was in your definition section. Is that defined as two or more? Would multiple mean two?

MS. GRAHAME: That's correct.

COMMISSIONER HARBOUR: Okay.

MS. GRAHAME: In other words, it would be the incumbent LEC plus a wireless or another provider, a cable modem provider.

COMMISSIONER HARBOUR: Right. Should -- let's look at B on page 4. When making a determination under A-5 of this section the Commission should consider the following and those all look like reasonable areas for the Commission to consider. Why wouldn't you want the Commission to -- why wouldn't (ph) you want to have the Commission consider A-1 through 4 as well as 5 or put another way why wouldn't it -- why would it be wrong to include 1 through 4?

MS. GRAHAME: It would not. What our -- our thought on B was to simply give the Commission as much discretion as it wanted. However, in going back and looking at A-1 through 5 we thought 5 was broad enough by itself to allow the Commission to include any factor that it so desired and we were uncomfortable with our B-1 through 3 to the extent it included the words natural monopoly. So that's why in response to Commissioner Thompson's question yesterday we're happy to eliminate B-1 through 3 or we could have B-1 and 1 would be any factor the Commission so desired.

COMMISSIONER HARBOUR: Okay. Because I read 5 as not being more inclusive, but as being limited to other service areas meaning other than 1 through 4.

MS. GRAHAME: Ah, I see. No, our goal was simply under B to give the Commission as much discretion as it wanted.

COMMISSIONER HARBOUR: Okay, thank you. If I could turn to Dr. Lehman, and since we are moving fast, if anybody needs to chime in with something that is a helpful addition, please do so. On page 17, item 14, Dr. Lehman you say that regulation of the incumbent retail services runs the risk of leading to a single provider, the entrant, as the survivor.

DR. LEHMAN: Could you repeat the page number? I think.....

COMMISSIONER HARBOUR: Yeah, 17 of your original testimony, not the reply, item 14.

DR. LEHMAN: Is it paragraph 17?

COMMISSIONER HARBOUR: Page -- page 17, I think, I can go back and check.

MR. MONINSKI: Our copy, Commissioner, shows page 17 being the last page of Dr. Lehman's affidavit.

COMMISSIONER HARBOUR: Oh, help me.....

MR. MONINSKI: I mean, original filing.....

COMMISSIONER HARBOUR: .....find the area where you talk about the financial viability of the company? I must have marked that wrong.

MS. GRAHAME: I think it's page -- it may be page 7 of ACS's reply comments, paragraph 12?

MR. JACKSON: The affidavit or comments?

COMMISSIONER HARBOUR: I think it was page.....

MS. GRAHAME: I think it's the affidavit. It may be the reply affidavit of Dr. Lehman on page 7, paragraph 12.

COURT REPORTER: I'm sorry, could you repeat that, Ms. Grahame?

MS. GRAHAME: Well, this is a mere guess on my part as I don't represent ACS, but like Commissioner Harbour I noted that in -- what I noted was in Dr. Lehman's affidavit attached to ACS's reply comments at page 7, paragraph 12, but plainly I yield this entire area to Dr. Lehman.

MR. MONINSKI: We have located that paragraph if that is the one that you're.....

COMMISSIONER HARBOUR: Okay, thank you. Was that in the original affidavit?

MR. MONINSKI: This is reply.

COMMISSIONER HARBOUR: Okay. Where is it?

MR. MONINSKI: Page 7 --.....

DR. LEHMAN: I don't think that's.....

MR. MONINSKI: .....you don't think that may be the one?

DR. LEHMAN: I don't think that's what he's referring to.

COMMISSIONER HARBOUR: I don't -- yeah, I'm looking at paragraph 12 on page 7 of the reply and that's not the -- where

I think your broad discussion on regulation of incumbent retail services runs the risk of leading to a single provider.

COMMISSIONER GIARD: (Simultaneous speech).....

DR. LEHMAN: Yes, we've got it, page 9, paragraph 14 of the original.

COMMISSIONER HARBOUR: Okay. Sorry for that incorrect page number. It's page.....

DR. LEHMAN: Nine, paragraph 14.

COMMISSIONER HARBOUR: Page 9, item 14. Okay. It says that -- generally that the regulation of the incumbent retail services runs the risk of leading to a single provider, the entrant, as a survivor. I gather that you believe your client's financial viability is threaten absent -- correct me if I'm wrong, absent a paradigm change as Mr. Moninski stated in his testimony in the telecommunications regulatory regime. Would that be a fair statement?

DR. LEHMAN: No, I don't think I'm making any factual statement about any particular company's. It's a general statement about what the effects of regulating the incumbent and not the entrant under a paradigm that involves the Telecommunications Act of 1996, what those results can be. I'm not ruling out that that might apply to my client's particular situation, but I haven't done any investigation of whether it would or would not apply to them.

I think as a general matter when you apply asymmetric

regulation under the conditions of the Act you increasingly run the risk that you will end up with the incumbent not being able to survive.

COMMISSIONER HARBOUR: Okay. Here, again, I'm looking for more specifics than generality. I mean, you know, I don't know that anyone would argue that over or improper regulation would be good when it puts people out of business, but on the other hand if it doesn't relate to support the -- you know, the client that you're representing, I don't know how it's relevant without the specifics, can you help me with that?

And you made some general comments to that extent, Mr. Moninski yesterday, but I -- but not as specific as I read these. I read these as applying to your client since they were in your affidavit.

DR. LEHMAN: I stand behind them as general comments and I do think that it's my understanding of this docket is that the Commission is doing a thorough review of all its regulations and I think that retail deregulation is an appropriate thing to consider given the changes that have happened since 1996. I -- there's been -- I've not provided any specific evidence the financial position of ACS, nor have I reviewed any so I certainly am not going to offer a specific opinion on that -- on that -- on this company's position, but.....

COMMISSIONER HARBOUR: Let me turn to Mr. Moninski. Do you believe that absent a paradigm change in the regulatory

regime your company's financial viability is threatened?

MR. MONINSKI: Commissioner, you have focused on hard facts and hard evidence in your questioning this morning and I don't have hard facts and hard evidence to present to you.

The theory behind the comments that were included were driven more by the cost advantage that ACS believes its competitors have and the results of that cost advantage and the anticipated results of that cost advantage.

We heard Mr. Jackson, I believe or Ms. Tindall one, yesterday say ACS is telling you they're in deep financial trouble, that's not true. I don't know that I've ever heard ACS tell anybody that it was in deep financial trouble. There are certainly financial issues that ACS is coping with.

Like most other companies in the marketplace today ACS is diversified. Its local exchange business is not its only business and at a holding company level I'm unaware of anybody who is suggesting to anyone anywhere that ACS is in deep financial trouble.

We consistently both in front of the regulators and to investors remind people who are listening that our place in the regulatory process has created specific challenges to those entities that are regulated.

If you take a look at a trend line and Dr. Lehman has one. There are probably others that we can present to you, but he has one on page 8 of Exhibit B. If you take a look at the

trend line as to how competition has progressed in Anchorage and in Fairbanks and in Juneau and simply extend that trend time to its logical conclusion on the basis that nothing changes. There is no conceptual reason that I can see that would prevent a CLEC from being able to captures 100 percent of the market in those markets.

So the costed -- our position is the cost advantage that exists today and the other competitive disadvantages to ACS that exist today combined have produced these results that you see in chart 8 and will continue to produce similar results, perhaps, even at an accelerated level as we go forward. So the answer is we're not necessarily saying we're going to go bankrupt. We are saying that in our local exchange business if there isn't a paradigm shift then there's no reason to believe that the results that we've seen so far are going to change and when you trend them they tend to 100 percent market share shift.

COMMISSIONER HARBOUR: Okay, that's fair enough. And I hope you understand, again, trying to peel the layers of the onion in putting your comments about the paradigm change that's required with Dr. Lehman's assertion that in situations a threat for survival -- financial survival could exist. I think that that applies to ACS.

Now, you talk about the trends I'm wondering if -- again, I love detail, if it's not available that's fine. If it is

available, maybe it would help and I'll tell you why. I believe that the role of a regulator is to place as much interest on the financial health of the utilities as on consumer protection and I believe the two work together. And to the extent that the utilities are healthy and fairly treated, to that extent will consumer protection exists.

And at the same time there's another role specifically targeting consumer protection, but I'm interested in the implication, if not the overt statement, that absent a paradigm change a threat exists. And I think that at least deductively we've concluded that's where it could be going based on your testimony today.

So the question I asked in order to clarify, again, if it's available publicly, doesn't provide, you know, competitors with information that shouldn't exist or it's not available publicly, I don't look for it, but if it's available it would be helpful.

Since you talked about trends, since 1999 or 2000 I'll just list some things that would be helpful to me to understand the need from an ACS viewpoint to a paradigm change in regulatory regime.

First, what is the greatest produce of net income by business segment for ACS companies? What amount -- in my former companies these are the kind of questions I ask myself in order to determine trends.

What amount and percent of income is produced by local service? What amount and percent of total income is produced by interexchange service? What amount and percent of income is produced by wireless service? By internet service and by the former directory service during this period? What is the single, largest category of expense or loss and what is that amount? Has there been a review of the impact of ACS debt on total corporate performance?

And finally to better understand the need for paradigm change by ACS of a proponent of regulatory regime change, now, perhaps, a graph out ACS operating company operating revenue -- again, publicly available information for the last several years from about 1999 or 2000 on with the total -- we talked about lines, with the total UNE loops owned broken down by those leased out and non-UNE loops served by ACS and if possible the revenue applying to each of those segments non-UNE and UNE.

Dr. Lehman, one last question along with line, do you agree that unregulated services like wireless and internet and debt burden are factors that relate more to corporate decisions than regulatory requirements and decisions?

DR. LEHMAN: I'm reluctant to say what -- what.....

COMMISSIONER HARBOUR: I'm talking in -- in --.....

DR. LEHMAN: .....what matters more.

COMMISSIONER HARBOUR: .....generically among --.....

DR. LEHMAN: Yeah.

COMMISSIONER HARBOUR: .....in regulated environment.

DR. LEHMAN: I'd be reluctant to say what weighs more. I think that telecommunication companies must look at the changes in technology in the marketplace. They obviously can't survive without looking at that, but regulation plays such a large part in this industry that they can't afford to ignore that either. I mean,.....

COMMISSIONER HARBOUR: I think I was unclear in my question. Let me put it in this way, does the regulatory requirements and decisions have a -- I'm sorry, do corporate decisions have a greater effect on unregulated serviced than regulatory decisions?

DR. LEHMAN: Could you repeat that once more, I'm not.....

COMMISSIONER HARBOUR: Do corporate decisions have a greater effect on unregulated activities, public company, than regulatory decisions?

DR. LEHMAN: I think -- in the general I don't think I can answer that. I mean, I can think of specific examples where corporate decisions have overridden any regulatory.....

COMMISSIONER HARBOUR: In an non-regulated area of activity?

DR. LEHMAN: Oh, in a -- in an unregulated.....

COMMISSIONER HARBOUR: Okay. Let me repeat the question. In your opinion do corporate decisions have greater impact on

unregulated activities than regulatory decisions?

DR. LEHMAN: In the unregulated area yes, I think that's true.

COMMISSIONER HARBOUR: I appreciate this. I know these are detailed questions, but by providing the information I hope to more responsibly understand the financial issues that have been raised here and their impact on trends and on the importance of considering a change in the regulatory regime.

On price caps, you discussed price caps with reference to, I think, safety net and carrier of last resort issues. You weren't in general -- I don't consider you to be in general an advocate of price cap methodology before this hearing, am I correct, but you do suggest those as alternatives for carrier of last resort and safety net issues that you raised, is that right?

DR. LEHMAN: Yeah, I mean, in re- -- particularly in response to Commissioner Thompson's questions yesterday, you know, this situation where a carrier may have some regulated markets and some unregulated markets under the ACS proposal it raises a question about how to determine the rates for the markets that are not deemed to be competitive service areas and certainly price caps is one alternative way of dealing with what is a thorny question about allocating the costs between different communities, but you're quite right, I'm not advocating as a general solution price caps particularly as a

one size fits all solution to all.....

COMMISSIONER HARBOUR: Right.

DR. LEHMAN: .....types of carriers. It's not an appropriate regulatory regime for certain kinds of carriers and certain situations.

COMMISSIONER HARBOUR: Right. And, I think, would you acknowledge that there are a number of -- while there are some experts that support price cap methodology, there are a number of others that have deemed that it is price -- or an inefficient, that.....

DR. LEHMAN: Well, I mean, I support the theoretical advantages of it, but in the spirit of your questions about evidence, the evidence on price caps is decidedly mixed at best. It.....

COMMISSIONER HARBOUR: Okay, good. Now, with respect to the safety net and carrier of last resort, have you considered other alternatives for consumer protection other than price caps either on the annual increase methodology or the flat price cap methodology? Have you considered any other protection or -- for those two areas other than price caps?

In other words, if we do as you propose and move to safety net and carrier of last resort protections, the only alternative you're actually proposing now is price caps. I think I got that right. The second -- the question was, have you considered other alternatives besides price cap?

MR. MONINSKI: If I may Commissioner, we -- conceptually I think we're in the same place, but we may be using two distinct elements somewhat interchangeably. When we were talking about price caps I believe we were talking about that in terms of a situation where you have a study area that was not fully competitive so you had some exchanges or some locations that were or some that were not and price caps may be an option to confront the situation where you had to find a good way to regulate those locations that had not yet been competitive.

When we talked about safety nets we were typically talking about that more in the context of an added layer of public protection in a competitive market. Now, we're focused on a competitive market, but we're still concerned, perhaps, about the residential ratepayer in the area of basic residential services and we did offered a couple of alternatives. There may be others.

The alternatives that we offered on the safety net question dealt with some limitation in the amount of price increase on a annual basis over a transition period, that was one. Something to the effect of not more than a dollar a year over a three to five year period.

The other thing that we offered was, perhaps, a modified Wisconsin plan which was an indexing plan where the rates for basic residential services was indexed to some median income or some percentage of median income so that was the distinction

between those two.

COMMISSIONER HARBOUR: Understood. Any -- okay. Let me move on. I'm going to eliminate a couple just in the interest of time.

Mr. Jackson, yesterday we ran short and I think I cut you off, offering a more time today, do you and Ms. Tindall have more on the choices, via the Illinois Bell case? I cut you off at that point. It's an important case for a number of reasons including the fact that the Illinois statute received significant attention in Juneau last spring and I think we were discussing what precedences are set which we should observe and evaluate in the merits of the proposals before us today versus what portions of a decision may have been trumped or pre-empted by the Triennial Review or Virginia arbitration and those issues. What -- maybe I didn't cut you off. I thought I did.

MR. JACKSON: Mr. Moderow will be with us again this afternoon on UNEs so the -- to the extent that that is a UNE directed question I'd possibly like to give him a chance to respond, but I will tell you what I think he will say, not because I know it on my own, but because he said it, which is that the Triennial Review would not in any way trump the decisions from Illinois and the Illinois decision stands as very good law.

COMMISSIONER HARBOUR: Right. I'll look forward this afternoon maybe to a little exchange 'cause I know we have a

difference of opinion.

MR. JACKSON: Can I make one other brief comment.....

COMMISSIONER HARBOUR: Please.

MR. JACKSON: .....regarding -- I just wanted to indicate, I'm sure you know about Mr. Chapados' affidavit. At.....

COMMISSIONER HARBOUR: Yes.

MR. JACKSON: .....paragraph 3 he has some specific information responsive to the questions that you asked, probably not as specific.....

(Hugh McKenna leaving the meeting)

MR. JACKSON: .....as you're looking for, but he does indicate that ACS's EBITDA growth (ph), now that's different from net income, but it's what financial analysts are using to a very large extent now, that EBITDA for ACS as a whole has grown from 111 to 129 million between 2000 and 2002. That that growth was in the local phone and the wireless businesses while the internet and the long distance businesses were having negative EBITDA, so it's -- perhaps, it could be more specific, but it is partially specific answer to some of your questions.

COMMISSIONER HARBOUR: At least indicators.

MR. JACKSON: Yes.

COMMISSIONER HARBOUR: Thank you for that. I know some of the other Commissioners would like to take a break now. I only have a couple more questions that I can handle quickly after the break. Would you like to adjourn for a few minutes -- or

recess for a few minutes?

HEARING EXAMINER OLSON: Let's take a 10 minute break. Breaks that we need 'cause of all the coffee everybody pumped earlier this morning, so we'll stand in recess for 10 minutes.

(Off Record - 10:03 a.m.)

(On Record - 10:15 a.m.)

COMMISSIONER HARBOUR: Thank you. And I should remind Mr. Agotte and anybody else that's still on, please, just chime in because you're going to see targets of opportunity.

I'm going to go to the last question. I may have a couple others for the experts this afternoon. Let me go back to Ms. Grahame and Mr. Rowe if he wants to comment or others.

Help me understand rural carrier concern for competition, okay? Is this a concern that cell use is an actual threat to the investment of the network or is it more a concern about further dividing the Universal Service pie which some have argued in that -- that big a deal and others argued has -- is or is the concern more with long distance? Is it more with local service competition, where -- or is it all of the above? Where is the concern?

MS. GRAHAME: This is Heather Grahame. Jim, do you mind if I jump in?

MR. ROWE: Please, splash away.

MS. GRAHAME: Let me give a -- let me answer your question generally and then I'd like Mr. Rhyner who has practical

experience and who might be able to provide the kind of detail I know that you like to hear.

COMMISSIONER HARBOUR: Good.

MS. GRAHAME: As a general matter as counsel the concern, number one, is actual threat to the network. Number two, we are concerned about Universal Service Funds. We know the Universal Service Fund structure is going to change and we know what it is today and we think the pie is going to diminish in short order. Our concern is less associated with long distance.

Our concern is the viability of the local exchange companies and the ability to charge reasonable rates to consumers once competition comes to a rural market because, remember, they are uneconomical to serve by one carrier without a subsidy. And it's the subsidies, both the Universal Service Funds as well as the implicit subsidies that allow rates to remain affordable in rural Alaska. And with that I'd like to turnover to Mr. Rhyner.

COMMISSIONER HARBOUR: Good, like to hear from Mr. Rhyner.

MR. RHYNER: Thank you, Commissioner Harbour. I guess I would disagree just a little bit with what Ms. Grahame said in that the long distance part isn't a threat 'cause the loss of access minutes is a threat and it is a considerable source of revenue. Many of the small rural companies derive as much as 75 percent of their total company revenue from Universal

Service and access. And as we've seen over the last two years with the implementation of the MAG (ph) Plan, a shift of access going to Universal Service which makes us more reliant on Universal Service.

I think to answer your question directly it's all of the above except for the threat to -- from wireless companies to a loss of local service revenues. Our experience, at least to this point, has been no real reduction in access lines counts from the entry or competition amongst wireless carriers.

. for -- in Dutch Harbor we're seeing -- we have two wireless carriers there and we haven't seen any loss of access lines to the wireless carriers. We have seen -- going to your earlier question about second line, we have seen a reduction in second lines, but that's due to the -- getting high speed service availability in that market.

MS. GRAHAME: Let me qualify my response on long distance. Many of the rural LECs have long distance affiliates through and so I -- when I responded to your question on long distance like your questions to AT&T as a long distance carrier I was thinking in terms of a long distance entity rather than the access minutes which are of a concern.

And, of course, once a wireless carrier becomes an ETC which we have not seen yet in Dutch Harbor or in rural Alaska up until Friday, that -- that is the point at which we see the competitive threat.

COMMISSIONER HARBOUR: Is there any reason to suggest though that there would be a loss of lines whether there's an ETC or not, is -- does -- or would that be transparent to the person making the decision as to whether or not to drop a wireline?

MR. RHYNER: Well, it would depend on the entity that entered. With a wireless carrier, at least with our experience so far, we haven't see a loss of primary lines to wireless carriers. If, however, in some of the larger communities in rural Alaska like Nome, Bethel, those areas where you have cable carriers and you start to see cabl- -- the proliferation of cable telephony we may well see a loss of primary lines to a second carrier.

COMMISSIONER HARBOUR: Okay, but -- okay, help me, I'm stru- -- cable telephony is not subject to ETC, is it?

MR. RHYNER: We haven't seen one of those yet, but if the cable company starts to provide cable telephony in a rural community where there is Universal Service available I see no reason to think that they won't apply to be an ETC.

COMMISSIONER HARBOUR: Oh, well, here I -- we're always in danger of tangents, but if that were the case under the current regime we wouldn't be seeing -- or we would we -- I guess because it were -- if it were seeking ETC it would have to come before us. Yeah, okay.

MR. RHYNER: Absolutely.

COMMISSIONER HARBOUR: Okay.

2700

(Tape Change)

Tape 2

0015

MR. AYOTTE: Commissioner, if I could weigh in at the appropriate time to provide comment on your question?

COMMISSIONER HARBOUR: Please, go ahead.

MR. AYOTTE: I think that the Rural Coalition did everything that they could to avoid answering your question. Your question was what are the rural carriers' concerns for competition and in their response it sounded much more like an anti-competitive ETC, don't allow wireless carriers to be ETCs.

They're not expressing concerns relative to competition. Their concerns are all grounded in terms of their objections to designating a competitive ETC and specifically a wireless carrier.

If wireless service is competitive to the rural LEC, then they're subject to competition today irrespective of whether the wireless carrier has been designated as an ETC, yet there's been no threat to their networks as a result of wireless competition and similarly if a wireless carrier is designated as a competitive ETC there is no effect on the level of Federal Universal Service support that the rural carriers will continue to receive.

Even the Commission itself noted in the Alaska Digitel order that concerns about any financial impact of designating competitive ETC concerns relative to the size of the Federal Universal Service Fund are simply not relevant to the question of whether you should designate a competitive ETC.

And without launching into a whole discussion of the FCC's portability rules and their Federal Universal Service Funding mechanism, the fact of the matter is when you have a competitive ETC, whether that be a wireless carrier or a landline carrier and there is competition for the incumbent LEC and more people subscribe to the network and the Universal Service support is distributed as the FCC has determined to the carrier that's providing the service, this is all a good thing.

More people connected to the network, more people having access to additional choice of services and Universal Service support being available to the carriers to enable those services to be affordable, these are all good things for the consumers and they're good for competition. But as it relates to the impact of the level of Federal Universal Service support to the incumbent LECs resulting from a competitive ETC, there is none.

Now, if there are changes and most likely there will be changes at the FCC level in terms of the manner in which they administer their Universal Service support, all designated ETCs are going to be subject to those changes, but those are really

funding questions and Universal Service policy questions which are far removed from the question of how do you get local competition at the state level within the confines of this proceeding.

Wireless carriers have been designated as competitive ETCs in a multiple of states and to date there has been no lost or disruption or threats to the network by the rural LECs. So I don't think the subject of Universal Service support and competitive ETCs is really the focus of this inquiry or should be the focus of your question. It's really the broader question of local competition and how the Commission can develop a regulatory climate which will foster that local competition not only in the urban areas, but also in the rural areas.

COMMISSIONER HARBOUR: Thank you for your comment. Mr. Rowe.

MR. ROWE: Commissioner, thank you. I'm Jim Rowe, director of the Alaska Telephone Association. I certainly respect those people who can always identify a good thing and there are many good things happening in Alaska, but I think we have to be careful and realize, as the prior speaker said, that there is competition there in rural Alaska. Even where there's not ETC designation, we recognize that competition, and the competition is for the disposal income that customers have that they can spend on modes of telecommunications.

However, the designation ETC is something that concerns us very much and its almost a mask for what it really is, it's USF. And it probably would be -- we'd probably be more careful in designating it if we always identified it with Universal Service Funding.

As the speaker said, there are good things happening out there. People can have access to wireless. They can call on the road when they have a flat tire. They might be on a snow machine and have the snow machine break down and you, kind of, alluded to that in some rural areas earlier in your comments, Mr. Commissioner, but you know what, I'm not sure those things are what was anticipated for being covered by Universal Service support, high cost support.

There are many good things out there, but all of that doesn't fit under the basic idea, the original idea of what Universal Service support is for. It is for people in rural, high cost areas that had no way to afford the basic cost of voice grade telecommunications. It wasn't mobile voice grade telecommunications.

And I think we have to be careful that all good things should not be paid for by Universal Service support even though the prior speaker is comfortable in knowing all the recipients even where wireless has come in, and I'm talking about wireless competitors who are getting ETC designation, are getting it.

At the federal level and quite honestly at my level we

certainly have many people who are concerned with the size of the fund. The political target it is as it's growing significantly larger. And it's what we're going to see in this state as is happening elsewhere particularly wireless service providers coming in and getting ETC designation and that fund going up dramatically.

These are good things for people when they can get wireless telephony and have more access to all our neighbors, all our friends and all our family, all our businesses and all our health care, but they're not necessarily things that should be supported by a Universal Service Fund unless it's redesignated what that use is, so I think we have to be careful. Thank you.

MR. AGOTTE: Commissioner Harbour, if I could just comment with respect to Mr. Rowe. I think this illustrates all of these concerns -- and I'm not trying to minimize or diminish these concerns. My point is quite simple, the objections that are being stated by the Rural Coalition as well as Mr. Rowe are really questions that are best directed to the FCC and to the Joint Board. They relate to the concerns and policy issues relative to the administration of Federal Universal Service support. They do not relate to matters of local competition in Alaska and they don't belong in this proceeding.

I respect the comments and the concerns. I just don't think they're going to further the Commission's task of

developing the local competition rules in responding to the Legislature. They are separate and distinct. They all relate to question relative to eligibility for and use of Federal Universal Service support. Those issues which are legitimate, important issues, but they do not relate to the questions of local competition.

COMMISSIONER HARBOUR: Well, that may be more than I bargained for, but I appreciate it.

DR. LEHMAN: Well, if I could add one thing.....

COMMISSIONER HARBOUR: Dr. Lehman.

DR. LEHMAN: .....then without taking any stance on whether it does or doesn't belong in this particular proceeding, it does underscore what I think is part of ACS's deregulation proposal that, in fact, designation of multiple ETCs is an appropriate trigger for deregulation of the incumbent carrier.

The fact is that their ability to sustain prices above competitive levels is undermined by designation of multiple ETCs. That's what we're talking about is, does the incumbent still need to be regulated for the retail price they charge in that environment and I think the discussion you've just heard illustrates that they have power to take more from consumers than they should get is really mitigated by the fact that there are multiple ETCs and that is an issue in this proceeding.

COMMISSIONER HARBOUR: Thank you for adding that. I'm

just going to add some with this question the icing on the cake for my selfish purposes and it might be relevant as we reach final considerations on it.

Probably a number of the members of the Rural Coalition and the ATA have subsidiary sisters, others who are -- who have PCS licenses who are -- who also operate wireless licenses, is that true?

UNIDENTIFIED VOICE: Some.

COMMISSIONER HARBOUR: Some, but not all?

MS. GRAHAME: Mr. Rhyner's companies do not, for example.

COMMISSIONER HARBOUR: Okay. My question is, if -- to the extent that a rural LEC believes that the rising wireless technology movement to that technology is threatening, why -- is there some reason why, maybe it has to do with license applications or allocations, but would not every rural LEC wish to acquire such a license and preempt competition by fully covering the area by both wired and wireless service?

MR. ROWE: May I, Commissioner?

COMMISSIONER HARBOUR: Please, I'm just -- I hope it's a logical question.

MR. ROWE: I think your patience will probably bring an answer to you in the new future. I don't think that preempts competition. I think there's some logic that has stopped our companies up here from doing that in the past. We realized two years ago that this was a ploy that companies that did have

cellular affiliates could certainly go in and apply for ETC status and get Universal Service Funding. And, in fact, we've had individuals that have told us that would be the thing to do because it's the way the trend is going and, indeed, they were correct.

We still see in real logic this isn't reasonable. That's not what Universal Service funding was for. And for people who have been providing what they see as quality service to rural Alaska realizing the costs and realizing the finite amount of support from the national forum for this, it didn't seem like a logical thing.

I think you will probably see it coming before this Commission and in all honesty, I think the fiduciary responsibility of the directors and management demand that they will come before this Commission and ask for ETC status for their cellular affiliates.

COMMISSIONER HARBOUR: Okay. I'm dangerously close to leading into a wide tangent, but since I did open it I have to ask -- let Mr. Rhyner and Mr. Jackson conclude here.

MR. RHYNER: I think part of the problem with the wireless service in rural Alaska is the -- the answer to your question is going to be very much the reason why many of the small LECs have gone away from their long distance affiliates.

The cost of transport into the Bush in Alaska is so cost prohibited that it's difficult to interconnect a cellular

service or a wireless service to the network to do roaming and many of the small carriers are finding nationwide are out of business because they can't be connected and if you can't provide roaming services to your wireless customers, then they're very often not interested in paying a premium price for a wireless service in the Bush that can only be used in that village.

But when you have some other connection into the villages that may provide the possibility to aggregate those services and get that transport at a more affordable level, so there are entities out there that could eventually afford to be able to do that.

COMMISSIONER HARBOUR: Thank you. Mr. Jackson.

MR. JACKSON: I was just briefly going to mention, based on my recollection, this may be information you already have and I would invite someone like Dr. Lehman to correct me if I get it a little wrong, but initially there were two cellular licenses in each market and one of those licenses was essentially reserved for local exchange carrier.

Now, in some instances that got complicated because the size of the area they may have been more than one local exchange carrier, but the local exchange carriers did have, sort of, a leg up the first time around in getting the licenses for cellular.

And then when PCS came along there are essentially, I

think, five different licenses in each area of different sizes and there was no leg up particularly for the LEC at that point, but there were -- those were sold at auction.

There's a pretty good bit of wireless spectrum out there for people who want to get into the business if they want to.

COMMISSIONER HARBOUR: Thank you. Mr. Hearing Examiner, I'm through for the time being.

HEARING EXAMINER OLSON: Ask Commissioner Giard.....

CHAIR JOHNSON: I think Ms. Grahame.....

MS. GRAHAME: Commissioner Harbour, if I might.

COMMISSIONER HARBOUR: Please.

MS. GRAHAME: I think I can provide -- I think I can conclude this discussion in a way that would be beneficial to you. We are not here to discuss Federal Universal Service policies and I don't think we have. We didn't in our comments. To the extent we've mentioned them it's been in response to your questions.

The whole issue evolves around HB -- from our perspective HB 111 required you to define a competitive service area and we have provided a definition that has two brightlines and so in the context of the designation of multiple ETCs that is something that we have presented to you as a brightline definition for the definition of a competitive service area. Thank you.

COMMISSIONER HARBOUR: Thank you.

MR. AYOTTE: And, Commissioner, if I could comment on Mr. Grahame's remark, if the Commission determined that the designation of multiple carriers as ETCs within a given area constitutes an appropriate competitive service area for purposes of the local competition, I think the Commission can make that determination. And on behalf of Dobson, we don't express any view one way or the other as to whether that's an appropriate standard, I -- but I will say it is certainly a brightline standard.

I think, however, that is a fundamentally different question and one that can be answered without the necessity of having to undertake consideration of the Rural Coalition's proposed Universal Service Fund regulations. If we're not here to discuss Universal Service policies, and we're not here to analyze those policies, then the Rural Coalition's proposed regulations which go directly to the questions of Federal Universal Service Funding designation of multiple ETCs, what sort of application processes are necessary, et cetera, et cetera, then those matters really don't belong in this proceeding. Thank you.

HEARING EXAMINER OLSON: Commissioner Giard.

COMMISSIONER GIARD: I'm going to ask questions today about competition, market power, tariff filings and then possibly the dominance issue which I am still having some confusion on, not in terms of the IXC, but in terms of the LEC.

So, I think, I was going to talk about ETC, but I'm not going to now. Not yet, I think we did enough on that for the record.

So I think I'm going to start with competition and I'm going to address my questions, because ACS was the first to file its regulations and its regulations are the ones that I used and I think other people have used as a basis.

When we're talking about competition, Mr. Moninski, would you please, again, define for me your two stage process and how you would identify and determine competition? And then, at the same time as you do that, tell me how rate regulation changes in each step so that I can write it down and have it clear in my head for all of my follow on questions for GCI, okay?

MR. MONINSKI: Okay. The two stage process is as follows; when a competitor enters a local exchange market and provides service via any platform -- and I will list a few, but there may be others, okay. It could be via total service resale, it could be by a totally separate overlay network, it could be wireless, it could be cable telephony, it could be the use of unbundled network elements, it could be any form of competition whatsoever based on any platform. When that event occurs and a competitor is actually in the market offering services such that at least 50 percent of the customers in that market have a choice of provider, at that point the incumbent carrier would be declared non-dominant.

COMMISSIONER GIARD: Okay. I'm going to stop you there if

I may, please, and I'm going to ask you some questions about that definition that you just gave me. As we heard testimony today that talked about wireless not really supplanting the first telephone line, you guys call it an access line, but for me it's my home line, so how does the consumer benefit from your definition of competition of the mere existence of a wireless? How does the person who owns an access line, a 274 telephone number, benefit from if the -- if that line is historically across the country not being supplanted by wireless, how does the consumer benefit from your definition of competition?

MR. MONINSKI: What we've seen so far harkening back a little bit to Commissioner Harbour's questions is a fair amount of anecdotal information about that, perhaps, not a lot of hard evidence about that, but -- but without trying to debate that we -- even if that -- even if it's true that customers don't today perceive a wireless alternative as being a clear substitute for their wireline, their primary wireline service, there's nothing to prevent that evolution. There's nothing that says that in a particular market -- in a particular Alaska market that consumers may very well begin to move in that direction.

The availability of a wireless alternative provides not just a voice alternative to a wireline voice service. As we know wireless services are expanding in their sophistication

and in their scope. They're expanding in their availability of providing data services. We are going to see that happening more and more often. The wireless service also provides an alternative to traditional long distance service so it competes in that market as well.

I believe, and ACS believes, that the availability of a wireless alternative presents competition in a variety of ways not simply primary line -- primary wireline substitution test.

COMMISSIONER GIARD: Okay. I don't think that you've satisfied my question because what I asked you is how does the consumer who has a line going to their home and you have told me in your response that there is, you know, right now people -- and I think that there's several people, Mr. McKenna he flew off, but that wireline is not really being replaced by wireless.

So your definition of a competitor entering a market includes wireless, cable telephony, you know, any form and so it's your definition and I'm asking you to defend it. And explain to the Commission how we could accept and adopt your definition and also meet our obligation to the consumer? And you didn't explain to me how the existence of a wireless competitor justifies the label of a competition in the market, the one line that's going to their home. Do you want to try again or do you want to change your definition?

MR. MONINSKI: Well, I don't want to change my definition.

COMMISSIONER GIARD: Okay.

MR. MONINSKI: Okay.

COMMISSIONER GIARD: Then maybe you want to try again.

MR. MONINSKI: I don't know that I'm going to be able to give you more examples of how the consumer benefits by the availability of wireline competition.

COMMISSIONER GIARD: Okay.

MR. MONINSKI: Other than the fact that, again, wireline -- wireless competition rather, provides competition beyond simply that primary voice grade, wireline service that, sort of, created the context of your question. I think we need to look at wireless and wireline competition in a broader context and I also think we need to evaluate ACS's proposal in terms of the degree of regulatory relief that's being proposed.

We're not simply saying the minute you have a wireless carrier in a market you deregulate, you detariff, you turn everybody loose, that's not the proposal.

COMMISSIONER GIARD: Okay. Dr. Lehman, do you have any comments on the existence because you also in your testimony spoke of the definition of competition, but I understood your definition to be more in line of facilities based? Are you guys in conflict on that or do you support.....

DR. LEHMAN: I think my comments more specifically address the second stage of this process, but I do think there's some commonality between my answer there and the answer to the

question you just asked which is the -- to see how consumers gain by removing the dominance label you have to say well, what is the dominance designation achieving for consumers and what is it giving up.

And it's my position that labeling a carrier dominant restricts their ability to offer the consumer new, innovative packages including different pricing schemes and to the extent that it's unnecessary it should be removed. To the extent that it's unnecessary. Is it an appropriate amount of regulation that remains in particular markets depending on whether this is the first stage or the second stage that's been reached, but handcuffing the incumbent does not help consumers any because it just says that one of their principal carriers is not able to be as flexible as they might otherwise.

COMMISSIONER GIARD: Dr. Lehman, if wireless doesn't replace the access line then how are we handcuffing the incumbent? I mean, the regulation has historically been on the benefits to the consumer from having the low cost, most efficient wireline going to their home, so when you build your definition for competition, which is important and I'm considering it, you seem to have, you know, put everything in the soup and I wonder if you want to reconsider based on asking us to declare an area competitive when wireless.

The Rural Coalition has come in and said we've got wireless people operating already against our LECs. We don't

-- that doesn't bother us. We're concerned about ETC and Universal Service Funds. We've already got wireless people operating. So they're not asking us to define something as competition just based on the mere -- unless I'm wrong, Ms. Grahame,.....

MS. GRAHAME: No, no.

COMMISSIONER GIARD: .....and you can correct me, so.....

MS. GRAHAME: That's correct.

COMMISSIONER GIARD: So your definition is even broader than the Rural Coalition's definition which is troubling because I -- it asks us to define competition based on a very big difference between like type (ph) services. There is no real like type service that I can find between a wireless service offering today -- I mean, I don't really think the RCA should be on the bleeding edge. I don't mind if it's on the leading edge, but between a wireless service and that line going to my house 'cause I don't have a cell phone.

DR. LEHMAN: This would be a easier question for me to handle if we could talk about the stage two designation..:..

COMMISSIONER GIARD: Well, all right.

MR. MONINSKI: But I'd like to take a cut (ph).

COMMISSIONER GIARD: Okay.

MR. MONINSKI: We have all grown up in this process operating under the theory that regulation is a substitution for competition, that regulation is probably a suboptimal

substitution for competition.

In ACS markets -- one of the reasons why this is going to be a tough question for ACS, in ACS's markets while I personally do believe that competition on any platform should be considered in terms of the degree of regulatory relief that might be granted to the incumbent, as a matter-of-fact, the situations that we have in all of our primary markets relative to competition is that our primary competitor is a wireline competitor.

We have wireless competitors out there as well. I'm not sure that I'm aware of any market right now where we face competition only from a wireless carrier. So from that standpoint our significant concern and significant issue is on the wireline side.

In this proposal like all of the proposals that we've made we've advanced them because we think they're appropriate. We think they're in the public interest. We think it's time to consider them. Any and all of them may not be perfect. There may be other approaches that could be taken that would be reasonable and produce an equally good result.

Right now if the Commission were to decide well, that's not go -- let's not include wireless in that scheme of things, but we will consider other forms of competition as potential trigger mechanisms for regulatory relief, at the end of the day that probably still produces a good result for ACS.

COMMISSIONER GIARD: So are you offering that?

MR. MONINSKI: Well, I hate to tell you that I -- that I don't think that wireless offers important levels of competition. I think what I am saying is that is -- that's not the primary form of competition we are facing today. If it wound up not being in the reg, but other things stayed in the reg, I think we would still realize a good result.

COMMISSIONER GIARD: 'Cause when I recall way back when I worked a little bit with ATU was that MTA also had a wireless and then MTA and MacTel, kind of, merged or something, but I was thinking that under your definition as you've prepared it way back in '97 or '98 or whenever the heck people started getting cell phones around town, we should have, based on your definition, we should (ph) have backed off and not regulated ATU because there would have been wireless providers in this city. Would that have been appropriate for us to do?

MR. MONINSKI: I'd have to go back and check the chronology because I think it may have predated the Telecom Act.

COMMISSIONER GIARD: Okay. So the day after the Telecom Act?

MR. MONINSKI: Ah, the day after the Telecom Act if you took a literal reading of what we have proposed then, yeah. Yes, that would have occurred.

COMMISSIONER GIARD: Would that have been the right thing

to do for the consumers at the time?

MR. MONINSKI: That's extremely difficult question to answer. It would depend upon the nature of the deployment of the cellular services, the kinds of services that were being offered, whether or not substitutable services were part of the package. It might have been, but my guess is the Commission probably would have thought not because we were at day one of competition, whereas we are now at day seven year of competition as we.....

COMMISSIONER GIARD: Mr. Moninski, you.....

MR. MONINSKI: .....consider these regs.

COMMISSIONER GIARD: .....don't like to gracefully give in, do you?

MR. MONINSKI: I -- would say -- I would say this, I try to be graceful. I would say this, again, if that element came out of ACS's proposal I don't think you'd see ACS jump up and down and object and ask for reconsideration if you even can in a rule making.

The one thing though that I would say just so that I don't fail to say it and that is we do believe that the reference to competitive ETC is an important reference and needs to stay in the definition.

So if we're talking about a situation where you have a wireless carrier who had not been designated a competitive ETC coming out of the definition again that is probably something

we can probably live with.

COMMISSIONER GIARD: Okay. I'm not going to go into the competitive ETC area right now. So go ahead on stage -- I'm done with stage one. Let's move on. Stage two.

DR. LEHMAN: Could I answer that same question you just asked then as far as.....

COMMISSIONER GIARD: Yes, that would be good of you, thank you, Dr. Lehman.

DR. LEHMAN: I think we focus too much on whether wireless is or is not a substitute today. The point of designation of a second ETC, and let's just deal with the wireless issue for now, because of the importance of high cost funds you have to say what can a wireless carrier offer people once they are receiving high cost funds. That is a very different level of competitive pressure than what exists today and people may not be substituting now, but if you get an allowance that says would you like to take a wireless phone at half the price of what it was before, that may be a very real competitive threat to the primary line.

And the point of deregulation is not to determine is it or is it not a substitute. It's to allow the market to chose the best substitute that's available to them. And what I would maintain is in stage two the trigger for deregulation is sufficient competitive pressure that once you have those multiple ETCs there is no need to regulate retail rates any

further.

COMMISSIONER GIARD: Okay. So why don't we start again with a definition of what stage two is?

MR. MONINSKI: By stage two are you referring to ACS's definition of significant competition?

COMMISSIONER GIARD: Um-hum.

MR. MONINSKI: Okay. That definition requires the presence of a facilities based competitor in the market either via a completely separate network or some hybrid network that, perhaps, relies on unbundled network elements or the UNEP platform that is capable of offering service to at least 75 percent of the customers in the market.

COMMISSIONER GIARD: And what is the effect of that on regulation?

MR. MONINSKI: The effect of that on regulation would be when that trigger had been reached that all LECs providing service in that market would then be price deregulated and would no longer be required to file tariffs.

COMMISSIONER GIARD: But we talked about a noticed tariff.....

MR. MONINSKI: The notice tariff was a filing that would occur at stage one of competition.

COMMISSIONER GIARD: Okay, thank you for clarifying that. Okay. You may take a deep breath.

There is a great difference between ACS's definition of

competitive service area and that's when it gets into the 75 percent which GCI has said is not real reasonable. And really it's just -- the mere existence -- and I'm interpreting what I read, mere existence isn't enough.

And so I was, kind of, thinking about the overall existence of competition in all telecommunication in Anchorage and I was thinking about how does GCI define cable competition? How is -- is GCI cable in Anchorage a competitive service offering? Has it got competitors?

MR. JACKSON: Does GCI's cable service have competitors? It's probably going to -- it has some level of competition. It has the -- it's growing. It has the dish competition which is evidently going to a become stronger competitive force with some of the local channels being on the disk and with ACS having a marketing agreement with the dish, so that's going to be more competitive.

I guess I'll -- it's hard for me to talk about cable without saying this and actually it came up yesterday, when we talk about market power we always tend to focus on whether or not there are competitors, but you also have to look at the other side of the equation which is to what extent is the service a necessity.

I mean, if I've got a monopoly over buggy whips in Anchorage, I mean, that doesn't really give me a whole lot of market power over anybody because, you know, they can do

without buggy whips, but.....

COMMISSIONER GIARD: Well, you're deviating so come back.

MR. JACKSON: Okay. Well, the point -- you asked about cable, cable competes in a broad entertainment market, in my opinion. They compete against going down to Blockbusters. They compete against other things. Those may not be competitors, but there are substitute services so I'm trying to answer whether or not cable is in a competitive market.

COMMISSIONER GIARD: So was your answer yes?

MR. JACKSON: There is limited competition for cable against.....

COMMISSIONER GIARD: Okay.

MR. JACKSON: .....our cable television services.

COMMISSIONER GIARD: Okay. So how do you determine that cable competition? By which manner and method do you use to determine that there is cable com- -- like, take dish. I mean, you know, that I'm familiar with disk network, so how do you determine that there is cable competition?

MR. JACKSON: Market share would be one factor. Ability to sustain higher prices than appropriate, then competitive.

COMMISSIONER GIARD: So dish -- is dish a competitor of GCI cable in Anchorage?

MR. JACKSON: Certainly.

COMMISSIONER GIARD: Okay. So how have you determine that dish is a competitor?

MR. JACKSON: I don't know.....

COMMISSIONER GIARD: Okay.

MR. JACKSON: .....other than just the obvious observation that they're on people's houses and that they're advertising and it's an alternative choice.

COMMISSIONER GIARD: Okay. How does it.....

MS. TINDALL: Unlike.....

COMMISSIONER GIARD: One second, Dana,.....

MS. TINDALL: Okay.

COMMISSIONER GIARD: .....if you don't mind. How is it an alternative choice?

MS. TINDALL: Did you want him to specifically answer?

COMMISSIONER GIARD: Well, he's the one that said it was an alternative choice. I don't care who answers it, but -- I mean, there is a reason that I'm asking.

MR. JACKSON: I guess.....

COMMISSIONER GIARD: How is it that it's a competitive choice? How do you know that?

MR. JACKSON: I know that because I see advertisements for it, I see people in malls selling the service and I see people taking advantage of the service by installing the dishes on their houses and I talk to people who use that as their way of getting video.

COMMISSIONER GIARD: Okay. What I would grind this down to say is that dish is a competitor because it passes or it

covers your service area pretty much.

MR. JACKSON: I would agree with that.

COMMISSIONER GIARD: Okay. So even if dish had two customers, in Anchorage, would you consider a customer because it -- or a competitor because it passes or it covers your service area in cable?

MR. JACKSON: I'll say -- I'll defer to Dana. I'd like to -- I'd just like to say something about that.

MS. TINDALL: We would call that limited competition even if it covers the service area. And it's distinguishable also from local telephone competition because of the ease in which customers are able to switch between companies which is distinguishable between the local -- from the local telephone market which is an aspect of how competitive the market is.

COMMISSIONER GIAPD: So, Ms. Tindall, would you say that it's harder to switch telephone services than it is to switch cable?

MS. TINDALL: Very much so. There's a very clear barrier to customers exercising the availability of choices which causes us not to want to rely on simply the offering of a choice, but rather whether or not customers have actually exercised that choice and that's because when a customer goes to exercise its choice in the local telephone market it is -- then requires the incumbent carrier to do a lot of work to actually switch that customer from themselves to the

competitive carrier and it turns out that that doesn't go very smoothly for a variety of reasons. And that is distinguishable from other markets where you can just simply drive up and buy the service.

COMMISSIONER GIARD: You wanted to add to that?

MR. JACKSON: It's just a small point, you do have a coverage. One of the reasons the dish is not as competitive against cable as it might be is that because the satellites have a relatively low look angle. Some people can't see over their neighbor or over their trees or over the ridge, so coverage even though -- I mean, yes, it covers the area, but there's a lot of spots it doesn't cover so that reduces it. That's a function of not being able to take advantage of it and if people aren't actually being able to take advantage of it then it reduces the amount of competition that it presents.

COMMISSIONER GIARD: Right. But you have said that you believe that dish is a competitor because it covers your service area.

MR. JACKSON: Well, I think I've said limited every time I've said that, but, yes.

COMMISSIONER GIARD: Okay. But limited would be what, 80 percent, 40 percent, 60 percent, maybe 75 percent?

MR. JACKSON: Within Anchorage, I would -- I -- you're asking me to speculate. I would guess 80 percent. I don't know, but most.

COMMISSIONER GIARD: Okay. It's close.

MR. JACKSON: Most.

COMMISSIONER GIARD: So I don't really understand when we're talking about competition why there would be (telephone interruption) wondered when you wrote your objections and you re- -- you preferred instead that a percentage of the market had actually been attained for their to be competition.....

MR. JACKSON: Well, that's only if it's (ph) a significant competition level.

COMMISSIONER GIARD: At the signif- -- I understand that's phase two or stage two or whatever you want to call it. That's where we are. So it was your preference that they would -- the competitor would have a certain percentage of the market gained?

MR. JACKSON: Twenty percent for the.....

COMMISSIONER GIARD: Twenty percent.

MR. JACKSON: .....significant competition level.

COMMISSIONER GIARD: As opposed to having simply the ability to have competition out there. And so.....

MR. JACKSON: I think to continue your analogy I think that the -- I guess, to some extent forgetting about the fact that some people are blocked by the skyline or whatever, that a situation that was comparable to the dish versus cable would meet our definition of competitive service area for the first step. And at that step the incumbent does gain a large degree

of rate flexibility and as a matter-of-fact, Dr. Lehman mentioned, you know, new packages. They are not restricted from offering new packages at that point.

The only thing -- they get freedom at that point to offer anything they want to without Commission approval except for increases. And according to Mr. Lehman, they wouldn't be able to do a -- Dr. Lehman, they wouldn't be able to have an increase anyway because they don't have market power.

COMMISSIONER GIARD: I think that they could do -- I thought -- well, Dr. Lehman, do you want to respond to that, about the increase (ph)?

DR. LEHMAN: Yeah, I -- well, they might have power to increase rates if they're below what a competitive level would be, but I would maintain they don't have the power to increase it above competitive levels and sustain it.

COMMISSIONER GIARD: Okay. So the -- I believe that I read, Mr. Jackson, that GCI is not really a proponent of the step two process, the two stage?

MR. JACKSON: We are a proponent of.....

COMMISSIONER GIARD: You are, okay.

MR. JACKSON: .....two stage and our -- our first stage comes.....

COMMISSIONER GIARD: I'm sorry I misunderstand.....

MR. JACKSON: .....when there's essentially, you know, a competitor offering service in the market regardless of market

share, just that there's a competitive choice available. And then stage two comes in when the competitor has 20 percent market share or a group.....

COMMISSIONER GIARD: Okay.

MR. JACKSON: .....of competitors have 20 percent market share and at that point the dominant carrier or the incumbent carrier, whatever you want to call 'em also has the ability to raise rates without getting Commission approval.

COMMISSIONER GIARD: Okay, thank you for that clarification.

MR. JACKSON: But -- and we have the 30 day notice period in both instances.

COMMISSIONER GIARD: We're going to get to that notice period in a few minutes. So, Mr. Moninski, when you established your 75 percent simply needs to serve -- to be available -- cover 75 percent of the area, were you advised -- did Dr. Lehman advice you of that? Who are your advisors on establishing that for a competitive service area?

MR. MONINSKI: Well, that trigger was basically developed internally at ACS without Dr. Lehman's advice or without the advice of anybody external to the company.

COMMISSIONER GIARD: What research did you do to substantiate that it would be good public policy to do it based on a cable like method of coverage, if you will, than something more concrete which is actual market share?

MR. MONINSKI: We did not perform research.

COMMISSIONER GIARD: Okay.

MR. MONINSKI: We have historically and consistently opposed a market share trigger as being irrelevant.

In Docket R-02-06 we also proposed a two step approach and, I believe, our step two in that proceeding was based on a 50 percent reach of a facilities based competitor. We took a look at that and we spoke about that internally and said maybe we might want to come back to the Commission and pick a number that showed a more overwhelming access of facilities based consumer choice and as a result we bumped our number from 50 percent to 75 percent.

COMMISSIONER GIARD: Dr. Lehman, in here you talk about -- in your first response, if you wouldn't mind, if I can find it, you talk about a guarantee of market share and I was curious about that guarantee of market share. If you could explain more fully how you believe that using GCI's market share definition will essentially guarantee market share and -- could you talk a little bit about.....

DR. LEHMAN: Well, I mean,.....

COMMISSIONER GIARD: .....how you think that will happen? How does that guarantee.....

DR. LEHMAN: I'll qualify the word a little bit in that I don't mean that it guarantees that, for instance, GCI would, in fact, get 20 percent of the market. What it does guarantee is

that deregulation and allowing fair and unfettered competition between the market participants won't take place until the 20 percent share is reached.

I guess I would go a little bit further to say that since you wouldn't have fair and unfettered competition until that point, it suggests that it will be easier for a competitor to reach the 20 percent level and certainly the evidence in the Alaska thus far indicates no difficulty in the markets that have been entered of the competitor reaching the 20 percent level and going beyond.

COMMISSIONER GIARD: Okay, okay. I think I'm ready to move on. I want to talk a little bit about and follow up on Commission Harbour's question which addressed and which you referred to the chart saying that if GCI continues to attain market share, you know, soon there's going to be 100 percent market share and that's going to be that based on your chart which I am looking for. Is that an economic theory?

DR. LEHMAN: I did not make any statement like that. My chart shows the actual history and I contain no projections? I don't --.....

COMMISSIONER GIARD: So whose economic theory is it that.....

DR. LEHMAN: I don't do projections.

COMMISSIONER GIARD: I know I heard 100 percent. I know I heard it.

MR. MONINSKI: Yeah, you did and I said it.

COMMISSIONER GIARD: Oh, okay. Is that your economic theory?

MR. MONINSKI: I don't know that I am suggesting an economic theory or somebody's economic theory to support that. We, again, as this chart was being developed and others that aren't in front of the Commission right now, simply tried to do trend projections based on today' set of circumstances, based on the cost advantage that we believe that GCI has under.....

COMMISSIONER GIARD: Um-hum.

MR. MONINSKI: .....UNE rates, based on some other disadvantages, competitive disadvantages that we believe we labor under as a result of the current regulatory regime.

And we said assuming none of that changed is there any reason to believe that this trend that we've seen where GCI has captured more than 40 percent of the market in Anchorage making it the highest level of penetration of any market in the country and something in the twenties or close to them in both Juneau and Fairbanks in a very short period of time, was there any reason to believe that those trends would be altered.

And we came to the conclusion that, again, given the realities of today's circumstances we couldn't see how that trend would be altered and that the logical projection of that trend would be that GCI would continue to capture market share, perhaps, to the point of 100 percent.

COMMISSIONER GIARD: Is your marketing fellow on?

MR. MONINSKI: He is not and I -- and it is for no lack of due diligence. We have been trying to reach him ever since we left the hearing yesterday and those efforts continue today. He was out of cell phone reach and as far as I know he has not made contact. Tyson.

COMMISSIONER GIARD: Okay.

MR. MONINSKI: And if we find him, we will make him available.

COMMISSIONER GIARD: Okay. Is that GCI's -- or ACS's published belief that things if they continue on as they are right now they will lose 100 percent of market share?

MR. MONINSKI: When you say published, I'm not exactly sure I understand the term?

COMMISSIONER GIARD: I'm curious for -- and it's probably more appropriate the question for the vice president of marketing, but to have a marketing strategy or a belief that if things continue today as they are they result in 100 percent of the market going to your competitor whether that is something you proclaim at your Board meetings or is it something that is just simply an anecdotal belief or an attempt to persuade the Commission of the direness of the situation and the need for change?

MR. MONINSKI: I would -- I'd be careful to refer to it as anecdotal because I think there's more substance to it than

just anecdote. I don't know the degree to which those trends have been discussed at the Board level or in the financial communities.

I do know that the specific chart that I was referring to has been presented in presentations to the FCC. And I want to be careful, too, not to just say that or suggest that we're planning on sitting back and just letting that happen.

That there are marketing plans, that there are initiatives being developed that we hope will alter that trend, but, again, the assumption behind the chart that I was discussing was that, that because of competitive disadvantages, tariffing requirements, the results of having certain filings getting suspended, the inability to re-balance rates over long periods of time which has been the case since competition entered the Anchorage market, to the extent that we're unable to alter those kinds of impacts on our ability to go out and market head to head are not changed then it's hard to imagine how the trend projection would change.

COMMISSIONER GIARD: Is there an ILEC that you're aware of in reference again to your paragraph 14, Dr. Lehman, that's gone out of business since the 1996 Telecom Act?

DR. LEHMAN: I'm not aware of, no.

COMMISSIONER GIARD: Do you believe that in reference to the testimony that was given by -- or that was read by Mr. Jackson which says that ACS's EBITDA, which I'm not -- earnings

before income taxes and whatever, is increasing that that substantiates the claims of Mr. Moninski? And we received conflicting information.....

DR. LEHMAN: Yeah, I've not looked at all at the evidence regarding ACS's financial position. What I would say though is to go -- is to emphasize that the substance of my testimony is very much at odds with the idea that the financial well being of any company or the market share of any company should be a criterion to look at in terms of deciding when deregulation is appropriate. I think it would be unfortunate.

It's not to say that you shouldn't be concerned about financial position of companies, but in cert- to -- as a trigger for deregulation it should be a forward looking trigger not something depending on what actually happened in the marketplace yesterday, but what could happen.

And I don't think wheth- -- I think it would be unfortunate to go back in and say well, because this company is financially in a bad position we must do the following, that is the worst of managed competition. That is not.....

COMMISSIONER GIARD: Well, act- -- yeah.

DR. LEHMAN: .....real competition.

COMMISSIONER GIARD: Actually what we're trying to gather is evidence supporting your claims and so you talk specifically about handicapping the incumbent can threaten their viability and so while Commissioner Harbour was also trying to.....

DR. LEHMAN: Yeah.

COMMISSIONER GIARD: .....ask you for substantiation of this claim, in actual fact in the Lower 48 or wherever, because our balance, as you're well aware, is the consumer need versus the industry need. (Telephone interruption).....

Okay. Let's move on. Okay. I'd like to address the question and issues of tariff filings because we're now in -- I'm going to go back to stage one where the tariff filing becomes a notice tariff. So in a notice tariff situation I have a couple of questions for ACS.

Actually I have a question for GCI. How has -- how is GCI harmed operating under its 30 day notice requirement as opposed to a shorter notice requirement. If GCI had an option of a shorter notice requirement, would it welcome it gleefully or would it prefer to maintain the 30 day as a CLEC in a non-dominant world? So pretend this is past, ACS was no longer dominant, so you're both equal, you get to go to 15 days, too.

MR. JACKSON: The amount -- the notice period we do not believe has a great effect on us or on any other competitor who's against -- whose -- we're in competition with. We think that there will continue to be the need for fairly light review by the Commission of.....

COMMISSIONER GIARD: I didn't get into the review.....

MR. JACKSON: .....tariff filings the way we talked about yesterday, so the notice period is primarily a function of how

much time you need.

COMMISSIONER GIARD: Okay. Do you agree with that, Mr. Moninski, that the notice period is basically the time that we need?

MR. MONINSKI: I have to relay to you the inputs that I have received from ACS marketing people and I can tell you.....

COMMISSIONER GIARD: Which people aren't around.....

MR. MONINSKI: Who aren't here right now, but I am certain that they would say this to you.....

COMMISSIONER GIARD: Okay.

MR. MONINSKI: .....if they were here. I cannot tell you the numbers of times that I have been approached by marketing people with the complaint that they are required to tip their hand to the competitor by virtue of making 30 day filings. So given that and given the very strong feelings that they have expressed to me about that, our position is different from GCI.

We agree that notice tariff filings need only be given a very limited or light review, that that is why we think a seven day notice period was adequate for that purpose, but more importantly because of a marketing perspective reflected in that proposal we believe that getting to market faster is an important strategic consideration.

COMMISSIONER GIARD: Okay.

MR. JACKSON: Commissioner, could I amend my previous answer a little bit after talking to Dana?

COMMISSIONER GIARD: Yeah.

MR. JACKSON: The period -- in some instances it will be the competitor that will bring anti-competitive concerns to you during.....

COMMISSIONER GIARD: I would think.

MR. JACKSON: .....your notice period. So I said it was entirely how much time you need.

COMMISSIONER GIARD: Right.

MR. JACKSON: I should have said it always includes how much time the competitor needs to look at it to see if their -- those kind of concerns that we would like to bring to your attention.

And if I can just briefly respond to Mr. Moninski. I guess the way we see it is when you see something and whether you see it because it's already in effect or because it's been filed with the Commission, it takes -- I'm saying, they -- let's say they do something, it takes us a certain amount of time to react, figure out what we're going to do in response in, you know, whatever, let's say it's 15 days it takes us to figure out what it's going to take us to respond.

Well, whether or not there's the notice period that's 15 days that gets -- he gets 15 days tacked onto the 30 so they still have the 15 day advantage or it's 15 days without the 30 days then there's still 15. It really just, sort of, changes when the 15 day advantage starts from. It doesn't change the

fact that there's a 15 day advantage is the way we look at it.

2700 --

(Tape Change)

Tape 3

Log 0015

MS. TINDALL: And that's marketing advantage.

MR. JACKSON: Yeah, marketing.

MS. TINDALL: You know, coming up with a marketing plan.

COMMISSIONER GIARD: I understand.

DR. LEHMAN: I do have one thing to add to that if I could. And, unfortunately, I don't have any evidence on this, I don't think there is any, but one thing missing from this discussion is how the period of notice affects consumers, not the competitors.....

COMMISSIONER GIARD: I was just going to ask that question.

DR. LEHMAN: .....and I -- after years of studying competition I do have a gut feel that the shorter notice period the more intense the rivalry will be. I cannot support that with any evidence, but I do think it would be appropriate for the Commission to ask the question about how it affects the nature of competition the length of the notice period because that is a missing element in terms of what the effects would be of any particular notice period.

COMMISSIONER GIARD: That's a very good point to raise.

One of the things that I looked at, Dr. Lehman, in your testimony was the chart where you show state deregulatory developments. And one of the things that I would like ACS to provide is the support for -- I'd like to know what the tariff standards are in the Lower 48. You quoted New Jersey, Massachusetts and Rhode Island. I assume that you already know what those tariffing standards are. Would you.....

DR. LEHMAN: Let me check it then, I don't know that.....

COMMISSIONER GIARD: Okay. Okay. Well, that would be helpful to provide kind of a listing for me of what the tariffing standards are in the Lower 48. If there are two stages -- sorry.

HEARING EXAMINER OLSON: Commissioner Giard?

COMMISSIONER GIARD: Yes.

HEARING EXAMINER OLSON: I apologize for interrupting, but if we live up to our UNE starting at noon and have the lawyers show up at noon we're going to need to take a lunch break pretty soon.

COMMISSIONER GIARD: Okay.

HEARING EXAMINER OLSON: If.....

COMMISSIONER GIARD: I wasn't aware of time, you know, I'm just going, so....

(Whispered conversation)

HEARING EXAMINER OLSON: Did I tell you 12:30 or did I say noon?

UNIDENTIFIED VOICE: I don't remember.

COMMISSIONER GIARD: Okay.

HEARING EXAMINER OLSON: Okay. We'll go forward then.

COMMISSIONER GIARD: Okay. Well, I'm happy to take a break, but Mr. Saupe is looking to relax so we're going to hit him pretty soon.

HEARING EXAMINER OLSON: Okay.

(Off record comments)

COMMISSIONER GIARD: Okay. My question actually was already written down so it wasn't one that I just came up with. But you had conflicting testimony yesterday that I heard. One of them was that you said 30 days -- you need 30 days. And then I don't know whether I heard you say that 15 days was fine. I think you said that you need 30 days and Mr. Saupe came in and said 15 days is cool with us. So I need to know from both of you talking together what is your preference with relation to tariff filing deadlines?

MR. SAUPE: Well, first of all, let me interject and note from the long distance market where shorter tariffing deadline is important to us.

COMMISSIONER GIARD: Right. I'm -- sorry.

MR. SAUPE: But you don't want to hear that.

COMMISSIONER GIARD: My question is -- and I should have read my writing, but it was how does it impact the wholesale customers that ACS has? And with the R-T-A or whatever it's

called.....

MR. SAUPE: What I believe I said yesterday is that if the notice period is too short a total service reseller.....

COMMISSIONER GIARD: Right.

MR. SAUPE: .....gets caught in a bind because our price is directly tied to their price based on the wholesale discount.

COMMISSIONER GIARD: Okay.

MR. SAUPE: And if they raise or lower their price.....

COMMISSIONER GIARD: Right.

MR. SAUPE: ..... more quickly than we can put systems in effect to raise or lower our price there can be a period where we're squeezed.....

COMMISSIONER GIARD: Right.

MR. SAUPE: And so I believe our position has been and we're on the record as saying we would need a minimum of seven days in order to make a response.....

COMMISSIONER GIARD: Okay.

MR. SAUPE: ..... in a local market. We would prefer a slightly longer period for that very reason that it makes it possible for us to make a response, to notify our customers, do whatever advertising we need.....

COMMISSIONER GIARD: Right.

MR. SAUPE: .....those things. So our preference would.....

COMMISSIONER GIARD: That's fine. So.....

MR. SAUPE: .....be a minimum.....

COMMISSIONER GIARD: .....seven days would be the minimum, but you could live with it, is that what you're telling me?

MS. CATLIN: Yes, that is correct.

COMMISSIONER GIARD: Okay. So, Mr. Moninski, how are you planning to better treat your wholesale customers than just giving them the minimum seven days? Did it occur to you that you'd be willing to make some distinction in the regulations or otherwise for how you could provide them with earlier information or is that illegal 'cause I don't know?

MR. MONINSKI: It is interesting that you ask that question 'cause Ms. Catlin and I had this discussion yesterday afternoon. ACS is already under contractual obligation to provide AT&T with earlier notice than the tariff filing. I'll try and be gracious. We have not done as good a job of that as we should be doing and I have promised Ms. Catlin that we are going to go back and redouble our efforts in that regard to make sure that AT&T gets the contractual notice that we have committed, so it's already built into the interconnection agreement.

COMMISSIONER GIARD: So how many days?

MR. MONINSKI: Five days.

COMMISSIONER GIARD: So five plus seven would be 12. Is that why it's satisfactory to you?

MS. CATLIN: Yes, that would be satisfactory if that is

what occurs.....

COMMISSIONER GIARD: If it happens, right.....

MS. CATLIN: .....yes.

COMMISSIONER GIARD: .....got it. Okay. Do you want me to take a break, Mr. Hearing Officer?

(Whispered conversation)

HEARING EXAMINER OLSON: Go ahead.

COMMISSIONER GIARD: Okay.

MR. JACKSON: If I could just interject. I am somewhat scratching my head wondering if it is legal for ACS to give one competitor more notice of a tariff filing than they give another competitor.

COMMISSIONER GIARD: Well, they're a customer.

MR. JACKSON: And so are we. We also do some amount of total service resale, not -- certainly not exclusively like AT&T does, but we have a certain number of customers that are on total service resale.

COMMISSIONER GIARD: Yeah. That.....

MR. SAUPE: You can pick and choose from our contract.

MR. JACKSON: That thought has already occurred to me, thank you.

COMMISSIONER GIARD: See, he is awake back there. Okay. Okay. I would like to talk -- or ask some questions for a few minutes about market power. And I'm going to spend a minute telling you what I dont know which is I'm sure going to be very

interesting to you because I'm sure you all think I know everything, but what I don't clearly understand in the regs that were written and proposed, the ones that exist now and the ones that are proposed, is the implication of dominance and the -- how it fits with the carrier of last resort. 'Cause the way that I read it, understand it is the carrier of last resort for the LEC is a burden, you know, it's a burden to bear. And what are the burdens other than regulation? Okay. And let me do this better. Are there additional burdens other than regulation? If we remove ACS's dominance tomorrow just 'cause Nan's in a good mood and we remove dominance, you no longer were dominant and you were equal, what's the impact on that other than rate regulation?

MR. MONINSKI: I'll take the first cut. The way that the regs are structured today there is a linkage between being the incumbent, being a dominant carrier, and being a carrier of last resort. Those are all connected in the regulations that exist today.

Part of what's been proposed, I think, by most of us is based on House Bill 111, we need to delink the incumbency from the dominant carrier determination. The Legislature has also said regardless of what you do at least for now the incumbent local exchange company will continue to be the carrier of last resort. So now we've seen those three things being completely delinked such that you are able to consider the dominant

carriers issues on a stand alone basis. We've pushed away incumbency. We've guaranteed at least for now that the incumbent carrier remains the carrier of last resort so that.....

COMMISSIONER GIARD: Right.

MR. MONINSKI: .....we isolate on dominant carrier issues.

COMMISSIONER GIARD: Okay. So how does market power then feed into the definition of dominant or not dominant? Is there -- have I missed it? I don't mind if I have, just tell me.....

MR. MONINSKI: I believe -- I won't try and speak for everybody. I believe that everybody accepts the notion that a dominant carrier is a carrier that has market power. Where we get into the debate is trying to define market power.

COMMISSIONER GIARD: So market power equals dominant?

MR. MONINSKI: Yes.

COMMISSIONER GIARD: Okay. Good. I'm there. Now I can ask my questions. Am I there? Is there anybody -- okay, good. All right. When we talk about market power I felt that it was very interesting the distinction between ACS and GCI and even the Rural Coalition between the dominant and non-dominant distinctions as pertains to market power. So I'm going to start with the Rural Coalition because you talk about market power and the wireless moving in. If we put aside the USF funds which now I understand ETC equals USF so we made some big progress there, Mr. Rowe. But how does the impact of market

power change with a wireless carrier?

MS. GRAHAME: In our view it becomes irrelevant. In our view market power is in Anchorage intertwined with the reliance by a CLEC on an ILECS' network for access to the customer.

COMMISSIONER GIARD: Let's talk about is market power not an issue in rural Alaska? Is dominance not an issue in rural Alaska?

MS. GRAHAME: I do not believe it is relevant when you have a wireless carrier -- where you have a stand alone network competing with a stand alone network. And the stand alone network can either be a cable network or a wireless network. When you have a competitor entering a market on its own through its own facilities in our view notions of dominance are irrelevant.

COMMISSIONER GIARD: Okay. So you oppose GCI's position that dominant carrier regulation is needed?

MS. GRAHAME: We oppose it.

COMMISSIONER GIARD: Okay.

MS. GRAHAME: And we oppose it because, number one, we think it is irrelevant as applied to how competition is evolving in rural markets. And in addition, it would keep the ILEC rate regulated. And a potential change in the definition of dominant to non-dominant under GCI's regulation would take up to 180 days, six months.....

COMMISSIONER GIARD: Right.

MS. GRAHAME: .....and in a rural LECs market that's a lifetime and the same would be done.

COMMISSIONER GIARD: Okay. So dominance also in addition to equaling carrier of last resort also equals rate regulation which pulls us back into it.

MS. GRAHAME: We distinguish between carrier of last resort. We -- and under our regs you'll see we retain carrier of last resort.....

COMMISSIONER GIARD: Right, I saw that.

MS. GRAHAME: .....obligation.

COMMISSIONER GIARD: I mean everybody's....

MS. GRAHAME: Somebody has to serve the customer.

COMMISSIONER GIARD: Okay.

MS. GRAHAME: And we will take that on. We get Universal Service Funds to do so. We think it's the right thing to do.

COMMISSIONER GIARD: So in your mind the Rural Coalition is asking the RCA or proposing to the RCA that once a competitor enters your market and immediately affects market power or market power is no longer relevant or you don't have market power anymore? Explain again to me.....

MS. GRAHAME: Okay. The competitive -- the question -- the analysis is as follows; the question is not market power. The question is when is an area competitive. When is a competitive -- when is a rural area a competitively -- a competitive service area. And under our definition it is when

there is either a second local exchange carrier certificated or when there are multiple ETCs. It's a bright line trigger.

At that point in time the market is a competitive market area, the ILEC retains carrier of last resort responsibility, notions of dominance and non-dominance go away.

COMMISSIONER GIARD: Okay. So if seems to me if we're looking at competitive service areas again then is it the Rural Coalition's perspective that the coverage area which is what ACS proposed is an adequate trigger?

MS. GRAHAME: No.

COMMISSIONER GIARD: No?

MS. GRAHAME: No. We don't know how you measure that, number one. And number two, in a rural market a competitor could come in, put up a tower, capture the two canneries in town and take the vast majority of our income stream.

COMMISSIONER GIARD: Right.

MS. GRAHAME: And that's -- that would have a devastating consequence not only for that area, but for the other areas in the LEC's.....

COMMISSIONER GIARD: Right. So you want a revenue based, that's what you were talking -- that's in the testimony, okay. I remember now.

Okay. So I'm going to go back for a moment to GCI and ACS if I may and I'm going to finish up. The 180 days, what type of items would you anticipate, if you wouldn't mind going

through your market power definition again, because you had several criteria. And I would like to talk with you about those criteria for market power. And I have a few of them, but I know you know them better than I do.

MR. JACKSON: Only if I can find them.

COMMISSIONER GIARD: I have them right here. Market share, number and size.

MS. TINDALL: Could you repeat your question?

MR. JACKSON: Yeah, we're ready. I'm sorry, I didn't realize it was a question.

COMMISSIONER GIARD: Okay. I just was waiting for you to find them.....

MR. JACKSON: Oh, yes, I have them.

COMMISSIONER GIARD: .....and then I went off on my own and was looking for things myself.

MR. JACKSON: I have them.

COMMISSIONER GIARD: Okay. You have them.

MR. JACKSON: We have them.

COMMISSIONER GIARD: Okay. Based on market share is that your 80 -- your 20 percent, is that your trigger? When you talk about based on you want to evaluate over 180 -- or take 180 days to evaluate dominance. You don't want it to happen right when ACS says it does. You want us to take time to pause and think about it and consider these items before we go ahead. So.....

MR. JACKSON: Let me just talk about the legal structure 'cause.....

COMMISSIONER GIARD: Okay.

MR. JACKSON: .....this is a little bit strange. The 80 percent/20 percent is a bright line that would essentially allow someone who's still a dominant carrier to obtain the complete rate flexibility even for increases. So there're essentially two different ways for a dominant to get the second level of flexibility. One is there's a bright line, it sort of automatically happens in terms of rate flexibility of they go below the 80 percent market share level. The second track is to go through this more complicated process to actually be declared non-dominant. And within this context I don't think the 20 percent....

COMMISSIONER GIARD: Okay.

MR. JACKSON: .....within this context would be a bright line.

COMMISSIONER GIARD: Okay. So you actually have your own little two tier system that you're proposing.

MR. JACKSON: There are two different ways to get....

COMMISSIONER GIARD: You know, you just have to be simple.

MR. JACKSON: .....to the second tier, I guess. Yeah.

COMMISSIONER GIARD: Yeah, I got it.

MR. JACKSON: It is complicated.

COURT REPORTER: What sorry? (Ind' rnible) because I

didn't get either one of you.

COMMISSIONER GIARD: You can say -- you can go first.

MR. JACKSON: It is complicated. There's two different ways once you get to the second level of flexibility.

COMMISSIONER GIARD: All right. I don't have any more questions based on that.

MR. JACKSON: Can I make one comment 'cause this was alleged -- referred to yesterday. And maybe there's just a misunderstanding of my understanding of the Rural Coalition's proposal because this is a question of whether or not they have severed this competitive service area and non-dominant from carrier of last resort. Although there is a provision that changes the definition of carrier of last resort the Rural Coalition also changed the regulation which is entitled Discontinuance, suspension or abandonment of service. And in that context they allow any local exchange carrier even though dominant when in a competitive service area to discontinue service which to me is a carrier of last resort kind of obligation. And that's why I made the statement that although there is the other provision that they referred to, that's why I made the provision -- the statement in our comments that they would get out of carrier of last resort upon something being defined a competitive service area, for instance, with an ETC is because of this discontinuance section.

COMMISSIONER GIARD: I understand.

MR. JACKSON: So to me there's sort of a conflict there.

COMMISSIONER GIARD: Go ahead.

MR. DILLEN: Commissioner, may we respond? Just with respect to that one section Mr. Jackson's referring to with regard to discontinuance of service, in addition to the parity we've created now in a competitive service area between all competitors and discontinuance of service we also added the phrase at the end unless otherwise required by law which we think makes that consistent since we've explicitly left the incumbent carrier as the carrier of last resort in other areas of competition (ph). We weren't -- we didn't mean to try to be, you know, sneak out the back door or something here. We were trying to be consistent by adding that last phrase as well. So I don't really see a sort of irreconcilable different here.

COMMISSIONER GIARD: Okay. Mr. Moninski, how are you competitively harmed by a 30 day notice filing for tariff? How are you competitively harmed if it's equal in its parity (ph)?

MR. MONINSKI: It is clearly equal where all LECs operating in that market would have to file on the same notice schedule.

ACS believes as I've indicated in my earlier comments based on inputs from its marketing team that 30 days is inherently harmful as a result of having to telegraph one's marketing initiatives that far in advance. We have certainly

see on the interstate side where the FCC even prior to going to complete detariffing which it has done now for non-dominant interexchange carriers even prior to that point in time only required LD tariffs to be filed on 24 hour notice basis. That process seemed to work just fine. We're trying to move in that direction.

COMMISSIONER GIARD: So are you more harmed than GCI under the 30 days notice? I mean do they -- are you more harmed than GCI or AT&T?

MR. MONINSKI: That may be a very -- let me -- it may be more complicated a question than it sounds, you know. It simply goes to the kinds of marketing initiatives you have on the drawing boards, separate companies' abilities to execute quickly. On the face of it it would not appear that we are more harmed.

COMMISSIONER GIARD: Right, because ACS is an efficient carrier. And so, you know, it's an efficient operation so I wouldn't think that GCI's marketing personnel are any more or less capable of getting a marketing plan out on the street. So I can't -- what I didn't really understand in your argument was how you were harmed by 30 days 'cause GCI has attained 40 percent market share in Anchorage with a 30 days notice. So if you were both -- and I know that there was -- that ACS has perceived great harm from that, that your notice period has been longer. But if you were on the same drawing board with 30

days and you equally had GCI's 30 day period I couldn't see where there was harm other than Dr. Lehman's comments which are more generic and for the industry as a whole, seven days or 15 days or 20 days, if we're redoing the damn thing let's just look at everything. And that's fine.

MR. MONINSKI: In the interest of fairness and if I don't say this Mr. Jackson will or Ms. Tindall will, in the interest of fairness the regulations that exist today have -- allow the dominant carrier, ACS in this case, to file tariffs for new, repackaged and discounted.....

COMMISSIONER GIARD: Yeah, yeah.

MR. MONINSKI: .....services on a 30 day.....

COMMISSIONER GIARD: I know.

MR. MONINSKI: .....schedule. So we are on that same schedule. The only change would be if we came in with a rate increase, so that schedule exists right now.

And the only other thing I think I can do is refer you to Mr. McKenna's affidavit where he does develop the first market issue and the importance of it. I was going to show you and I don't have them with me right now something that probably demonstrated that a little more effectively than Tickle-Me-Elmo. If you took a look, if you've seen the Anchorage Daily News over the past couple of weeks you will have noticed that GCI just recently started putting in full page ads for its new relationship with Alaska Airlines. Good marketing, good

advertising.

— The important point is that AT&T one week prior to that began using double full page ads in order to present their new marketing initiative. It seems to me that AT&T must have believed that it was important to get that out a week before GCI did. And there's a close to home example of what first market probably really means.

COMMISSIONER GIARD: Yeah.

MR. JACKSON: Can we -- can we address that.....

MS. TINDALL: A little clarification. That has.....

MR. JACKSON: .....that's a little distorted (ph).....

MS. TINDALL: .....nothing to do with the tariffing time schedule. That had to do with individual contracts with Alaska Airlines.

MR. JACKSON: Yeah. We got -- Alascom has done a wonderful job of making lemonades out of lemons here. But they knew that we were coming because Alaska Airlines was severing their relationship. It had nothing to do with your requirements. It had to do with things which would exist regardless of your requirements.

COMMISSIONER GIARD: I'm done. Thank you.

HEARING EXAMINER OLSON: Okay. Lunch, 12:30. If -- or as close to 12:30 as you possibly can make it, huh? You'll recall that we can only do UNEs now from 12:30 to 1:30 because there's a tariff meeting and then when we come back after the tariff

meeting, let's assume it's a half hour, so the Commission will do tariff meeting from 1:30 to 2:00 and then we'll get back on the record and finish up the UNEs to the extent we can finish them up and go forward with the rest of the Commissioner questions if there are any. Okay.

MR. AYOTTE: Mr. Olson?

HEARING EXAMINER OLSON: Yes, sir.

MR. AYOTTE: Mark Ayotte here. I'm trying to do time conversions as well. We don't really have an interest in the UNE issues. But if I understand you there's likely some further Commissioner questions after the UNE witnesses?

HEARING EXAMINER OLSON: The Commissioners indicate that there may be some further questions that have arisen, you know, as a result of discussion from other Commissioner questions.

MR. AYOTTE: Yes.

HEARING EXAMINER OLSON: So they want to reserve that opportunity, so I just don't know how long the UNE is going to last. We should certainly know whether they're going to complete it by -- they'll have that hour and then if they're not done between 12:30 and 1:30 we'll have to pick them up at 2:00 because Mr. Shelanski and Mr. Miller are only available till 3:00 local time. To accommodate you, Mr. Ayotte, I'd be happy to call you or we can call you directly if you don't want to participate in the UNE proceedings, and then call you if they're going to be future questions unrelated to UNEs so you

can be involved. Would you like us to do that?

MR. AYOTTE: Well, that would be great. The alternative suggestion was I would just sort of dial in toward the tail end of the UNE discussions and try not to disrupt the flow of things.

HEARING EXAMINER OLSON: Okay. Sure.

MR. AYOTTE: So that would likely be around 1:30 Alaska time?

HEARING EXAMINER OLSON: Yes. About 4:30 Minneapolis time or St. Paul time. And if you dial in you'll certainly know whether we've finished them up by now if you inquire I'll surely be able to tell you where we think we are, so if we come back at 2:00 p.m. and do some more UNEs we'll have a better idea how much more time it'll take.

MR. AYOTTE: That's great. I'll just dial in at that time.

HEARING EXAMINER OLSON: All right. Thank you.

MR. AYOTTE: Thank you very much.

HEARING EXAMINER OLSON: Thank you. Let's go off record if we're not off record.

(Off record - 11:57 a.m.)

(On record - 12:40 p.m.)

HEARING EXAMINER OLSON: So let's get back on the record and we'll continue with the UNE questions. I'm not quite sure where we left off.

CHAIR JOHNSON: Commissioner Harbour was (inaudible) UNE questions. —

COMMISSIONER HARBOUR: Okay. I've got a couple of quick ones that are related. This is for ACS. On the opening brief you suggested on page 12 that the Commission has amortized infrastructure investment, I think the term was 20 years or more. Are you aware of any cases where the Commission has set depreciation rates for ACS investment at less than 20 years? I'll give you time to get there, Mr. Moninski. I think I have it marked on here page 12.

MR. MONINSKI: Commissioner, I'm trying to recall when I was writing this piece where my information came from. I'm sure that it came from our revenue requirements department. I didn't ask that question and I don't have that answer with me today, but I'd be happy to produce it to you in a post-hearing filing.

COMMISSIONER HARBOUR: Okay. It's not necessary, but if it does come about the answer's different and it changes the testimony that would be probably useful.

To GCI, Mr. Jackson, page 19 line 10. Depreciation proposals.

MR. JACKSON: Yes, sir.

COMMISSIONER HARBOUR: I wonder if you as others have suggested think there would be value in including in that proposal consideration for technological change?

MR. JACKSON: We do think that....

COURT REPORTER: You need to talk into the mic.

MR. JACKSON: We think technological change is also a consideration. And throughout our.....

COMMISSIONER HARBOUR: Implicit rather than meaning them to be explicitly named in the.....

MR. JACKSON: The reason it's not -- let me tell you why it's not specifically named in the way I drafted it, which is -- and I think that is really consistent throughout. I really tried to draft regulations as short as possible to address the specific legislative policy. And I think this does a complete job of addressing the legislative policy, but then if the question is, you know, in a broader context how should the Commission set depreciation rates it would certainly consider technological change also.

COMMISSIONER HARBOUR: Thank you.

MR. JACKSON: So if you're trying to have comprehensive regulation about how to deal with depreciation that should certainly be added, but I think this in itself addresses the policy -- the legislative policy.

COMMISSIONER HARBOUR: That's all I have.

HEARING EXAMINER OLSON: For those on the phone Commissioner Giard will be up next.

MR. MODEROW: Hearing Officer Olson, in response to Commissioner Harbour's question yesterday regarding some

citations I've written them down and I have copies for the Commission and everybody.

HEARING EXAMINER OLSON: Okay.

MR. MODEROW: It's a specific citation to paragraph 630 through 648 of the Triennial Review Order. And the two regulation subsections that were adopted thereunder. I've just put a specific reference to each of those. And I mean no argument by this writing. The order and the regulations speak for themselves.

HEARING EXAMINER OLSON: Thank you. I asked for it yesterday thank you.

COMMISSIONER HARBOUR: Mr. Hearing Officer, I might also say that if any commentor wants to try to add to our understanding based on events that occurred since Illinois please feel free. This was not meant to be restrictive because a party volunteered the information and it's not required but is invited. Thank you.

COMMISSIONER GIARD: Okay. We're going to talk about UNEs. Dr. Shelanski, are you on board?

DR. SHELANSKI: Yes, I am.

COMMISSIONER GIARD: Okay. I wonder if you could tell me whether the method proposed by GCI to calculate the methodology proposed is wrong?

DR. SHELANSKI: Okay. Sorry. You came in a little bit faint there. Whether the method proposed by GCI for the

calculation of UNE rates is wrong?

COMMISSIONER GIARD: Uh-hum.

DR. SHELANSKI: Well, my concern about the way that that -- that they have described the method, essentially a blank slate method, I believe that that method is potentially quite hazardous. And.....

HEARING EXAMINER OLSON: Mr. Shelanski, can you get a little bit closer to the phone or.....

DR. SHELANSKI: Okay. I'm right up against it, is that okay?

HEARING EXAMINER OLSON: There, that's perfect, thank you.

DR. SHELANSKI: Okay. Thank you. I think that there's some problems with a model that relies on drawing a new network or redesigning a network on a blank slate. I think that there are two sets of problems. The first reason that I think the method is -- and let me start by answering your question directly. It doesn't have to be wrong. Everything will depend on the input and how the inputs are arrived at. But I think it's likely to be wrong for two sets of reasons. First, sitting down and drawing out a new network with no constraints of what architecture or what kind of technologies used in that network could lead to a network that has nothing to do with the realities of the particular market, geography, service pattern, demand that exists in a particular marketplace. The way that inputs are valued, switch costs, labor rates, cost of capital,

need to be somewhat realistically tied to the market in which the particular network subject to the proceeding exists.

And I would -- I have one set of concerns with a blank slate model that is unconstrained that simply looks anywhere in the country to find optimal technology and optimal inputs is that one builds a network that never could even be built in the territory and in the particular service market being regulated. And such a model would be tremendously hypothetical and would dis-serve the purposes of sending accurate competitive price signals.

COMMISSIONER GIARD: Okay. Dr. Shelanski, I would like to follow up on a few things that you just said.

DR. SHELANSKI: Sure.

COMMISSIONER GIARD: Talking about the realities of the market and tied to the particular market, so is the formula -- the methodology which I can't remember what it's called, but it changed recently, would the -- what is it called?

DR. SHELANSKI: The modified synthesis.....

COMMISSIONER GIARD: Right. And.....

DR. SHELANSKI: ..... model.

COMMISSIONER GIARD: Right. Modified synthesis model. So would it be -- what I wan to know is if that method is used and the word wrong as I used that word meant would it not be upheld on appeal. So if that model was used would that model -- because that type of model was used would that likely to be not

held up on appeal?

DR. SHELANSKI: I would defer, if you would, to Ms. Brinkmann on that legal question about how it would fair on appeal.

COMMISSIONER GIARD: Okay.

DR. SHELANSKI: If that's okay.

COMMISSIONER GIARD: Okay. That's fine, sorry.

DR. SHELANSKI: Yeah. And I'd be happy to -- my own sense is that the use of a model like the MSM model has been endorsed in certain occasions by the FCC and has been approved by the Supreme Court. I don't think I could tell you -- you, I'm an attorney as well as an economist, I can't tell you with a straight face that it wouldn't' be held up on appeal.

COMMISSIONER GIARD: Okay. And I think I need to hear from Ms. Brinkmann on that particular issue.

DR. SHELANSKI: Yes.

COMMISSIONER GIARD: I would like to switch then to the model that you are endorsing.....

DR. SHELANSKI: Yes.

COMMISSIONER GIARD: .....and have recommended to your client ACS that they use. Is that a correct characterization that you have recommended that model to them?

DR. SHELANSKI: No, I was not involved in the model development with ACS, so you know, I was not involved at the early stage of -- with ACS in any model that they recommended.

COMMISSIONER GIARD: Who is your expert?

MR. SHOUP: On the modeling?

COMMISSIONER GIARD: Who do you want me to ask the question of regarding whether it would be wrong to use your model?

MR. SHOUP: You could me, you could ask Karen Brinkmann.

COMMISSIONER GIARD: Okay.

MR. SHOUP: You could ask any of the attorneys representing ACS.

DR. SHELANSKI: Oh, I could also -- I mean even though I was not involved, Commissioner, with -- at the stage of their developing their model, I believe I can address that question.

COMMISSIONER GIARD: Okay.

DR. SHELANSKI: Adopting your same definition of wrong about upheld on appeal.

COMMISSIONER GIARD: Yep.

DR. SHELANSKI: I believe to a certainty that -- or I believe very strongly that the model that Alaska has been -- has endorsed could and probably would be upheld on appeal.

COMMISSIONER GIARD: Okay. Ms. Brinkmann, is that also your belief?

MS. BRINKMANN: Yes, it is.

COMMISSIONER GIARD: So it appears to me from your testimony that the TELRIC interpretation is really rather broad and that it can accept both the MSM Model and the model that

ACS is proposing within the depth and breadth of the word TELRIC, is that a correct under- -- am I understanding that correctly from both you?

DR. SHELANSKI: Yes, ma'am, that is my testimony that the -- that TELRIC is not so narrow as to dictate a particular model. That a variety of models as the Commission said recently in the Virginia arbitration order can be consistent with TELRIC. And that it is within the state's discretion to then adopt the model that is most in keeping with the policy of sending accurate and efficient price signals to entrants, preserving accurate and efficient investment incentives for the incumbents.

COMMISSIONER GIARD: Do you have a comment, Ms. Brinkmann?

MS. BRINKMANN: Yes, I agree with everything Professor Shelanski just said. And I would just add that the Commission also made clear that in addition to the selection of an appropriate model the Commission also focused on the use of the appropriate cost inputs which should be specific to the market and to the carrier in question.

COMMISSIONER GIARD: Okay. We're going to get to cost inputs in a few minutes. Dr. Shelanski, when you spoke a few minutes ago you talked about, and I wrote these words down, tied to the particular market. That you had two problems with the MSM model. And one of those was you felt that using something in the Lower 48 or, you know, New York City, some

other area, was a concern, but would you be less -- would it mollify your concerns if in fact MSM were tied to this particular market?

DR. SHELANSKI: I think that there are some flaws with the MSM that are not easily corrected even with adjustment with state specific inputs. I think that certainly helps. And i think that if the input values that are used for various costs and the kinds of technology that assumptions -- assumptions that are used are realistic to the market, I think that certainly helps the case enormously. But there are a couple of other problems with the MSM and with a blank slate approach even if there are some constraints put on it.

The first set of problems is that these models don't tend to account for growth and change very well. The synthesis model when it was developed by the Federal Communications Commission was meant really to take a snapshot of market conditions as they stand at a particular point in time. TELRIC, of course, is forward looking. And one of the things that is a challenge for any network as it is developing is efficiently to anticipate changes in demand in both growth and shrinkage in demand and the evolution of technology in particular kinds of services. And the synthesis model is not a model that at least in the forms that I have seen it used had any way of rationally taking account of this kind of dynamic forward looking process of changes in demand and changes in

growth.

COMMISSIONER GIARD: Uh-hum.

DR. SHELANSKI: The other concern that I have with using a blank slate model is if we really take seriously the idea of building a new network and asking the question what would it cost ACS or any other ILEC to build a new hypothetically efficient network and indeed down the road to sit down with the blank slate and build it again when technology changes.

We wind up with very serious problems of enormous fixed costs being repeatedly incurred. Those costs have to be depreciated on a forward looking basis anticipating having to sit down and rebuild again a few years down the road. And that model I think if it really takes depreciation and cost of capital seriously in the way that the Commission has talked about taking them seriously, the cost of capital of a competitive market and depreciation that may have to be accelerated to account for relatively rapid decline in the network value over a short period of time even if the asset lives remain reasonably long will generate, I think if done rigorously, an extremely costly result, very high UNE prices.

So the model is not just one that has flaws from the perspective of the ILEC in terms of being under compensated, if one really takes the logical extreme sitting down and rebuilding and costing out what that rebuilding would cost at each interval that there's a significant change in technology

the cost to CLECs and consumers would be enormously high. It's just not a model that--if you take this assumption seriously tends to serve the TELRIC purposes as well as a model that is more realistically tied to a network architecture that is actually being put in place in a forward looking basis by the ILEC being regulated.

COMMISSIONER GIARD: Dr. Shelanski, has the method that you are proposing for or are supporting I guess ACS as its expert, has that -- have you successfully -- has that been successfully deployed, now successful means upheld on appeal from my perspective, any other state in the Lower 48. Other -- we talked a bit about the Virginia decision and I would like you to clarify that for me just a little bit, but where else?

DR. SHELANSKI: Well, I mean there has been -- there have been a number of states that have based at least part of their TELRIC price calculations, for example, on recent switch purchases, for example, of the actual ILEC being priced or being -- being.....

COMMISSIONER GIARD: Okay.

DR. SHELANSKI: .....egulated. So there have certainly been aspects of what ACS's is advocating that have been adopted by state commissions and that are in place that have not been either not been challenged or not been defeated on appeal.

COMMISSIONER GIARD: Okay. So is ACS given your experience and I'd ask Ms. Brinkmann also to respond to this,

making a broader interpretation because it does go far beyond recent switch purchases? In its regulations it goes into, you know, actual cost of labor, actual (indiscernible) costs and I'm going to pull the regulations, but I'm sure you're familiar with what their proposed regulations look like, so how -- what are their parameters compared to the other parameters that you've seen in the Lower 48 in terms of UNE pricing?

DR. SHELANKSI: Right. In my -- you know, in my experience and I must say off of that I do not have a personal experience with very many states.

COMMISSIONER GIARD: Okay. Well, Ms. Brinkmann can answer first then.

DR. SHELANSKI: Okay.

MS. BRINKMANN: Yeah, I also have not attempted to do a survey of all the other state plans to see where they would have similarities with the ACS proposal.

COMMISSIONER GIARD: I'm not interested in survey. I was interested in your experience.

MS. BRINKMANN: Again, I guess I would reiterate what Dr. Shelanski said which is that there are -- I am aware of at least some state plans that do incorporate assets, the same type of factual information that ACS's plan would require, but I can't give a complete answer. I don't have complete experience to answer the question.

COMMISSIONER GIARD: So what aspects, Ms. Brinkmann, are

commonly used in the UNE pricing that ACS is proposing?

MS. BRINKMANN: Well, for example, in the Virginia arbitration case that we discussed yesterday quite a bit the Commission did, in fact, rely on the most recent switching costs for, I believe, 1996 to 2000 incurred by Verizon as evidence of a forward looking switching cost.....

COMMISSIONER GIARD: Okay.

MS. BRINKMANN: .....for Verizon's -- for TELRIC price, that's one example off the top of my head.

COMMISSIONER GIARD: Okay. But we go forward -- I mean am I wrong, do we not go far beyond switching in ACS's proposed regulations?

DR. SHELANSKI: You know, I think that labor costs have been -- and subject to check, let's say in New York, Massachusetts and New Jersey and Maryland have all.....

OPERATOR: Hugh McKenna is leaving the meeting.

DR. SHELANSKI: .....have all adopted localized labor rates out of recognition that all competitive firms in the market -- in the particular market being regulated or at issue would be facing similar labor markets. And to impose on the ILEC the obligation of being as efficient as a firm facing a different external labor market in a different area didn't make sense.

COMMISSIONER GIARD: Okay. So there's some labor and switching costs and you'll be able to provide to your client

something that your client can provide to me that show, you know, some kind of order or something that indicates -- substantiates your statement, right, then about the labor, right?

DR. SHELANSKI: I will do my very best, Commissioner. One of the problems is a lot of these rates are arbitrated and they're not -- often we do not get, for example, in loop costs in the orders that come out from the commissions breakdowns of everything that has gone into a determination of what those costs should be. But I believe that there should be some evidence particularly on the nonrecurring comp 5 (ph).....

COMMISSIONER GIARD: Okay.

DR. SHELANSKI: .....of adoption of localized labor rates.

COMMISSIONER GIARD: Okay. I want to clarify that I'm not asking you guys or ACS to review, you know, every order you have -- you know, as their expert witness you are the people that have much more experience in this than I am, and so what I'm trying to ferret out is the reasonableness of ACS's request to us that we adopt their regulations. And there is substantial opposition to the adoption of their regulations. And so I need to know as I make my decision how much experience stands behind their proposal.

DR. SHELANSKI: And I will do my best to find what I can to provide to ACS so they can provide it to you. But just for the record most of my advocacy has been on what the FCC itself

has said rather than on what has happened in particular states.

COMMISSIONER GIARD: Okay. And I'll turn to the regulations, Mr. Moninski, if I may. Yesterday we talked about using the -- okay. So we've established on the record that it's not wrong to use MSM. There are issues with it. And I'm going to come back to you, Dr. Shelanski, in just a few minutes. And it's probably not wrong to use actual costs as a basis. So we have established and I think yesterday in the record you folks talked about one line and some lawyer generated document that said the FCC perhaps said neither is -- neither was not TELRIC compliant, I think was that -- those were the words that we were discussing.

DR. SHELANSKI: Paragraph 49 of the Virginia arbitration order.

COMMISSIONER GIARD: All right, 9. So I think that that is (indiscernible - distorted) the opportunity to use the methods that you are requesting. Okay. So what we talked about yesterday was -- and what I want to know about today is how do you go from actual cost to the efficient costs that you would use in your calculation? How do you make that transition? Because the costs that are -- actual costs, today's costs are not what we're talking about. We're talking about forward looking costs. So how do you make that transition? What are the computational factors that you consider?

MR. SHOUP: Commissioner, I think to answer the question you'd have to divide this up into what you're talking about. And let me give you some examples. For example, labor rates. Labor.....

COMMISSIONER GIARD: Okay. We can go actually by item if you want.

MR. SHOUP: Whichever is easier, whichever is more useful to you.

COMMISSIONER GIARD: Actually most efficient technology. Let's go down to number 4, (b)(4).....

MR. SHOUP: Okay.

COMMISSIONER GIARD: .....which is labor and materials.

MR. SHOUP: All right. With labor and materials there has been a divergence. Labor rates have been going up, not only in Alaska but everywhere else as you might expect. You can track what they'll be in the future by doing a projection of two things. One is what they've been in the past and, two, looking at your union contracts. ACS is a union shop. We have union labor rates. We've provided those union contracts both to the Commission and to GCI. And so we can look at those and do a projection of what they'll be in the future year by year fairly accurately.

With equipment some of it is going up in price and some of it is going down. For example, switching or some technological area like switching, some of those things are going up, but

some of them are going down rapidly in price with technological changes.

With things like copper cable, those prices are going up. And we can track those by looking at what we're paying for them now, what GCI is paying for them now, and what we paid for them in the past and we can track pretty closely where those prices are going to go.

I mean they're obviously some things you can't tell. For example, if some company goes out of business that we don't anticipate and it causes copper prices to go up or if there's a flood of copper on the market in some particular year. But generally we can track those into the future as far as out into the future as is possible to do.

And so, you know, we can -- those are all trackable things. And I think we're prepared to present evidence on those when we get there.

COMMISSIONER GIARD: So what you're talking about it seems to me is trending.

MR. SHOUP: Yes.

COMMISSIONER GIARD: So you use actual costs as the basis for trending the future.....

MR. SHOUP: Yes.

COMMISSIONER GIARD: .....plus adding some factual statements or factual information from your union agreements?

MR. SHOUP: Plus what it costs our competitors to do

things. I mean they're in the same competitive market we're in, so they're paying prices for similar kinds of things that we are.

COMMISSIONER GIARD: One of the things that you said yesterday is that ACS is efficient. And you also implied -- or I can't -- well, actually tell me again whether you said that they're going to be more efficient in the future?

MR. SHOUP: Again, I suppose it depends on what -- exactly what aspects of this we're talking about. What I was talking about was network deployment and that's what we're talking about with UNEs. We have to be efficient in that area otherwise we go out of business. I mean the reality of this is when we buy copper cable, when we buy fiber, when we pay for switching equipment, there is no incentive for this company to pay more than it has to pay, and it doesn't do that. It -- therefore, it -- you know, in the broad kind of philosophical sense it is self evident that it is efficient because why would it? Well, what motivation would it have in a competitive market when it doesn't get a guaranteed return on investment to go pay more than it needs to.

COMMISSIONER GIARD: Right, I understand those areas, but those areas are rather the simplistic and the easier items to identify when you're talking about efficiency. And where efficiency gets difficult or challenging in my opinion is in the areas of operations and union contracts and how -- what

bench marks ACS can provide to substantiate that it is an efficient carrier. And I can't recall and perhaps you can recall the actual phrasing, but it's the least cost most efficient.' And do you believe that these standards that you're proposing will come from -- are based in the most efficient least cost carrier? I think that's what it was.

MR. SHOUP: I'm not -- I'm sorry, I'm not sure I understand.

COMMISSIONER GIARD: Okay. Give me the phrase, least cost, most -- those little five words. You have it,.....

MR. SHOUP: From

COMMISSIONER GIARD: .....Dana, just give it to me.

MS. TINDALL: Least cost most efficient carrier.

COMMISSIONER GIARD: Least cost most efficient carrier, okay. So if we have the least cost most efficient carrier as a standard, okay, and then you say I am the least cost most efficient carrier and my cost records, not GCI's or anybody else's, should be the ones that we use as a basis for UNE pricing, to -- I would like you to put on the (indiscernible - phone noises). I would like you to put on the record how you prove to your -- the people who are going to be buying the service from you that you are the least cost most efficient and that your actual costs are to be used?

MR. SHOUP: And, again, I think it depends on which costs we're talking about.

COMMISSIONER GIARD: Okay.

MR. SHOUP: If we're talking about UNEs and deployment of plant.....

COMMISSIONER GIARD: Uh-hum.

MR. SHOUP: .....then all of the things I've just mentioned as evidence would be the way we would do that. When it gets to other issues, cost of capital, for example, then it becomes a much more difficult set of proof because all of the things that get factored in to cost of capital come into play. For example, risk, how much risk is the company facing now that there's significant competition. Depreciation rates, et cetera, et cetera. There's a lot that goes into all of that. But those would be some of the things we would rely on.

COMMISSIONER GIARD: What are you prepared to offer for substantiation that you are efficient, that you are an efficient carrier?

MR. SHOUP: Within the -- I'm assuming the question is within paragraph 685.....

COMMISSIONER GIARD: Yeah, yeah, yeah.

MR. SHOUP: .....of the First Report and Order? The things I've just talked about, the deployment records, the costs, the labor contracts, depreciation schedules, all of those kinds of things are the things that we would offer. And they're all coming up in U-96-89.

COMMISSIONER GIARD: Okay. So you offer all of those and

you say as a result of my providing these to you, Kate, we are efficient, but when I stand back I say, geez, you know, efficiency really is a comparable statement.

MR. SHOUP: Yes.

COMMISSIONER GIARD: It's compared. There's bench markings in the industry. There are -- and I'm sure in your industry you have those particular bench marks. One of the statements that was written in here is that you are the most efficient ILEC in the country. It was written in here. I don't know whether -- has become -- has turned ACS into the most efficient carrier in the country.

MR. SHOUP: I'm sorry, I didn't see that reference. The most efficient ILEC in the country?

COMMISSIONER GIARD: Uh-hum.

MR. SHOUP: For its size, perhaps.

COMMISSIONER GIARD: I think that was a qualification, I can find it in here.....

MR. SHOUP: All right. Yeah, I don't remember seeing that, but I think for its size and in similarly situated markets we have documentation that shows efficiency with respect to other comparable ILECs which we're happy to provide. I think Mr. Moninski offered to provide that yesterday.

COMMISSIONER GIARD: Okay.

MR. SHOUP: And certainly with comparison to GCI we can offer that evidence as well.

COMMISSIONER GIARD: Okay. In page 11 of 34 of your initial brief, even after positioning itself as one of the most cost efficient ILECs in the nation.

MR. SHOUP: Oh, one of the most cost efficient in the nation. Right. I.....

COMMISSIONER GIARD: So there's.....

MR. SHOUP: I think that what -- correct me if I'm wrong, but I think that's a comparison that we made to other similarly situated ILECs in the United States. I don't think we're talking about, you know, New York City. I think we're talking about other comparably sized ILECs.

COMMISSIONER GIARD: Okay. And that information, Mr. Moninski, forgive me if I've forgotten it, that's the information substantiating that statement that you're going to provide to this agency?

MR. MONINSKI: Yes.

COMMISSIONER GIARD: Okay. And was that an independent evaluation that you were -- has there been some third party that said that?

MR. MONINSKI: I believe that ACS derived that information itself by contacting those companies. I don't know that it was done by an independent third party.....

COMMISSIONER GIARD: So it wasn't an industry manual or journal or something that made that claim?

MR. MONINSKI: Again, I don't believe so, but I'll confirm

that for you when I make the subsequent filing.

2700

(Tape change)

Tape 4

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COMMISSIONER GIARD: Do you think that your actual costs would be adjusted as -- what I'm having a challenge with is how do you get actual cost to reflect -- to not reflect the inefficiencies inherent in purchasing, you know, a monopoly telephone system only four or five years ago because I think that -- were there built-in efficiencies in ATU?

MR. SHOUP: I assume so, it was a regulated monopoly, but I wasn't in this business in terms of representing or dealing with telephone companies in those days so I can't tell you that. But just -- it seems self-evident that a regulated utility in those days had a guaranteed return on investment and therefore there was no incentive for it to be efficient and I think that's what the FCC's talking about.

COMMISSIONER GIARD: Can ACS prove that it has made changes since taking over ATU that have resulted in its efficiency?

MR. SHOUP: Yes, I think we can.

COMMISSIONER GIARD: Okay. You can prove that?

MR. SHOUP: I think so, yes.

COMMISSIONER GIARD: Okay. I'm going to direct some

questions to GCI. Is it wrong to use ACS's proposed model under TELRIC?

MR. JACKSON: Let Mr. Moderow and I --.....

COMMISSIONER GIARD: Okay.

MR. JACKSON: .....it -- our -- I'm not positive whether you're talking about our regulations.....

COMMISSIONER GIARD: Let's use.....

MR. JACKSON: .....versus their regulations or our proposed model, it is not wrong to use appropriately -- Mr. Moderow can address this, I think he will say that appropriately adjusted it is not wrong to use the model that they've proposed. Legally it would be wrong to use the regulations that they've proposed. There's a very big difference between the model that they've proposed in the existing arbitration and the regulations that they've proposed here.

COMMISSIONER GIARD: Are there significant differences, I mean, I don't -- I'm not sure the -- my -- the Commissioners will tell me if I'm treading on turf that I shouldn't, but.....

MR. SHOUP: Between the model and the regulations? I think that the model is consistent with the regulations. I think everyone -- I assume everyone here agrees though with Dr. Shelanski -- Professor Shelanski's statement that a range of models can be used within TELRIC.

COMMISSIONER GIARD: That's where we're getting.

MR. SHOUP: Right.

COMMISSIONER GIARD: Okay. All right.

MR. MODEROW: If I could maybe try to expand on that?

COMMISSIONER GIARD: Uh-hum.

MR. MODEROW: Number one, I think what Jimmy was trying to say in a different way is that the model they have proposed in the arbitration.....

COMMISSIONER GIARD: Let's focus on the regs then.

MR. MODEROW: Okay.

COMMISSIONER GIARD: That's what we're supposed to do.

MR. MODEROW: The regs -- in my estimation the regs as proposed do not map to the model. Most significantly the technology actually deployed is a problem, they don't -- and the rest of them all go to input decisions that in any arbitration and within any model including the one they've proposed and including the one that we have -- an alternate that we have proposed it's the input decisions that need to be made but within the arbitration.

The problem with ACS's proposed regulations is they propose to pre-make all of those decisions and base things on their actual cost. And the actual costs or the actual statistics are the problem. It was -- you know, this language we keep going back to the actually word in paragraph 685. Well, I'm going to go to the Supreme Court of the United States and in their opinion they say that an embedded cost methodology

that relies in any part on historical cost the incumbents say they actually incur in leasing that work elements, the problem is that it will pass onto the lessees the difference between most efficient cost and embedded cost.

Now the problem that we've got here and I think it's fair to say that the model they've proposed properly utilized or the model -- the alternate model that we have also proposed, properly utilized and corrected as to structure and most importantly these inputs that are decided based on the evidence in that arbitration, not in your regulations here, prejudged in the regulations, if those are properly done either model would be able to yield a result within a TELRIC range.

MR. JACKSON: If I can try to say this in yet one other way and it'll be very short. Taking the model that they proposed, if we use efficient inputs in that model that model can work, but their regulations require the use of their actual cost even when they're not the efficient cost and that's the problem with the regulations.

COMMISSIONER GIARD: Mr. Moninski are you saying that your actual costs are your efficient cost?

MR. MONINSKI: And I'll defer to Mr. Shoup for the detailed answer to this question, but we said I believe yesterday that the actual cost is the appropriate point of departure to derive the forward looking efficient cost. Mr. Shoup, if you have.....

MR. SHOUP: Yeah, if I could add to that? The regulations if read carefully stress forward looking throughout. They talk about there being -- you know, you have to use something to start with and so, you know, we're proposing that our costs are the place that you start, but not the place that you end. And I don't -- unlike Mr. Moderow, I do not read the Verizon decision to say you can't even look at that evidence, I don't think the Supreme Court has said that and I don't think the FCC has said that.

COMMISSIONER GIARD: Okay. So.....

MR. MONINSKI: Commissioner Giard?

COMMISSIONER GIARD: .....I guess I need to go back to my question. I know. I know. And that is how do you adjust your actual cost to the efficient cost, what components like -- how do you do it?

MR. SHOUP: For example -- let me give you a concrete example. Let's assume we have a five year old switch in place, let's assume there is a switch that is compatible with this network that is more efficient and that the price of that switch is less than the price that we paid for the five year old one, you simply in the terms of a forward looking analysis use the price of the cheaper switch. That's an example of what you would do.

COMMISSIONER GIARD: Okay. Let's talk about labor costs.

MR. SHOUP: Okay.

COMMISSIONER GIARD: Give me an example in labor?

MR. SHOUP: If your labor cost today is $10 an hour and your union contract requires you next year to pay $12 an hour and you're doing this on a forward looking basis you would use 12 and not 10.

COMMISSIONER GIARD: Well, I have a question about that then because did ACS -- has ACS renegotiated the labor contracts since ATU went away?

MR. SHOUP: I don't know the answer, but I'm assuming that we would have in that much time, but I don't know the answer.

MR. MONINSKI: And I am not certain of that answer either.

COMMISSIONER GIARD: Well, the reason I'm asking the question is because when you stated earlier that it's likely that ATU was inefficient in its operations, then you would then assume that they had inefficient union contracts as well because that would be the umbrella of overall operations?

MR. SHOUP: I don't know that that would be true in the.....

COMMISSIONER GIARD: Okay.

MR. SHOUP: .....first place and in the second place -- I can go back and check this for you, but I highly doubt that we've negotiated -- that we haven't negotiated new labor contracts since 2000.

MR. MONINSKI: And, Commissioner Giard, if I might add without trying to give you a concrete answer to whether or not

Legacy union rates were efficient, clearly those union rates were presented to this Commission along the way, at certain points along the way during formal rate proceedings at which point if the Commission had determined that those rates were unreasonably high or derived in an inefficient way it would have imposed some sort of offset for rate making purposes.

COMMISSIONER GIARD: Mr. Moninski, we weren't looking at, I don't think, at a most efficient standard and forward looking cost at that time so I don't know that that particular response is germane to forward looking prices where I am trying to establish that using actual cost is a good idea. I'm an accountant, okay, so I understand the desire to use actual cost, but there is a significant challenge when you're looking at the most efficient standard.

And I'm trying to have you provide evidence of how you're going to get your actual cost today which I think would be to the most efficient -- I mean, how are you going to -- is it 25 percent, I mean, is there an embedded cost percentage that you believe are in your actual costs in -- other than the place where you can just simply replace the item as in your example, Mr. Shoup,.....

MR. SHOUP: One other way you could do that would be to -- we -- I don't think any of us would argue that GCI which is a non-union shop is paying more for labor than we are. If we looked at their labor costs and compared them that would give

you a good bench mark I would think.

COMMISSIONER GIARD: Uh-hum. All right. Okay. We were going to talk about the increases in efficiency that ACS would bring forward as evidence using a forward looking, but I don't think your marketing -- someone is here to answer the questions about (indiscernible) plan, right?

MR. SAUPE: I -- he's not here, but I check on that this morning. What I am told this morning is the same answer we gave to GCI in the discovery request in U-96-89. They asked us that question there and what we told them -- they were asking for -- do you have long range planning for deploying and all of that sort of thing and the answer is we don't.

What we have is -- budgeting is year to year and the long range planning is also year to year. That's what I'm told this morning, but -- and we tried to find the guy, you know, who is the ultimate authority, but I checked on this and I'm reasonably certain that's the answer.

COMMISSIONER GIARD: Okay. I'm reasonably certain -- I don't believe that that's the correct answer. I don't think that there's any SCC (ph) company in the company that does year to year budget planning, it -- you -- it's not practical. That there is somewhere, and there has to be, some kind of strategic planning going on at ACS that is longer than one year.

Now I'm not -- I'm done with it in terms of that, but in proposing evidence that you are an efficient and will be more

efficient in the future, it would be challenging to say we are planning on being more efficient in the future, but we don't have a two or three year strategic plan.

MR. SHOUP: All I can tell you, Commissioner, is that's what I was told, that they're --.....

COMMISSIONER GIARD: Okay.

MR. SHOUP: .....that maybe there's somebody out there working on something, but I'm told we don't have that today.

COMMISSIONER GIARD: That completes my questioning on UNEs for now. I'm done.

COMMISSIONER HARBOUR: Yeah, maybe one. This is related, Mr. Moninski, page 7 depreciation. We follow the lead of other government bodies and I know the term is used, using industry standards as well. I wonder if there are other states or models of acceptable -- that provide acceptable depreciation methodology that conforms with law that does use an industry standard or other governmental body reference or are we creating this here?

MR. MONINSKI: We perhaps are creating it, we have been looking for it both in our initial comments and again in reply, I had indicated that one of the reasons why we were advocating at the outset the use of IRS depreciation rates was that we were looking for a governmentally sanctioned surrogate that we could use that would be administratively efficient and reasonably effective.

There was considerable push back as you all may recall on the use of the IRS numbers. We looked for some other governmentally sanctioned numbers, the closest we were able to come were the range of depreciation lives that are used by the FCC, we incorporated that into our reg as being an appropriate reference point.

We also advocated the fact that given the degree of competition and the circumstances in Alaska that it would not be inappropriate for our depreciation rates to be lower than what the FCC had bench marked. But that was all we were able to find so far, we continue to look and if we find anything at the state level or the federal level that looks like it would work as the kind of surrogate we had hoped to find, we will certainly bring that to the Commission's attention.

COMMISSIONER HARBOUR: Thank you.

HEARING EXAMINER OLSON: Okay. Mr. Shelanski, Mr. Miller, the Commission indicates they're not going to have any more questions on UNEs, so there won't be any need for you to call back any further unless you just -- unless your companies wish to be available for some other reason.

MR. MILLER: We're going to -- excuse me for a second, could I provide just one clarification? This is Mr. Miller.

HEARING EXAMINER OLSON: Sure.

MR. MILLER: And the only reason I do this is because I think it was said that everyone agrees that it would not be

wrong to adopt GCI's model and I just wanted to make clear because I understand there'll be a transcript made of this, that I am not in that category, I do not agree that it would not be wrong to adopt GCI's model for the reasons that are stated in paragraph 52 of the FCC's Virginia order. And I don't want to burden the Commission with stating those since I wasn't asked a question, but I just wanted to clarify the record.

HEARING EXAMINER OLSON: Is that GCI's models or ACS's model?

MR. MILLER: I'm sorry, ACS's model, yes. Thank you for correcting me on that one.

HEARING EXAMINER OLSON: Well, the only reason I asked you, you're appearing on behalf of GCI, I was.....

UNIDENTIFIED VOICE: No, no, no, he's on behalf of AT- --.....

HEARING EXAMINER OLSON: .....or AT&T, you surprised me. I'm sorry.

MR. MILLER: Yeah, well, I misspoke. Thank you. I would have made an even worse record if I wouldn't have corrected that. Thank you very much.

HEARING EXAMINER OLSON: Okay. All right. Well, there isn't any need for you to remain unless your respective clients wish you to. We're going to recess because the Commission's going to hold its tariff meeting which is -- for those of you

that are interested, it's in the other hearing room. And we will reconvene here at 2:00 o'clock and the Commissioners have other questions ur lated to this UNE inquiry. You do not have to clean up, you can leave everything where you are and we'll come back on at 2:00 o'clock and we'll stand in recess. And for the rest of you that are on the phone that do wish to participate, I guess you need to call back in.

(Off record - 1:30 p.m.)

(On record - 2:09 p.m.)

HEARING EXAMINER OLSON: Okay. We're back on record. The Commission finished its UNE inquiry and there may be some other follow up questions on other areas. I don't know whether the Commission has decided whether or not, but if there is no particular request then we might as well start from the left. Oh, I'm sorry, I'd be remiss. Mr. Saupe has to leave at 2:30 and Dr. Lehman is only here -- has to leave -- you can be here until 3:00, I think, can you? So they requested that if you have questions that are going to be directed to Dr. Lehman or Mr. Saupe or AT&T that you do those first.

COMMISSIONER STRANDBERG: I am going to be brief here, we've been here for a -- quite awhile and we certainly.....

COURT REPORTER: Identify yourself for the record, please?

COMMISSIONER STRANDBERG: Excuse me, this is Commissioner Jim Strandberg.

COURT REPORTER: Thank you.

COMMISSIONER STRANDBERG: We have certainly beat the dead horse here significantly and been over and over quite a number of things. I wanted to in an earnest fashion and fairly quickly talk about Mr. and Mrs. McGillicutty (ph), the ratepayer, and to focus on the implications of proposed regulations which are proposed really by three parties here. They are significantly different and I think -- I wanted to focus on the tariffing issues and the carrier of last resort issues.

I am -- I want to ask each of you what will the ratepayer see after changes in these competitive regulations, are they going to -- and I'm talking about the near future, I think this is where the tire meets the pavement, whatever we do do here we have to make sure that we don't bring in a whole bunch of consumer complaints. And I wanted to start with ACS because ACS's proposed changes in the tariff regulations are significant and far reaching and when I contrast them between those of the Rural Coalition and those of GCI I specifically note that we did take -- ACS does take item C out which reads, not withstanding A or B of this section, and this is on page 5 of 9 of the ACS proposed regulations, the Commission will disapprove and require modification of rates that are not just and reasonable or that grant an unreasonable preference or advantage to any customer or subject the customer to an unreasonable prejudice or disadvantage. That has been taken

out of the ACS proposed regulations.

So I would like to ask, and I'll start with Mr. Moninski, how are the ratepayers going to be treated in your estimation were we to implement these regulations as you propose, Mr. and Mrs. McGillicutty, he has a small business and she's at home?

MR. MONINSKI: I think from a procedural perspective the proposals that ACS has made will be almost unnoticed by Mr. and Mrs. McGillicutty. I don't think those two folks and everybody that they represent have a clear sense of what's happening with tariff filings today. There's a -- I used a quote in my reply comments that came from the FCC that I'll paraphrase that basically says, tariffing is really kind of unnecessary, for the most part nobody reads them, the few people who do don't understand them.

And I think while that might sound a little harsh I think that it -- you know, coming from the FCC I think it's an interesting comment and I think that it is generally true. So that if we moved to a scheme where we were no longer filing tariffs and noticing tariffs and going through a tariff approval process however we may want to characterize that process from the ratepayer's perspective I think moving from that process to the notice tariffing that we've been talking about or to detariffing I think from the public perspective's that's going to be fairly transparent.

Would it substantively result in significant changes to

ratepayers such that it might generate a huge number of complaints for this Commission? I don't think so and I don't think so for a number of reasons. Number one, and I say this because I really believe it, I don't think the marketplace, I don't think the competitors that are here in this room will allow ACS to go off and do or to allow any competitor to go off and do really stupid things, really harmful things, the marketplace will discipline that kind of behavior.

I've heard people say well, you implemented that 24 percent rate increase and you didn't do anything about it, you just left it there. The simple fact is that we have been doing things about it and we continue to do things about it. For starters we haven't come in and asked for any other interim rate increases. Did we learn a lesson? I think so. Was it necessary for us to come in and simply rescind that if we ultimately determined that it was a bad idea? That would have been one approach, but there were other approaches.

One of the approaches is to try and resolve the issues that we need to resolve in terms of rate rebalancing by virtue of the rate cases that are pending before the Commission right now. Another approach was you make other kinds of filings as we have done to try and ameliorate the negative impacts as they were being experienced of that change. Those are the kinds of things that I believe will continue to happen and they'll happen more in real time. We won't have to go through

hopefully another series of huge rate cases or rate redesign cases like we're involved in right now.

We won't have to spend significant amounts of time doing tariff changes on an individualized basis because the process will be much more streamline and we can respond to the marketplace, the needs of consumers and what's happening on the part of our competitors much more quickly and much more efficiently. So my answer to your question is I -- procedurally I don't think that consumers will see a significant change in their life and in terms of how telecommunications is being delivered to them and I do believe that the marketplace will discipline competitors to make sure that they're not going off and doing harmful things.

COMMISSIONER STRANDBERG: I want to give the other parties a chance to comment on this, but I also wanted to ask you, Mr. Moninski, how do you see the responsibility for carrier of last resort to be discharged within the marketplace under the concept of your regulation?

MR. MONINSKI: Well, as we know the Legislature in bringing us here made it pretty clear that the incumbent carriers were for the time being going to continue to be the carrier of last resort. I don't think there's anything that we've said in our written comments or in our oral presentations that would suggest that we challenge that or we don't acknowledge that. Carrier of last resort issues are kind of

difficult to define and to pigeonhole.

We've all used the term for years, when we go and look for definitions of it in statutes or in regulations or in cases, it's not all that easy to find. And we do know it has something to do with an obligation to provide reasonable service to anybody who asks for it typically by virtue of the offers that have been approved by the regulator. I think that those obligations continue regardless of what tariffing scheme you're under.

We've seen some disputes about how carrier of last resort obligations should be discharged. We have heard some discussion in these hearings about how we need as a generic matter to go and revisit that issue both in terms of the local exchange portion of it as well as the interexchange portion of it. And I certainly agree, I mean, we've made some proposals in another docket and we've heard some proposals being made in this docket about shared carrier of last resort obligations and I think it's important as a policy matter that we continue to pursue those. In the meantime I think the concept, to the extent that we understand it and to the extent that it's been defined, remains unchanged.

COMMISSIONER STRANDBERG: Go to GCI next. You've left -- basically left item C in, I think, in your proposals, do you feel we need that and why?

MR. JACKSON: I certainly don't think it can hurt. I

guess part of what I heard from Mr. Moninski is that things won't change whether it's there or if it's not. If that's true it certainly does -- also doesn't hurt to have it, but if it is, in fact, necessary that Mr. and Mrs. McGillicutty from certain inappropriate changes, I think it's good for you to have that power to exercise when necessary.

Somewhat more broadly in the context of markets that aren't as competitive as say Anchorage, Fairbanks and Juneau, some of the other companies' proposals also declare those as competitive service areas, for instance by wireless and that sort of thing. In those instances I think it may even be more important than say in Anchorage, Fairbanks and Juneau, I mean, you could have all sorts of changes. There's certain things that we don't even hardly speak about even though we disagree with some of the other parties, but we've heard a lot about rate rebalancing.

GCI personally doesn't think that rate rebalancing is necessary to nearly the extent that the LECs proclaim. We don't talk it very much because rate rebalancing doesn't necessarily hurt us and we, as you know, have enough fights about things that do hurt us, but.....

COMMISSIONER STRANDBERG: Yeah.

MR. JACKSON: .....in terms of the public interest we're not sure rate rebalancing is a great idea or is necessary and it would give you some power there. It can -- the -- on

carrier of last resort there's not a whole lot here, in the other docket.....

COMMISSIONER STRANDBERG: Enough said.

MR. JACKSON: .....is -- and maybe it's.....

COMMISSIONER STRANDBERG: Right.

MR. JACKSON: .....R-02-06, we did make a proposal for sharing carrier of last resort responsibilities in a market which becomes very competitive.

COMMISSIONER STRANDBERG: Yes.

MR. JACKSON: And so there are some proposals in the other docket to address that.

COMMISSIONER STRANDBERG: Okay.

MR. JACKSON: Dana may have had some thoughts she wanted to add too, I'm not sure.

MS. TINDALL: I think from the perspective of Mr. and Mrs. McGillicutty, it's important to remember that right now the only difference in the competitive areas between non-dominant and dominant carriers is the ability to raise rates. And so the difference that they would experience would be -- if there was going to be a change would be -- if there was going to be a change in how rates were done would be they might experience rates going up. I mean, that's the difference and the question is is there enough competitive choice then for them to go elsewhere if their carrier raises their rates.

Many of the proposals before you today would have the

effect of allowing carriers to raise rates where there's not competition. Geographic rate deaveraging is getting the ability to raise rates in rural areas. Rate rebalancing, what it really means is decreasing business rates and raising, you know, residential rates. So -- I mean, what we're really talking about is raising rates and that is -- you know, under GCI's proposal is there -- in competitive areas can people see rate increases? Sure, not to the extent under some of the other proposals, but there is that ability.

So anywhere you move under any of the proposals from where you are today you have the possible effect of people seeing rate increases and the question is is there enough of a choice for them to go elsewhere so they're protected from those rate increases.

COMMISSIONER STRANDBERG: Thank you. Ma'am, do you have a few comments on the question?

MS. GRAHAME: Yes, I do, thank you. In the areas that the Rural Coalition serves, the -- Mr. McGillicutty owning his small business would be happy because depending on the community at issue business rates would go down for the rural ILECs because the ILEC would in most instances need to remove the implicit subsidies that support residential rates. Secondly, Mrs. McGillicutty.....

COMMISSIONER STRANDBERG: Could you hold for one second?

(Off record comments - distortion on phone line).....

MS. GRAHAME: Okay. All right. I'll start over. For -- the answer to your question, Commissioner Strandberg, for the Rural Coalition in part depends on where this takes place. For probably most of the areas where the Rural Coalition companies serve, Mr. McGillicutty, owning his small business would be happy because once the rural ILEC knew that a wireless ETC for example was going to be certificated, the rural ILEC would rebalance its rates and remove implicit subsidies. The business rates would go down. Mrs. McGillicutty would be happy in terms of the rural ILEC having agreed to be the carrier of last resort and under the Rural Coalition's proposal as you know the Commission retains jurisdiction to approve or disapprove rates or conditions for a broad range of reasons. In other words under our proposal you retain control and you retain authority.

The ultimate issue for you will be what happens to the rates in other communities served by that same rural ILEC if the competition arrives in an area such as Dutch Harbor that seriously underwrites the rates for the rest of Interior Company's communities. So ultimately that's going to be the question, but under our proposal you retain full authority over terms and conditions.

DR. LEHMAN: I had.....

COMMISSIONER STRANDBERG: Mr. Ayotte, do you have any comments?

MR. AYOTTE: No, thank you.

DR. LEHMAN: I had something to respond to here, to.....

COMMISSIONER STRANDBERG: Okay. Dr. Lehman, maybe we can.....

DR. LEHMAN: You're going to go to them first? Okay.

COMMISSIONER STRANDBERG: .....let Mr. Saupe first and then come back to you?

MR. SAUPE: Yeah, I'll be very brief. Speaking as a local exchange carrier that engages in total service resale, our customer, Mrs. McGillicutty, since we don't at this time serve business customers could be disadvantaged if there were total detariffing. The way total service resale works under the Telecom Act is we purchase off of the retail tariff at a negotiated or arbitrated discount. So I'm not sure how ACS would propose to handle that situation, there would be a possibility that total service resale is an option for entering the market, it might not work any longer if there were total detariffing and/or no notice periods.

On the question of whether subsection C should remain, I think we're -- we would agree with GCI that that's a safety net that could remain and probably should remain. And as for CoLR in the -- either the long distance or the local market I think we agree that there always should be at least one competent carrier obligated to serve in any particular area. We don't believe it necessarily has to be the incumbent, but both Mr.

and Mrs. McGillicutty are entitled to have at least one carrier obligated to serve them particularly if they live in an area that's perhaps not otherwise profitable to serve. That's not to say that there ought not to be some kind of support given to the entity that is required to shoulder that burden.

COMMISSIONER STRANDBERG: Dr. Lehman, you indicated.....

DR. LEHMAN: Yes, I'm a little concerned that we've -- that it's been characterized as a fairly simple matter of is there a provision that allows for rate increases or not because the temptation is to say well, why should anybody's rates go up. And I'm not saying anybody's rates necessarily will go up, but I think it's important to note a few things. I mean, rate rebalancing may be more significant than it's been characterized as.

I don't think GCI would agree that they should pay more for UNE loops for businesses than for residences, the FCC has fortunately saved them from having to make that argument, but UNE loops are not priced according to class of service, yet we have retail rates that are and that exposes a competitive vulnerability that sooner or later is going to wreck -- is going to call for some kind of rate rebalancing.

I provided information on a number of states that have higher basic local rates than Alaska, less competition, and they are allowing for rate increases. I'm not saying they will happen, but they have built-in -- we -- if we live in a fear

that anybody's rates will go up that this is an intolerable proposal then I think it's unrealistic for a world of competition, there has to be some provision for rates to be able to rise.

And I do think there is recourse that people have if it is unduly discriminatory the Commission can say no to a rate increase and I guarantee if it is that -- that discriminatory you will hear about it from the ratepayer.

COMMISSIONER STRANDBERG: Under the proposed ACS regulation do you feel that we have the ability to stop (indiscernible - distortion)?

MR. MONINSKI: It will take me a second to get there, Commissioner Strandberg, but if you take a look at the provision that it -- under 240 I believe it is, that's just above the section C that was deleted, there is language in there that specifically says that if a party comes forward and makes at least a preliminary showing that rates are unreasonably discriminatory or priced below cost that the Commission would then intervene.

MR. JACKSON: Excuse me, I think we need to go to the language.

MR. MONINSKI: Okay. And if it.....

COMMISSIONER STRANDBERG: Yeah.

MR. JACKSON: Because it certainly doesn't say a preliminary showing. It.....

MR. MONINSKI: I -- I'm sorry, if you'll give me.....

COMMISSIONER STRANDBERG: Yeah.

MR. MONINSKI: .....just a moment.....

COMMISSIONER STRANDBERG: Sure, we'll wait for you.

MR. MONINSKI: .....I'll find it and I'll read it.

COMMISSIONER STRANDBERG: Okay. It's speech time (indiscernible - distortion).....

MR. MONINSKI: You're right, I was paraphrasing. The exact language is in ACS's proposed 3 ACC 53.240(a).....

COMMISSIONER STRANDBERG: Uh-huh.

MR. MONINSKI: .....and it's -- it is the added language at the end of the paragraph where it says the tariff change will automatically go into effect without further affirmative approval action by the Commission. The Commission will only intervene to limit such notice tariff filings where a party has made a clear demonstration that the proposed tariff change results in below cost pricing or is unreasonably discriminatory.

MR. JACKSON: In seven days?

COMMISSIONER STRANDBERG: Okay. That's -- all right. You know, one concern is in getting service in fringe areas. Under noncompetitive rules we have line extension policies and the utility's really required to provide service on a nondiscriminatory basis in all areas of its service area. Under these rules are you seeing any erosion of that

requirement under the carrier of last resort perhaps or otherwise?

MR. MONINSKI: I don't see any erosion of the obligation. When we are in the mode of -- on that continuum where we're still filing notice tariffs, the line extension tariff that you refer to is still on the books, any changes to it would have to be presented to the Commission.

When we move to a completely detariffed environment there would certainly be the opportunity for ACS as an incumbent to alter or restructure the cost sharing arrangement that exists right now for line extensions. I don't know that line extensions and I don't think line extensions go away, but there are certainly the potential for that process to change. Again to the extent that consumers became concerned enough about that to bring that to your attention I view the Commission as having ample residual authority to step back in and address that issue.

COMMISSIONER STRANDBERG: Any comments from any of the other parties on that particular aspect?

MS. TINDALL: I think if that's the effect of detariffing there is a lot of other parties who would be interested in being in this hearing, like the homebuilders for one.

COMMISSIONER STRANDBERG: Any comments other than that?

MS. TINDALL: No.

COMMISSIONER STRANDBERG: All right. I have one other

question and that is going to your reply comment, Mr. Moninski, page 24 of 26, you state concerning the safety net, ACS would not object -- I'll wait for you, page 24.

MR. MONINSKI: Thank you.

COMMISSIONER STRANDBERG: Are you there?

MR. MONINSKI: I'm there.

COMMISSIONER STRANDBERG: Okay. ACS would not object to a rule that limited residential POTS rate increases to an amount not to exceed $1 per year for a three year transition period, can you maybe explain more what you had in mind there with POT service?

MR. MONINSKI: POTS service, the acronym that has been used for many years meaning plain old telephone service, we were -- when we considered this provision -- basically it's ACS's position that the safety net element is not necessary, that again relying on the effects of markets, the availability of substituted service, the safety net is not necessary. However we believe that the Commission may take a different view of that, that it may have a level of concern for basic residential ratepayers that would cause it to hesitate moving in the direction of relaxing regulation, going to detariffing and the kinds of things that we advocate as being important.

If that's the case then we had tried to suggest a concept of safety net to get the Commission to a comfort level that they would allow markets to begin to operate freely. The

proposal for $1 a year for a three year transition period is merely that, it's just one idea. There are probably others and ACS would be more than willing to consider and work with the Commission to develop others if that seems to be where you want to go.

COMMISSIONER STRANDBERG: Thank you very much. That's all I've got.

CHAIR JOHNSON: I just have two and I guess they both go to ACS and it's kind of an area that we've been discussing the detariffing proposal. First -- well, here's a question that's actually been suggested to us by Staff, under the ACS proposal that permits detariffing of retail and special access services when 75 percent or more of customers have a choice of facilities based services, actually it's a multi-part, would the presence of a service provider (ph) serving 75 percent of the customers lead to detariffing?

MR. MONINSKI: Well, I know consistency is the product of small minds, but I need to be consistent in my answer to the question. We have taken the position -- Commissioner Giard offered us a number of questions about it earlier today, we have taken the position that the competition from a cellular platform constitutes competition.

CHAIR JOHNSON: Okay. And that would be true regardless of whether or not I was an ETC or not?

MR. MONINSKI: Yes.

CHAIR JOHNSON: Okay.

MR. MONINSKI: That was our position. Again we want to be careful not to appear to be intractable in those positions, any of the positions that we've articulated, we've begun with basic objectives. On the UNE side we're -- our objective is the one that the Legislature included in principle number 1 of fair compensation, we want to find a way to stay within the boundaries of TELRIC and get to fair compensation. We've proposed a number of things that we think would accomplish that, there may be others. And to the extent the Commission would want to pursue others we'd be happy to go there.

The same is true on the deregulatory proposals, if the Commission reaches the conclusion that wireless competition not based on ETC status simply does not yet constitute sufficient competition to trigger these proposals that we've indicated, that probably doesn't trouble ACS all that much because in the markets that we are most concerned about it is really wireline competition that we are facing.

CHAIR JOHNSON: Okay. Same section, same -- continuing here. You define in subsection E at -- here's the 75 percent trigger and then it goes all retail and special access product and service offerings, all local service providers will be detariffed. Was there a particular definition that you had in mind for special access product and service offerings or is there -- are you referring -- you're tying to a tariff, what is

your definition of a special access?

MR. MONINSKI: Subject to clarifying if when I get back to my office I need to, what we had in mind there was all of the special access services are -- or a definition of special access services, that would include all access services that were not switch access services.

CHAIR JOHNSON: So that includes transport then?

MR. MONINSKI: Yes.

CHAIR JOHNSON: Okay.

MR. MONINSKI: And for clarification retail transport, we're not talking about transport in the UNE context or transport in any other context.

MR. JACKSON: Interexchange?

MR. MONINSKI: The -- Mr. Jackson, was -- the question was interexchange transport and I'm -- I'd probably need to go back and reread the regulations which tended to be focused on local exchange service, but we -- as a conceptual matter and we've even indicated in our response to AT&T comments that we believe that the interexchange market in Alaska has achieved the same level of competition as it has in the Lower 48, it's been detariffed there and it probably should be detariffed here.

CHAIR JOHNSON: Maybe if I could, Ms. Kenyon, did you have a follow up on this point?

MS. KENYON: Perhaps it would help me to understand what you're talking about, when you're talking about special access

are you talking about services that ACS sells to interexchange carriers, are you talking about services that are sold to business customers?

MR. MONINSKI: We primarily are talking about services being sold to customer, to end users.

MS. KENYON: So this is equivalent to private line then?

MR. MONINSKI: Yes.

MS. KENYON: All right. Thank you.

MR. MONINSKI: You're welcome.

CHAIR JOHNSON: Okay. My last question, I wanted to follow up a little bit on the question that Commissioner Strandberg posed and he was -- he's concerned about what happens in a detariffed environment, what happens to customers. My primary concern and I think you spoke to it a little bit and I -- other parties discussed it, is in the area of price discrimination.

And I'd like for the benefit of everybody here just to give me -- give folks the benefit of what I believe price discrimination is and I -- actually I referred to -- Professor Phillips (ph) spoke on utility regulation and he states that price discrimination occurs when a seller establishes for the same product or service different rates that are not justified entirely by differences in cost or the same rate where differences in cost would justify differences in price. And then it actually further goes on to describe the circumstance

where as a result of the possibility of adding to profits through price discrimination (indiscernible) the special rates were given to certain buyers particularly commodities or favored places. That's my concern is in a detariffed environment that a competitive provider would propound and conclude and offer rates to high value, high volume customers at perhaps favored -- I mean, rates that are not justified on the basis of the economics that they would not offer to other consumers.

And I'm just wondering if you believe that your proposal is adequate to -- does the Commission have the powers that are appropriate and necessary to enforce and police undue price discrimination, discrimination amongst customers based on your proposal?

DR. LEHMAN: I (indiscernible) let me answer the last part of that first because I think that it -- the way the regulation -- the way Mr. Moninski read it just before, the Commission retains the ability of -- whatever the exact wording was, you know, undue price discrimination, to say no to a notice filing. So I think you do retain that ability. But the issue of price discrimination -- this is one I've done a fair amount of work on and it -- I hate to draw examples to other industries because none of them are exactly comparable, but you can't help but think about airlines.

And, I mean, airlines the model is price discrimination.

As a consumer I don't like it much although the -- everyone's opinion on it is that consumers are better off for it. Not every consumer is better off, that's the nature of price discrimination or schemes where people face different prices. Undue price discrimination, I mean, you'll hear about it because people will say it's not fair the way they're treating me and if you think there's a basis for that you have the prerogative to say no.

But I do think you should expect in competitive markets to see an increase in what most people would call price discrimination because that's what happens in competitive markets, they're messy. And you will get some amount of complaints from that, I mean, it's in the incumbent's and the -- all the competitors' interest not to have too many complaints because that can lead to you stepping back in or saying no to the prices that have been set. So I think they have an incentive not to have many of those complaints, but competitive markets are messy and the problem you have is that you can't prevent competitors in these markets from doing that.

I mean, cell phones are priced the way -- whatever way the cell phone provider wants to provide them, different kinds of contracts to different customers. And in that environment the question is is the incumbent going to have the same ability to match those kind of offers or are you going to tie their hands

and say no, you can't do that, but everyone else can in which case sooner or later that's the way the market's going to look. So I think price discrimination is something you should be concerned about, but you -- all you really need is to retain the ability to intervene if you need to.

CHAIR JOHNSON: Okay. I understand the theory, if you will, the question to ACS is is it the vision of ACS that what is contained in their proposal, the tools that are contained in the regulations as you've drafted them, is that adequate in your estimation for this Commission to prevent and police price discrimination?

MR. MONINSKI: And my answer is yes. There is a timing issue even when you get to notice tariffs where you -- where if you were to adopt our proposal you're operating on a seven day cycle, that cycle becomes even shorter if we go to detariffing, but it relies upon consumers, anybody who may be aggrieved bringing the matter to your attention. That brings it to your attention somewhat after the fact for some period of time, but certainly wouldn't prevent the Commission from immediately stepping in and taking over the issue at that point in time.

I agree with Dr. Lehman, what we've seen in particular in local markets since 1997 is a considerable amount of pressure from customers to discriminate. We have customers that come to us and say routinely, GCI's just been into our office, they've offered us this deal, what's your best deal, are you going to

be able to beat that. And we -- that's the essence of what's been going on in the competitive market. It -- to -- it is not possible any longer to simply offer the same rate to everybody for the same service, it just doesn't work anymore. But as long as you have a fail safe mechanism which I believe is built into the regs that we have proposed, to the extent that that becomes abused, to the extent that that becomes more than is tolerable from a public policy standpoint, the Commission has the ability to step back in.

CHAIR JOHNSON: Yeah, we may have to look at that a little bit. I guess I would pose the same question to the other parties, is it -- from your reading of the ACS proposal on detariffing does the Commission have adequate tools to protect against undue and unfair price discrimination?

MR. JACKSON: Maybe I'm missing it, but I don't see where the regulations in the detariffing situation specifically provide any right for the Commission to jump in if it sees something wrong and maybe I'm missing it.

CHAIR JOHNSON: I think -- Jimmy, I think they referred to the provisions -- let's see, 220.....

COMMISSIONER STRANDBERG: It's the last sentence on A, (indiscernible).....

CHAIR JOHNSON: Page 240?

COMMISSIONER STRANDBERG: Page 59, last sentence on A.

MR. JACKSON: Well, it.....

CHAIR JOHNSON: 240A at the end?

MR. JACKSON: But that's not in detariffing, that's when you're in the -- still in the seven day notice period. And you --....

CHAIR JOHNSON: Okay.

MR. JACKSON: .....when you're in that seven day notice period the -- you know, if you can figure it out within seven days and anybody has an opportunity to hear about it and you get comments, you know, in that very short window there's an opportunity, but that's at -- that's not at the detariffing stage. And we go -- we will go almost immediately to the detariffing stage in all markets under ACS's proposal,

I mean, it's almost illusory I think to look at this seven day notice because I don't think you're going to find yourself in this seven day notice situation for very long in any market. I think you almost immediately go to the detariffing situation where I don't see any provisions for the Commission to get in.

CHAIR JOHNSON: Okay. Ms. Tindall?

MS. TINDALL: If cellular based -- if cellular providers count as facilities based competition under the detariffing provisions, the only markets -- well, the only markets are markets where there is no cellular, where there is no other -- anything else but plain old telephone service provided by the incumbent. All other markets will immediately go to detariffing.

MR. JACKSON: There's the cellular reason, but even -- in addition to the cellular reason in the Anchorage, Fairbanks and Juneau markets we were capable of offering service to 75 percent of the people.....

CHAIR JOHNSON: Okay.

MR. JACKSON: .....pretty shortly after entry.

CHAIR JOHNSON: I appreciate that, I'm looking at the tools part. I guess Mister.....

MR. JACKSON: I don't see any tools in deregulation.

MS. TINDALL: Once you're in detariffing you're done.

CHAIR JOHNSON: Okay. Kristi?

MS. CATLIN: AT&T Alascom concurs with that, we see no provision for the Commission to continue its review under -- after you hit this phase 2.

CHAIR JOHNSON: Okay. That's what your -- that's your analysis, do you believe that there ought to be tools,.....

MS. CATLIN: If you.....

CHAIR JOHNSON: .....additional tools?

MS. CATLIN: .....were to go with this recommendation, we have absolutely do, yes.

CHAIR JOHNSON: Okay. And it -- are you prepared to make recommendations as to what those tools ought to be?

MS. CATLIN: We could, I'm not prepared at the moment, but we could. If you were to -- if you -- if we -- if in the -- when you release the regulations that you are going to propose

and if this is in it, we will make recommendations.

CHAIR JOHNSON: Okay. Is that your point?

UNIDENTIFIED VOICE: (Indiscernible - away from microphone).....

CHAIR JOHNSON: Ms. Grahame?

MS. GRAHAME: Yes, we think the Commission ought to retain some sort of residual control or power and maybe the way you do that is you provide some sort of a waiver from existing regulations to AC- -- to the Anchorage market for example which -- and you reserve the power to step back in if you need to.

CHAIR JOHNSON: Mr. Ayotte?

MR. AYOTTE: Yes.

CHAIR JOHNSON: Did you wish to weigh in on this issue?

MR. AYOTTE: No, thank you. Other than to, of course, reassert my plug for wireless carriers in 332(c) 3(a).....

CHAIR JOHNSON: Your 332(a) objection is noted.

MR. AYOTTE: Thank you.

MR. MONINSKI: Commissioner, if I could?

CHAIR JOHNSON: Sure.

MR. MONINSKI: If after we look through these regulations carefully, and perhaps GCI already has, we find that the provision that I believed was there isn't there, that is a provision that would allow a party to come forward and claim unreasonable discrimination, that the Commission would have the authority to step back in and deal with that issue, if we find

that it's not there and it may, in fact, not be, then ACS certainly wouldn't have any objection to its inclusion.

There was one provision, it's not the one we were looking for, it's under 53.230(d) that talks about the discontinuance of a single product or service that a customer could -- if aggrieved by that could come to the Commission and ask the Commission to not allow the local company to go forward with. Again it -- perhaps it was just my drafting error and for which I apologize, but there's no argument, there's no dispute about the Commission having the ability or the need for that ability, in fact, probably all of the kinds of things that we're talking about in terms of these proposals are grounded in the Commission's ability under 42 05.711(d) to waive application of rules and it was always my understanding and it continues to be that when you make such waiver you always have the opportunity to rescind such waiver if the public interest requires. So.....

COMMISSIONER HARBOUR: This -- I'm about at the end like everybody is. I wanted to express my appreciation, this has accomplished for me in this odyssey everything I hoped it would in terms of filling in the cracks and I really appreciate all of the hard work and the testimony.

I do have a couple of last questions. Mr. Moninski, when you referred to a party, is it your memory that whatever is either in the regulation or was supposed to be in the

regulation, by party you were really referring to citizen so that it would not have to be a party to a proceeding to come forward and complain within a certain time period or otherwise, but rather a consumer, a ratepayer could come --.....

MR. MONINSKI: That --.....

COMMISSIONER HARBOUR: .....that's what you meant?

MR. MONINSKI: .....that was our testimony.

COMMISSIONER HARBOUR: Thank you. Let me go back to -- while we're on -- talk -- while I'm talking with you about the -- back to that actual competition in any form and we -- we've talked that to every detail almost. But I want to go to a McGillicutty type question -- I mean, I don't want to, but I think that when we start looking at fine tuning this whole process it'll come up. What's to prevent -- and realize that you -- you know, your proposal -- I know your -- you have three big markets and then you have interests in other markets, but the rules that are established here -- we're really mindful -- try to be mindful of not only of the big places, but the little places and not only the urban, but the far out areas and so forth and a rule -- if it's going to be a rule it really needs to be thoughtfully applied in all those areas.

So the question is what if you have an area that has been run by an incumbent for a period of time and there is a new entrant and under a new set of definitions that these regulations could establish that new entrant might have true

minimal impact on day one, I mean, there it may be that signal has the capability of covering the area and that's been the focus of a lot of our talk.

Now let me apply that in a different direction than we've discussed, in a McGillicutty light. What is to prevent the incumbent -- and I'd ask for you in the Rural Coalition too to respond to this from the perspective of the two regulation approaches, what's to prevent an ILEC from seizing an opportunity to dramatically raise prices for a period of time knowing that once that new entrant starts developing some true penetration of the area a person can always pull back a little bit.

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(Tape change)

Tape 5

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COMMISSIONER HARBOUR: Conversely what is to protect the McGillicuttys from the evolution of a predatory pricing capability of the incumbent whereby with the new entrant he -- I -- he thinks I can out last him and prices go down with the hope of waiting him out. And the Rural Coalition's thinking the reverse with big companies coming in. But then -- and then what happens is there is no competition and yet we have a quote, competitive service area that was established and no trigger to go back to a regulatory regime.

So let me ask you both with respect to the ability of an incumbent with the advent of a new entrant, how do you -- how does the Commission treat the potential for predatory pricing on the one hand or high prices on the other for an interim period?

MS. GRAHAME: Okay. Thanks, Ted. From the Rural Coalition's perspective the -- here's how we answer your questions. Number one, our trigger is different than ACS's trigger. Number two, under our regulations we still post tariffs and you still maintain control for approving or disapproving or setting aside anything it is we do so you maintain control of the market. And so I don't think under the scenario you've described you should have any concern because you retain ultimate control.

COMMISSIONER HARBOUR: Thank you.

DR. LEHMAN: The -- with regard to the price increase, I mean, I have put a lot of faith in the marketplace and I think the question you pose, the entrant has come in, nobody knows they're there, you just save -- the incumbent would save them a fortune in marketing expense if they decided to enact the strategy you did because they've just handed them a bunch of customers and the ad campaign they wanted run.

So I actually think that would be an extremely dangerous, foolish strategy for the incumbent. Predatory pricing is protected by antitrust laws, I mean, if the incumbent engages

in predatory pricing it is illegal regardless of how this rule has changed.

And, finally, I -- I'm not sure whether the rules are adequate in this regard, the proposed rules, but the trigger for reentry, I mean, I think it's perfectly appropriate that the same trigger should work in reverse and if the conditions under which a market was declared fully competitive disappear that it would be reclassified back if those conditions disappear. I don't know if the rules read that way, maybe Mr. Moninski does know if they do read that way, but that's the appropriate course I think.

COMMISSIONER HARBOUR: Thank you.

MR. MONINSKI: And my response would be similar to Chairman Johnson that the underlying authority for the Commission to adopt any of these proposals is its statutory authority under 711(d) and I would agree with Dr. Lehman that if the conditions that gave rise to the declaration of a competitive market were to change or -- and disappear that the Commission would be fully empowered to reimpose regulation in that market.

COMMISSIONER HARBOUR: Thank you. One further -- is Dr. Shelanski still with us?

MS. GRAHAME: I think not.

COMMISSIONER HARBOUR: Okay. You know, in his -- it may have occurred elsewhere, but it was one of the places in his

material where we found the word elasticity. Normally I -- I've seen that in discussions that involve the larger markets in the Lower 48 and I've seen less discussion of that in Anchorage, but just let me ask you from a Rural Coalition and an ACS viewpoint if I could and if GCI wants to comment, fine, I'm not asking for a lot on this. Are there elements in the local networks that -- as opposed to what he was saying where there is high elasticity and that's one of the reasons for allowing competition, are there areas of very low elasticity that in the advent of a much lower regulated environment would enable an incumbent to take advantage of the inelasticity of certain increments of that market and business comes to mind, but there may be others?

DR. LEHMAN: That -- my quick answer to that is the availability of UNEs -- I haven't thought through other types of competition right now, but that one is pretty obvious. The availability of UNEs nullifies that impact because.....

COMMISSIONER HARBOUR: Yeah.

DR. LEHMAN: .....if you significantly raise the price to those inelastic customers you still have the UNEs available for competitors to serve them at a better price and they should be able to do so.

COMMISSIONER HARBOUR: Sure. (Indiscernible) okay.

MS. GRAHAME: From the Rural Coalition's perspective under our proposal the answer is no again because we still have to

post tariffs and you can still set them aside.

COMMISSIONER HARBOUR: Okay.

MR. JACKSON: I thought the question was whether or not there are services that have a -- that are inelastic and my answer would be although I don't immediately have empirical data would be that POTS service is fairly inelastic certainly in comparison to, you know, the bells and whistles that are generally added to it.

MS. TINDALL: I think by definition if the service is inelastic then yeah, someone can take advantage of it. I'd like to say one thing about the predatory pricing question too. The original interexchange carrier regulations that were setup such that a dominant carrier could lower rates but not raise rates were partly setup to protect consumers, but to a large extent setup to protect from predatory pricing.

They -- those regulations followed an antitrust case brought by GCI against the old Alascom and there is certainly -- while antitrust violations are -- you know, Justice looks after antitrust, there is certainly a role for the Commission to worry about predatory pricing and there traditionally has been a role. From a small entrant's point of view bringing an antitrust case nearly broke us, we became very, very close to declaring bankruptcy in those days. And so simply writing it off to the antitrust laws will take care of it, you know, is not always a good answer.

And there has been a traditional role and when you are -- when you are giving the ability to an incumbent carrier to raise rates without full competitive protections not only are you leaving the consumers without protection, but you're leaving the competitors without protection as well because the key to not being able to predatory price -- you can only predatory price, drop prices below costs and sustain them for a long period of time if you have some hope someday of recouping that money by then later being able to raise rates above costs and getting that money back. If you can't do that, if there's a cap on those prices then you're, in effect, limited in your ability to predatory price as well.

COMMISSIONER HARBOUR: Okay.

MS. GRAHAME: Commissioner Harbour, I have one quick follow up.

COMMISSIONER HARBOUR: Ma'am?

MS. GRAHAME: And that is under the Rural Coalition's proposed regulations, our provision under retail rates that allows you to retain control allows you to retain control over any unreasonable preference or advantage not only to a customer, but to a carrier.

COMMISSIONER HARBOUR: Thank you very much.

COMMISSIONER GIARD: Dr Lehman, in reference to the phase 2 strategy of the ACS proposals, when you look at deregulation, it's a transfer of responsibility from -- for protection from

the regulator to the free market. So you're making a transfer of responsibility to the free market and in the detariffing regs that -- or under the regs that ACS has proposed, how would a customer who is being discriminated against know that, how is a single customer going to be aware or informed when there's no tariff, there's no notice, how are they going to be informed, how are they going to find out, a single customer in the market?

DR. LEHMAN: Well, let.....

COMMISSIONER GIARD: That always happens to me.

DR. LEHMAN: Let me try a different example than airlines because --.....

COMMISSIONER GIARD: It's bought, it's.....

DR. LEHMAN: .....because this actually happened to me. I mean, how do I know that my long distance plan that I'm on is, in fact, not a really bad plan compared to what other people are on. And the answer is I actually don't know very well. And I actually sat around a table of regulatory economists at one point none of whom were convinced they were on the best plan and weren't even aware really what's out there.

Yes, you're right the responsibility gets handed to the free market and it gets handed to consumer to look at what's out there and I think if they don't shop around they're indicating that their elasticity's relatively high and they -- relatively low and they don't care a great deal about finding

out. But we do this in lots of markets where consumers -- I mean, they all have different rate plans for the cell phones and they -- how do they know that they're not getting a bad deal, I mean, this happens all the time. The -- this supposes that it is a competitive market and there is choice available.

COMMISSIONER GIARD: Thank you. I don't have any more questions.

HEARING EXAMINER OLSON: Pretty close to their word, 3:05. There were a number of requests by Commissioners for information from the parties and there were a number of times that the parties said they would provide the information, I didn't keep a list. I hope each one of you can remember what it is that you said you would provide, but to assist you in doing that if you would provide that information to the Commission within 10 days after the dissemination of the transcript, that will provide you with an opportunity to revisit that -- the context of which the information was requested and that should give -- also give you enough time to provide the information I think.

MR. MONINSKI: Clarification, within 10 days of the availability of the transcript you want the parties to submit that which they said they were going to give you, is that the directive?

HEARING EXAMINER OLSON: Yes.

MR. MONINSKI: Okay.

HEARING EXAMINER OLSON: Yes. Okay. That'll work for everybody? Thank you very much for spending the last three days down here and I got educated I hope. That's all I can say, I can't -- I was going to say something (indiscernible) I got educated. Thank you. And we'll stand in recess.

(Recessed - 3:07 p.m.)

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C E R T I F I C A T E

UNITED STATES OF AMERICA)
)ss.
STATE OF ALASKA)

I, Rebecca Nelms, Notary Public in and for the State of Alaska, residing at Anchorage, Alaska, and Reporter for R & R Court Reporters, Inc., do hereby certify:

THAT the annexed and foregoing Public Hearing in Docket R-03-003 was taken by Suzan K. Olson on the 4th day of September, 2003, commencing at the hour of 9:00 o'clock a.m, at the Regulatory Commission of Alaska in Anchorage, Alaska,

THAT this Hearing Transcript, as heretofore annexed, is a true and correct transcription of the proceedings taken by Suzan Olson and transcribed by Suzan Olson, Lynn Hall and myself.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 8th day of September, 2003.

_____
Notary Public in and for Alaska
My Commission Expires: 10/10/06