HB

111

(File 5 of 5)

27

STATE OF ALASKA

REGULATORY COMMISSION OF ALASKA

Before Commissioners:

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

REGULATORY COMMISSION OF ALASKA
701 West Eighth Avenue, Suite 300
Anchorage, Alaska

PUBLIC MEETING

June 9th, 2003
9:00 o'clock a.m.

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P R O C E E D I N G S

Tape 1

0015

(On Record - 9:00 a.m.)

CHAIR HARBOUR: Good morning, Ladies and Gentlemen. I'm Dave Harbour, Chairman of the Commission. We're on record at a little after 9:00 o'clock this morning on June 9th, 2003. This is a public meeting of the Regulatory Commission of Alaska.

Present with me this morning are Commissioners Strandberg, Johnson and Thompson. Kate Giard (ph), our newest Commissioner was unable to attend this particular meeting. She will be in attendance at the June 25th public meeting and we can formally welcome her to our group at that time.

The meeting would normally have been scheduled for this Wednesday, but due to some of the Commissioners being unable to attend the public meeting on Wednesday we bumped it to Monday so we could address some important issues. One of those important issues is -- stems from recent legislation. The Committee Substitute for House Bill 111 as amended by the Judiciary Committee in the House of Representatives.

Before discussing this item we'd like to invite public participation. Are there any members of the public who would like to participate this morning? Sir, please.....

MR. ROWE: May I?

CHAIR HARBOUR: .....come forward.

MR. ROWE: Thank you.

CHAIR HARBOUR: I see several friendly faces in the room this morning. It's good to see everybody here. Madam Reporter. Do you want to state your full name?

MR. ROWE: I will, thank you, Mr. Chairman. I'm James Rowe. I'm the director of the Alaska Telephone Association. It's R-o-w-e. I thank you for the opportunity to provide public comment this morning.

Particularly I'm here to speak on behalf of the membership in regard to the review you just mentioned, Mr. Chairman, that of House Bill 111. We've very interested in participating in this docket. It's of significant interest to the customers represented by the members of the Alaska Telephone Association which are rural companies providing telecommunications in the state.

We'd like to suggest that there's already a significant amount on the record of commentary over the years. And particularly I'd refer you, at least for some comments, back to Docket R-97-12 which is the market structure rules governing local exchange competition.

And in ATA's comments, one of the comments we made was the Commission should develop regulations that will allow fair and sustainable competition to evolve where it is appropriate. And the word fair was very much used in the bill that came out and was handed to you folks and to all of us I'd say.

I suggest also in our commentary in R-97-12 we said Section 253(b) of the Act preserves the states' powers to exercise discretion in considering competitive entry to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers. And though we didn't have it in our text I would suggest that we might want to put in bold print and underline, continued quality.

Twin pillars of the Act were competition and universal service. Competition is a tool to provide service and it is the preferred tool. Universal service is the goal. It's the only goal. Universal service in a sustainable environment, whether through regulation or competition, is certainly success. A competitive environment that jeopardizes universal service is failure.

We look forward to working with you on this docket. Thank you very much for this opportunity.

CHAIR HARBOUR: Thank you, Mr. Rowe. If you'd like to leave a copy of your testimony this morning or your public comment, we'd be delighted to have it.

MR. ROWE: I'll give you what I have, sir, thank you. Are there any questions?

CHAIR HARBOUR: Thank you, Mr. Rowe.

MR. ROWE: Thank you.

CHAIR HARBOUR: Yes, sir, please come forward. Welcome to the public meeting. Please state your full name for the record.

MR. MONINSKI: Thank you, Mr. Chairman, and Commissioners. Good morning. My name is Ted Moninski. I am the director of regulatory affairs for Alaska Communications Systems.

I didn't really plan to speak this morning, although I've had a chance to take a 30 second review of the proposed order that the Commission will be discussing later on this morning. I'd like to express concern about one item and it has to do with efficiency, but it also has to do with ensuring that we have properly addressed all of the issues that need to be addressed in the scope of the Commission's legislative directives.

In particular as I take a look at page 4 of 7 of the order -- the draft order suggests that the Legislature did not intend that our policy review should duplicate work already underway in pending regulations dockets. And then the Commission goes on to list the dockets that commentors should hopefully not duplicate efforts in.

It seems to me Mr. Rowe mentioned Docket R-97-12 which is a proceeding that the former APUC opened up in 1997. This Commission has also commenced Docket R-02-6 and it seems to me that it's going to be extremely difficult to not address issues that are currently pending in R-02-6 as a matter of not

duplicating comments, which in my mind then puts what we are taking about in this new proceeding should one be commenced and R-02-6 on, perhaps separate time lines, separate tracks, separate opportunities for convergence and -- but I would express some concern about that.

I actually gave some thought to suggesting to the Commission that R-02-6 become the focal point of these proceedings because so much of what the Legislature has asked the Commission to consider is already being considered in the context of R-02-6.

So as you consider this morning's draft order I would certainly urge you to include the question of making sure that we have all of the issues in the right place so that we're addressing them in the right time. Perhaps, even for any interest of efficiency as the order suggests that we not wind up having to comment repeatedly on the same set of issues. And more importantly that we not wind up having those issues on separate time lines. Thank you.

CHAIR HARBOUR: Good comments, Mr. Moninski, thank you. I think as we move into a discussion on the next agenda item it may be that you might wish to make a comment or two on that, Commissioner Johnson. Thank you, Mr Moninski.

Any other comments, public comments. Okay. I was hopeful of hearing oratory from my friend Mr. Henry, but I guess we can do that later.

At this point the first item on our agenda stems from the Committee Substitute for House Bill 111 amended judiciary and it is the subject of review of telecommunications legislation as our second public witness referred to a few minutes ago, as well as Mr. Rowe. Commissioner Johnson to my right has taken the lead on this large and very important project and would ask him to talk to us now about that process.

COMMISSIONER JOHNSON: Maybe if I might just for the -- to move things along here, Mr. Chairman, I'd like to move that we release the proposed Notice of Inquiry that's in the packet identified as R-03-XX pertaining to Commission review of rules and regulations governing telecommunications rates and charges between competing telecommunications companies and competition in telecommunications. I would make that motion at this time.

CHAIR HARBOUR: Is there a second?

COMMISSIONER STRANDBERG I'll second for discussion.

CHAIR HARBOUR: Thank you, Commissioner Strandberg. Commissioner Johnson.

COMMISSIONER JOHNSON: If I could just speak to it. Thank you, Mr. Chairman. Where do I start here, I think it's safe to say that the proposal of this project is the most important thing that this Commission will do this year.

We have already spent, I think, an appropriate amount of Staff time on it. We will spend a great deal more Staff time and Commission time on the matter and we know that there is

acute interest in the telecommunications community as to any rules we might develop. We know that issues are contentious. I think that always goes without saying.

What we've tried to do in the proposed NOI that you have in front of you is develop a scenario where we can consider issues that have been raised previously and that we have made an effort to link currently opened dockets that address some discrete subject matter areas with the nine elements that the Legislature has asked us to address.

I think that if you read carefully we are prepared to look very carefully at efforts by parties to explain how action that we might take in connection with the nine enumerated elements would relate to other open dockets. And we are, I think, upon appropriate showing if this -- if we, in fact, approve this today by the parties, we would -- we do want to save time. We do want to take advantage of effort that's put into other proceedings and I think that we have a platform upon which we can do that.

I would surely entertain any thoughts from my colleagues as to how we might improve what's in front of you today so that we can better achieve that and maybe this would be a good time to entertain those thoughts.

COMMISSIONER STRANDBERG: Taking into consideration the comment that Mr. Moninski made I thought it was particularly well placed. The need to synchronize and I -- to synchronize

the consideration of the issues within the various regs dockets that we have.

In looking at R-02-006 that -- you know, I can't pull from memory what our current schedule is on that, but I'm not at this time advocating any change in this order, but I do think that we can certainly recognize that comment and the need for us administratively within the Commission to synchronize these activities. I thought it was a very good comment by him, so I'll make that comment right off the bat.

COMMISSIONER THOMPSON: I have a question, if I may, was it your intention in doing this to keep the currently open R dockets on the same schedule they are or to the extent that those current -- currently opened R dockets contain issues that overlap the issues that the Legislature directed us to review to have them completed within the same time frame as the Legislature directed?

In other words, if there's an issue in R-02-06, which to my recollection there are, that overlap what the legislative directive was, was it your intention to just keep that going on the same time track it is now or to complete those parts of the docket that would be consistent with what the Legislature did within the same time frame?

COMMISSIONER JOHNSON: It's Monday morning, I'm trying to remember what.....

COMMISSIONER THOMPSON: Okay.

COMMISSIONER JOHNSON: I believe that there is an appropriate time in the schedule that you have here for us to make an effort to synch up other dockets and we're going to look at that down the road. I think that's where we left things last week if I'm correct. Is that correct, Phil, based on your recollection of our discussions last week?

MR. TREUER: Yes. Is that directed to me?

COMMISSIONER JOHNSON: Yes.

MR. TREUER: Okay. Yeah. I'd like to point out that most of the opened R dockets have had a head start on this.....

COMMISSIONER THOMPSON: Um-hum.

MR. TREUER: .....omnibus docket.....

COMMISSIONER THOMPSON: Right.

MR. TREUER: .....and since we've already issued NOIs and in some cases even proposed rules, but in R-02-6 we haven't issued proposed rules yet, so I think there's time to synchronize things that need to be synchronized.

COMMISSIONER JOHNSON: Although I do believe it's appropriate for us to look at these issues comprehensively.....

COMMISSIONER THOMPSON: Right.

COMMISSIONER JOHNSON: .....and not in isolation as, you know, it effects the industry.

COMMISSIONER THOMPSON: No, I appreciate the fact that they -- a lot of these issues interrelate. My concern is more in slowing things down by having -- in some of these dockets

there's already proposed regulations on the table and you may -- I think it's important to look at them in the perspective of the issues raised in all the other dockets as well, but I don't want to see things slowed down or delayed because they're somehow -- because of what the leg- -- and I don't think that was the Legislature's intent to slow us down on any projects, so to the extent that issuing this notice -- as long as this notice -- it's not the intent of this to do that, it's not a problem.

COMMISSIONER JOHNSON: Well, I would not, except that I would note that I think we have an obligation to examine the currently opened dockets in light of the legislative policies. That is.....

COMMISSIONER THOMPSON: Um-hum.

COMMISSIONER JOHNSON: .....we don't want to do anything that's going to be necessarily adverse or contrary to the policies that have been adopted by the Legislature. I think we need to have a degree of fidelity to the polices as they've (indiscernible - simultaneous speech).....

COMMISSIONER THOMPSON: I agree. I also don't want to make -- I mean, on some of these dockets we have extensive comments already filed (ph).....

COMMISSIONER JOHNSON: Right.

COMMISSIONER THOMPSON: .....by the parties and it seems an enormous waste of time for.....

COMMISSIONER JOHNSON: Right.

COMMISSIONER THOMPSON: .....both the parties to refile and us to reread things they've already said.

COMMISSIONER JOHNSON: Precisely.

CHAIR HARBOUR: If I might, I might direct our attention to the Bill itself, page 2, it's in your packet. On page 2 it's under Section 2(c) the Legislature stipulated that the review required does not apply to current open dockets pending review.

And so I think the intent around this table is to embrace as many of the relevant issues as can be embraced within the time limit, but to the extent that we run into clear deadline problems with respect to November 15th, the Legislature has given us guidance that the first priority is to address items not included in the dockets and meet the deadline.

With that having been said I agree with the intent that members have expressed of embracing as much of a (indiscernible) approach to this as we can do either directly through this docket or through linking with related dockets.

COMMISSIONER STRANDBERG: This is awful new and we're putting things together quite quickly. Obviously there is a fair amount of organizational work that does need to be done, but I view this as some additional horse power to speed things up, not to slow anything down. And, indeed, I think we do have the ability to review issues that are in other dockets and if

appropriate to get it together so it's a cohesive fast track process, review where the issues need to be.....

COMMISSIONER THOMPSON: Okay.

COMMISSIONER STRANDBERG: .....and I think that's where I'm at.

CHAIR HARBOUR: Are we ready for the question? Any further discussion? All in favor say aye?

IN UNION: Aye.

CHAIR HARBOUR: Opposed? The motion passes.

We'll go to the next item on the agenda which are proposed water and sewer regulations. These regulations were last discussed at our public meeting on April 9 and some good ideas came out of the discussion. Commissioner Strandberg.

COMMISSIONER STRANDBERG: Thank you, Chair Harbour. I'll wait for a moment to let the hall clear out here.

(Off record comments)

These are -- before us are draft regulation which had previously been before us in the April 9th public meeting. At that meeting we decided the proposed regulation required additional work to redefine a proposed registration program for one of three classes of utilities into a certification program. And we have accomplished this work through diligent work with -- by the Staff and our regulations attorney and also with a key element of help that was provided us by Commissioner Johnson. I wanted to thank you Commissioner Johnson for the

assistance in the rewrite of this.

To move the docket along I'd like to pose a motion here. I move that we notice the attached draft regulations for comment subject to Staff editing for form and any edits that are from the dias today for a 90 day period and that we accept one cycle of comments.

COMMISSIONER JOHNSON: Second.

COMMISSIONER STRANDBERG: I'll just give a short discussion here. The work that has gone into this regulation converts it to a draft regulations which I believe complies with the directions we gave to Staff at the last public meeting. I do support the new approach as protecting the public interest and public health.

Without going into extensive detail and the history of the dockets I will summarize the salient changes made in the last meeting and also provide Commissioner Johnson time for discussion of the legal aspects of the change that has been made.

Commissioner Johnson participated in the limited rewrite of the regulations and my thanks to him, wherein we converted one class of utilities which we had previous -- or which is defined by annual revenue and governance structure from exemption with conditions to a provisional certification class of utility in response to concerns expressed by our regulations attorney.

There were some other changes that we made to the regulation as well, but at this time I'd like to give Commissioner Johnson time to discuss the changes that he helped on.

COMMISSIONER JOHNSON: Well, if I could just provide a little (ph) -- thank you, Commissioner Strandberg. And just provide a real brief overview. What we have in front of us today -- and there were problems. One of the problems we moved from -- at one end of the spectrum we have the Commission's statutory authority to exempt utilities from regulation, that's at one end of the spectrum.

At the other end we have -- of the spectrum we have a -- basically a full array of both economic and quality of service regulation that can be quite intensive when we do our job. And I've always believed that the statutory scheme enacted by the Legislature allowed us to, of course, utilize both extremes as well as anything in the middle. And I -- as I looked -- that was my -- the under -- my -- the point at which I began my analysis.

In the course of doing that I think we stumbled upon -- and it ought not to be this way, but it's the way it was, we also have to ability to classify utilities under the law. And I believe that what we have here is, I think, a good faith effort to classify utilities in order to meet the needs of the need to regulate to some extent the activities of some small

water and sewer utilities.

And as that I believe that what we have is a good faith and a valid effort to exercise that power to classify utilities under, I think, it's AS 42.05.690. I think that's the statutory section. She's looking up, I think that's correct. I think that's the correct sec-.....

MS. RUSCH: I'm sorry, what is it?

COMMISSIONER JOHNSON: 690.

UNIDENTIFIED VOICE: 691.

COMMISSIONER JOHNSON: 42.05.690.

UNIDENTIFIED VOICE: 691.

COMMISSIONER JOHNSON: 691, excuse me. And anyway that's primarily my contribution to the regulations. I do believe that if we look at certificates of public convenience and necessity as property rights, my education in the legal basis of property rights suggests that each property right really consists of a bundle of sticks, that there are unique and discrete elements to ownership of property. When we issues a certificate we, in essence, are handing out some small part of that bundle of sticks, that property right to a certificate holder.

Because of that the grantor retains the ability to define how many sticks they give away and I think that's consistent with the notion to classify the utilities and to provide for a system of provisional certification in this case.

That is the certificate that a party that would apply for and obtain under these proposed regulations, a small water and sewer utility, the certificate that they would obtain is no greater than what we grant. It takes on no greater importance or no greater significance than what we the grantors intend to grant them. So that is the -- sort of the philosophical underpinnings of the proposal we have in front of us here today.

And I think it's responsive to the recent legislative audit and I think represents a pretty reasoned and balanced effort to find an appropriate level of regulation for these utilities which has been pointed out to a great extent are operating in a totally unregulated environment. So I favor the packet that's in front of you and I look forward to the comments as they come in.

CHAIR HARBOUR: Thank you. Questions?

COMMISSIONER THOMPSON: I do, I have several. First for Commissioner Strandberg, you said in your motion one cycle. Was it your intent not to allow reply comments and if so, why?

COMMISSIONER STRANDBERG: That was the thought to move the issue along because primarily we have had significant input on this already and, in fact, the draft regulation does comport in large extent to the general direction that our comments have come in on. I'm certainly open if other Commissioners feel like we should have another round of reply on this to consider

that, but my initial thought was that we would move forward.

COMMISSIONER THOMPSON: I guess my comment would be these specific regulations are different even than the ones we last offered. There's a lot of parties involved and I usually benefit from hearing party's comments on other folks' suggestions. My suggestion would be a brief, perhaps, 30 day reply cycle.

COMMISSIONER STRANDBERG: The reason why we set it for 90 was because there is indication that the Citizens Advisory Board was going to reconvene to consider this. Admittedly they are but one of a number of commentors, but it does take -- it is a large board and it does take time for them to get together and to get organized.

COMMISSIONER THOMPSON: When do you hear that they're going to reconvene?

COMMISSIONER STRANDBERG: I don't believe that they've set the date, but we wanted to give enough time so that they would have some scheduling capabilities on that.

COMMISSIONER THOMPSON: So was it your intent to coordinate the timing of this case so they could file within the 90 days or.....

COMMISSIONER STRANDBERG: Yes.

COMMISSIONER THOMPSON: Well, I guess I still don't see why that would preclude a reply comment schedule. I think that's a good idea, but I don't know why that would suggest to

you that we shouldn't allow reply comments.

COMMISSIONER STRANDBERG: Okay. Comment accepted.

COMMISSIONER THOMPSON: The next one is a question probably mostly for Virginia. The last time we discussed these regulations you'd not yet had the opportunity to review them for both drafting standards and consistency with our statutory responsibilities. I know there's been some debate. I imagine by virtue of the fact that they're presented again this morning that your concerns have been resolved, but I just wanted to confirm that and find out what the focus of your review has been.

MS. RUSCH: Well, I believe that this concept is consistent with the statutory scheme and the Commission's authority to utilize its discretion here. This particular set of regs has not been reviewed as Rosalie (ph) will for compliance with the drafting manual before it goes out and so that still needs to be done. And there I provided some very big scale editing suggesting, but some fine tooth combing still needs to the done to get this more in compliance with drafting manual style and other rules.

COMMISSIONER THOMPSON: Okay. And the last question again for Commissioner Strandberg which is this project is linked to others that other state agencies, most notably DEC, have been engaged in. I know that we've had discussions -- there's been policy discussions between the two different agencies and

having been gone for the last two weeks I don't know what coordination this particular proposal -- what opportunity you've had to coordinate with DEC and the other impacted agencies on this particular set of draft regs.

COMMISSIONER STRANDBERG: I've had extensive discussions with Mr. Dan Easton (ph) who -- from DEC who is the DEC point of contact. He understands the approach. And, again, because this is a permissive approach wherein people are not necessarily obligated to sit in the particular provisional class which we have established here, we feel that it provides a good basis for going forward on a relationship with DEC for providing sustainable utilities.

And there is flexibility built in to it to really be able to exist on whatever that future relationship does developed with respect to sustainable utilities and the potential for subsidies that might be necessary for that, so I believe that the coordination is occurring and there is a considerable amount of future discussion that needs to be had on the subject.

CHAIR HARBOUR: Thank you. Other questions. Commissioner Thompson, did you want to phrase an amendment to the motion before we move to the main amendment regarding the reply comments?

COMMISSIONER THOMPSON: Yeah, I'd like to make a motion that the underlying motion -- I guess it could be -- if

Commissioner Strandberg will accept it as a friendly amendment we don't need to respond to it, but I'd like to allow for 30 days reply comment.

COMMISSIONER STRANDBERG: I would find that acceptable.

CHAIR HARBOUR: Okay. That being accepted we go to the motion itself. Is there any objection to the motion?

COMMISSIONER STRANDBERG: There is one other discussion which I would like to bring up for the benefit of the Commissioners. I asked -- just so you understand the amount of coordination that we've worked -- that we've had with Staff.

We've talked extensively both with are Tariff Section and with our Consumer Protection Section. There are implications here of the regulation. Currently the way it is written, and this is different from the last time around, is we will require an informational tariff when the second class of utility is brought into the fold, so to speak. And it's probably good to discuss at this point the practical administrative impact of the implementation of this regulation.

We have a considerable number of certificated water and sewer utilities that already exist in the state. There is a large group that currently have no relationship with us. A portion of those under this regulation would be exempt, but another portion would need to come in for this provisional certification program that we've embarked on.

And so it's good to understand that there will be on the

order of 200 utilities that we will have to in some fashion establish a relationship with and we can talk about that at a later public meetings, I believe, but what is important here today is the administrative impact of the tariffing requirements that are currently within this regulation. And currently the way the regulation is written is we would require an informational tariff initially to be filed with each of these small utilities.

Once that information tariff is filed and their certificate is received, we really would not have any ongoing relationship with that utility unless there is a consumer complaint. And the way the reg is written right now is once we receive that complaint, the utility would then be obligated to bring its tariff within -- I believe, it's a 10 day period, immediately up to date with us so that our Consumer Protection people could actually handle a complaint.

And I'd ask Ms. Pitts to be here to answer any questions and, indeed, to, perhaps, respond on how she felt that something like this would actually work with this particular class of utility. And I think it's probably appropriate for us to talk about that at this meeting. The rest of it I think we're going to need to deal with later on in the implementation, but with your concurrence, Ms. Pitts, do you have comments on this?

MS. PITTS: Yes, my initial reaction is that it's probably

not going to be helpful to a consumer to -- that's filing a complaint if there's no rules on file right -- you know, right at the time. Either a consumer will have to wait for the utility to file 10 days later or two weeks later or whatever and then that raises a question of does the rules then apply retroactively to a complaint or not. I don't see this as being helpful for a consumer at all in terms of having some set of rules to go by at the time the complaint is being filed.

COMMISSIONER THOMPSON: I have a question. So does -- in this provisional certification, and I beg your indulgence because I literally got this, this morning when I walked in the door having been gone, but that's not your fault, it's mine. Does the provisional certification require filing of a model tariff?

COMMISSIONER STRANDBERG: Currently the regulation has basic tariff requirements. We've moved away from the model tariff after careful review of the comments, but that the model tariff would be -- we propose at a later date to make that available on line as a resource, but it would not be required as a part of the regulation.

CHAIR HARBOUR: Commissioner Strandberg, the -- in tracking one of the confidences that I had in the provisional certification concept was that annually I was a little bit concerned that, perhaps, a utility might fall within the requirements of provisional certificatior and then grow and

grow out of the requirements. And that seems to be taken care of with the annual filing requirements, so they'd have to reaffirm through affidavit and the filing of additional tariff update material that they were still within the provisions of this limited certification.

COMMISSIONER STRANDBERG: That is correct.

CHAIR HARBOUR: Okay. Other questions? Is there objection to the motion? Seeing no objection, the motion is approved.

We move now to other business before the Commission and I thought for my selfish pleasure and benefit if -- and probably for that of others here, I would ask Commissioner Thompson who just returned from a trip during which the United States Government asked for her expertise in a far away land in some of the areas that we regulate and could you give us a brief report on your trip?

COMMISSIONER THOMPSON: I'd be happy to. I returned, in fact, last night from Gaberone Botswana which is in southern Africa. It's on the -- if you think of South Africa, Botswana is landlocked. It has between Namibia to the west and Zimbabuk and Mozambique to the right. And I was there participating in a project called Net Tel Africa at the invitation of USAID, the United States Agency for International Development.

The purpose of this project is capacity building within African regulators regulatory systems. Most of these countries

are new to their own governance and have only recently established regulatory agencies like ours. The specific purpose of this two week program was to develop a curriculum for an African equivalent of what we call boot camp here in the United States which is a program that new regulators and regulatory staff attend soon after they're appointed. In our country it's in Ohio State University and it happens in the summer for two weeks.

The purpose of Net Tel Africa was to have the African regulators develop their own curriculum for this program and there were a small number of us Americans that were helping in terms of advising and developing of the curriculum and also in presenting some hot topics in the afternoon.

Over the last year by e-mail what they did was divide the entire scope of what an agency would have to know to regulate telecommunications. And I should also say in most of these countries the telecommunications regulatory authority is separate from the authority that regulates the other utilities in the country. It's not true in all, but in most.

And the focus of this program was specifically telecommunications regulation, but amongst the topics to be taught, one of them was universal service or universal access as they use the term in Africa because less than five percent of the population on that continent has access to a telephone. And they define access as the ability to walk to a telephone

within five kilometers, so their system is completely different or very much different than ours.

Anyway, I worked with University of (indiscernible) in Johannesburg on the universal service portion of the curriculum and then in addition was asked to present materials on a couple of different hot topics for discussion in the afternoon. It was a fascinating project to participate in and I really appreciate the support of this agency and the invitation of USAID to participate. I learned things that will be with me for the rest of my life. It's a different world.

And specifically in terms of what I bring back to my work here I think there are two things that I learned a lot about in the last two weeks. One is insights into community development or bringing this telecommunication structure to communities that have not currently had it that will help me in reviewing and participating in the administration of the grant program we have from the federal government for rural internet access.

Although in Africa the issue is access to basic telecommunication services, I think it's not long before access to internet is the same -- becomes the issue and the issues are much the same when you're bringing to a community something that they haven't had before that allows contact with the outside world.

The other is some different insights into the basic regulatory structure for telecommunications that are gained

only by perspective. Remember here that most African regulatory agencies have only existed for a few years or at most a few months and so what they're looking at is how the rest of the world has address the issue. And I heard the term leapfrogging a lot.

You know, they're spending a lot of time looking at how other countries have done things well or not and trying to bypass some of the problems we've had in our structure. So whenever you're called upon to think anew, gee, if I could start with a clean slate how would I do it, it helps you come back and think about where you are now as opposed to where you'd like to be.

So it was a wonderful experience and I look forward to talking to more of you individually about it when I get a chance.

CHAIR HARBOUR: Thank you, Commissioner Thompson. I like to do that because it's seldom that we as a group can be together and it's at a public meeting so in addition you get the benefit of that.

We now move to Executive Session. If there is reason for one, Assistant Attorney General Rusch.....

MS. RUSCH: I don't have --.....

CHAIR HARBOUR: .....any suggestions? No.

MS. RUSCH: .....I don't have any.....

CHAIR HARBOUR: Is there any other business to come before

the body?

COMMISSIONER STRANDBERG: Move to adjourn.

COMMISSIONER THOMPSON: Second.

CHAIR HARBOUR: It's been moved and seconded. Objection? The meeting's adjourned. Thank you very much for your attendance.

(Recessed - 9:45 a.m.)

1500

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:

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THAT this Hearing Transcript, as heretofore annexed, is a true and correct transcription of the proceedings taken and transcribed by Suzan K. Olson.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 10th day of June, 2003.

_____
Notary Public in and for Alaska
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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

REGULATORY COMMISSION OF ALASKA
701 West Eighth Avenue, Suite 300
Anchorage, Alaska

PUBLIC MEETING

October 8, 2003
9:00 o'clock a.m.

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COMMISSIONER THOMPSON: Yes, and asking for comments on two things. Comments on the structure of the model itself and which -- what inputs do the commentors feel are appropriate.

CHAIR JOHNSON: Okay. That's the question before the body, will the members, please, vote?

IN UNISON: Aye.

CHAIR JOHNSON: We're all unanimous. So thank you for that. Thank you, Phil (indiscernible - background noise).

Do we want to take a very short break before consideration of the next item or do we want to keep on going?

COMMISSIONER THOMPSON: Rock and roll.

CHAIR JOHNSON: Rock and roll. Without objection I'm going to clear my.....

COMMISSIONER THOMPSON: Thank you, Phil.

MR. TREUER: Sure. Can we put on the web page before we release the order, the model?

COMMISSIONER THOMPSON: It's okay by me. You don't care if the model's on the web page?

CHAIR JOHNSON: No, that's fine.

COMMISSIONER THOMPSON: Go for it.

COMMISSIONER STRANDBERG: Nice job, good model.

MR. TREUER: Thank you.

CHAIR JOHNSON: The next item on today's agenda -- actually it's item number three, it's Docket No. R-03-3 which is the review of our -- a comprehensive review of our

telecommunications regulations pursuant to Section 2 of House Bill 111. And we had a -- what I personally consider to be a very productive and informative hearing a number of weeks ago and I know that many of the people that represented industry are here today and I can just tell you that I found it to be very useful and I appreciate your participation and assistance to the Commission in addressing this issue.

What I'd like to do today is hear from Staff, primarily Ms. Kenyon, describing from her perspective the status of this matter and sort of setting out a little road map for where we go next. I believe that this matter remains probably the number one item on the Commission's agenda for the remainder of this fiscal year. We are trying to be responsive to the legislative mandate and I think we're going to do it. I'd like to recognize Ms. Kenyon for awhile and then we'll have hopefully some discussion amongst the Commissioners after that. So with that, Ms. Kenyon, would you, please, address us on this subject?

MS. KENYON: Yes, this is in regards to Docket R-03-03, and according to the legislative mandate we have a deadline of November 15th of this year to issue proposed regulations. So while you don't have to decide a particular issue, what we're looking for is what should be issued -- what type of regulation changes should be issued to the public to comment on.

In preparation to meet that deadline tentatively scheduled

as far as I could tell these are -- there are going to be two public meetings, one on October 22nd and one on October 31st so that you can discuss in detail how you would like to proceed. Hopefully we will have all of the answers as to what you want publicly noticed by the end of those two public meetings. We can draft an order, get those out -- the order out and meet the deadline.

My goal is to have a staff memorandum or possibly even multiple ones because there are a variety of subjects here, have one to you by October 15th of this year, that means next week so we're pretty busy working on this project even as -- as you can tell we've got most of the common carrier staff here and we've parsed it out between us because it's such a complex task. I've provided you with a rough list of the issues so that you could see who's working on what to give you an idea of what we're concentrating on so that you can tell us if we're looking in the right places and are providing you with the services you want for this project.

We've been concentrating on the competitive market structure rules because that's where most of the comments were filed. It's not saying that we aren't going to look at everything, but those are the areas where we've spent most of the time so far to date and we've made a lot of progress there. The places where -- that I wanted to point out to you specifically -- you should be where you have an additional

docket out there, R-02-06, that's a docket that you created to consider local market structure issues and when I looked at it it looks like the proposals in the pending docket we're talking about today as well as R-02-06 are very similar. So there's -- at times there's at least -- I think it's the ACS proposal, it's virtually identical between the two.

So one thing you might want to consider is if you do issue -- when you do issue notice of regulation changes that you issue it in both dockets and perhaps that will take care of both at the same time. There's only a minor -- one or two issues raised in R-02-06 that in my opinion aren't mentioned in R-03-03 in one way or another.

Regarding the other issues, at this time, you know, we have had a lot of comments on the unbundled network element issues and the wholesale pricing issues, a lot of comments. I'm anticipating that the staff report on that though, our memo, isn't going to be that long. We've seen a lot of -- looked at a lot of those issues and we're probably not going to spend a lot of time on options that we believe are either duplicative of federal rules or contrary to federal rules, but it'll be up to you to decide how you want that done. If you want to spend a lot of time on that you probably should let us know at this meeting.

As far as the ETC issues are concerned, memorandum on that is mostly done. One thing I am not planning on providing to

you at this time is an alternative for the proposals currently on the table. You'll have the options of everything -- of whatever anyone has proposed on that matter, but -- which is mainly the Rural Coalition's proposal, but unless you direct me otherwise I wasn't planning on providing you a Staff alternative to the Rural Coalition's proposal.

Let's see if that's -- what else I had. Oh, as far as the structure of the memo, I've looked at the proposals and I've looked at the issues in the local market structure docket and they're complicated and there's a lot of details there. And when I realized -- but I realize that there are -- some of those complications were created by the fact that some of the proposals are internally consistent -- inconsistent so that they're like almost pulling you in two different directions at one time.

So the way the memos are going to be structured to you is rather than saying do you buy the whole proposal that someone has filed, we're asking basic questions. We've T'd (ph) up a basic question like where should the local competition rules apply and then we give you the options that people have proposed so you can pick the option you like, if you don't like those options you can make one up that you think is better or you can select no change. But when you look at the key questions that you need to answer, it seems like a lot of the issues get a lot simpler. So that's the structure that we're

-- that we've been using for our memorandum.

Let's see if there's anything else I wanted to mention. And I guess unless any of the other staff have any comments to make at this time, that's all I had.

CHAIR JOHNSON: Okay. I'd like to -- actually the way to proceed, I was wondering if Commissioners have questions of Ms. Kenyon at this point, maybe we can do it.....

COMMISSIONER HARBOUR: I have one for -- it's for either.....

CHAIR JOHNSON: Commissioner Harbour.

COMMISSIONER HARBOUR: .....you or Ms. Kenyon. R-03-03 specifies areas for inclusion into the draft regulations, but also leaves the door open and we do in our order inviting comment. I'm wondering if that door is wide enough and or is it appropriate to incorporate the 02-06 proceedings with the two additional items you mentioned into 03-03 so that we don't give notice in two separate dockets on the same issues?

MS. KENYON: I believe it is when -- to this -- to date I've drafted a lot of the local competition memo and there's only a handful of places where I've actually had to mention the word R-03-06 because a proposal was filed. I need to still incorporate some of the comments from that docket into the memo so that you have a full range of the ideas that have been suggested to you, but I don't think it's going to be that -- I mean, I think there are virtually the same issues on many of

these things.

The one that was different was the seven day rule issue where -- you may be familiar with that, that GCI and ACS have a difference of opinion as to what should be the regulation change in our local market structure range is that regulations that specify when certain type of customer change over orders have to occur. That's a new issue in R-02-06 that's not raised in R-03-03. However I think with the triennial review order that puts a whole different spin on that issue because that order from the Federal Communications Commission directs you to provide a batch -- hot cut batch processing procedures that may directly affect that and you might want to consider whether or not you want to address that issue now.

So another option is you could hand that off to another case or just not deal with it, it's up to you. But I guess to answer your questions I think we can do -- we can combine the two together and there won't be any harm and we can issue one notice and perhaps have all of the comments directed to one or the other docket to make life simpler.

COMMISSIONER HARBOUR: Thanks for that answer. Mr. Chairman, just in the sense of efficiency and if you were to consider that appropriate I'd sure be supportive of it.

COMMISSIONER STRANDBERG: I would comment that we do have a hard deadline in 03-03 of November 15th. 02-06 is under a different time line so if there were things that we needed to

consider for the Legislature we could do that under 03-03 and if there were other things that we needed to take a little more time on that still allowed us to comply with the Legislature we could leave those in 02-06.

COMMISSIONER HARBOUR: But I think the main objective, Mr. Chairman, is not to be putting out to notice duplicates and, you know, arranging for additional costs of Commission and industry at the same time. And if we can economize in the way Commissioner Strandberg suggested that might be a good alternative.

CHAIR JOHNSON: I certainly appreciate that. I guess where I'm going on this is I do not want to create the impression on the part of the Legislature, on the part of industry that this Commission is failing to act in a timely manner and I guess, folks, where I am is that the train is rolling and as far as I'm concerned the train will continue to roll because I think that's what the Legislature expects of us. Further comment, Commissioner Strandberg?

COMMISSIONER STRANDBERG: I would say that in my opinion the most efficient thing to do is to keep the train rolling in 03-03, make the decisions and as they fall away in 02-06 they will fall away and indeed that docket may just go away. But it is there in case there is something that we need to do with it.

CHAIR JOHNSON: Are there additional questions for Ms. Kenyon relative to.....

COMMISSIONER GIARD: Mr. Chairman, if I may? On the UNE pricing issues, Ms. Kenyon, you talked about maybe not doing as much work in that area, is that because of the other docket that we've got going and some of the decisions that may be made there? So are we going to.....

MS. KENYON: It's not so much the other dockets that are going, but, you know, we need to -- you know, if you want us to spend the time there we certainly can, but I think our intent was if that -- of those proposals that were in the -- the UNE pricing proposals and the wholesale proposals are not likely to move further because they violate federal law or are inconsistent with federal law, we're not going to spend a lot of time on them.

CHAIR JOHNSON: Yeah.

MS. KENYON: But that was, I think, the intent that we could put whatever amount of detail you want in that and -- oh, pardon me.

CHAIR JOHNSON: If I could just respond to that and I just wanted to perhaps clarify is I don't think we should be putting Ms. Kenyon in the middle of discussions that we need to have as a Commission and I'd -- I guess what I was trying to do was just get questions for her right now and then when we're finished with that I think I'd like to open it up to have some discussion here on the panel.....

COMMISSIONER GIARD: Okay.

CHAIR JOHNSON: .....as to.....

COMMISSIONER GIARD: Okay.

CHAIR JOHNSON: .....some of these various issues, but don't ask Lori to respond to items -- decisions that really are ours to make. So.....

COMMISSIONER GIARD: Okay.

CHAIR JOHNSON: Okay.

COMMISSIONER GIARD: So you'll let us talk about that in (indiscernible - simultaneous speech).....

CHAIR JOHNSON: Absolutely.

COMMISSIONER GIARD: Okay. What about -- I look at the schedule that we have in front of us, Lori, with the staff memos, the deadline for the staff memos and then rolling into the public meetings, I wondered if it -- if you thought it would be helpful to have a work session in between there with the Commissioners or how are you -- is -- how do you see that happening?

MS. KENYON: Well, any work session with the Commissioners would have to be at a public meeting.....

COMMISSIONER GIARD: Right.

MS. KENYON: .....and we could have as many public -- I mean, it's up to you folks how many public meetings you want, but you'd need to have seven days advance notice to the public. So today would be the deadline for the -- next Wednesday's public meeting.

COMMISSIONER GIARD: Okay.

MS. KENYON: I guess what I'm saying is you're -- you need to start planning now if you want more of them.

COMMISSIONER GIARD: Right.

MS. KENYON: We're available if you want any type of training on any of these issues or additional explanation, that's what we're here for.

COMMISSIONER GIARD: Okay. No more questions, Mr. Chairman.

CHAIR JOHNSON: Additional questions for Ms. Kenyon? If -- thank you, Lori.

At this time I guess I'd like to throw this open for a more general discussion amongst the panel as to what they perceive the issues in the docket are and as to the direction the Commission ought to go. As you know, I've certainly spoken to I think each of you informally relative to issues presented in the docket and I've received some feedback.

And I just want to -- it might be useful just to sort of guide the discussion without -- and my purpose in doing this is not to suggest that any issue's been foreclosed or decided upon, but just to indicate from you collectively what I believe your comments to me reflect so far. I mean, this is kind of -- just sort of a starting point for discussion. So with that caveat let me just say that -- well, let me recap from my perspective what I think I've heard back from you to start the

discussion once again.

I believe that there was substantial support on this Commission as -- and as well as the other participants at the hearing relative to the proposal offered by the Rural Coalition on depreciation. And I believe that that is something that we are probably going to pursue, I think that's a pretty clear result out of the hearing. And I think the Staff is working on appropriate memoranda in that respect and I think we're well situated to handle that issue.

Secondly, I think that there was -- and this may be very, very contentious, I'm sure it is, I have not detected on the part of the Commission much consensus on taking specific action in the area of unbundled network elements and UNE pricing in general. Now if I'm wrong on that certainly I'm going to hear from people in a few minutes, but I did not gather any sort of consensus, I don't see where there's a lot of people moving in the same direction on that and I think the issue remains a contentious one in the industry in general.

There are other proceedings underway for -- and in particular the FCC has announced a proceeding in which they intend to review TELRIC pricing, I know that that is going to be a lengthy proceeding. Nonetheless, I have not heard from this Commission or amongst the -- all the presentors at our hearing earlier where there is a consensus direction there and anyway that's -- maybe that's what -- all I need to really say

about that.

I do believe -- and I got a little more detailed as we moved into the area of local market structure and market rules, there does appear to be support for a proposal -- and this is flexible once again, a proposal that would permit a dominant carrier in a competitive service area to reduce rates, offer new or repackaged services or implement special contracts without Commission approval upon 30 days notice.

I don't think there's -- we're not locked into 30 days notice, but in rough terms certainly the day -- number of days is adjustable. Certainly there's a need on our behalf to define what a competitive service area is, there is a need on our behalf to define what a dominant carrier is. And then there may be some other aspects of this proposal that we want to flesh out, but I detect in general support for that proposition.

Similarly, I have identified in general once again support for a proposal that either carrier in a competitive market may increase or decrease retail rates subject to a notice tariffing approach. Certainly the details of that remain for us to iron out.

Anyway I can say with certainty that those two areas, I think, are -- we are looking at and I think Staff is also making some preparations and developing some recommendations for us in that area.

Additionally in the interexchange carrier area (indiscernible) issues in general, there appears to be support for a proposal to permit rate reductions in noncompetitive markets upon 45 or 30 days notice to Commission, something of that order. And once again there's matters of definition that we need to look at there.

There's a -- in general support for a proposed amendment to add a subsection to eliminate a requirement for supporting information in tariff filings to reduce existing rates and impose a 45 review period on the Commission in these circumstances. That's in the IXC arena.

Additionally, there's general support for a proposal to eliminate filing of an annual report by IXCs including outage reports and performance reports in tariff filing requirements for dominant carriers under 3AAC 52.375. That was proposed to us and I think we should take an additional look at that.

And finally -- and this is just me making kind of a first cut at all this stuff, there does appear to be support for a proposal to modify the dominant and nondominat and market power rules for the interexchange market. And those are largely matters of definition once again that we are going to have to struggle with.

I know this is sort of a dangerous position to be in too, but I'm trying to set these matters forward to the Commission to sort of focus our discussion and debate a little bit and to

provide additional direction to Staff. Ultimately we have to work with them to develop the kind of product that will allow us to generate specific regulations, proposals here in a pretty short time frame.

So I just -- I'm identifying these issues from the standpoint of just trying to get the discussion started and hearing -- I'd like to hear further from Commissioners at this time as to what they think of these ideas as well as anything else that was discussed in the course of hearing that we ought to take up. I think this is the time for us to provide some direction to Staff. So with that are there comments on the part of Commissioners on these matters? Commissioner Strandberg?

COMMISSIONER STRANDBERG: I have one comment and that is that some of the issues, in fact, are tied in with federal law and to the extent that we are going to need to make decisions about our regulations, what sort of legal assistance are we going to empanel or amass to help us make these decisions particularly about the UNE rates?

CHAIR JOHNSON: Well, I think -- if I may respond, I think that the Department of Law is -- and our legal advisor in the Department of law is familiar with these issues, you know, we have certainly addressed them in other dockets, other areas. I'm -- I will say that I'm confident and I note that their -- this advice does not fall into the category of legal advice,

but I do believe that the Staff of the common carrier section is well familiar with the specifics of the FCC rules and is prepared to work with the legal staff to develop the kind of advice and answers we need. But our Staff is knowledgeable in this area, they really are and I'm confident that we're going to get some solid advice from, you know, the -- our Staff working with the Department of Law.

COMMISSIONER STRANDBERG: And purely as a positive suggestion, if there are issues that we may need like a written -- short, written legal discussion about where we can go in our decision making on this, on certain of these issues is there any sort of thought from the Commissioners about really getting it organized about some of these key issues that have been -- that we've been dealing with for years which really do relate to this particular reg making?

COMMISSIONER HARBOUR: Mr. Chairman, yeah, I have a.....

CHAIR JOHNSON: Commissioner Harbour.

COMMISSIONER HARBOUR: .....personal response for you. During the legislative session I encountered a number of legislators who, you know, had been talking to various parties and what may appear to one person as a common sense approach to any of these issues in the isolation of our own state is affected as you suggest by federal law and jurisdiction in some other cases. And, therefore, I think part of this is an education process and I think it's a point well taken that

perhaps in the order that issues the notice that if there are areas that we wonder about, that we do seek a legal opinion and then perhaps by referencing the order issuing the notice give a little explanation of that particular area, why is that -- and if there are areas determined to be areas that we cannot explore, then it would be good sense to include the rationale and attach the legal opinion by footnote.

That's right from the get go, that's from the issuance of the notice of the draft regulation so that it's clear why the direction is taken that is taken. So I appreciate that suggestion and that's a suggestion for a way to handle it.

CHAIR JOHNSON: I guess it -- just responding, I believe that ultimately though that legal advice that's rendered from the Department of Law to this Commission is for the benefit of this Commission. And we are certainly free as a Commission to indicate based on advice of counsel and whatever other policy level calls that we want to make as to what we believe that the limits of our -- or the latitude of our ability to act is and I'd just -- reluctant I -- I do believe that once again that the legal opinions that we gather are for our benefit, we're not necessarily shopping that to the world. I don't think that that's.....

COMMISSIONER HARBOUR: And.....

CHAIR JOHNSON: The point is that if we believe based on their advice that certain areas we ought not to go into, better

just say it and offer that up and I'm afraid -- I'm certainly happy to do that, but I just -- I don't want to involve them, they are our counsel and we need to treat and respect them as Staff would, but the decisions in the -- that are made or the policy calls that are made are ours. I have no problem addressing as you suggest in the order, we think that certain areas are off limits we'll just state that.

COMMISSIONER THOMPSON: Commissioner Johnson.

CHAIR JOHNSON: Commissioner Thompson, do you have a.....

COMMISSIONER THOMPSON: I have a comment which is it puts legal counsel in quite an awkward position to be rendering a legal opinion in a vacuum and it's probably more appropriate in the context of specific decisions or suggestions made by -- in the Staff memo that they would be a position to be able to tell us whether we can do that or not which is, I think, what you're really asking.

You can't -- it's not a reasonable request to say what can we do, what are we legally allowed to do, it's much more -- you're more likely to get an answer that would be useful in guiding the Commission to come up with -- for this agency to devise a policy that it wants to pursue and then ask and then in the course of devising that policy to seek guidance from our legal counsel.

Then I imagine that's something that the Staff would be free to do also in the process of drafting their memo, perhaps

identifying legal issues then and we can see them, but I'm not sure that you're going to get the answer you need if you try to append something to a public notice.

COMMISSIONER HARBOUR: Okay. I think the end result could be the same though.....

COMMISSIONER THOMPSON: Right.

COMMISSIONER HARBOUR: .....and that is a careful explanation of why a choice is made.

COMMISSIONER THOMPSON: Uh-huh.

CHAIR JOHNSON: Okay. Are there further comments?

COMMISSIONER GIARD: I have a few.....

CHAIR JOHNSON: Commissioner Giard.

COMMISSIONER GIARD: .....comments, if I may, Mr. Commissioner?

CHAIR JOHNSON: This is the time and place.

COMMISSIONER GIARD: I think from a statewide policy perspective I'd be interested in comments from the Commissioners who have served on the Commission longer than I have as to really where -- if we're going to focus our attention on particular issues and not focus our attention on other issues, it would be helpful for me to help make that decision if I knew really what issues have been driving this Commission for the last four or five years.

And that's one of the reasons that I brought up the UNE pricing issues because it seems since I joined the Commission

that that's been something that -- the lack of a regulation or in that particular area has caused some considerable concern on behalf of the ability of the utilities to efficiently perform their tasks and for us to be able to maybe efficiently regulate.

So I would just be interested in the other Commissioner's opinions as to whether when we put this policy or this regulation out if we are really addressing those issues that not only may be can be quickly and easily dealt with like depreciation which was a darn good suggestion, but are we dealing with the issues that have, you know, caused this Commission and the Legislature and our utilities and the public the most heartache over the last several years?

CHAIR JOHNSON: Would anyone like to respond?

COMMISSIONER THOMPSON: As a veteran I will. And I'd say that my experience tells me that perhaps the best decisions are not one when you're addressing the problem that they're in front of you screaming about, but when you take a step back and say what's really the issue here and what can I do to solve it. And in that vein I think that there is a need -- I'm comfortable with the approach that Staff is taking in structuring the market.

I think that a lot of the local market issues are significant and something this Commission needs to address. It -- we got a memo a couple of weeks ago from somebody else on

common carrier staff about how our local market structure regulations differ from every other state in the union. It's something that I think focusing attention on those rules is appropriate.

The other comment about the UNE pricing is that we have to be careful in this to understand what it is we have the ability to change and what we don't. We're an administrative agency, we're a creature of law and we have certain responsibilities, we don't have others. And not that we're shying from them, we have important responsibilities with regard to UNE pricing, but I think we need -- our work can be most productive if we focus on what it is we're supposed to be doing and look at things from a broader perspective of what are the real drivers in this market, what are the changes that have occurred in this market over the last five or six years that we have not adjusted to in our regulatory policy.

And with that I would concur with the Staff's emphasis on both a look at local structure and IXC market structure regulations and to determine what adjustments should be made to those regulations to reflect markets that have in some cases developed as competitive and markets that have adopted new technologies and will continue to in the future.

COMMISSIONER GIARD: I don't have any comments for.....

CHAIR JOHNSON: Further discussion? Commissioner Strandberg.

COMMISSIONER STRANDBERG: I concur with Commissioner Thompson. I guess the way that I'm seeing this is there's certain aspects of this that do not conflict with the Telecommunications Act of '96, 1996, there are other aspects of it that are directly related to it. And I believe that we have broad -- we have discretion in certain of the issues, in others I believe that they are significantly complex and indeed controversial and a legal interpretation of the area that we can actually maneuver is actually of concern.

And so I guess I am concurring generally with the approach that Staff is taking on this and I do believe indeed that they recognize that issue and I -- maybe I can't -- I don't mean to speak for them, but I believe there is two different areas here, one is the federal -- federally constrained and the other is areas where we can actually act and fix something. And that -- I don't know, Ms. Kenyon, if you have any further comment on that, but I'll give you an opportunity here if you'd like to speak?

MS. KENYON: Thank you, but actually I have no further comment, but I'd defer to Phil because he's actually the one who'd be working on the UNE and the wholesale issues, if he has any comments.

MR. TREUER: No, I think pretty much everything's been said.

2700

(Tape change)

Tape 3

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CHAIR JOHNSON: Is there further discussion and once again our desire this morning is to provide some direction to Staff and to try to keep this process going. And will ultimately lead to our (indiscernible). I should mention -- and obviously there's a certain amount of one on one that has to take place here, but I personally am interested in discussing with Commissioners the approach to the ETC question a little further. I didn't mention that initially, but that is of interest to me and -- as to how we might handle that.

I think there's an interplay between that issue and general market structure rules in my mind and I think it might be wise for us to attempt to look at those issues concurrently, but I don't want to suggest that there's a consensus on this issue as yet. As a matter of fact, the Commission may be somewhat sharply divided, I'm not sure exactly, but anyway I think those discussions will continue.

Are there further -- is there further discussion on the part of the Commission?

COMMISSIONER HARBOUR: Mr. Chairman.

CHAIR JOHNSON: Commissioner Harbour?

COMMISSIONER HARBOUR: Yes, your earlier briefing was appreciated and I know that you've tried to communicate with us

individually to get your own understanding to present today, but I think in the same sense of -- that you presented ETC. No matter what's been said the devil's in the details and in the draft that we work on and I don't -- and I'm sure you don't expect us to necessarily subscribe to the briefing as represented any final decision on any of these issues.....

CHAIR JOHNSON: That's right.

COMMISSIONER HARBOUR: .....because based on the way it's finally worded it could be that one who suggested one approach might withdraw and completely oppose that approach based on the final wording.

CHAIR JOHNSON: Just -- I understand and we have a complete additional process that we go through relative to noticing of actual regulations and so that's when everybody gets a chance to look at what we might do and comment upon it. And so we are trying to get that process ready, set and go to use the expression T'd up in advance of our deadline in November. So.....

COMMISSIONER HARBOUR: Mr. Chairman, what we would expect.....

CHAIR JOHNSON: Commissioner Harbour.

COMMISSIONER HARBOUR: .....at next week's meeting if it's on the agenda next week as well, would that be.....

CHAIR JOHNSON: What were we expecting, Ms. Kenyon?

COMMISSIONER STRANDBERG: Not on that -- next week.

UNIDENTIFIED VOICES: (Indiscernible - simultaneous speech).....

MS. KENYON: I wasn't aware there was going to be a meeting next week.

COMMISSIONER HARBOUR: Oh, you were saying if we desired it to be we'd need to notice it today?

MS. KENYON: Yes, that's what I was saying. What we're hoping to give you is a document or multiple documents outlining options and pros and cons on the options by next Wednesday.

CHAIR JOHNSON: Okay.

COMMISSIONER HARBOUR: Okay.

CHAIR JOHNSON: Is there further discussion as we walk gently on the thin ice of telephone regulatory reform?

COMMISSIONER STRANDBERG: Thank you.

CHAIR JOHNSON: And I'll just be clear, I was not looking.....

COMMISSIONER STRANDBERG: Right.

CHAIR JOHNSON: .....for a motion, there's no action.....

COMMISSIONER STRANDBERG: Right.

CHAIR JOHNSON: .....to be taken on this other than the discussion we had here today. That brings us to the end of our prepared agenda.

As indicated earlier we have a category of other business and then we do have a scheduled executive session. Is there

other business to come before the Commission this morning?

COMMISSIONER HARBOUR: Mr. Chairman, move executive session.

CHAIR JOHNSON: Okay. It's been moved and seconded that the Commission go into executive session to hear from our attorneys as to pending litigation -- two items of pending litigation. Is there a second to that motion?

COMMISSIONER THOMPSON: Second.

COMMISSIONER STRANDBERG: Second.

CHAIR JOHNSON: It's seconded. With that we'll take a moment as we do go into executive session and I'll ask Ms. Rusch to count noses and determine if everybody that she wants present in the room is here and those people that really are not appropriate have left. Let's go off record.

(Off record - 11:20 a.m.)

(Executive session)

(On record - 11:50 a.m.)

CHAIR JOHNSON: We've been in executive session to hear from counsel regarding pending litigation. And we have been adivsed by counsel. We are now back in open session.

COMMISSIONER HARBOUR: Move adjournment.

CHAIR JOHNSON: There's a motion to adjourn.

COMMISSIONER GIARD: Second.

CHAIR JOHNSON: Commissioner Harbour moved to adjourn. Is there a second? Commissioner.....

COMMISSIONER GIARD: Second.

CHAIR JOHNSON: .....Giard. Is there objection? Without objection we are adjourned.

(Recessed - 11:20 a.m.)

0215

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 Meeting held on October 8th, 2003, was taken by Suzan K. Olson, commencing at the hour of 9:00 o'clock a.m, at the Regulatory Commission of Alaska in Anchorage, Alaska;

THAT this Transcript, as heretofore annexed, is a true and correct transcription of the proceedings taken by Suzan K. Olson and transcribed by Lynn Hall.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 10th day of October, 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
Kate Giard
Dave Harbour
James S. Strandberg
G. Nanette Thompson

REGULATORY COMMISSION OF ALASKA
701 West Eighth Avenue, Suite 300
Anchorage, Alaska

PUBLIC MEETING

October 22, 2003
9:00 o'clock a.m.

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P R O C E E D I N G S

Tape 1

0015

(On Record - 9:05 a.m.)

CHAIR JOHNSON: We are on record. It is October 22nd of 2003. And welcome to the scheduled regular Public Meeting, I think that's correct, of the Regulatory Commission of Alaska. I'm Mark Johnson, Chair of the Commission. With me are Commissioner Strandberg, Commissioner Thompson, Commissioner Harbour and Commissioner Giard. All members are present. We have a quorum.

The first item scheduled on the agenda today is public participation. Are there members of the public that desire to address the Commission on matters that are relevant to the activities of the Commission? Any member from the public today? With that and being no takers, the public participation section of the meeting is closed we can move on in peace.

The first item -- the next item on the agenda, I believe is a report from our Consumer Protection -- oh, actually -- and this has taken a couple of different forms. I had discussion with Staff and what I'd like to do with the permission of the Commission is to hear from Ms. Pitts on the quarterly report from her section, the Consumer Protection Section. Without objection I'd like to recognize Ms. Pitts.

MS: PITTS: Good morning, thank you, Mr. Chairman. I'm

going to be brief. I've got a little respiratory problem, but you have a handout with the statistics for the last quarter which is pretty clear.

We're below numbers in complaints this year over where we were last year, taking into consideration last year the formal proceeding that we opened about the local competition issue here in Anchorage and also that we were accounting for complaints in a different manner at that time so that accounts for the differences in the percentages and numbers.

However, as you can see from the summary of Staff resources we still do most of our contact and deal mostly with telephone issues, that's still in the forefront. From that first page you can see that we're doing -- about 84 percent of what we do is deal with telephone issues.

Now on July, August and September '03 our electric complaints were up. That would be attributed to in July probably cut offs because weather is now warmer and the utility gets more active in collecting and that would account mostly for the increase in the electric complaints you see there.

And getting into September probably that last push to get accounts current before we get into dark and cold season again so we would likely be hearing from consumers either that don't have the resources to pay or trying to find out what their obligation is to pay all or make some kind of arrangements.

We're still averaging about 1,000 telephone calls per

month and not all of the calls that we take are -- concern issues that are jurisdictional here. Nevertheless, we must answer the phone so they're all counted in.

The total of filed complaints on the next page, you'll see that the numbers are down quite a bit. Both -- while opened, closed and pending complaints are all down.

And I just note that in 2002, as you may recall, we were counting the telephone -- competition complaints, we were counting them twice, once for each entity involved in the complaint and as of July 1, '02 we started just counting them once. So basically if you take 2002's numbers and take it in half it would be a better comparison to compare to 2003 to really see a comparison of where we are.

Again, on the next page we're doing mostly telephone complaints, gas and electric crept in there, but those were just a handful.

On that back page, that gives you an idea of who the main players were, whose customer we heard from in July, August and September. And, of course, most of the complaints are filed from Anchorage customers and the main players in Anchorage, of course, are GCI, ACS and to a lesser degree, very lesser degree, AT&T Alascom.

So that is, kind of, a quick overview of the complaints. And you've been made aware of other things we're doing in the section as it relates to Gustavus' outage. And, you know, that

we're also doing the Bristol Bay election which we should be issuing an order on here very quickly by the end of this month would be our deadline for issuing the order announcing that election.

And we are also about mid way or maybe a little better into the annual report production. So that's it for the section and I'll take any questions that you might have.

CHAIR JOHNSON: Are there questions for Ms. Pitts? It appears not. Thank you, Agnes, we appreciate it.

MS. PITTS: Thank you very much.

CHAIR JOHNSON: The next item on our agenda is a discussion which had begun in a prior meeting regarding an open Docket, R-03-03 which pertains to a review of -- a Legislative directed review of our telecommunications regulations. And we've also placed on the agenda related dockets because the matters touched upon are also addressed in other open Dockets, R-02-06 and R-01-2 and we did that to provide notice to everybody of what was on the table for discussion today.

Primarily, and if the Commission will indulge me a little bit here, we have in front of us today a Staff report that attempts to set out a variety of policy alternatives for our consideration in connection with these dockets. I would say, and I think most Commissioners have spent a fair amount of time with this already, that it is a comprehensive report. It is detailed. It provides a very detailed look at our regulations

and the options that are in front of us in connection with our regulatory review process.

I will say that just from my standpoint I think it is -- it represents an enormous amount of work on the part of our Common Carrier Section and we appreciate that. It's obviously a fine work product.

What I'd like to do today, and I guess I'll just give a little notice to folks, that what we're going to do today probably isn't going to be very pretty. We're going to try to go through this document as an aid to our decision making in connection with this regla- -- excuse me, regulation review docket and make some choices. Begin the process of making some choices.

Ultimately we have a November 15th deadline for complete of this project to the Legislature and it's important that we stay on schedule to develop a work product that complies with that deadline. Because of the way that this Commission is structured and operates we don't have the ability to meet as a group and debate a lot of the pros and cons of the issues. Unfortunately or fortunately, depending on your perspective, we have to do that in a forum like this.

And so I would just advise, of course, Staff and the Commission and the industry people that are here today that this may not be pretty. This is certainly not the end product and I don't think anybody should draw any conclusions from our

discussion here today. Ultimately the end product is just that, the end product, and any conclusions that might be drawn should be drawn when we do complete work on this docket.

I would hope that we can have a full and rather free discussion of all the policy alternatives that are open to us today and make some fundamental decisions.

I do want to talk a little bit about schedule. We have this meeting and I would hope that we would probably spend the remainder of the morning on this issue to make as many decisions as we as a Commission are able to make in that period of time.

It's my intention to have a -- excuse me, Ms. Nizich that's going to be a special public meeting on Wednesday of next week in the morning at 9:00 a.m. -- commencing at 9:00 a.m. to probably complete the substantive work and discussion on this matter.

And then I believe in recognition of the fact that we may want to reflect a little bit on the decisions that are made both in this meeting and on the meeting that will occur next Wednesday we will -- I'm actually probably looking for a little input from the Commission, I'd like to meet one more time and I'm proposing that we meet Friday, October 31st to review and basically take final action on the work that we will do today and next Wednesday so that will provide us a little breathing space to once again reflect on decisions that we have made at a

tentative level today and next Wednesday and take some final action.

That's my proposal, and it might be useful if any one has -- maybe I'll just at this point ask Commissioners if they have comments on the proposed scheduled.

COMMISSIONER THOMPSON: The only thing I'd note is there is a prehearing -- or a prehearing meeting. I don't know what kind of schedule overlap you have or if you're intending to start in the afternoon or have them use the hearing room. I think that's going to need to be recorded.

CHAIR JOHNSON: Yes, it would be my intent to meet in the afternoon of August 31st.

COMMISSIONER THOMPSON: Okay, okay.

(Off record discussion)

CHAIR JOHNSON: Okay. So are there any other comments on the schedule, if not, that's going to be the way that we intend to proceed.

I will comment that I know that puts a gap between the meeting next Wednesday and the subsequent meeting on Friday, that puts a fair amount of pressure on Staff. And the alternative would be to meet the following week, but we do have a hearing that commences on Monday that will occupy considerable time of the Commission so maybe I -- does Staff have comments on the proposed schedule? Lori.

MS. KENYON: I -- pardon me, I like the proposed schedule.

I think that it makes more pressure on Staff if you try to squeeze it in, in early November because our deadline is November 15 and there's a lot of things that have to happen in those first two weeks in November. I'd rather you did it the second -- the third meeting in October -- all the meetings in October, pardon me.

CHAIR JOHNSON: Okay. Okay, with that out of the way turning once again to the Staff report, it is a -- I'll do some comments maybe adding a little bit to it. The Staff report sets forth a number of policy alternatives to us. I had hoped to develop more of an organized way of looking at it. I'm not sure if I've been achieve that. And I think we've all been struggling fairly mightily with the content.

I don't have a lot of direction to provide to folks today other than the fact that I would hope that we would make some decisions today. I fully anticipate that we will make certainly many more decisions next Wednesday. And I don't have a great deal of structure to today's activity. I do believe it's important for us to have a good discussion and it's an opportunity for Commissioners to inform one another as to their various views on these issues.

With that, I guess, what I'd like to do is open the discussion by asking members of the Commission if they have comments particularly as to how we might organize this activity today. If they have general comments as to any philosophical

issues, policy alternatives that are addressed in the Staff report, let's certainly begin a discussion on the issues and we will make progress today I'm fairly certain of that.

I don't know how far we're going to get, but with that and with the permission of the Commission I would ask if there are Commissioners that want to open the discussion, have some opening comments?

COMMISSIONER GIARD: If I may Mr. Chairman?

CHAIR JOHNSON: Commissioner Giard.

COMMISSIONER GIARD: I just love to go first once in a while.

CHAIR JOHNSON: Sure, please do.

COMMISSIONER GIARD: I was hoping that we could use the Table of Contents that were prepared by the Staff which I used when I went though and I, kind of, in my head ticked off section by section so that gave me some guidance that I was hitting the areas that I found were important to me.

So I would propose to the other members that we start with the Table of Contents which starts with local market competition and we start with Item number A and we proceed through that.

I think that I'd spoken with Staff earlier and if we were able to get to the point of -- through our discussions to -- through the bundling issues, up to the point of LEC wholesale as a -- you know, as a -- perhaps a goal for today then we

could leave the next section for Wednesday. That would enable the Staff to start drafting on the local market competition section, so that would -- those are my conversations with Staff and that would be my initial proposal today to the other members.

CHAIR JOHNSON: Are there comments on this approach? Commissioner Strandberg.

COMMISSIONER STRANDBERG: I would concur with Commissioner Giard's approach. I would think that as we -- Ms. Kenyon and her Staff and her associates have done an excellent job, I think, in framing the issues.

It might be good as we go into each of these issues we hear from Staff if they have any comments and maybe they can summarize that their recommendation is on each of these because we have a number of different positions that the parties have taken and, indeed, there's a fairly detailed analysis that the Staff has taken.

So, I think, we're going to have to be fairly careful to consider all of the record and she -- our Staff's done an excellent job in bringing the record to us. So, I guess, I would support that approach.

I do have some, I guess, preliminary comments about where just from a policy overview standpoint and I would be happy to share it with my colleagues if that would be appropriate now, Mr. Chairman?

CHAIR JOHNSON: Please do.

COMMISSIONER STRANDBERG: You know, generally speaking I think I take the approach of as much as possible freeing up the competitors in the market place with respect to retail rate regulation. And, you know, I am sympathetic generally with the need for restructuring freedom and I'm sympathetic with the comments on dominance.

I am also concerned about the well being of the consumer and, perhaps, one policy approach might be that we consider with these market changes the issues of discontinuance of service, carrier of last resort and to be fairly firm with those aspect to make sure that every customer has an opportunity for a basic service offering no matter what happens in the market place between the competitors, because it's relatively un- -- we're going into uncharted ground if we free up the market and take some of these shackles that we have on the ability for the participants to actually maneuver within the market.

So as a general approach, I think, when I read the record I stood back and tried to say well, what is going to be your underpinning, Jim, as you have these discussions and that's pretty much where I'm at on it, is I'd like to make sure that every consumer has a basic service offering that they can get a phone. And that they can get it in a timely fashion and they can have a reasonable rate for that basic phone service.

And also along with that to seriously investigate ways that we can, you know, change our market rules to allow much better competition. And that's just, kind of, an opening statement about where I'm basically going with this. Thank you.

COMMISSIONER THOMPSON: (Indiscernible).....

CHAIR JOHNSON: Commissioner Thompson.

COMMISSIONER THOMPSON: I just have a comment on the procedure proposed. I would concur with Commissioner Giard, it just makes sense to go through in the order that has been outlined with Staff.

And the only other comment I have is Commissioner Strandberg suggests a Staff summary of each of these separate points might be appropriate. With all due respect, I'm not sure that's a good use of our time this morning. We've all spent hours reading through the comments in doing this and I think folks in the room are familiar with it. We would -- our time would be more productive spent in the discussion and debate and decisions on these rather than hearing about -- hearing again about summary of comment.

CHAIR JOHNSON: Other comments?

COMMISSIONER HARBOUR: You know, Mr. Chairman, I --.....

CHAIR JOHNSON: Commissioner Harbour.

COMMISSIONER HARBOUR: .....I think the procedural suggestion is good. I liked Commissioner Strandberg's remarks

about charting new ground and in a second I'd like to comment on that.

I appreciated your opening remarks framing the discussion. I think that's important in a public meeting because these proceedings are on record and available to the public. I think you properly said that those who are here should be mindful that final decisions aren't being made today in the discussion and that it -- you know, there's going to be some interaction.

Later in your remarks you did use the word decisions today and I think that what -- just speaking for one self would say -- and probably with some degree of consensus around the table as I'm reading body language, decisions in the sense that we're trying to arrive at consensus, but as next week unfolds, the meeting next week and the following meeting, it may well be that because of the dynamics involved and the rationales presented and, indeed, changes at the federal level or at the Court level that occur, a quote, decision, that or a consensus that had been achieved today might be changed. Is there -- and I'm wondering if the Chairman and others generally agree with that (indiscernible - interrupted).....

CHAIR JOHNSON: That's certainly -- yeah, I would certainly agreed with that. I think that when I spoke of decisions I meant preliminary decisions and would acknowledge that as we fully inform ourselves that -- and I certainly am not going to get too upset with people if they, in fact,

reconsider their views between now and taking final action. So that's why I'm trying to, sort of, set the stage for and put the focus on the end product.

You know, we're going to be doing -- frankly the process we're going to do here is probably going to be pretty ugly in some cases. I do ask that the members be patient with one another because I think we're all just, sort of, searching for some answers and illumination as we go through the process, but I certainly want to sit back once again on the next Friday and take a very careful look at what we have done and if it doesn't look right to me I'm going to certainly reserve the right to modify as appropriate positions I may have taken, but I would hope people would keep an open mind throughout the process.

COMMISSIONER HARBOUR: Great, I appreciate it and I think that frames it just perfectly.

As to Commissioner Strandberg's comment on charting new ground. Again, for the benefit of the public, you know, it seems like with all these industries, from my viewpoint, we're -- in a way we're charting new ground in a lot of these areas with a lot of industries and -- but we're focusing on telecommunications for this and I -- while the Commission has already been involved in decision making and in beginning decision making on a number of the issues involved ir the amended version of House Bill 111, I think that that bill did bring together a number of the issues and presents an

extraordinary opportunity.

And I hope the public recognizes though that probably part of the reason behind your observation that it could be a messy operation is that it is -- there's so much change involved in this industry, perhaps, more than any other from my viewpoint, and these owe to a number of factors.

We're dealing with basically a century old business -- or industry caught up in a technological age that's influenced by many factors. Technology is one of them, but also federal rule making is another one of them and potential Congressional action is another and Court decisions that we heard about several times a month effect that and could effect the outcome of the issues that are encompassed in this docket.

So I'd suggest that the work that we're doing between now and November 15th is very important work and good work, but what we're really coming up with in draft regs moving toward final regulation changes is a living document that owing to that charting of new ground is to be expected to be changing on a frequent basis and so that regulation that I'm -- I'm looking at is a living document and we're taking the first step. Thank you.

CHAIR JOHNSON: Thank you. I guess I'm the only person that really hasn't spoken in terms of how we're going to proceed today. I'll be, perhaps the loan dissenter, I -- although I agree with the use of the Table of Contents, I'm not

sure if proceeding in the order which is set out in that Table of Contents is going to be most productive because it -- I can at least say this to my fellow Commissioners, I believe the most difficult issues lie at the beginning and those will be most time consuming on our part.

And I believe that there's a lot of other decisions that we could made today that we would actually, I think, be time -- time would be best served if we were to make decisions as to the remainder of the items set forth in the Table of Contents and passing on the local market stuff 'cause I think that is extremely complex and I think is probably going to involve most of our time, but I will proceed -- and I -- obviously as the majority wishes.

Are there -- I guess with that are there further comments on issues that people want to talk about where we're going to go today? Commission Thompson.

COMMISSIONER THOMPSON: Are we into the substance yet?

CHAIR JOHNSON: We are.

COMMISSIONER THOMPSON: Okay. One A. I'd like.....

CHAIR JOHNSON: This is the time.

COMMISSIONER THOMPSON: A one, I've got a question for Staff about their proposed draft under option 2. The language there varies from what was filed by the parties and I'm wondering if it was your intent when you put as ordered by the Commission to include competitive service areas recognized by

the Commission in either an order or through regulations. I mean, it looks like ACS's proposal just talked about the regulations and I suspect that your proposal used the language order 'cause you were thinking of a different process and acknowledging that competitive service areas are recognized through a different process.

MS. KENYON: The reason I put it there is I wanted to make sure that it was clear that it took an affirmative decision by the Commission to designate an area as a competitive service area. Bypassing the potential that a utility may say by regulation it sort of happened and now we're in a competitive service area by virtue of the regulation, but without Commission action.

COMMISSIONER THOMPSON: So that the language in option 2 would preclude the regulations from setting forth standards that utilities could basically self-certify to have complied with. In other words, you're anticipating a process that even if the regulations had standards for when we would recognize a competitive service area there would be some kind of process where the utility comes in with their evidence and says okay, we're there and the Commission issues an order that says yes, in fact, we recognize that's true.

MS. KENYON: That is correct, though I anticipate it would be a fairly easy process. In many cases you're not going to have a lot of debate about what is a competitive service area.

At least I'd like to think so. In the past we haven't. The only question we've had is when it happens. We think there's always been the idea, we knew the competitive service area, but at what point did you have enough competition to warrant invoking those rules.

COMMISSIONER THOMPSON: Okay. With that understanding then I'd suggest language that might be a little bit different. Instead of competitive service areas as ordered by the Commission, perhaps, as recognized by the Commission in an order would be better 'cause we don't really order competitive service areas, we recognize that they are competitive.

MS. KENYON: That's consistent with what we had in mind.

COMMISSIONER THOMPSON: Yeah.

COMMISSIONER HARBOUR: Mr. Chairman and I wonder if I could ask Commission Thompson.....

CHAIR JOHNSON: Go ahead.

COMMISSIONER HARBOUR: .....a question? Would it be -- you know, it probably goes without saying that any party can petition us on matters like this or on our own motion we have the ability to bring these issues up. Would it be well in this case to include in your changed language a recognition that the matter of a competitive service area may be brought to the Commission by petition or on our own -- or by our own motion? Does that -- is that.....

COMMISSIONER THOMPSON: I think it's implicit. I mean,

that's how we make decisions and it would be a drafting issue but if Virginia was here -- we've got a stand-in for Virginia today. She would tell us you shouldn't put language in there that you don't need.

COMMISSIONER HARBOUR: Right. Well, I'm the first one to lock heels in the face of legal advice. On the other end when I read that it looks -- it just -- it looks like the Commission wants to go out and mandate the competitive service areas rather than act in response to some cause like a petition, so.....

CHAIR JOHNSON: Could I just interject. I just want to let people know that Mr. Landry is here today, but he has another event that he has to go to. He has another client that has a long standing appointment I believe at 10:00, is that right, Jeff?

MR. LANDRY: That's correct, Mr. Chairman, I have to.....

CHAIR JOHNSON: So to some extent we are.....

MR. LANDRY: .....leave at 10 minutes to 10:00.

CHAIR JOHNSON: .....going to be flying blind relative to legal counsel after that time, but hopefully we will have an opportunity to look at any potential legal issues further on down in the process. I just wanted to make people aware of that resource issue. Sorry.

COMMISSIONER THOMPSON: That's okay.

COMMISSIONER STRANDBERG: I wanted to ask, Commissioner

Thompson, I guess I am looking 53.200(a), was it your intention that those changes that you suggested would go directly as a regs change? I mean, I'm looking at the reg and it's -- and it reads, the provisions 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. Were you suggesting to change that to competitive service areas as recognized by the Commission in an order?

COMMISSIONER THOMPSON: Yes, substituting the specific reference to Anchorage and substituting the language we talked about, eliminating the specific reference to Anchorage.

COMMISSIONER STRANDBERG: Yeah, I think that's a good change.

CHAIR JOHNSON: (Indiscernible) comments on this issue?

COMMISSIONER STRANDBERG: Do we want to move (indiscernible - interrupted).....

COMMISSIONER THOMPSON: Let's move.....

CHAIR JOHNSON: Well, I.....

COMMISSIONER STRANDBERG: .....or do we want to say, yes, that's our intent and have them draft and come back to us?

CHAIR JOHNSON: I guess what I'd like to do and I -- this may be a little bit more cumbersome, but we are establishing a written record for people to review. We are going to be looking at, I think, Staff's best efforts at our final meeting to capture decisions we made and set them forth. I guess I'm

giving another writing assignment to the Staff, but I think they're not surprised.

I think to kind of make it a little bit more expeditious I'd like to just, sort of, proceed on a consensus basis today expressing our general policy choices without getting too encumbered with a bunch of motions. I don't want to preclude people from making motions if it's appropriate, but I don't want to just slow things down by having a bunch of voting and awkward motions, so is that agreeable to the Commission?

COMMISSIONER THOMPSON: Commissioner Johnson, I think that's a good idea in fact because it's awkward to ask us to vote on language we don't have in front of us, so.....

CHAIR JOHNSON: Sure.

COMMISSIONER THOMPSON: .....it's probably more appropriate. And I would encourage Staff if you don't feel like you're getting appropriate guidance on the basis of this somewhat freewheeling discussion to speak up and let us know if you need more guidance, but I think it would be more productive today if the result was enough guidance to Staff that they can actually draft the regs and then come back and vote on those.

CHAIR JOHNSON: Okay. Are we --.....

COMMISSIONER GIARD: Yeah, that's fine.

CHAIR JOHNSON: .....we comfortable with this process.....

COMMISSIONER STRANDBERG: I concur with that process.

CHAIR JOHNSON: Okay. With that then I think we have

rough agreement on that. I would -- this may be an appropriate point -- and I haven't really addressed substantive issues so far, I spent a certain amount of time with this and scratched -- and I'll just let people know where I am at the outset.

I am concern that the proposed structure -- or some of the structure in language that has been proposed both by the parties and may already exist in our regulations, I haven't conducted a microscopic review of them, may make our overall market structure too complex.

And I'm guided a little bit by -- I did go out -- somewhat outside the record and looked at a statutory provision in the State of Washington that in my estimation did a good job of highlighting this problem. In that in Washington State they have made an effort to look at competition from the standpoint of product offerings and competition from -- in general from the standpoint of markets. They are substantially less involved with making classifications of carriers.

Yet our proposal as I've looked at it or the way we've, sort of, attacked this docket, we, of course, have several distinctions in terms of between -- among carriers. We also have distinctions among markets. We talk about market power. We made no distinctions on the basis of product, although we, sort of, flow that into a discussion of market power, but I'm concerned that there -- or maybe an observation that it may be possible for us to develop structurally a regulatory scheme

that includes fewer variables, so that's where I'm going and it will be an interesting discussion here this morning. Commissioner Thompson.

COMMISSIONER THOMPSON: I appreciate your comments 'cause I -- I think -- and it fits well with, sort of, an overall impression I had that we'll become evident as we go through some of the specifics of the subsequent pages which is that I would generally favor a regulatory scheme that's more positive rather than restrictive.

In other words, rather than saying we, the Commission, are going to take the responsibility for evaluating the facts and you have -- and we will decide when the market's competitive, and then instead set goals. Think as an agency about what the reasons are that we regulate. What it is, you know, based on the evidence we have in front of us about consumer complaints and other issues we believe will be important, focus our regulatory approach on getting the carriers -- getting industry to positively meet the standards we feel are appropriate and then -- in those areas and then relax standards.

In other words, rather than evaluating whether or not if they've -- making them do certain things when they go to competitive, say what we care about are, you know, consumer protection, we care about service quality, we care about whatever is on the list and as soon as you make -- as soon as we can get through the list and say you've meet all these

standards then, you know, we'll relax the regulatory approach, because that's why we regulate.

We regulate to protect consumers so if we have assurance, if we think though what we need to have the assurance that consumers are protected and we're satisfied that it's there, we don't need to regulate any more.

CHAIR JOHNSON: Yeah, okay. I appreciate that. I just -- I'm going to be looking, and I'm not fully there yet, but I'm trying to figure out a way where we can really fold distinctions that focus on carriers and classifications of carriers into a more -- and a broader analysis of markets, but anyway that's just what I'm looking for. I'm not totally sure how we're going to do it yet, but the dominant/non-dominant distinction for me is cumbersome and I think we need to keep our eyes on that as we go through this process, but sorry for the speech folks. I just (indiscernible - interrupted).....

COMMISSIONER GIARD: Mr. Chairman, if I may, as I was reading through these.....

CHAIR JOHNSON: Commissioner Giard.

COMMISSIONER GIARD: .....regs it seems to me that within Alaska we have really, kind of, two specific markets, the urban versus the rural. And the competitive likelihood in each market is really quite different based on reading of the record and listening to the testimony.

It seems like out in the Bush, the rural market, the real

rural market there's going to be competition for wireless, so it's a wire line or incumbent LEC competing against a wireless provider. And that the market that they're trying to via for is really the market for the access charges because that provides a substantial revenue flow to the incumbent LEC in the Bush.

And it is possible if you can envision wireless promulgating itself out in rural areas that as -- rather than replacing the line to the home, the cellular phone will actually become the long distance mode. And I think that the Rural Coalition was very concerned about that aspect of competition. And I don't know that reading the regulations that we have really addressed, you know, kind of that concern.

In urban Alaska there's more like a wireline to wireline competition. It seems that there's facilities based competition in the three urban areas or, perhaps, more in the more urban areas. So as we go through this it seems very challenging for us to create regulations which will respond adequately to the needs of those rural communities and the needs of our urban areas because competition means very different things to both of those.

COMMISSIONER THOMPSON: Got one (ph).....

CHAIR JOHNSON: Comments on this issue? I have a comment. Go ahead.

COMMISSIONER THOMPSON: Okay. Do you want to go first?

CHAIR JOHNSON: No, you go first.

COMMISSIONER THOMPSON: Okay. I would caution my colleagues or ask you to think carefully about any regulatory scheme that basis distinctions on the technology used by the providers to provide the service. I would, I think, generally, philosophically it's important to look at these things from the perspective of a consumer which is that it's a communication technology.

And that if you look at the history of regulation, probably especially over the last 15 years in the U.S. that in cases where a regulatory scheme has been designed based on a particular type of technology or technologies it has fallen flat after a couple of years because industry and the engineers of the world are ahead of us in terms of doing it.

So I'd like to think of things rather than having our regulations at all based on a particular technology or technologies, but thinking of them as consumers do as a communications technology.

COMMISSIONER HARBOUR: Mr. Chairman, I didn't know this subject would come up so early and (indiscernible - interrupted).....

CHAIR JOHNSON: I think we're going to go a lot of different directions and I think we ought to just go with it, Commissioner Harbour.

COMMISSIONER HARBOUR: Okay. I wanted to see if Staff

could obtain a copy of the report from TNS Telecoms that was noted in the paper yesterday. The record in our proceeding pretty much shows that the -- the actual replacement of wireline by wireless to be relatively small. And this new study while it's Lower 48, I assume although I don't know, doesn't go into that detail. It says that household spending for wireless phone service grew 9 percent while spending on traditional phones dropped 4 percent. And as of midyear the average household spent 48.28 a month on wired phone service and 44.63 on wireless. So that represents a chemistry that I think is much different than I gleaned from our record. And in the spirit of being -- as was just said more current with technological change, I think it'd be good to have that and review it in this context. Thank you.

CHAIR JOHNSON: If I could -- and I appreciate your comment on the ETC designation and I know we're trying to work through from the beginning to the end and ETC is at the end, but I'm going to jump here anyhow. I really believe that the appropriate way for us to deal with ETC issues is to not address them in this docket and, in fact, open a new docket to address those issues and here is the rationale is that ETC designation is inherently federal although obviously authority's delegated to this Commission to make those determinations, but it is a product and a creature of federal law. It is always going to have it's kind of own set of rules

and those rules will always be in my estimation in addition or somewhat outside of whatever sort of market structure we attempt to cobble together. I believe that we do need to look at ETC issues, but I think attempting to weave ETC issues into our market structure at this point will be difficult and time consuming and they'll be a high potential for error in the course of doing that. I personally believe that ETC issues are an important -- are certainly important to rural carriers in the state and I would like to deal with them separately as I believe that the overall regulatory scheme anticipates that they'll be dealt with separately. But that -- that's my proposal to people, I would really think it'll simplify our discussion if we proceed in that manner, but.....

COMMISSIONER GIARD: Except, Mr. Chairman, I was.....

CHAIR JOHNSON: .....(indiscernible - simultaneous speech) comments on that.

COMMISSIONER GIARD: .....wondering how we then define, you know, competitive service area which I wasn't really thinking much of the ETCs when I was making my comments, I was thinking of the challenge for Alaska of defining a competitive service area. I was looking at the Staff's definition under option 4, in those 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. And my question that came to mind

as a result of studying that was really, you know, is wireless service a local exchange -- does this contemplate wireless in rural Alaska, do you consider that if there's a wireless ETC which is offering service in rural Alaska will this option 4 provide the ILEC with an ability to -- or the Commission ability to determine that it's a competitive service area? I thought when I read it it primarily looked at facilities based or wireline, maybe it's just a distinguishment that Staff can make.

MS. KENYON: All right. The -- our proposal has two parts, the first sentence would not allow you to -- well, I shouldn't say would not allow you, the first sentence sets the standard in and of itself would not anticipate a wireless carrier being something that would trigger the competitive service area. The second sentence though would let you do -- designate any area you wanted, if you felt that the wireless service provided a competitive alternative that warranted the regulations, the committed (ph) regulations you apply, you could designate any area you wanted as a competitive service area. It's just that the first sentence tells you under what conditions you pretty much are guaranteeing to people you're going to designate that area as a competitive service area. And the second sentence is where you get the flexibility to say well, we'll look at special circumstances and designate it as warranted.

COMMISSIONER GIARD: If I.....

CHAIR JOHNSON: Commissioner Thompson, please?

COMMISSIONER THOMPSON: I'd offer a comment going back to your remarks a moment again, Commissioner Johnson, which would be support. And now I'll put on my joint board hat. As a member of the Federal and State Joint Board on Universal Service that's an issue that we're actively working on, it's been referred -- the issue of designation of ETC is part of the portability proceeding. We stated publicly that we're going to have our recommendation to the FCC by the end of the year. So yet another reason for steering clear of that in this docket is the fact that there's at least a likely -- a possibility that the rules may change or some more guidance may be available from a federal -- on the federal level relatively soon. And I think in response to Commissioner Giard, I think where you're getting yourself in trouble perhaps is in understanding of what being an ETC means or not. That just has to do with Universal Service,.....

COMMISSIONER GIARD: Uh-hum.

COMMISSIONER THOMPSON: .....you can have multiple carriers and they don't have to have Universal Service to offer service in a competitive service area and I don't know that we need to deal with that issue here in order to decide what a competitive area is.

COMMISSIONER GIARD: Well, would you agree that then when

we go through this provision that a wireless telephone or a cell phone can be considered a local exchange service then?

COMMISSIONER THOMPSON: Yeah.

COMMISSIONER GIARD: Okay.

COMMISSIONER STRANDBERG: And I think the advantage of the language that the Staff has posed here is that it gives us the option to make those decisions on a case by case basis, indeed it may be different under different circumstances and in that sense I agree with Commissioner Thompson that we need to be technology transparent on this. So probably a more general language which gives us the option to make decisions based on individual records would be better in this case.

COMMISSIONER THOMPSON: Right. So not just wireless, cable telephony, voice over IP, I think that that -- the range of communication services that are or will be available soon to consumers are ones we should be thinking about and proceed as Commissioner Strandberg put it, in a technology neutral manner.

COMMISSIONER HARBOUR: On a voice over IP, well, we don't regulate that field.

COMMISSIONER THOMPSON: Right. And that's the one certificated.....

COMMISSIONER HARBOUR: So you're saying that we could name it as influencing a definition of a competitive service area without regulating it?

COMMISSIONER THOMPSON: The question about whether or not

we regulate it is open and we don't need to name it. I think what we need to be is mindful of that there is a plethora of technologies over which consumers can receive communications services and we should not tailor regulations for a specific technology.

COMMISSIONER HARBOUR: Good. I like the term technologically transparent, Commissioner Strandberg.

COMMISSIONER STRANDBERG: You know, as Commissioner Thompson says there's a lot of these issues that are developing in front of the FCC and indeed the voice over -- voice over internet protocol issue is really developing before us. So I think it would definitely be to our advantage and to the state's advantage to keep these general.

COMMISSIONER HARBOUR: Well, the court system is participating in that evolution too.

COMMISSIONER GIARD: Well, it's the question of certificated, I mean, are you -- if you have voice over IP is that a certificated local exchange service, certificated to provide local exchange service? I mean, I just want to be sure when this is drafted.....

UNIDENTIFIED VOICE: Right.

COMMISSIONER GIARD: .....that we do what you say and that that is as broad as possible.

COMMISSIONER STRANDBERG: I would make the comment that, you know, we would have a docket to certificate and at that

time we would consider the record on whether or not to certificate a utility. So, you know, this would -- the issue would be developed probably in that docket.

COMMISSIONER GIARD: All right. It's the voice of experience. And I have another question. And that is that when we talk about a competitive service area in option 4 the -- which this is essentially similar to what GCI had proposed without the facilities based, but the Staff added the words throughout the area.

The portion or portions, and I have some comments about those -- that phrase, of a certificated local exchange service area where multiple carriers are certificated to provide local exchange service and are actually providing local exchange throughout the area. Now I wondered if that precluded -- you know, throughout the area implies to me 100 percent, it has to be 100 percent throughout the area, has to cover it and I was concerned about those three words, throughout the area.

MS. KENYON: We talked about this at the Staff level and all of the Staff that are sitting here believe you should use the words throughout the area. The first sentence is where you're basically guaranteeing that if an area meets this characterization you're going to consider it a competitive service area. So based on the legislative language that says competitive service areas should take into account of whether actual competition exists in the area, we felt that you -- in

order to know if competition exists it had to be throughout the area.

Otherwise what you could conceivably do is guarantee competitive service area status to someplace that had maybe a competitor that could -- was capable of serving 70 percent of the area, but not the remaining 30 percent and then you could have price flexibility for that 30 percent of the customers that didn't have a competitive choice. We also believed that for the most part if you're talking about a wireline carrier once they get an interconnection agreement in place they're going to be able to serve throughout the area either through UNEs or through wholesale. And did I leave anything out, I think I may have, folks?

UNIDENTIFIED VOICE: I don't think so.

COMMISSIONER HARBOUR: I have a question for Lori on that same subject. The language actually providing local exchange service throughout the area, is pretty definitive as compared to a number of the comments that we got from the parties. Some of the parties advocated that the day a competitor is certificated that -- in effect that becomes a competitive area.

And what this says is that the Commission has to consider whether or not actual exchange service is being provided throughout the area. So that implies that there would be a history, a period of time during which the Commission could determine whether or not actual competition existed in the area

perhaps by product or by those lists that you discussed earlier of qualifications. Am I right in that?

MS. KENYON: Yes. And to give you an example once you -- what we've done in the past or something very similar is you know you've got a certificated carrier that just entered an area, a new area. And the first day you give them the certificate they really can't provide much service and it may be that you require them to give you status reports that say well, now I can or cannot provide service. And if you think those -- you could also poll the other carriers in the market to be make sure that they are not being disadvantaged by the competitor slow rolling those status reports, but in any event I think it could be quite simple, you know, either the competitor can or cannot serve most of the market.

And you can just simply release an order then to say well, it looks to us sufficiently competitive. And that's what we've done in the past, they're not normally a big deal where you have a whole proceeding and getting -- well, a lot of testimony on this issue.

COMMISSIONER HARBOUR: Earlier we had a discussion about the legal comments as to adding language in regulations that might be redundant or overlapping.

MS. KENYON: Uh-hum.

COMMISSIONER HARBOUR: When I had suggested the idea of actually in effect restating that on the -- these types of

issues like whether it's a competitive service area could be brought by motion or at the Commission's own motion and this is an example of what that -- you know, your suggestion that perhaps the newly certificated entity be required to give progress reports which is an added regulatory requirement. Another way to approach it or would be -- I say another way, would be to permit the incumbent or basically invite parties to by motion suggest when competition was active in the area and maybe using certain baselines or measurements.

MS. KENYON: We have a proposal to that effect if it would -- to address this issue. What you could do as part of option 4 at the tail end of it, you could have another sentence that says the Commission my pursuant to request or under its own motion recognize locations or service areas as a competitive service area or something to that effect. We could put that language in there and maybe pretty it up some, maybe make that a combination of -- I mean, the last sentence in option 4 and merge it with the sentence I just wrote -- read could get you where you wanted to go.

COMMISSIONER HARBOUR: Mr. Chairman, if the -- you know, I know that we're really rough drafting this, if the colleagues don't object I'd like to see that kind of draft language included because our legal counsel's going to be reviewing the whole thing anyway for efficiency and regulatory format so,.....

CHAIR JOHNSON: Okay.

COMMISSIONER HARBOUR: .....you know, we can make changes later if we need to, but let's get in the kitchen sink.....

CHAIR JOHNSON: Yeah.

COMMISSIONER HARBOUR: .....if we believe the kitchen sink belongs.

CHAIR JOHNSON: That's fine, let's just get that option on the -- you know, out there. I think Staff's going to do that.

COMMISSIONER GIARD: Mr. Chairman, I was looking -- actually I was looking at this in terms of the portion or portions of a certificated local exchange service area and I was concerned with -- if we were to designate portions of an area, I thought ACS' recommendation of a community within a certificated local exchange service area was a broader way of identifying those -- it is implicit that if you take that broader definition perhaps you will not be able to have, you know, competition throughout the entire area, but I think it's much broader and allows for -- allows the companies to more readily and easily allocate cost between their regulated and nonregulated operations.

What I was concerned about when I read portion or portions of was that you can actually go down to the very granular level and have, you know, a housing section or a subdivision determined to be unregulated -- or regulated whereas the rest of the area surrounding it would be unregulated and the company

would have to allocate its costs accordingly. And I was worried that would be too -- I mean, really it would be burdensome whereas if you have a community you can identify the cost of the community, I mean, you can think of the communities within Anchorage, the Municipality of Anchorage, we have Girdwood, Eagle River, you know, Chugiak, Anchorage. So I was -- I felt that a broader definition like (ph) the one that ACS proposed was probably favorable. Those are my feelings on it.

CHAIR JOHNSON: Commissioner Strandberg.

COMMISSIONER STRANDBERG: In the context of writing a regulation it might -- I'd just ask Commissioner Giard to consider this, that we would want to have the ability under our regulation to consider as many different circumstances that could occur and the words a portion of might actually give us more latitude than the words a community within.

I agree with you that very likely we would be considering communities within a service area if there's more than one community within a service area or indeed if it is a community or it's just a subdivision, but to keep it as general as possible and still fulfill the aims and the goals of where we're heading I think -- I would suggest that we may want to do that here, take that approach.

COMMISSIONER HARBOUR: Mr. Chairman.

2700

(Tape change)

Tape 2

0015

COMMISSIONER HARBOUR: Yeah. I appreciate the concern that in a given service area if there are enclaves where the competitor does not provide service that determining the area competitive could potentially be a problem for those enclaves. And so I appreciate your comments, Commissioner Giard, and I'm just wondering -- I'm brainstorming now, if there were a comment that within the total service area of the incumbent the rates charged to the enclaves, to the areas without competition, would be no higher than the rates charged in the competitive area, would that take care of the problem without going through the difficult apportionment of cost scenarios that you'd be forced to go through if you had to set rates for the enclaves?

CHAIR JOHNSON: Could -- I'm not going to respond there, I'm just going to -- if I may, just jump in here. And I know people are kind of struggling with the best way to define a competitive service area, I would say as a policy matter that if it's our obligation to insure the benefits of competition accrue to consumers part of that is an, I think, exercise of self-restraint on our part, that is we must be willing to accept that we have less regulatory reach and we may, in fact, be less able to regulate in terms of the granularity of analysis.

Now -- I mean, I guess what I'm saying is that if we're going to allow competition to take place in a competitive service area from my perspective part of that is us making an affirmative decision that we're not going to look at things at an excessively minute level. We have to let go of the reins and we have to be willing to say that Congress in its wisdom determined that establishment of a competitive market for local services is in the public interest and we are supportive of that and that we need to allow that competition to take place and part of the fallout from that is that we will have less control over those markets, we'll have less control over the provision of services, we'll have less control over the prices.

And so I think we're making a mistake when we start to -- you know, we've gone from a regulated marketplace and now what we're trying to do is serve -- in essence have regulated competition which I think is a far more difficult task, but we need to learn to let go in that process. But that's more of a policy call, I know we're struggling to try to get the best definition here, but I'm loathe for us to try to appropriate to ourselves the authority to regulate at that level and I think that's a formula for a whole lot of heartbreak, but.....

COMMISSIONER THOMPSON: I've got a couple specific questions about option 4 for Staff and I'll ask the one that's probably easier first. In the second line you used the word carriers and I was thinking that's used a lot of other places

in the regulation. The question is is that still an appropriate term if we're talking about a technology neutral policy, what's a carrier and is that -- would provide -- telecommunications providers or some other term be better?

MS. KENYON: If you want to make it as broad as possible you might want to use the term telecommunications provider or competitor. Carriers I do believe restricts it to some degree. I keep getting back to though, this is -- this first sentence is what would commit you to declare a competitive service area.

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: So if you make it too broad you -- you know, you could be creating a situation where you said well, I know what we said, but we really didn't mean it. That's my only concern is that you might want to keep some limits on it and then under the second sentence of option 2 you would still be able to declare any area you wanted a competitive service area. In.....

COMMISSIONER HARBOUR: Commissioner Thompson, could I.....

MS. KENYON: Sure.

COMMISSIONER HARBOUR: Wouldn't a lot of these kinds of issues be resolved if we included a good definition section, for purposes of this section carrier is defined as and then just put in whatever -- however we define it without worrying about what the dictionary says that -- apply it to that section?

COMMISSIONER THOMPSON: Then you're getting into kind of drafting contortions, I think you ought to say what you mean. And the question really is is the term carrier appropriate in the market, the world we have today. I think it's a term that was used historically to describe traditional wireline telecommunications providers, but in the world that there's other -- I mean, there's providers that use other technologies and should we be using a term that more clearly states that we're looking at all platforms, not just the traditional wireline to avoid the kind of confusion we had at the beginning where Kate was asking well, gee, is a wireless carrier a carrier too in your definition.

MS. KENYON: Well, I can tell you that the way this was drafted it was intended that a wireless carrier would not be necessarily a trigger for the competitive service area. I have not seen evidence that wireless competition provides significant restraint upon any incumbent carrier.....

COMMISSIONER THOMPSON: Uh-huh.

MS. KENYON: .....as far as its material pricing. And that may be someplace where, you know, there may be disagreement between me and various of the panel members for this, it's your decision to make obviously. If I could -- I don't want to use up your time if you find you'd rather talk amongst yourselves, but I'd like to comment a little bit about some of the things that have been spoken today about this

section?

COMMISSIONER THOMPSON: Yeah, I think I'm -- I've got one more question,.....

MS. KENYON: Okay.

COMMISSIONER THOMPSON: .....but I can come to it later. Go ahead.

MS. KENYON: It was never our intent that this section be used to say a street or a subdivision is competitive versus noncompetitive. Would -- we're talking about are portions of a certificated service area, you're talking about something that could be a third of the state. We always intended that this would likely by a community. Why we didn't use the word community is because community is undefined and, you know, what does the word mean.

I think what you need to do is be able to look on a map and know what the competitive service areas are. And that's why it's a portion -- why we used the language we did, portion or portions because community was nonspecific and there may be ambiguity there as to what is a community.

COMMISSIONER GIARD: So you think the words portion or portions are broader than ACS' definition of a community, so.....

MS. KENYON: Could eas- --.....

COMMISSIONER GIARD: .....that was your intention in putting in there.....

MS. KENYON: Could easily be.

COMMISSIONER GIARD: .....because when I read it I read it from the industry's perspective of, you know, I'm going to have Anchorage area and then, you know, I'm going to have 15 different portions that aren't competitive. Is GCI completely -- you know, would GCI meet this definition, actually providing local exchange service throughout the area?

MS. KENYON: I would believe so, I think all of ACS AN would probably fit there, certainly Fairbanks, Juneau, as a matter of fact, anywhere that GCI's an ETC that would certainly fit this because they have to serve throughout the area.

COMMISSIONER GIARD: So what I was thinking of when I was reading that was earlier when I first arrived here we were talking about Fairbanks and there were portions of Fairbanks at the time which I thought GCI couldn't offer similar services, there was -- so that's not --.....

MS. KENYON: No.

COMMISSIONER GIARD: .....Salcha or somewhere up there, so they -- once they get in there they've got it all?

MS. KENYON: I believe so, they have ETC status for the entire Fairbanks study area and they have the obligation to serve so you could easily declare all of your existing competitive service areas right now as, you know, the future competitive service areas under the proposed regulation.

COMMISSIONER GIARD: So they're actually providing local

exchange service throughout the area in Fairbanks?

MS. KENYON: My understanding is they've declared that they are doing that. The only -- there might be maybe.....

COMMISSIONER GIARD: Because I thought there were little places that we were concerned that they weren't able -- and that's why this throughout the area kind of stuck with me.

MS. KENYON: They're obligated to serve under their ETC, so if there's a place that they're not serving right now I think we could fairly ask them why aren't you serving. But I'm -- my understanding is that if there's pockets it's not much.

COMMISSIONER STRANDBERG: One comment might be, Commissioner Giard, that in the situation with GCI they have an interconnection agreement and they can basically rent portions of the ACS network.

COMMISSIONER GIARD: Right. Right.

COMMISSIONER STRANDBERG: And pretty much that gives them access to the entire area where ACS serves. Now whether they're going to serve high cost customers or low cost customers, that will -- that is another issue, but if they do have ETC designation there is a basic requirement under that, you know, that they do provide service for any customer who wants it. So any of these competitive carriers that have these interconnection agreements pretty -- and they have an ETC designation, by definition they're going to be throughout the entire area.

CHAIR JOHNSON: Commissioner Thompson.

COMMISSIONER THOMPSON: My other question,.....

CHAIR JOHNSON: Yes.

COMMISSIONER THOMPSON: .....and this is for purposes of discussion. It would be helpful to me to have Staff state why the words are certificated to provide local exchange service and are important in this sentence. And I'm thinking that if what we're doing is looking at -- if what we're trying to determine is if customers really have options, is there enough of a possibility that they may have options that aren't certificated, do we want to make sure they're certificated for other policy reasons, tell me why we need those words?

MS. KENYON: All right. And it goes back to the philosophy about whether or not you believe a wireless carrier provides enough competition to warrant you relaxing the rates or the rate policies for an incumbent carrier. Certificated local exchange service would make it in my mind a lot more difficult for someone to argue a cellular provider meets this first sentence, those requirements.

Now you could take away the word certificated and it not -- probably wouldn't matter a whole lot. I know that right now many wireless carriers are not certificated so it may mean -- .....

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: .....that mean you could -- that may mean --

restrict this further. I would suggest you keep though the words local exchange service because you're essentially -- that's the service that we're talking about is whether or not is -- you have a competitive alternative. If it's not a comparable or exactly like local exchange service I guess I would ask is it an effective competitor that you should be allowing the incumbent to take the variety of rate changes that we allow under our competitive service area regs.

COMMISSIONER THOMPSON: Okay. Well, with that -- oh, go ahead, I'm sorry.

CHAIR JOHNSON: What've you got?

COMMISSIONER THOMPSON: I was just going to offer some other general edits that follow up on that discussion based on that because I think that we -- I would suggest that when we do the draft it should instead read, the portion or portions of a certificated local exchange service area where multiple telecommunications providers instead of carriers and I would leave are certificated to provide local exchange (indiscernible). And then say instead of and are actually just say and provide local exchange service throughout the area. I listened to the discussion that -- and the question Commissioner Giard had asked which is the same one I had and I now appreciate why leaving that language might be important.

CHAIR JOHNSON: Okay. Could I pose a -- and I realize -- I appreciate that, thank you. I may -- somebody might accuse

me of arguing against my own position here, but is there value in taking the provision or one aspect of competitive service area definition that was proposed by the Rural Coalition and including it in ours and that is the provision that provides that an area where the rural exemption has been lifted, is there a economy in us including that task and designation in this definition, will that save us work, will that add work to our plate or what do you think, Lori?

MS. KENYON: There are areas where you've left -- where you've lifted the rural exemption and there are no competitors so I don't think that if -- I don't advise you to add that. I think Glacier State's study areas, the example that was in the comments that came to mind that you've lifted it there.

COMMISSIONER THOMPSON: So it may not -- it may save us work, but it may cause a lot of people heartache.....

CHAIR JOHNSON: I guess.....

COMMISSIONER THOMPSON: .....(indiscernible - simultaneous speech) consumers in the.....

CHAIR JOHNSON: Back to me I guess because if you -- that raises a question of whether or not the rural exemption ought to have been lifted but if.....

COMMISSIONER STRANDBERG: Are you trying to let go here, is that what you're trying to do?

CHAIR JOHNSON: I'm trying very hard. Actually, you know, I have several goals, I -- and I appreciate the advice, I'm

just trying to figure out a way where we can establish some symmetry in the marketplace and make -- and once again this is inconsistent with what I just argued on ETC, but where we can make designations have dual purposes. But that was what I was looking for and having heard what was just said that may not be possible. We'll move on. I -- well, anyway I may have more to this as we move on, I just.....

COMMISSIONER GIARD: Mr. Chairman, I just want to state.....

CHAIR JOHNSON: Please.

COMMISSIONER GIARD: .....that taking out those words are certificated to provide local exchange service out of that phrase just kind of melts away all my concerns that we were being too restrictive. So.....

CHAIR JOHNSON: Okay.

COMMISSIONER GIARD: .....just should have let Commissioner Thompson go first and we would have been through this a lot quicker. So I think that that's a very good change.

CHAIR JOHNSON: Okay.

MS. KENYON: Could I have clarification because I'm not sure that I understood. I thought that you were keeping.....

COMMISSIONER THOMPSON: Uh-huh.

MS. KENYON: .....certificated in.....

COMMISSIONER THOMPSON: I was.

MS. KENYON: .....and you're saying we're keeping it --

taking it out.....

COMMISSIONER GIARD: No, you said take out certificated (indiscernible - simultaneous speech).....

CHAIR JOHNSON: Could you restate your proposal,.....

COMMISSIONER THOMPSON: Okay.

CHAIR JOHNSON: .....Commissioner Thompson?

COMMISSIONER THOMPSON: Okay. The portion -- I was leaving it in, Kate, the portion I was thinking about taking out.....

COMMISSIONER GIARD: Then it got taken out?

COMMISSIONER THOMPSON: .....and then I changed my mind.

CHAIR JOHNSON: Start -- go ahead (indiscernible - simultaneous speech).....

COMMISSIONER THOMPSON: Portions of certificate -- of a certificated local exchange service area where multiple telecommunications providers are certificated to provide local exchange service and provide local exchange service throughout the area.

COMMISSIONER STRANDBERG: Commissioner Thompson, why would you want to leave that in, it seems to me if you took the certificated out it would allow us in the future if things change that a PCS carrier who's not certificated, but, in fact, is providing local service -- I mean, if there is evidence in the record it would allow us to have a wider discretion in our decisions?

COMMISSIONER THOMPSON: I guess I was persuaded by the comments or the implications of Ms. Kenyon's comments that some of the uncertificated carriers may not be providing services that are comparable. I think the basis for allowing a market to go competitive is where a customer has choices. And if we don't -- considering the lack of controls we now have over service quality for some of those carriers, we may be leaving a consumer with no choice. Until we have -- or unless there's some other way through the regulations to establish quality of service standards I don't think that's appropriate.

CHAIR JOHNSON: Can I suggest that this might be one of those areas that we might want to revisit,.....

COMMISSIONER THOMPSON: Uh-hum.

CHAIR JOHNSON: .....I think that we've put up.....

COMMISSIONER GIARD: Okay.

CHAIR JOHNSON: .....a pretty good point on it already, but I don't want to get bogged down by (indiscernible - simultaneous speech).....

COMMISSIONER THOMPSON: No, I think that's a good idea, we'll see what happens elsewhere.

CHAIR JOHNSON: All right. Yeah, we can do some scribening (ph) and.....

COMMISSIONER THOMPSON: Uh-huh.

CHAIR JOHNSON: .....make some proposals when we get a more -- a little further on down the line here.

COMMISSIONER GIARD: Okay. Well, I'm not melted away anymore so just hang onto that. I'm back to my, you know, shifty feeling about it.

CHAIR JOHNSON: Is there somebody who wants to pick up the ball at this point?

COMMISSIONER THOMPSON: Do you want to go to number 3?

CHAIR JOHNSON: Are we charging straight ahead here in life?

COMMISSIONER THOMPSON: All right. I'll.....

CHAIR JOHNSON: Let's -- okay. Let's go to number 3 since we're there on page (indiscernible - simultaneous speech).....

COMMISSIONER THOMPSON: Okay. I can start the discussion with the perennial questions about the staff option which is option 3. I see the words fair treatment and I wonder about how a standard like that that's as broad, ambiguous as fair treatment is going to be applied.

MS. KENYON: It is broad. I'm trying to remember if we quoted the House Bill 111 on this one.

COMMISSIONER THOMPSON: Uh-hum.

CHAIR JOHNSON: That.....

COMMISSIONER THOMPSON: That doesn't.....

CHAIR JOHNSON: I think that's .....

COMMISSIONER THOMPSON: .....address my concern.

CHAIR JOHNSON: Yeah.

COMMISSIONER THOMPSON: I think that's in there, but.....

CHAIR JOHNSON: I think that's why they did this.

COMMISSIONER THOMPSON: .....I don't know that that.....

MS. KENYON: Yeah.

COMMISSIONER THOMPSON: .....helps us. If I'm thinking about regulations as setting standards that I'm -- and providing me with guidance about what to do, this doesn't provide me with much guidance.

MS. KENYON: Would you prefer the old traditional just and reasonable which is what we have historically used as a standard?

COMMISSIONER THOMPSON: There is a lot of legal precedent, decisions from both this agency and courts, about what just and reasonable means so I know what that means. I don't know what fair means.

MS. KENYON: I think we just trying to follow the legislative.....

COMMISSIONER THOMPSON: Okay.

MS. KENYON: .....language directly and I agree that fair is ambiguous. I don't think we would have any objection to replacing fair with just and reasonable.

COMMISSIONER HARBOUR: Well, I think on points like this if that ends up in the final regulation, Mr. Chairman, it would be good in our final summation to equate things like that we do with the legislative language, that it is -- it is responsive to the legislative language using appropriate terms.

CHAIR JOHNSON: I don't think it's any huge deal, I would say that it might be that this ought to be a little more -- to think about the extent to which the Telecommunications Act and this action by the Legislature is suggesting a different regulatory direction that has historically been the case. So I -- I'm actually supportive of the staff recommendation because I think it reflects that it's not just the old monopoly regulation, but that's -- that may be just me. Can we -- may we move on.....

COMMISSIONER STRANDBERG: Yes.

CHAIR JOHNSON: .....(indiscernible - simultaneous speech).....

COMMISSIONER STRANDBERG: I would say I think I support the staff recommendation on this one because,.....

UNIDENTIFIED VOICE: Yep.

COMMISSIONER STRANDBERG: .....you know, we've used just and reasonable in terms of rates more than we have in treatment and I'll just make that comment and we can move on.

CHAIR JOHNSON: I think.....

COMMISSIONER THOMPSON: And perhaps their concern.....

CHAIR JOHNSON: .....we can talk it about further.

COMMISSIONER THOMPSON: Yeh, can be addressed by somehow defining what that is or saying as part of our legislative history.....

CHAIR JOHNSON: Yeah.

COMMISSIONER THOMPSON: .....and discussion that we think fair is just and reasonable. I'm just concerned about a standard that's -- the responsibility of enforcing a standard.....

CHAIR JOHNSON: Okay.

COMMISSIONER THOMPSON: .....that's meaningless.

CHAIR JOHNSON: I think we've had a good discussion here and we can move on with that one and maybe come back to it next week.

MS. KENYON: Excuse me, so you haven't really decided what you want to do on that, right?

CHAIR JOHNSON: That's correct.

MS. KENYON: Okay. I just want to make sure, I'm sorry to be kind of blunt about it, but ....

CHAIR JOHNSON: Well, I -- no, I think (indiscernible - simultaneous speech).....

COMMISSIONER GIARD: Have we decided anything yet?

CHAIR JOHNSON: We have decided that we're focusing on option 3 and as to the exact form of that I think is open to a little further discussion. I don't think there's a whole lot of scribening that's going to take place there, it's not going to have a cascading effect elsewhere in this process. So can -- may I return to the discussion just -- and I know we're sort of jumping outside of the organized thing, is there a consensus regarding the ETC question? I think -- as I interpreted.....

COMMISSIONER THOMPSON: Uh-hum.

CHAIR JOHNSON: .....Commissioner Thompson, that she was supportive of addressing.....

COMMISSIONER THOMPSON: Uh-hum.

CHAIR JOHNSON: .....ETC issues in a separate docket and that is my.....

COMMISSIONER THOMPSON: Uh-hum.

CHAIR JOHNSON: .....interest. And I am interested in addressing those issues, I just don't think that we need to do it R-03-03, but, Commissioner Strandberg.

COMMISSIONER STRANDBERG: I wonder if the Staff has any input on that?

MS. KENYON: My main concern is whether or not it's the right time to start the investigation because I know that the Joint Board and the FCC are investigating ETC issues and they may give you requirements or guidance that may affect your deliberations. So opening up an ETC docket may be fine, but when, is it -- should it be done immediately or should we be, you know, waiting for the FCC to act or at least see what the Joint Board's going to do?

CHAIR JOHNSON: My preference is to act and do it, you know, in the course of this proceeding, that is to spin it out of this proceeding because it's been addressed by significant parties, it's certainly be wrangled with this Commission already, and I think it deserves a place on our priority sheet

rather than not being listed at all. So I would prefer to act now as opposed to wait.

COMMISSIONER STRANDBERG: Well, let me see if I can make this comment. You know, the question of designation of ETC status, of course, I don't think we should deal with that here, but the parties have put that forth as if they have ETC status that that would be some sort of a determinant in our establishment of competitive areas. And in that sense I think we're going to have to consider those comments from the Staff, but that's about as far as it ought to go. So I think we do need to consider the comments, but as far as any sort of work on, you know, whether -- on the way that a telecommunications provider would gain ETC status, I don't think that has any place in this docket.

COMMISSIONER HARBOUR: Mr. Chairman, I'd -- I'm persuaded by those comments for the reason that in determining a competitive area whether the person has ETC status or supplies services without the benefit of ETC, this -- the process needs to be determined in this docket anyway. How.....

CHAIR JOHNSON: If.....

COMMISSIONER HARBOUR: .....ETC is determined then can be delayed.

CHAIR JOHNSON: Okay.

COMMISSIONER GIARD: I think the Rural Coalition was very, very, very concerned about what has happened recently and as

you designate ETC status then there is the sharing of Universal Funds, but there's also the competition and as you have competition in an environment, that's probably what we need to deal with here. The more technical aspects of how you define ETC status does not belong here. So as long as we hit the -- as long as we deal with, I think, the Rural Coalition's issues or partial -- a portion of the issues as it deals with competition, then I think we've met our obligation to the time and effort that they spent putting it together.

CHAIR JOHNSON: Okay. I think we've probably beat this horse enough for right now.

COMMISSIONER GIARD: Who was the guy that put the shoe on the table?

CHAIR JOHNSON: Moving along. Would someone like to -- would this be a good time for us to take a short break, we've been at this for an hour and a half and maybe people want to go to the restroom and collect thoughts and maybe develop a new plan of attack, but we're -- as people are seeing it's a long process and I anticipate it's going to be a long process, it's an important process so we're going to move forward. Did you have something before we broke, Lori? Okay. Can we -- let's go off record and let's try to keep the break short because the time we spent mucking around.....

COMMISSIONER STRANDBERG: How long?

CHAIR JOHNSON: Let's go with 10 minutes and while we're

-- I'll be back here at 10:40 by this clock. Thank you.

(Off record - 10:30 a.m.)

(On record - 10:45 a.m.)

CHAIR JOHNSON: We are back on record. We've been having a, I think, a good discussion of the (indiscernible) alternatives represented in this docket. It was proposed during the break for better or for worse and in recognition of the fact that we have the ability to double back in this meeting or in future meetings that we perhaps pick up the pace a little bit and at least make some calls. I think -- Commissioner Giard in particular expressed to me that there may be a number of places where there are no concerns or no options that we want to -- going to take so maybe we can move a little bit more rapidly through the text. Rather than me have to do that and since she proposed it,.....

COMMISSIONER GIARD: I'd be happy to.

CHAIR JOHNSON: .....I think I'm going to let Commissioner Giard sort of talk for awhile and I think it -- once again I think we need to move and do what we can. And I don't want to discourage discussion by anybody on any point, but I think there may be some opportunities for us to make some decisions and move on to areas where we do need to spend more time. Commissioner Giard.

COMMISSIONER GIARD: Well, if I get to hear myself asking questions then I'd probably be less inclined to talk. So we

were at the position of item number 4, is that correct?

COMMISSIONER THOMPSON: Page 5, you got it.

COMMISSIONER GIARD: Page 5, item number 4, and the question is should the Commission delete the existing option for waiver under 3 AAC 53.200(c). The Staff have recommended no change and I wondered if the panel had any discussion points on that, is there any discussion on the Staff's recommendation?

COMMISSIONER THOMPSON: I didn't understand ACS' reasoning either.

COMMISSIONER GIARD: Okay. Is there any -- would you like to move on?

CHAIR JOHNSON: Yes, I think.....

COMMISSIONER GIARD: Okay. The next one is item number 5, should the Commission add a new section 3 AAC 53.200(d) regarding inconsistency in regulation. The Rural Coalition had made one recommendation and the Staff recommended do not add a section subject to legal counsel indication that the proposed section is needed. Is there any discussion about the Staff's recommendation or should we move forward?

CHAIR HARBOUR: Concur.

COMMISSIONER GIARD: Okay. Moving on.....

UNIDENTIFIED VOICE: (Indiscernible - away from microphone).....

COMMISSIONER GIARD: Commissioner Harbour said concur. We are on now item B, certification. Item number 1, should the

Commission clarify that certification requirements do not apply to exempt carriers. Our staff recommended no change, is there any Commissioner who would like to discuss that point?

CHAIR JOHNSON: Just to the point -- wow, you're doing all the work here, this is fun.

COMMISSIONER GIARD: I'm practicing to be chairman someday when I grow up.

CHAIR JOHNSON: Other than the fact that I haven't fully dealt with this issue myself, I have not reached conclusions on this one so we may come back if I get some other idea. That's all I have.

COMMISSIONER STRANDBERG: I concur with the Staff on this one.

COMMISSIONER GIARD: Thank you.

COMMISSIONER STRANDBERG: Let's move on.

COMMISSIONER GIARD: And, Staff, is this going -- are you able to just take notes? Okay.

MS. KENYON: Yes.

COMMISSIONER GIARD: Item number 2 is should the Commission allow registration in place of certification for small local carriers in new competitive markets. There were some options that were proposed. Staff proposed no change to this section, their pro (ph) financial review lessens the chance of a small CLEC going under subjecting consumers to lost money and temporary lack of service. So does any Commissioner

have discussions on the Staff's option number 2?

COMMISSIONER STRANDBERG: Well, I think first of all we're going to need to hear from a regulations attorney about whether or not we can do it. I -- go ahead.

CHAIR JOHNSON: I guess it -- where I was coming down on this one is that I don't see where this was a matter that was either posed to us by the Legislature or raised by one of the parties. I'm not even sure if we should deal with this in any way. Correct me if I'm wrong with that, but I don't.....

COMMISSIONER GIARD: I don't see any place.....

COMMISSIONER THOMPSON: That would be supportive of no change?

CHAIR JOHNSON: Yes.

COMMISSIONER THOMPSON: Yes.

COMMISSIONER GIARD: Okay. Section number C on page 7, section 53.220, determination of dominant status. We all slow down. Issues, the Staff cite some relevant legal cites, HB-111, policy 2 and 3 AAC 53.220(a). The issues the Staff identified is one, should the Commission continue to maintain a distinction between carriers based on market dominance. The Staff have recommended option 2 which would maintain dominant classification in noncompetitive markets and for incumbent LECs during transition period to a competitive market.

The Staff notes that GCI and ACS also recommended that option. Any discussion about this matter?

COMMISSIONER HARBOUR: I have a quick comment and a question.

CHAIR JOHNSON: Commissioner Harbour.

COMMISSIONER HARBOUR: First of all, I compliment the Staff on using the term upon petition or on its own motion. Anyway not to be too cute. Going on further, determine whether local exchange carrier has market power in its service area and as appropriate designate or change the designation of the local exchange carrier's dominant or non-dominant -- I've only been here nine months, can you tell me any action that we've taken in the past along these lines to redesignate or designate?

MS. KENYON: Are you talking about page 9, option 3?

COMMISSIONER HARBOUR: Page.....

MS. KENYON: Sorry.

COMMISSIONER HARBOUR: I'm sorry, am I in the wrong place, I was on.....

COMMISSIONER GIARD: Page 8, option 2, Lori.

COMMISSIONER HARBOUR: Okay. Well, I'm on the wrong page then, I will withhold then. Pass, I'll get back to that one.

COMMISSIONER THOMPSON: I've got a question for Commissioner Johnson about this one. This would be -- we've got the language here that talks about dominant classification.

CHAIR JOHNSON: Well, if I might, I know that there's House Bill 111 policy language and there's regulations language, but we also know that dominant, non-dominant

distinctions are, of course, still used at the FCC level and has a rich history. I can tell you that this is an area where I fully intend to spend a lot of time between now and the next meeting better informing myself as to the evolution of the dominant, non-dominant market standard. I know that -- you know, obviously it's -- exists at the IXC level and I want to look to see how much of that is still alive at the federal level and how much of it ought to be still alive here at the state level.

And it's sort of interesting, on the one hand, the Legislature adopted and used the language in House Bill 111, I find myself in sort of the uncomfortable position of thinking that the Legislature might have been wrong in doing that, that they may be making a distinction that does not have a good use. I just don't know. I don't know, I -- this is a -- one of those deep think issues that I expect to spend a fair amount of time with.

COMMISSIONER STRANDBERG: And I would comment that this is interrelated with a number of other issues. So what I would propose is that we pass on it right now and get into the meat of things and we may have to come back to it in the context of other items.

CHAIR JOHNSON: Did you have further questions, Commissioner Thompson?

COMMISSIONER THOMPSON: Unh-unh.

CHAIR JOHNSON: You didn't really get to your question,

did you?

COMMISSIONER THOMPSON: I think you said you were going to think about it some more because.....

CHAIR JOHNSON: Could I put you on the spot and get the benefit of your thinking just as we're sitting here a little bit?

COMMISSIONER THOMPSON: I think you raised the issue of what those words mean in a federal context and it's true that they have a rich history, but it's also true that it is a history that because of events after the Telecommunications Act in 1996 the FCC is moving away from and that's because of the difficulties that Staff's aware of and we've talked about here, of defining what dominant and non-dominant is.

So I am intrigued by the concept you raised earlier of focusing our efforts rather than on the characteristics of the carrier, of the characteristics of the market and the services offered and that might allow us to -- after we've gone through that and more fully explored the ideas that I guess we're going to hear about next Wednesday, figure out whether we still need to be thinking about carriers in this way or not.

CHAIR JOHNSON: Yeah, thank you, I appreciate that. I know I raised the issue, but I can -- and you may just be further along in your thinking on this than I am, but what's -- can I -- I'm truly interested in developing ways that we can simply the regulatory structure and classifications. And this

one sticks out to me. Are there further comments about dominant and non-dominant?

COMMISSIONER GIARD: So, Mr. Chairman, is the will of the body that we come back to dominant status section of this next week and just move on to discontinuation or do you want to go through the discussion of market power and the triggers of items number 2 which if the Commission continues to designate carriers what standard?

CHAIR JOHNSON: I would -- I guess just to provide a little bit -- maybe we can a little further down the road today, I would propose that we defer discussion entirely.

COMMISSIONER GIARD: Okay.

COMMISSIONER THOMPSON: I was going to.....

CHAIR JOHNSON: Go ahead.

COMMISSIONER THOMPSON: I think it might help you in your thinking about whether or not we need to continue to use the classification is -- help all of us if we understand what the implications of that are. So I don't know how many (indiscernible - simultaneous speech).....

COMMISSIONER GIARD: It's not very long.....

COMMISSIONER THOMPSON: It's not very long.

COMMISSIONER GIARD: .....but it is -- the discussion is potentially rich in terms of market power and automatic triggers.

COMMISSIONER THOMPSON: Yeah.

COMMISSIONER GIARD: I think.....

CHAIR JOHNSON: Okay. Let's -- I mean, let's kind of make a first --

COMMISSIONER THOMPSON: Dive in and see if we can make.....

CHAIR JOHNSON: .....cut at it. Let's not get embroiled in, you know, a bunch of distinctions that we're going to have to go back and revisit, but anybody that wants to jump in, I.....

COMMISSIONER GIARD: Well, item number 2 was the subject of a significant amount of debate by the participants who responded. And the item number 2 is if Commission continues to designate dominant carriers what standard should be used. The Staff have made a recommendation which is an automatic trigger with an option for a case by case review. And so I'll leave that discussion -- I guess we could use that as a starting point for our discussion. They talk about a local exchange carrier's dominant for the provision of retail service in a location if its market share in that location is 60 percent or more and no single local exchange carrier, ETC, has obtained a market share of 20 percent or more at that location as determined by the Commission. Is there discussion on item A of the Staff's recommendation?

CHAIR JOHNSON: Commissioner Thompson.

COMMISSIONER THOMPSON: Why'd you come up with 60 percent?

MS. KENYON: It's what was used by the FCC.

COMMISSIONER THOMPSON: Do you know why they said 60 percent, is it based on some kind of economic study?

MS. KENYON: I have to admit I don't really know. In the past I have always assumed those numbers are somewhat arbitrarily set.

CHAIR JOHNSON: If -- could -- Lori, I'm sorry, it was -- you said FCC's (indiscernible) in what proceeding?

MS. KENYON: When the FCC was considering whether to allow AT&T to become non-dominant they used a 60 percent market share as part of their analysis.

CHAIR JOHNSON: So that's an IXC?

MS. KENYON: For an IXC,.....

CHAIR JOHNSON: Okay.

MS. KENYON: .....definitely. For a local -- that's why we picked 60. Anything you want to add?

MR. TREUER: No, I'm not sure that they -- I'm not exactly sure they used 60 percent as the threshold, I think AT&T may have had 60 percent market share at the time and they decided to designate them as non-dominant.

CHAIR JOHNSON: I see Mr. Saupe nodding his head back there? Okay.

MR. SAUPE: I'm not yawning.

COMMISSIONER GIARD: That's because he's gone to sleep.

COMMISSIONER THOMPSON: And the other question is about

the last phrase in B, not including lines leased as UNE loops. I'd like a little discussion about why those should be excluded?

MS. KENYON: I think that what we were looking at under -- A and B go together.

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: A is pretty much targeted for a retail market, whether or not they're dominant in the retail market. And for purposes of that under B you wouldn't include the UNE loops because technically your competitor could provide service by UNE loops and give you quite a bit of competition in the retail market.

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: If you exc- -- if you -- in other ways if you included the UNE loops, if you didn't have this B provision then the incumbent could be dominant.....

COMMISSIONER GIARD: Forever.

MS. KENYON: .....for quite a long period of time.....

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: .....even though it may physically have lost quite a number of customers to its competitor that served using UNEs.

COMMISSIONER THOMPSON: Okay. And then that ties into the question that rises out of B, what's retail market, provision of retail services?

MS. KENYON: Well, we've used that term consis- -- well, it's a term we've used a lot in our past regulations and I'm not sure we ever really defined it. You can.....

COMMISSIONER THOMPSON: But.....

MS. KENYON: .....look at 53.240 and we used the term retail markets.

COMMISSIONER THOMPSON: Yeah.

MS. KENYON: It generally means that the services provided to consumers as opposed to other carriers.

COMMISSIONER THOMPSON: Well, I'm thinking for example if you establish a dominant standard and you say market share has to be 60 percent it's important to know what market you're talking about, is it business and residential, does it include -- you know, are you looking at the market service by service. In other words there's a lot of different services that a residential or business customer can buy, are we going to be looking at gee, for, you know, this particular type of service the competitor doesn't have 60 -- or the -- it's -- we didn't meet the 60 percent standard, but for the other one they do. What if the competitor doesn't even offer a certain type of service or are you looking at offerings overall by a provider in that market? It seems like that might be the source of some confusion.

MS. KENYON: Do you want to (indiscernible) this one?

COMMISSIONER THOMPSON: Go ahead.

MR. TREUER: I think we're talking about access lines so.....

UNIDENTIFIED VOICE: (Indiscernible).....

MR. TREUER: .....access lines is a measure of overall market power within the retail market. And so.....

COMMISSIONER THOMPSON: That standard makes more sense.

MR. TREUER: Yeah.

COMMISSIONER THOMPSON: I think that the language here should reflect that because otherwise it's -- it could be really -- it could be confusing.

MS. KENYON: I'm not sure I understand what you're suggesting we do? It says percent access lines.....

COMMISSIONER THOMPSON: Okay.

MS. KENYON: .....right now is why.

COMMISSIONER STRANDBERG: And, you know, when the reg is just retail service.....

COMMISSIONER THOMPSON: Yeah.

COMMISSIONER STRANDBERG: .....they just talk about retail service in the existing.....

COMMISSIONER THOMPSON: Okay.

COMMISSIONER STRANDBERG: .....reg.

COMMISSIONER GIARD: Lori, do we really need the and under item number A, as if the market share in a location is 60 percent or more do we really need the and because I thought I saw somewhere that GCI has like 19 percent in one area and 21

1 percent in another area, do we -- is the and absolutely
2 critical there because you could have in the new world say
3 there's a lot of -- I mean, it's not likely, but maybe there's
4 a lot of competition, but no single person has 10 percent. I
5 mean, if their whole market is less than 60 percent or -- do we
6 really need that other item?
7 MR. TREUER: I think we were thinking about the situation
8 in which one carrier had 60 percent of the market and you had
9 40 carriers with 1 percent of the market each, that's a big
10 difference from a situation where you have one carrier with 60
11 percent and two competitors with 20 percent each. So.....
12 COMMISSIONER GIARD: And as I was looking at -- thinking
13 about these, I was thinking about that really this market is
14 Alaska and there hasn't been like the plethora of CLECs to
15 enter this market and provide the kind of competitive service
16 because frankly we don't have the population and we do have, I
17 think, some of the lowest telephone rates in the country so
18 there hasn't been like this huge influx of people saying let's
19 go to Alaska and provide service.
20 MS. KENYON: Well, that's not -- well, our concern is
21 whether or not you have enough competitive pressure such that
22 the incumbent effectively doesn't have any market power and
23 under an automatic trigger it could have 60 -- it could have 20
24 percent of the market and still have a lot of market power.
25 What we're getting here is an -- is the idea that not only is

the incumbent facing competition, but that there really is a competitor out there that's making a difference and we thought that the 20 percent really was a -- is actually a pretty low level. You look at the existing markets GCI really hasn't been operating in Fairbanks and Juneau all that long and we actually looked at the charts that were provided in the comments about how long it took a comp- -- GCI to get to the 20 percent level,.....

COMMISSIONER GIARD: Yeah, I remember that.

MS. KENYON: .....it was really pretty quick.

MR. TREUER: Can I add something else to this? I think what we're -- one of the important things we were trying to do here is to avoid a burdensome administrative procedure with every single LEC that faces competition. Where we have an objective standard or trigger that kicks in that sort of avoids us having to go through these proceedings, but at the same time there's other provisions in here that allows -- I think the -- another really important one is the one that allows a LEC to petition the Commission whenever there's a competitive LEC applying for certification or a LEC or a wireless carrier petitioning for ETC status. It allows the LEC to come -- the incumbent to come in and petition to be classified as non-dominant at the same time, it lets them --.....

COMMISSIONER GIARD: Uh-hum.

MR. TREUER: .....gives them the same opportunity to be a

non-dominant carrier as soon as the competitor enters the market. So and -- I viewed this as sort of administrative efficiency by having an objective trigger, but it also provides other safeguards for you to step in if you think that the objective trigger is not working.

COMMISSIONER THOMPSON: Access lines, that's pretty technology specific, is there another word that you can use that doesn't -- isn't linked to copper wire? I think I understand the concept you're trying --.....

COMMISSIONER GIARD: Uh-hum.

COMMISSIONER THOMPSON: .....what about customer connections or something like that, I don't know?

MS. KENYON: If you want it to be simple and administratively easy to figure out the trigger, then access lines is probably the word you want to use. If you're talking about different technologies like voice over the internet and cellular, you probably want to have a little bit more time and thinking about it and maybe not want an automatic trigger to determine if dominance is there. So A and B have to do with the administrative ease part while, I guess, if you're talking about maybe there's another carrier out there or a provider that means dominance is not an issue anymore, that one -- that's probably not an automatic trigger situation.

MR. TREUER: If you use customer connections there could theoretically be rural areas of the state where the incumbent

would automatically become non-dominant as soon as the regulations go into effect by virtue of the fact that there are wireless carriers out there serving that may have more than 40 percent of the market or.....

COMMISSIONER THOMPSON: Yeah, okay.

COMMISSIONER GIARD: Can I ask a question, because it seems like Commissioner Thompson's point is really driven toward making us free of the burdens of the old copper wire. And I was looking at the way the -- I was reading in the paper about satellite television and the coverage, couldn't we move more toward a household rather than access lines, move toward more of a household designation?

COMMISSIONER THOMPSON: But what do you have -- what happens if, you know, there's more than one type of communication service purchased by members of the household and they purchase from different providers, where do (indiscernible - simultaneous speech).....

COMMISSIONER GIARD: Well, I mean, you -- what they normally do is in television market you have surveys that are made that are found out who's your telephone provider. And if an ILEC comes in and says look, we don't think that we're dominant anymore, we've done this survey and less than 60 percent of the households are covered -- have our service, you know, and our service is defined as, you know, telephone line to the house. You know, it -- it's much broader than access

lines which is basically wiring.

COMMISSIONER STRANDBERG: It would seem to me that A and B are definite triggers under the circumstance where we have wireline competition. The issue of this -- these other technologies or being able to embrace other types of service are covered later on in really the other clauses and I think I --.....

COMMISSIONER GIARD: Okay.

COMMISSIONER STRANDBERG: .....just to kind of move things along I would say that this seems to kind of work.

COMMISSIONER GIARD: All right. I'm sorry, I was eating. So we can go on. There's further sections C, D, E and F, would Commissioners like to speak to the items in either of those sections?

COMMISSIONER THOMPSON: Why'd you pick the list that you did in C?

MS. KENYON: Okay. We have had consumer complaints and active proceedings involving line extension policies, effectively construction practices, subdivision agreements, so I believe that those merited having a further look without having an automatic trigger. The interexchange access services, I think some could argue that that is a noncompetitive service because whatever carrier is selected by the customer for their local, they automatically get the same carrier providing their access service so there is no -- and we

haven't seen it either, that there's hardly any price competition going on for access services so that needed to be included in the list.

Data services and private line services were included because those can depend upon where you have actual facilities in place. And I'm a bit concerned that at the -- since we haven't really looked at the triennial review order of the FCC in the detail we would like, I don't know how that affects those services and I was concerned about well, if you don't necess- -- if the competitor didn't have facilities we don't know if that's -- those are really -- if the company could still have market power there. Interconnection services are pretty obvious why they're in there.

COMMISSIONER HARBOUR: I have a question for Staff. The term provisioning is covered by several of the categories that you put in there so that's why that word doesn't appear anywhere, right?

MS. KENYON: The word provisioning can mean a lot of different things to a lot of different people is why.....

COMMISSIONER HARBOUR: Right. So you're just more specific with --.....

MS. KENYON: We're.....

COMMISSIONER HARBOUR: .....usually it encompasses a -- at least one, but maybe more of the terms that you've chosen, right?

MS. KENYON: Uh-hum.

COMMISSIONER HARBOUR: Does this section -- doesn't it kind of address the concern I earlier expressed about enclaves in a -- say an area that's deemed competitive, but there's a subdivision, there's an area that some of the services that you've named in say -- are provided by one provider, therefore a monopoly provider, so this is really intended to meet that concern of the enclave within a competitive area?

MS. KENYON: Well, we didn't really have that in mind. What we had in mind here is you get tariffs, you get proposals from utilities that say when I'm going to expand into a subdivision and provide service this is how much I'm going to charge the developer. Those types of agreements is what I had in mind when I said subdivisions, these are the treatment of contracts and similar documents that have to do with the actual physical laying of the cable because right now in the local markets the customers really don't have an option except for in rare circumstances. They -- if they want a cable going to that subdivision they're going to contact ACS because GCI isn't really providing that service. That's what I had in mind.

COMMISSIONER HARBOUR: Okay.

COMMISSIONER GIARD: Lori, what does item F do for us?

MS. KENYON: All right. It responds to the criticisms that have been placed at the Commission that has never clearly identified what it will consider when it determines the carrier

is dominant. So what F does is it says when we are going to investigate a situation where somebody says I'm no longer dominate because of this or we want to review whether or not we're -- they are dominant for a particular service that we've been treating them as dominant for, 7 identifies what we'll look at.

COMMISSIONER GIARD: So there's an automatic trigger in A and tells us how to do it in B and then in F if we do go in an item by item evaluation that's opposed in C then we would have F as an additional guideline?

MS. KENYON: It could be in C or in E that you'd have additional guidelines.

COMMISSIONER GIARD: Okay. So.....

MS. KENYON: Or D for that matter.

COMMISSIONER GIARD: .....in a typical market or in a straightforward market A is -- A as modified or as explained by B is a sufficient trigger?

MS. KENYON: That's a sufficient trigger for most of the -- what I call voice type services that you hear so much about on the TV and advertised. C provides some limits to that.....

COMMISSIONER GIARD: Right.

MS. KENYON: .....and if -- and then if you want to go further beyond that then you'd look at D, E and F.

COMMISSIONER GIARD: Okay. Do other Commissioners have any more questions about that particular section? No?

CHAIR JOHNSON: I just reminded myself that I'm on the record so I decided not to say something.

COMMISSIONER GIARD: Item number 3, when using access lines as a measure of the carrier's dominance should the Commission also include lines sold to another LEC through total service resale. Is there any discussion from the Commission on that particular item? No?

Moving on to section D. Section 53.230 discontinuation of service. The Staff says that this section cannot be viewed in isolation of other proposed regulation changes. And then they go on to their issues which is item number 1, under what conditions may a carrier discontinue and abandon service. The Staff has provided some options that are several pages long -- or they review options that are several pages long and then they make a Staff recommendation which is in option 3, use the interexchange carrier service abandonment rules as a template for the local carrier rules. And is there any discussion by Commissioners on that area?

COMMISSIONER THOMPSON: Only that I'm recalling the times that we've used these rules in the IXC context and there was a couple times where for different reasons we needed more information or the progress -- we ended up extending the deadlines a little bit. Do you see the same sort of flexibility being available here, in other words the standard -- is this a workable time frame do you think to get adequate

notice out and give the Commission time to decide?

MS. KENYON: I'd like to reread it before I comment on that. I think it does, I think that your main constraint is if -- under option -- under point A, you get a small carrier that comes in and says I want to abandon service in 30 days and you believe they have some type of critical service that requires -- merits longer than a 30 day review.

COMMISSIONER THOMPSON: Uh-huh.

MS. KENYON: This doesn't really allow you that, you're stuck with a 30 day review period for the small carriers unless -- and you could say -- you'd have to conclude that they weren't -- that the service was needed for the public convenience and necessity in order to make them continue to serve.

MR. TREUER: All right. I'd just add one thing. The market -- IXC and the local market are a little different in this respect that most of the long distance carriers we have certificated are simply resellers and if they go out of business no one even notices sometimes. In the local exchange market if they're -- you have a customer that's linked to you.....

COMMISSIONER THOMPSON: Uh-hum.

MR. TREUER: .....directly and if you go out of business they're going to know it right away. So it is -- it is a little more crucial in the local.....

COMMISSIONER THOMPSON: Yeah.

MR. TREUER: .....exchange market. Unless they're a total service reseller, but I don't -- even then I don't know if there's an automatic provision where you go back to the facility -- underlying facility based carrier.

MS. KENYON: I don't know that there is, I think you just lose service if the reseller quits. Unless you -- obviously they have to come to you first, assuming they obey this rule, you'd have 30 days advance notice before they quit local service, but.....

(Off record comments)

CHAIR JOHNSON: Which option are we currently discussing or we're not just (indiscernible - simultaneous speech).....

COMMISSIONER GIARD: I'm sorry, we're under option 3.

CHAIR JOHNSON: .....specific options?

MS. KENYON: If I could add? You currently operate under the rule where a non-dominant carrier can discontinue local service after 30 days notice. So that's where you're starting from and Staff's proposal goes -- actually make it a stronger standard because we're -- we have sort of a size constraint added to that.

COMMISSIONER STRANDBERG: I would support the Staff's position on this one whereas talking about Commissioner's Johnson's comments o' complex regulations and wanting to simplify them for competitive areas as we moved through I think

as much meat as we can get in these abandonment of service areas will serve us well.

COMMISSIONER HARBOUR: Just one question, does the earlier definition of lines served go to this definition too? Another way to ask that might be can you envision times in which a carrier applied to discontinue professing less than 10 percent market share and that was arguable, but based on a lack of definition of line served or are we covered okay on that?

MS. KENYON: I have to admit that I'm not sure whether -- I mean, I believe that there are two different standards for lines served, whether you're dominant.....

COMMISSIONER HARBOUR: Right.

MS. KENYON: .....versus whether you can.....

COMMISSIONER HARBOUR: In this case.

MS. KENYON: .....abandon service. And for abandoning service you want -- you may want to have those lines be as broad as possible to include all the lines controlled by the carrier. And offhand looking at this I keep thinking why didn't we include UNE lines in A and there may have been a good reason, but.....

COMMISSIONER HARBOUR: Just something to think about it.

MS. KENYON: Yeah.

COMMISSIONER GIARD: Okay. On to number 2 which is what abandonment of service rules should apply to -- sorry, sir.

CHAIR JOHNSON: I just wanted to stop and clean up (ph).

I'd say that --.....

COMMISSIONER GIARD: We can stop at.....

CHAIR JOHNSON: .....and I was -- know people are talking about these options, you know, I'm continuing to listen for the rationale that continues to support the dominant, non-dominant distinction and that's still a live issue for me and frankly I'll just put people on notice that if we were to abandon that distinction the logical place for us to end up on this issue might be the proposed option of the Rural Coalition that's set out on page 13. But I don't want to delay our discussion unnecessarily about that, but their proposal would -- obviously makes a -- deletes the non-dominant distinction and there's some -- I think we could scrib (ph) in that a little bit more. But anyway I'd just -- I continue to have concerns about the viability of that distinction in the local marketplace.

COMMISSIONER THOMPSON: Could I ask a question? The -- one of the main distinctions between the RC proposal and the Staff proposal a couple pages later is the specificity in the Staff proposal about who gets notice. Are you proposing to.....

CHAIR JOHNSON: Oh, yeah, I guess I was focusing on that.

COMMISSIONER THOMPSON: .....just delete all that language or are you focusing more on the first paragraph?

CHAIR JOHNSON: No, I was not.

COMMISSIONER THOMPSON: Okay.

CHAIR JOHNSON: You're right, I was not commenting specifically.....

COMMISSIONER THOMPSON: Okay.

CHAIR JOHNSON: .....as to the Staff proposal and I probably should take a look at that. I appreciate that.

COMMISSIONER THOMPSON: Okay.

COMMISSIONER GIARD: Item number 2, what abandonment of service rules should apply to rate deregulated carriers. Staff have recommended option number 2 which supply the same rules as those selected in the previous section concerning regulated markets. Is there discussion of this item?

COMMISSIONER STRANDBERG: Why do you feel we need the same level of disclosure?

MS. KENYON: Actually it was I thought you'd get a broader range of comments if you noticed it that way.

COMMISSIONER GIARD: But why would you not want -- if the question's abandonment and making sure the customers aren't left hanging.....

MS. KENYON: Uh-hum.

COMMISSIONER GIARD: .....high and dry by someone, why does it make a difference whether a carrier is economically deregulated or not?

MS. KENYON: It may not. This is your most conservative standard to protect the public interest, that's why I felt that with that in mind and you'd get a broader sense of comments

about whether or not there was any reason to relax that standard.

COMMISSIONER THOMPSON: I think in general if you're looking at a competitive market the responsibility to protect the public interests of consumers becomes greater. So I don't.....

MS. KENYON: Especially.....

COMMISSIONER THOMPSON: .....know why there should be a different standard. I agree with the Staff recommendation.

COMMISSIONER GIARD: Any further discussion on that? We're moving on. Okay. Section 53.240 retail rates. Staff have several cites and item number 1 under what conditions and to what extent should the Commission implement rate deregulation.

2700

(Tape change)

Tape 3

0015

And there were several options proposed by the respondents. Staff had recommended 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 service. Are there Commissioner comments on this section?

CHAIR JOHNSON: I just wanted to note on -- at the outset, I think this is one of the more complex and critical sections

of our whole proceeding and my thinking in this area is not fully developed as yet. I think it's an area that we're going to have to revisit. And I certainly invite people if they're ready to go on these things to charge ahead, but I fully anticipate we're going to have to revisit this issue again next week. I don't think this is easy stuff.

And once again, it doesn't take very long to see where this whole dominant carrier stuff that I'm concerned about leads its way into this distinction as well, and anyway, I don't want to impair or disrupt people from moving forward. Commissioner Thompson?

COMMISSIONER THOMPSON: I want to talk about option 4 that isn't there before everybody starts rummaging papers. And this is where I'm back to the comments I made initially. I think if we're talking about, again, thinking about why it is we regulate at all and thinking about what's important, I would rather see a standard in our regulation that describes a list of -- list the things we think must be accomplished before it's appropriate to relax rate deregulation. And those being focused on an adequate consumer protection process that they have, service quality standards, some kind of hot cut process. It seems like a lot of the complaints we get are -- involve switching from one provider to another.

And I'm not comfortable backing away from regulatory oversight until we're sure that the market's really going to

work. So I don't have a specific list here today.

I've got some ideas. I'm interested in Staff's comments as well, but what I envision is something that might be analogous to the 271 process, that was mandated on the Telecommunications Act that we escape because we didn't have a bell. In other words that you would have a finding, a list of things, standards that must be met when a finding was made that they'd been met then any type of -- or the rate deregulation would occur.

MS. KENYON: I guess the Staff position is figuring out what that list is and what are the appropriate triggers is very difficult to do and you always will have exceptions. The market is very complex. If you deregulate prematurely that's probably one of the worst things.....

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: .....you an do. So that's why we were of the opinion that it should be case by case.

COMMISSIONER HARBOUR: Well, can I understand, Commissioner Thompson, you were suggesting that in forming an application certain requirements needed to be accomplished. That doesn't mean that the Commission couldn't find against based on other criteria, but that to come to us.....

COMMISSIONER THOMPSON: I just think that.....

COMMISSIONER HARBOUR: .....that that list should be accomplished.

COMMISSIONER THOMPSON: ....I'm concerned about leaving it. It's discretionary here. And yes, you're going to have to look at it on a case by case basis, but you'd have to do that under my scenario as well to review whether these standards should be met. I think it's be helpful to industry to provide clear signals about the things we think are important. And also to recognize that our role in a competitive market is different. If we're shifting from the role of someone who makes and enforces all the rules to someone who makes sure that consumers get protected when the rules go away, when companies control rates and prices, then we need to be looking at different issues than we have traditionally.

And I feel more comfortable -- I agree that premature deregulating the market is probably one of the worst things you can do for a consumer and ultimately for the utilities involved as well. So it's important to make sure that it's not premature. So how do you know? Well, you make sure that there's adequate protections in place, that there's adequate processes in place to deal with the type of issues that come up when a market transitions to competitive.

Our experience with the local market in Anchorage we saw again today, the vast number of complaints we get are from telephone consumers in Anchorage. Well, maybe we didn't do such a good job of protecting them in the transition. I think if we've going to embody in our regulations a process to

transition markets to competitive we need to take that experience to heart and figure out what we didn't do so well in Anchorage so that you don't see the same kind of skyrocketing of consumer complaints in other markets as they transition to competitive.

MS. KENYON: I've been thinking about this a lot and the one thing I keep having problems getting around is that the retail rates are used as the basis for wholesale rates. And as a result until you have a full facilities based competitor I don't know when you will be able to easily just say we're not going to look at those retail rates anymore, just going to assume the market can do -- can take care of all those options for you.

COMMISSIONER THOMPSON: I app- --.....

MS. KENYON: That's the one thing I'm not.....

COMMISSIONER THOMPSON: Yeah.

MS. KENYON: .....sure how you put on a list.

COMMISSIONER THOMPSON: Well, how do you -- why can't you deal with wholesale rates differently? I mean maybe the answer is you can deregulate the retail market or not look at rates in the retail market, but you still have some kind of -- you say, you know, wholesale is different if service is being provided by other competitors through those wholesale rates? Maybe that's a different market.

MS. KENYON: Well, they're interrelated because.....

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: .....because the ILECs retail rates are the wholesale rates with a discount.

COMMISSIONER THOMPSON: Maybe the answer is setting wholesale rates differently.

MS. KENYON: Can we do that under the Act? I though the Act required us to use retail rates or federal policy, one or the other, that's the only thing that -- I mean if I thought a way around it I'd offer it....

COMMISSIONER THOMPSON: I don't know. That's worth looking at.

MS. KENYON: Yeah.

COMMISSIONER THOMPSON: I don't know the answer off the top of my head.

MS. KENYON: Yeah.

CHAIR JOHNSON: Well, I mean isn't that where we get in involved in the 17 percent discount or something? Didn't they set a standard, a default discount?

MR. TREUER: The default discount is already thrown out by the Eighth Circuit.

CHAIR JOHNSON: Oh, okay. So did they -- does that federal law currently require a case by case inquiry to establish those rates?

MR. TREUER: It's set through the arbitration process.

MS. KENYON: It's not the discount rates that I'm

concerned about. I mean I'm assuming that's a given. But what if the retail rate had something like well, this is a retail rate, in order to get it you can't be a competitor. There's -- that's kind of a really extreme example, but I'm thinking the terms and conditions are such that it is anti-competitive and prohibits the wholesale provisioning of that service in one way or another. We wouldn't be able to control that if you deregulated the retail market.

COMMISSIONER HARBOUR: We should be able to work around that.

COMMISSIONER THOMPSON: I think that's a different problem and I'm going to have to think about language, but I think it's a different problem.

MR. TREUER: Can I suggest that there may be a terminology problem. I think....

COMMISSIONER THOMPSON: Uh-hum.

MR. TREUER: .....one of the most -- one of the biggest rate deregulations you can do is what we discussed in the previous section is to allow the incumbent to have upper pricing flexibility and you're putting the incumbent then on parity with everyone else. That's the biggest first step I think.

The next step, I think we're really talking about detariffing to some extent when we talk about rate deregulation.

COMMISSIONER THOMPSON: Uh-hum.

MR. TREUER: And we have -- we've taken a step in that direction in the IXC market by with a registration process where we have on line tariffs and we don't do the same level of review anymore. So I'd just like to point that out. If that helps in the discussion.

COMMISSIONER THOMPSON: Yeah.

COMMISSIONER GIARD: Lori, can you talk to me about the automatic triggers 'cause when I was reading option 1 it seems like what we're coming back to on this is that we would go to an entire proceeding again on a case by case basis without any automatic triggers. And part of the benefit of reviewing these is to loosen some of the regulatory burden on the industry. And I can't see where we couldn't fit both automatic triggers and, you know, the criteria, if we set a quality criteria like they have in -- where they've done price caps and other things in the Lower 48 and we couldn't build that into the application or -- so that the LEC says okay, you know, I've met 75 percent or more of the customers, there's a CLEC and a C -- ETC, which is capable or reaching 75 percent more of the customers and we have these policies in place, therefore, unless we hear from you in the next two weeks, you know, we're rate deregulated.

MS. KENYON: Okay. For example, let's say you take the -- take an option where you said automatic triggers, and they met all the requirements. There may still be loopholes that you're

very concerned about like line extension policies.

COMMISSIONER GIARD: Right.

MS. KENYON: And it's very difficult to craft something that says -- that we've thought of everything to protect the public interest. That's our problem. We have -- I mean I personally tried and obviously other more intelligent people could come up with a good answer, perhaps that I didn't, but it's how do you do it that you have made sure that you're still protecting the public interest if you've just created a checklist?

COMMISSIONER GIARD: Well, you're not going to be able to protect the public interest. I mean that's something that is kind of the balance of having a competitive marketplace. If we really wanted to protect the public interest to the extreme that we could we would never deregulate anything. We'd keep them right by the neck. And I'm concerned that we have an opportunity here to loosen and then we want to make sure we can grab them again if they misbehave by putting in some of the policy items that Commissioner Thompson was talking about, but that the automatic triggers seem to be something that, you know, really lets us take our hands off and say okay, we've established this, we've looked at it, here are the things we want you to meet, and we could put in here somewhere if subsequently Ms. Pitts tells us that you have 150 complaints, you know, we yank you back in. But I don't know.....

MS. KENYON: Well, once you deregulate it's hard to go back.

COMMISSIONER GIARD: It's hard to go back. It's not impossible to go back.

MS. KENYON: And, you know, how far do you want to go in your first steps here? This is a radical departure from what you.....

COMMISSIONER GIARD: I don't want to be on the bleeding edge, but I surely wouldn't mind being on the leading edge. I really don't want to be in the middle. That's my personal feeling.....

COMMISSIONER STRANDBERG: Well, I'd just like to say I think that we're probably not going to get to a conclusion on this today, but I am reflecting on the comments of both Commissioner Giard and Commissioner Thompson. And I would like to see if we could develop that 271 like list with some healthy abilities for the Commission to really influence what actually happens in a proceeding. I think that may be -- you know, and like Commissioner Thompson I don't have the list, but it seems to me that the parties, at least ACS has attempted to do that in their comments with a relatively limited list which they'd have to comply with in order to....

COMMISSIONER GIARD: Right.

COMMISSIONER STRANDBERG: .....tariff (ph). So with that, you know, I'd like to suggest that we work towards that.

COMMISSIONER THOMPSON: And I guess on the enforcement standard I would put -- because I recognize it's pretty tough to re-regulate after you've deregulated, so in terms of enforcement I'd do fines or require refunds. Give us the power to require them to refund what customers have paid or something like that, that rather than having them hauled back in and re-regulate 'cause you can't really do that. Once they're gone they're gone. But you can through an economic process give them a great dis-incentive to continue to serve if they're slip below the standards that they initially met.....

MS. KENYON: You're limited under statute, I believe, of the amount of fine that you can assess.

COMMISSIONER THOMPSON: Well, what if it's a customer refund instead of a fine. I don't know if it falls within the same restriction.

MS. KENYON: You've had court battles over how far your ability is to refund. I mean retroactive refunding.....

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: .....I could see you being in court on that. And if you just deregulate the market you have also other questions about do they continue to do accounting, follow your accounting rules, things like that. I guess that's for a later date.

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: But I just don't -- I guess.....

COMMISSIONER THOMPSON: I guess my answer to that would be.....

MS. KENYON: .....I've seen it too many times in the Lower 48 that fines have been totally ignored. They're a very -- they try as hard as they can and the commissions have come up with these fantastic fines and the practice that generated where the reason why they gave them the fine continues. It's more economically viable to continue down a path and just pay the fine. It's like having a parking ticket.

COMMISSIONER THOMPSON: Yeah. No, I agree. I understand the issue. And we're going to have to think creatively about how to assess an economic consequence, but I guess all on the theory that we're moving to a market where customers have choices and, you know, they're making decisions based on economics rather than regulation about whether they're going to enter and serve and who they're going to buy from, that that type of signal would be more appropriate, but I recognize that it's got to be the right amount or it doesn't really make a difference to people and it's not going to -- I just -- I think that's probably a more productive way of enforcing than talking about re-regulating 'cause you can't really do that once you've gone down the path and loosened things. And you asked about things like accounting requirements, it makes a difference whether or not the company gets Universal Service benefits or some of the other ones because you -- I don't think we can

abate the accounting requirements under the circumstances.

MS. KENYON: Well, could you even rate -- if you deregulate then is it -- from your last comment are you suggesting you might not be able to deregulate if they're getting USF funds?

COMMISSIONER THOMPSON: Well, I guess we need to better define for purposes of discussion what deregulation is. What I mean is getting out of the requirement that each service offering to customers be written in a tariff that we review and approve or not. I'm thinking of it more in the context of detariffing. And in the context of the utility's ability to set its own rates based -- rather than having to prove to us that they need the money before they raise the rates.....

MS. KENYON: Uh-hum.

COMMISSIONER THOMPSON: .....let them decide whether this is -- you know, whether they want to charge their customers this or not. I'm not thinking of it in terms of not having any accounting requirements because I think we're still going to need some if -- especially for the companies that get Universal Service monies. I don't think we can fulfill our responsibilities to the federal government to the other states that get those monies without having some knowledge of how those funds are used.

COMMISSIONER STRANDBERG: And I guess the carrier of last resort, the dominance issue, and a basic service offering so

that no matter what does happen in the marketplace there is some sort of safe harbor where a consumer can go to get a basic phone, that might be a concept that could be considered here. So it might allow us to let loose more of the market as long as we had some safety net in there so that people can get service.

COMMISSIONER THOMPSON: Well, you can put that on the list. You can say you have to have a basic offering that is.....

COMMISSIONER STRANDBERG: Right.

COMMISSIONER THOMPSON: .....phone service and nothing else.....

COMMISSIONER STRANDBERG: Exactly.

COMMISSIONER THOMPSON: .....and it can't be -- ever go above this rate.

COMMISSIONER STRANDBERG: Right, that might be one approach here.

COMMISSIONER GIARD: Item -- is there further discussion, Mr. Chairman?

CHAIR JOHNSON: So we were talking -- or I just wanted to clarify for my own benefit. We're talking just sort of generically in terms of the question of the conditions which ought to apply before we embrace some sort of rate deregulation, is that correct?

COMMISSIONER THOMPSON: I'm going to.....

CHAIR JOHNSON: I'm trying to clarify where we are.

COMMISSIONER THOMPSON: I'm going call tariff detariffing because it's.....

COMMISSIONER GIARD: Detariffing is a good term.

COMMISSIONER THOMPSON. The term rate deregulation has become confusing.

CHAIR JOHNSON: Okay. Obviously I think there's a need for a whole lot of discussion. Commissioner Giard, I guess from my standpoint if you're trying to flow from that point into -- on page 24 into a discussion of continued retail rate regulation of some kind and that it go through a series of option, I think that that discussion is going to hinge a lot on what we decide relative to the -- what we just went through.

COMMISSIONER GIARD: I'm sorry, sir, I didn't understand.

CHAIR JOHNSON: I'm just not sure if we can take up.....

COMMISSIONER THOMPSON: One of the options is do not -- you know, status quo.

CHAIR JOHNSON: Yeah.

COMMISSIONER THOMPSON: I mean so what are you proposing?

CHAIR JOHNSON: Well, I guess I'm just mindful of the time and I'm trying to figure out is there other -- to utilize a term that I think Commissioner Strandberg used to me yesterday, is there other low lying fruit elsewhere in the Staff discussion that would -- that we could allow and give them direction on outside of this local market structure.....

COMMISSIONER THOMPSON: I'd ask.....

CHAIR JOHNSON: .....discussion?

COMMISSIONER THOMPSON: .....them what -- is there anything else, you know, we'll.....

CHAIR JOHNSON: In the time that we have remaining here.

MS. KENYON: As much as you can get done today I'd actually get done. As far as low hanging fruit if I were to guess what the low hanging fruit is it may be the depreciation, the ETC, I don't know what you want to do about the LECs and the wholesale -- the LEC wholesale UNE things or -- I mean corporate restructuring, I don't know how much discussion. I mean only you folks know how much debate -- how much difference of opinion you may have amongst yourselves. I can't guess to that. That's where -- whether or not you have low hanging fruit.

CHAIR JOHNSON: Yeah, I agree that those are items that might be ripe, if you will, for discussion and at least allow you -- give you folks a little direction and we can return to, I think, those deep think issues that probably are so time consuming next week, but it would allow you folks to sort of spread out your work load and not just get hung up in one area that's incomplete is where I'm going.

COMMISSIONER THOMPSON: So can we talk about.....

CHAIR JOHNSON: I was hoping we could talk about depreciation I guess I'll be real blunt about it.

COMMISSIONER GIARD: That's my very favorite subject.

CHAIR JOHNSON: And I thought from our earlier efforts to discuss results of the hearing that there was substantial consensus in my opinion around the Rural Coalition proposal, and then there was subsequent discussions by Staff. I guess what I am suggesting, they had a -- we just jump back to page 68, 69, I'd like the Staff recommendation option 2. (Indiscernible - voice lowers).....

COMMISSIONER THOMPSON: I want to clarify whether by lives you mean projection lives in that sentence?

MS. KENYON: Which sentence are you referring to?

COMMISSIONER THOMPSON: Revised RC proposals to refer to lives and net salvages instead of rates, do you mean projection lives?

MS. KENYON: Yes, under B line 2 it says projection lives.

COMMISSIONER THOMPSON: Okay.

MS. KENYON: That would be the language you would be adopting -- .....

COMMISSIONER THOMPSON: Okay.

MS. KENYON: .....not adopting. Issuing for public notice with some minor text around it for content.

COMMISSIONER THOMPSON: Okay. Then I concur as well.

CHAIR JOHNSON: So is it correct as I look at this that if we answer question 1, that is should the Commission develop a rate, life, net salvage range tables to simplify the depreciation process? And we selected option 2 that that would

mean we would not address your second question, should the Commission adopt non table based approach to comply with House Bill 111?

MS. KENYON: I think you still have to tell me what happens if they don't take the table.

CHAIR JOHNSON: Okay.

MS. KENYON: And one of the things that you can say is that well, status quo, I don't want any more regulation, to define that what happens if they don't take the table. Otherwise you still have to go through the issue 2.

CHAIR JOHNSON: Okay. There are four options under that section. The Staff -- I don't think there's a Staff recommendation amongst the four options, is that correct?

MS. KENYON: I think I may be going and confusing myself. Under old option 2 on page 69, that we just got off of.....

CHAIR JOHNSON: Oh, I.....

MS. KENYON: .....I think we do have what -- we do explain what happens. I think it's.....

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: .....D there.....

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: ..... any change in depreciation shall be developed after consideration of actual useful lives, so we do address -- and other depreciation changes. I take it back. I don't think you necessarily have to do should the Commission

adopt a non-table approach.

CHAIR JOHNSON: Okay. So we don't have to do that one. And I know there was a lot of work put in there. Four options set out. Those are roads we don't have to take, is that.....

MS. KENYON: That's correct.

CHAIR JOHNSON: Okay. Do we -- should we address the burden of proof, question number 3 at the top of page 74. And there are options there. Is there discussion on this? There's a Staff recommendation regarding option 2. Other questions or comments about this?

COMMISSIONER THOMPSON: Question.....

CHAIR JOHNSON: Depreciation expert?

COMMISSIONER THOMPSON: .....is for -- a question for the person who is not here which is whether we need this section in light of the.....

COMMISSIONER GIARD: Right.

COMMISSIONER THOMPSON: .....reference to burden of proof in the adjacent section, but that's a Virginia question.

COMMISSIONER STRANDBERG: That's our attorney.

CHAIR JOHNSON: Those -- I fully anticipated that we could have those legal discussions, I guess, down the road. We may not have an answer on that burden of proof question for you.

MS. KENYON: Uh-hum.

CHAIR JOHNSON: There is a question about interim booking in the depreciation section.

COMMISSIONER GIARD: Well, I think this interim booking goes back to the time that it took the industry to get an answer on depreciation. And I wonder if -- I mean if they're going to adopt the table then they won't really need interim booking provisions. I mean did you guys have a.....

MS. KENYON: It helps. I think that the table will hopefully reduce the time that we need to devote and the industry needs to devote to develop the depreciation rates.

The interim booking proposal of the Rural Coalition also -- it went part and parcel with their rate table. There's a presumption that the rates the utility would use on an interim basis would be the ones eventually adopted 'cause they're in the rate table, so since you're away from a rate table concept I think it makes it more difficult to adopt an interim booking concept 'cause there's not a presumption of success.

COMMISSIONER GIARD: So Staff recommended omit the interim booking section. So that's where they -- there's no interim booking of depreciation.

MS. KENYON: They would have to specifically ask you to be able to do that.....

COMMISSIONER GIARD: Right.

MS. KENYON: .....they can't do that today.

COMMISSIONER GIARD: They can't do that automatically?

MS. KENYON: Right.

COMMISSIONER GIARD: Right. Because if they use the table

then we're automatically going to approve it, the table that we all create.

COMMISSIONER STRANDBERG: Right.

COMMISSIONER GIARD: Is that correct my understanding?

COMMISSIONER STRANDBERG: I guess I'm not understanding this. It seems to me that there's perhaps more credence to allow interim booking if we have the table rates because, you know, then the utility using the table rates there's a much greater likelihood that those will be the final rates.

COMMISSIONER GIARD: Oh, I thought the table.....

MS. KENYON: You don't have table rate.

COMMISSIONER GIARD: .....rates would be automatic. Sorry.

MS. KENYON: I'm sorry.

COMMISSIONER STRANDBERG: Go ahead (indiscernible).....

COMMISSIONER GIARD: No, I'll (indiscernible - away from microphone).....

MS. KENYON: If you accepted Staff's recommendation you've got table lives and table salvages.

COMMISSIONER STRANDBERG: Okay.

MS. KENYON: Then they have to figure out the rate.....

COMMISSIONER GIARD: Uh-hum.

MS. KENYON: .....that's an extra step to figure out the rate. We don't know what rate they can come up with. They could come up with a wide range given those lives.

COMMISSIONER STRANDBERG: Okay.

COMMISSIONER HARBOUR: This is a keep it simple question. But for the purpose of discussion while I've had a number of discussions with a number of experts on this subject. I think for the record I'd love to hear Staff's comment and then if Commissioner Giard feels so inclined I'd love her views on the earlier -- some earlier suggestions that it could be kept simple by using -- by employing IRS depreciation rules and rate making. You know the pro's being proposed is, you know, that's theoretically an audited procedure, that it's confirmed in other documentation. That it's confirmed in tax returns. Can you discuss a little bit the effect particularly if you feel there is a momentous effect on ratepayers from employing a simpler concept like that one including, I guess, accelerated depreciation which is a part of that whole concept?

MS. KENYON: Well, traditionally the Commission has not accepted point carte blanche the IRS depreciation rates. You need -- usually have some type of record to show that the rate is developed based on what the utility actually has, the plant and its expected life and other factors that you feel are important. The IRS tables are very flexible. They allow accelerated depreciation. You lose a lot of control over what that rate is and whether or not that rate is appropriate if you say well, just for rate making purposes we'll let you use the IRS tables. That really doesn't give you -- I mean that

doesn't really put a lot of restraint on what depreciation rate the utility may use. And it could allow the utility to implement a rate even though it's -- essentially has recovered most of its investment through depreciation expense in the past, but it could still charge a high rate just because it's in the IRS tables and is allowed, so while you would be able to perhaps modify those life tables, I'm guessing here 'cause I -- but you might be able to have some type of IRS consideration when you develop the life in salvage tables. I'm not recommending that you do that.

COMMISSIONER GIARD: You know, Commissioner Harbour, I think one of the really terrific opportunities that comes out of the Rural Coalition proposal was that we finally get to establish depreciation lives for Alaska. And that is and has always been it seems to me in the articles I've read a contention of the industry is that yes, we have these FCC, but they were formed in the Lower 48, this gives us an opportunity to establish rates or lives based on what happens in Alaska. And I think the IRS has the same problem, I think, that the FCC would in that it's really not Alaska based. And that was why I substantially supported the Rural Coalition and then the Staff's proposal because we finally get to have something for Alaska.

COMMISSIONER HARBOUR: Thank you. Do you have something -- anything to add?

MS. KENYON: I agree with what Commissioner Giard said.

COMMISSIONER GIARD: That's the first time she's agreed with me today. Say it again.

MS. KENYON: I agree.

CHAIR JOHNSON: Just coming back then, did we address then the interim booking question? Did we resolve that?

COMMISSIONER THOMPSON: No, we didn't resolve it.

CHAIR JOHNSON: What --.....

COMMISSIONER GIARD: (Indiscernible - simultaneous speech) Staff's recommendation?

CHAIR JOHNSON: What do you think, Kate?

COMMISSIONER GIARD: I think the Staff is.....

CHAIR JOHNSON: Depreciation expert?

COMMISSIONER GIARD: .....on board. I think they're on line so I wouldn't do it. I would just eliminate it as the Staff recommended.

CHAIR JOHNSON: Commissioner Strandberg?

COMMISSIONER STRANDBERG: I'm going to -- I need to do some reading on this because I think we need to be responsive -- you know, it is going to take some time for us to do these depreciation studies even under a new renewed strengthened resolve for us to move them faster. And it's just not clear to me that we should not allow an interim booking and I just want to read, so I'm reserving judgment on that.

CHAIR JOHNSON: Commissioner Thompson?

COMMISSIONER THOMPSON: I'm with Kate.

CHAIR JOHNSON: Okay. I agree with Commissioner Giard primarily because I trust her judgment in this area. Are there further comments on this interim booking question issue? Number 5, should the Commission allow utilities to implement special amortization? We have choices between a RC, Rural Coalition proposal and then the Staff recommendation is that we not include this section. They believe it's not necessary. Commissioner Giard?

COMMISSIONER GIARD: One of the concerns that I had in this section was if we have like stranded plant or some, you know, situation like that, if that would then automatically fall under this special amortization. So I went with the Staff's recommendation on that because I was -- we had some conversations about stranded plant and I was worried about the implications of that. And I just didn't know if I was dealing with something that's in the same range. And what your thoughts were on this?

MS. KENYON: I agree with your comment.

COMMISSIONER GIARD: (Off record comment).

CHAIR JOHNSON: So where does that leave us as to this question number 5?

COMMISSIONER GIARD: Well, I would go with the Staff recommendation.

CHAIR JOHNSON: Okay. And then I think the final issue

presented to us in this section is number 6, should the Commission adopt a new regulation for new class of property? The Rural Coalition had a proposal and then there's a Staff recommendation indicating that this is not necessary. Commissioner Giard?

COMMISSIONER GIARD: Well, on this one, Mr. Chairman, I went with the RC proposal rather than the Staff simply because of the new technology or something and we may want to then have an opportunity to add this new class of property into the existing live table, so we want an ability to make that table a living document or a living table, walking, breathing thing, so that's the reason I felt the RC proposal was a little more forward looking. So.....

CHAIR JOHNSON: Comments?

COMMISSIONER THOMPSON: I don't understand it. I don't understand what they mean by a new class of property and why it would be important.

COMMISSIONER GIARD: Well, my interpretation of the new class of property meant that there's something that is in the -- has something that's brand new that isn't -- doesn't fit within the existing categories. I don't know what the new thing is, but it would have maybe a brand new technology or a brand new piece of equipment or something that we hadn't considered in the tables that we're going to create. And that's the only reason I felt that the RC's proposal kind of

encompassed what do we do in that situation.

COMMISSIONER THOMPSON: I don't understand how frequently this happens?

COMMISSIONER GIARD: I think it would probably happen very rarely. I mean, you know, those property categories have existed for years and years and years.

COMMISSIONER THOMPSON: Well, what happens now when this situation occurs if there's some utility plant that doesn't fit into any of the categories? What do you do now?

MS. KENYON: Probably an example of it was when they didn't have a cable category for fiber.....

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: .....people were trying to figure out how we treat fiber, and how.....

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: .....obviously you'd have a different -- to me it would be obvious you'd have -- you get a different life for a fiber cable than you would for a metallic cable. And what I've seen in the studies is that they can figure out how much plant that they've got in each category, how much is fiber, how much is cable. They can assign a life to both. Figure out sort of the effective weight to give those factors, then merge it into this composite rate they'd apply for the full accounts. So arithmetically we do what the Rural Coalition I believe -- the end result of what the Rural

Coalition's proposal was, but what we don't do is say they have now a new line item in their uniform systems of accounts that is for a particular type of plant category that didn't exist before and a depreciation rate for it.

It wasn't so much that what they wanted was objectionable as much as it's not -- we're not sure it's really necessary.

COMMISSIONER THOMPSON: Okay.

COMMISSIONER STRANDBERG: I support the Staff on this one.

COMMISSIONER GIARD: I'm cool. I'm fine with it.

CHAIR JOHNSON: Okay. I think there's support for the Staff.

That brings us to the end of the depreciation section and also pretty much noon. And I know that we have a lengthy adjudication this afternoon. I think that's probably about as far as you're going to be able to go today.

Just for the benefit of everybody, next Wednesday it's my intent to work through the remaining issues and to at least give Staff direction as to everything that remains either in -- of course, from my perspective there may be a number of cases where we don't decide to do anything, but we're going to work through those next Wednesday and we should be prepared -- there's nothing else pending that day as I understand it, so we may work the morning and then take a lunch break and then come back to complete that task.

Then on Friday there was some further conversation --

there is another proceeding that is scheduled to begin on Friday morning, I'm talking about next Friday now, and that may be somewhat lengthy. We will need to have -- we may have a better indication as time goes on, but the point is that we're definitely meeting in the afternoon on Friday and there may be a need to slide this meeting somewhat later in the day as to take final action as to the decision making in this docket. We will -- I'm going to ask everybody to remain a little bit flexible on that, but we'll set a time, but the time may be a little bit impacted by the other proceeding that would be -- commence that morning, but we will come back at some time on Friday afternoon to complete action on the docket, so I think we've made good progress here today and I think it's important for us to start a dialogue, and I think it's been a very constructive dialogue. And I'd like to thank the members for being patient with one another and I think we've established a good record. We've avoided to many -- I don't think there have been many if any circumstances where there's been simultaneous inquiries or statements being made, so I think we do have a good solid record.

I know there's a lot of work yet to be done and I know I started the session here today by commending Staff, I'd like to reiterate that. I think that this report is very thorough and they should be congratulated for work well done. So there was a great deal of work to be done, but we've come a certain

distance today and I'd like to thank folks. So that's the end of item number 2 on our agenda.

Is there other business to come before the Commission here today? Nothing else?

COMMISSIONER HARBOUR: Move adjournment.

CHAIR JOHNSON: Moved to adjourn.

COMMISSIONER THOMPSON: Second.

CHAIR JOHNSON: Seconded by Commissioner Thompson. Is there objection? None noted. With that we are adjourned at 12:01. Thank you very much, Folks.

(Recessed - 12:02 p.m.)

1383

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 Meeting held on October 22nd, 2003, was taken by Suzan K. Olson, 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 and transcribed by Suzan K. Olson, Lynn Hall and myself.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this October 24th, 2003.

_____
Notary Public in and for Alaska
My Commission Expires: 10/10/06

30

STATE OF ALASKA

REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Mark Johnson, Chair
Kate Giard
Dave Harbour
James S. Strandberg
G. Nanette Thompson

REGULATORY COMMISSION OF ALASKA
701 West Eighth Avenue, Suite 300
Anchorage, Alaska

SPECIAL PUBLIC MEETING

October 29, 2003
9:07 o'clock a.m.

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P R O C E E D I N G S

Tape 1

0015

(On record - 9:07 a.m.)

CHAIR JOHNSON: Good morning. It is October 29th and this is the scheduled -- maybe this is a special public meeting, Special Public Meeting for the Regulatory Commission of Alaska. With me are Commissioners -- I'm Mark Johnson, Commissioner, and with me are Commissioners Strandberg, Thompson, Harbour and Giard.

The first item listed on our agenda is public participation, are there members of the public present here today that have a desire or need to address the Commission on matters of interest to the Commission? If not, and hearing no response, we will close the public participation segment of our meeting and move to item 2 which is listed as continued consideration of revisions to our telecommunications regulations, specifically Docket R-03-3, but also encompassing Dockets R-01-2 and R-02-6.

And at our last public meeting on this matter we were going through a Staff options paper that is in my view quite detailed and we had made some headway. The intent today is to the best of our ability complete our review of that document. And we have reserved another meeting on Friday for further consideration of this issue. I -- once again, let's just back

up. The intent today is to try to make our first cut, if you will, our first effort to work our way through the various options that are presented in the Staff report. And then I do believe it may be appropriate for obviously Staff to do some consolidation of our thoughts at the end of today's meeting and we will review that summary cn Friday.

I have scheduled all day today to get through this if necessary. It's my intent to have this meeting continue until 11:30 at which time we'll take a break for lunch and allow people to regroup a little bit and we'll return here at 1:30 to complete our task here today. So we had -- were proceeding on an informal basis through the Staff summary previously and I'd hoped that we could continue that approach, a certain amount of back and forth. And we were not making motions to any great extent, we were trying to address issues as best we could.

I had discussions with Staff yesterday, it may be cumbersome and probably inefficient for us to try to recap where we were at the end of the last meeting, I don't think that Staff is prepared to do that. I think it would probably be a little bit unfair to put them through that at this time. And I'm happy -- and Commissioner Giard was involved, we had considered a variety of issues and I believe at the time we adjourned we had -- primarily we had worked on some local market structure issues and then we -- at the very end we had diverted to address some other issues relating to depreciation

and I, frankly, don't recall what else. But there are some issues that we have addressed and some that we have not.

I would be interested if any Commissioners have additional thoughts on how we're going to proceed today or what we think might be the most efficient way to proceed?

COMMISSIONER STRANDBERG: I like what we were doing last time and I think Commissioner Giard seemed to have her -- have a good handle on just kind of moving us through. Either one of us, we need to just keep moving through the issues.

COMMISSIONER GIARD: Commissioner Strandberg, I was just giving you an example so that perhaps today you could lead.

CHAIR JOHNSON: Maybe I'll just start the discussion by making this admission. I have been very busy over -- since we last met and I'd expressed concern and my interest in developing a more simplified market structure. And had some productive conversations with Staff during that time.

And it would be my -- my first thought was that it would be very desirable if we could figure out a way to eliminate the dominant, non-dominant distinction in our regulations. I'm not sure if that's possible and I probably moved beyond that to some extent. But I know that that was probably causing a lot of anxiety for Staff because it really affected the structure of what we had in front of us, but I just want to clarify that, that I -- it's -- I'm probably going to be abandoning that not because I don't think it's a good idea, it's just that at this

point in time making that change may be a little bit too cumbersome. Now there may be times and opportunities down the road when I may take up that effort again, but I'm not going to consider that matter further. So that will clarify. That's not to say I'm -- and I'm -- I've been looking at existing market structure rules quite a bit to try to figure out if there's modifications we can make, maybe we can deal with those. I am continuing to look at that, for example, I'd spent sometime with Staff this morning talking about our current retail tariff standards in the local markets and I may come back to that, but I just wanted to -- that's just a preface about what I've been doing and I'm not sure if anybody really cares, but I thought that might provide a little help for folks.

Commissioner Giard, did you have a place where you wanted to start today?

COMMISSIONER GIARD: (Indiscernible - away from microphone).....

CHAIR JOHNSON: You -- give us a citation and we will make our move.

COMMISSIONER GIARD: My attempt to defer this action to Commissioner Strandberg obviously didn't work. So I believe, Mr. Chairman, that we moved forward from section 53.220, determination of dominant status, which your comments bring us back to this section again today.

UNIDENTIFIED VOICE: What page are you on?

COMMISSIONER GIARD: Sorry?

CHAIR JOHNSON: Probably 7.

COMMISSIONER GIARD: Oh, I apologize, page 7,.....

CHAIR JOHNSON: Page 7.

UNIDENTIFIED VOICE: Okay.

COMMISSIONER GIARD: .....where the Staff has given us some relevant legal cites from both HB 111 and from our own currently existing regs. There are several issues and options, the first issue is should the Commission continue to maintain a distinction between carriers based upon market dominance. If the body wouldn't mind I would like the Staff to just kind of talk about market dominance just a little bit, background, if you don't mind, Lori?

MS. KENYON: It's a broad subject, is there a particular area that you want me to talk about?

COMMISSIONER GIARD: Well, we have two options,.....

MS. KENYON: Uh-hum.

COMMISSIONER GIARD: .....option 2 which was GCI, ACS and Staff recommendation, was maintain dominant classification in noncompetitive markets and for incumbent LECs during transition period to competitive market. And one of the concerns I had about that was our definition of competitive market. Did we -- I can't remember,.....

MS. KENYON: I don't believe that you had finalized what

you believed.....

COMMISSIONER GIARD: Right.

MS. KENYON: .....to be a competitive market.

COMMISSIONER GIARD: That was my quandary, Mr. Chairman, when I was looking over this particular one. And that it seems like this is building like a pyramid as I was watching the building of the pyramids the other night on TV, shall we just move forward and have the discussion about the dominant, non-dominant without knowing what we've decided for the competitive market structure?

COMMISSIONER STRANDBERG: I think we need to move through the issues, discuss them, we may have to iterate back.

COMMISSIONER GIARD: Okay.

COMMISSIONER STRANDBERG: The --.....

CHAIR JOHNSON: Fine. I.....

COMMISSIONER STRANDBERG: .....this is a better process.

COMMISSIONER GIARD: All right.

CHAIR JOHNSON: I anticipate doubling back.

COMMISSIONER GIARD: Okay.

CHAIR JOHNSON: I've got a -- don't be surprised if I throw something else out there this afternoon.

COMMISSIONER GIARD: Okay.

MS. KENYON: Well, assuming just for rhetorical purposes that our competitive service area definition is everywhere that there is competition, however we all define it, then the idea

of having a dominant and non-dominant classification allows you to provide additional scrutiny of rate increases of a carrier that appears to have market power because of maybe it has many of the facilities in place or it has other ways of controlling the market or the rates. This would allow you -- for example if a carrier came in and proposed a 25 percent rate increase for a particular service that at the time that they filed the tariff and if they were dominant they'd have to explain why a 25 percent was right by providing you actual data.

Now if you didn't have a dominant classification and if you treated them all the same then on day one when you receive that 25 percent rate increase you'd essentially have -- that's all the information you'd have. You know it was a 25 percent rate increase, but you really wouldn't know much about the justification for why. Now you could suspend either a dominant or a non-dominant filing and we do if we find that the rates don't look right for whatever reason or we question them and ask for further clarification.

The big key here as I see it is the timing and when you get the information you might need to decide your position. Because if you create -- if you eliminate the dominant and the non-dominant carrier classes then what you -- and assuming that you still ask for some tariff information and justification of rates that you find unusual, assuming you all do that then you have less time to evaluate a dominant carrier's -- an old

dominant carrier's filing because they didn't give you the information that you might have needed on day one, instead you have to wait the period of time to ask for it.....

COMMISSIONER GIARD: Right.

MS. KENYON: .....when you actually do need it.

COMMISSIONER GIARD: Okay.

MS. KENYON: That's one of the key things about the retail rate side. Now also with the way we've structured our regulations today dominant carrier comes with a lot of other -- we use dominant carrier as a flag to see whether or not they have to qualify for other requirements like uniform system of accounts,.....

COMMISSIONER GIARD: Right.

MS. KENYON: .....separations and for IXC markets, quality of service. So while you could revise those regulations you -- that would be something -- if you decided to get rid of the dominant carrier status you'd probably want to look down the road to see what other changes may be needed.

COMMISSIONER GIARD: Okay. That's very helpful, Lori, thank you.

COMMISSIONER HARBOUR: Commissioner Giard,.....

COMMISSIONER STRANDBERG: May I ask.....

COMMISSIONER HARBOUR: .....just to keep us focused too, I think listening --.....

COURT REPORTER: I can't hear you.

COMMISSIONER HARBOUR: .....listening to the Chair's comments a few minutes ago, it -- we're not, I don't believe, discussing whether to eliminate dominant or non-dominant categories, but how -- rather how to define market power and dominant categories, right, so we could focus more on that than -- on how rather than if.

COMMISSIONER GIARD: Do any of the Commissioners -- I'm sorry, Mr. Strandberg?

COMMISSIONER STRANDBERG: One comment, and that is in just looking at the regulations I think maybe the -- just so we're all on the same sheet of music, I'm looking at 53.220(b) and basically it say here 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 are non-dominant carriers. So I'm believing that we need to start from there, potentially changing that potential regulation and then moving forward.

And I guess I was interested in -- from Ms. Kenyon and her group, if you have any recommendations on how to move forward from that especially in relation to the recommendation that you've made to us?

MS. KENYON: I can tell you that in our discussions the dominant, non-dominant carrier definition is what took up most of our time, it's one of the more critical pieces that you have to deal with. I also want to mention -- Phil noted something

else, I wanted you to understand as well that if you're a dominant carrier if you want a rate increase we've got 45 days to look at it as opposed to a non-dominant carrier which we'd have 30. So that's another key distinction in how we treat the retail tariff filings.

As far as where you start and where you go, given how much -- how key a concern this is for the panel perhaps the dominant -- looking at what dominant carrier is might help you, but I think you could go either way, you could either look at what rules apply and then decide which ones are dominant or you could decide which ones are dominant and then decide what rules to apply. It's your discretion.

COMMISSIONER STRANDBERG: So what we're doing now is determining what is dominance and what is not dominance and you have an extensive recommendation on that particular point for the LECs?

MS. KENYON: We do. And if you choose to keep a dominant, non-dominant category then we propose a change in that definition which would sort -- in many ways get you away from market power as the key. We allow more flexibility, we allow -- under our proposal I believe it's a 60 percent standard that would for some of the services get you to non-dominant status even though there might be a chance you may still have market power if you're a carrier, but that gives you the -- the carrier additional flexibility.

COMMISSIONER STRANDBERG: And you're proposing basically an automatic trigger with option for case by case review, that's.....

MS. KENYON: Yes.

COMMISSIONER STRANDBERG: .....your recommended approach in this matter?

MS. KENYON: Yes, as well as carving out some services where it appears that you probably should not relax the dominant standard.

COMMISSIONER STRANDBERG: And what services -- just so we can get on the same sheet, what services are those?

MS. KENYON: Line extensions, subdivision agreements, private line services, and that's not to say that those remain in the dominant category forever, but that that requires a higher burden of proof in order to become non-dominant under our proposal.

COMMISSIONER STRANDBERG: So you're taking off the table -- you're proposing to take off the table the line extension issue?

MS. KENYON: Exactly. That -- that's -- if you -- I forget the exact language, but I think it's if you own many of the facilities in an area then line extensions are not -- you don't get the non-dominant status for line extensions.

UNIDENTIFIED VOICE: Oh, I thought you were looking for these.....

MS. KENYON: Yeah.

UNIDENTIFIED VOICE: .....new services.

COMMISSIONER STRANDBERG: What page is that?

COMMISSIONER GIARD: It's on page 10 on the top, Commissioner.

MS. KENYON: Yes.

COMMISSIONER STRANDBERG: Thank you.

MS. KENYON: Yes, and I believe the criteria is a carrier that holds a facilities monopoly for the provision of local exchange loops in a location and we define that as dominant.....

COMMISSIONER STRANDBERG: Got you.

MS. KENYON: .....for those services.

COMMISSIONER STRANDBERG: All right. Thank you.

COMMISSIONER GIARD: So if the body would like we'd open the discussion on item number 2 which is if the Commission continues to designate dominant carriers what standard should be used. There's several options that the various entities brought forward, they are summarized here and option -- with option 3 being summarized by the Staff. And the first part under option 3 is item (a), a local exchange carrier is dominant for the provision of retail service in a location, talking about market share. Market share at -- that the Staff recommend is 60 percent or more. If a carrier retains 60 percent or more and no single CLEC had obtained a market share

of 20 percent or more in that location as determined by the Commission. Are there any Commissioner comments on item (a) under option 3?

CHAIR JOHNSON: Commissioner Thompson.

COMMISSIONER THOMPSON: This has the term provision of retail service, what are you including in that?

MS. KENYON: Pretty much everything that's a service to a customer except for those services that are carved out by (c). And when I say customer I mean a residential or business customer as opposed to a carrier customer.

COMMISSIONER THOMPSON: Why did you choose to set -- articulate standards like this rather than as presumptions, rebuttable presumptions? It seems like, you know, just procedurally --.....

COURT REPORTER: I can't hear you.

COMMISSIONER THOMPSON: .....that procedurally there are advantages to having standards identified as presumptions that can be rebutted sometimes easier.

MS. KENYON: Oh, for example, like the other options where they identify what criteria you would look at for market share -- for market power, is that what you're talking about by rebuttal presumptions or are you saying that we should point blank just state if you are -- if you offer these services and you own the monopoly facilities you're considered dominant until proven otherwise? I'm not sure I know what you mean.

COMMISSIONER THOMPSON: I'll come back to it because I'm struggling with how to change -- put the concept into language, I'll come back to that.

COMMISSIONER GIARD: Well, it seems to me that this is rather old fashioned regulation, just chatting with my Commissioners in a forum and it's -- you know, there's a lot that's happened in both the Anchorage markets and other markets, I mean, we pretty much are at a point where it seems like we could make some standards, something a little bit more flexible than, you know, 60 percent. I imagine kind of proving that you have a market share of 60 percent or more or that no single local exchange has obtained a market share of 20 percent or more, I mean, I could imagine if someone says no they only have 59, no they have 60, you know, we'll be in here for four months trying to decide. And if you just walk out and take a deep breath you can tell that there's competition in Anchorage.

And, you know, market power is a pretty important indication of market dominance, I just wondered if we can figure something else out.

CHAIR JOHNSON: Yeah, if I might and in defense of the Staff recommendation, they have subsection (e) which is really sort of a safety valve that gives you the sort of flexibility that you just described. I like the way they fashion -- I'm always a little fearful when we come up with a regulation that is long just in terms of length because it -- sometimes it

suggests complexity.

I'm not sure if this is necessarily a complex regulatory regime to apply because I like the -- for example, the 60 percent trigger, if that's not a close question then it's an automatic and it really relieves the Commission of that sort of detailed inquiry you've described. So I might want to tweak a little bit of what I see in option 3, but I think option 3 is pretty well assembled. That's just my view.

MR. TREUER: I had one thing.

CHAIR JOHNSON: Sure.

MR. TREUER: The way -- when we were discussing these, we recognized that the automatic trigger would probably almost certainly in Anchorage make the dominant -- current dominant carrier non-dominant on the day the regulations went into effect. It probably would also work in Fairbanks and I believe Juneau, I think GCI's market share in Juneau is like 19 percent. I don't -- although that depends on their mix of UNE loops versus wholesale loops.

MS. KENYON: Right.

MR. TREUER: So we were aware that the automatic trigger would kick in almost automatically. So they are in a sense old fashion because they continue to use the kind of designations, but they also have administrative simplicity when you actually implement the regulations.

COMMISSIONER GIARD: But are they reactive enough to the

existence of real competition because there's a bridle on the incumbent, you know, a saddle, weights, you know, they're in a race but they're weighted down intentionally.

MR. TREUER: It -- I think the provision that allows an incumbent to petition the Commission when there's a competitor coming into the market so that they have an opportunity to show that they're facing a significant competitor and on day one could become non-dominant, the day that the competitor is authorized to provide service or begins providing service, I think that gives them a great deal of flexibility and gives the Commission a great deal of flexibility to respond on a case by case basis. We have -- you look at the 23 different LECs we have in the state, they're all very different.

COMMISSIONER GIARD: Uh-hum.

MR. TREUER: It's going to be very hard to fashion regulations, general regulations, that address every single one of those markets. And I think this gives you a great deal of flexibility as well.

COMMISSIONER STRANDBERG: I'm a little concerned about the exclusions, the item (c) and basically as near as I can tell the concept is that the carrier that basically has the network is still going to be responsible for construction service, line extensions and subdivision agreements. Those have been a hot button for us. Do you think that we're really addressing everything we have to address with those exclusions?

MS. KENYON: The -- if you're asking should we add more to the list or should we take things off the list?

COMMISSIONER STRANDBERG: I'm just -- more than anything I think I'm talking to my fellow Commissioners here as to whether or not we're accomplishing the goals of the legislation by those exclusions and indeed are those still the weights and the shackles as Commission Giard spoke of still on the incumbent in a competitive market, is it appropriate to leave those there?

COMMISSIONER THOMPSON: I think by looking at the list, and I'd ask for confirmation from Staff, it looks like they came up with those based on customer complaints that the agency has dealt with over recent years. And if our goal as a regulatory agency is to protect the consumers and this is -- these are areas where the parties have not been able to work it out, there's been a failure of the competitive market to address these problems even under the regulatory regime we have now, it would be appropriate to continue to exercise some oversight that -- I'm more concerned about how this list should change, you put a list like this in regulations well, you know, something else will be disputed next year, maybe some of these things will be worked out and they can go off the list.

Might it be more appropriate to say that the Commission can continue to exercise authority in areas that -- where they receive a certain number of consumer complaints, maybe that's not clear enough about where we could exercise authority,

but.....

COMMISSIONER STRANDBERG: I would offer -- I agree with you, Commissioner Thompson, my point is though it may be that those responsibilities need to be shared as opposed to remaining with the incumbent under a competitive market.

COMMISSIONER HARBOUR: I wonder if maybe including them as done -- in their own section, maybe including them under (e) as examples of the discretionary judgments the Commission will make on a case by case basis. Here's the thing, Commissioner Strandberg, I want to ask you if -- let's take in extreme, suppose that entire exclusionary paragraph were eliminated, how would the Commission assure Universal Service when nobody wanted to do a certain provisioning?

COMMISSIONER STRANDBERG: I -- you know, that is the question. I mean, that, in fact, I think comes to one of the major points in the difficulties in attempting to deal with a competitive marketplace and that is how do we assure that the customer can get served with some sort of a basic service offering. We have to balance that against a apparent levying of a significant responsibility on the incumbent in a -- and whether or not we're actually having competitive market parity.

CHAIR JOHNSON: Ms. Kenyon.

MS. KENYON: I think that your concerns are noted, but that where you need to be addressing that issue is in the carrier of last resort section because what this says is

anybody who has the monopoly facilities, be it the dominant or -- current dominant or existing non-dominant carrier, we don't care. If you have -- if you're a carrier and you hold monopoly facilities then you have to file rate -- rates like a dominant carrier essentially. And it doesn't mean that the incumbent has only the responsibility for the line extensions, those -- it doesn't require that it be only the incumbent.

COMMISSIONER STRANDBERG: Yes, and not only rates, but tariffs and.....

MS. KENYON: Yes.

COMMISSIONER STRANDBERG: I take your point that these -- perhaps these matters do need to be addressed under the carrier of last resort when we do consider the carrier of last resort issues and how if we indeed do want to make those shared -- more shared than to lay them on the incumbent.

CHAIR JOHNSON: I guess what I'd like to do to try to allow us to move along a little bit, I personally think that option 3 is the position from which we want to start and we may want to double back and have some further discussions on this. Are we comfortable with option 3 what -- Commissioner Harbour?

COMMISSIONER HARBOUR: I'm comfortable with it, I just wanted to clarify with Staff one question. For the concern in which the competitive ratios are achieved of 60 percent, 20 percent and so forth, how does this address the situation where there's an enclave that while generally in the area or --

there's the 60/20, in this part of that area the company with market power actually has 95 percent, and then how do you -- being that this is a three dimensional matrix we're working with, add to that the complexity of dissimilar services, it may be that the 60/20 applies to lines and the other criteria you mentioned, but -- is that again where (e) takes care of those kind of variables?

MS. KENYON: Yes, (e) is where -- that gives you the opportunity that if your trigger -- automatic trigger appears to be premature for some areas that you could say well, you're not dominant everywhere but in this location or part of a location.

COMMISSIONER HARBOUR: So to some extent the tradeoff is that while the ILEC may have reduced burdens of -- filing burdens and so forth as a whole, it still may retain a burden for filing for a geographical enclave or for a certain type of service?

MS. KENYON: Only if you choose to let that happen because the way this would work, let's say you had a city or a location where you had one of those enclaves where someone, one carrier had dominance and market power -- I mean, had market power, they had 100 percent of the lines. The way this is worded in option 3 the whole location becomes non-dominant for that carrier once they meet that magic 60 percent, 20 percent share. Only if you decide that we have a problem, we have to carve out

this piece, do you run into the situation that you have suggested where then they have to figure out how do we apply the 30 and 45 day tariff guidelines. And I grant you that may be a bit confusing if there's a part of a city that's still considered dominant.

COMMISSIONER HARBOUR: Right. No, that clarifies, I think that (e) is important.

MS. KENYON: Yeah.

COMMISSIONER HARBOUR: Thanks.

COMMISSIONER THOMPSON: Commissioner Johnson, I appreciate your suggestion that we -- although I'm not sure how this is going to work, we're going -- we've got a lot on our double back list, I agree that option 3 -- before we move on I -- there's one issue I want to raise because I think it may affect the drafting coming back again which is in subsection (b) it refers to lines. And again based on my technology neutral stance I'm not sure lines is the right way to count customer contacts.

MS. KENYON: Access lines?

COMMISSIONER THOMPSON: Well, access lines, why are we using -- why don't we use customer connections or something that is not -- some words that are not linked to -- specifically linked to a particular technology?

MS. KENYON: Because right now if you link it with a technology then the 60 percent and the 20 percent are easily

identified standards. If you say by any technology then you have to figure out well, how many lines are served by voice over the internet, how many lines might be served by wireless, and your standard is no longer clear and certain. Now granted that does link it to a technology at least for this automatic trigger, but I think that's not such a bad idea because it's understandable.

If you think that a wireless carrier is to the point -- or any other technology is to the point where dominance status is no longer the right thing to do then you still have (e) as a matter of -- way of giving the non-dominant status. So it's really pretty flexible, it's just the automatic trigger which is where we're trying to be the most careful as being clear as to what we mean. And we do mean in this case lines, access lines, I think is probably the.....

CHAIR JOHNSON: You know, (indiscernible) works within itself, I think that we do have that relief valve though in subsequent sections. And we've obviously got freedom to consider a lot of stuff, but this -- you're right, it is rather specific at it relates to the trigger.

COMMISSIONER THOMPSON: I appreciate the explanation, it is clearer I'd agree, but I'm just concerned about thinking ahead in a market five or 10 years from now when we may have a voice over IP or some other technology that has what would otherwise be considered dominant share and I suppose if that

occurs we have (e) available.

CHAIR JOHNSON: Of course the other thing that we have available to us in the event of significant technology shift of that nature is we have the ability to amend the regulations to reflect the change.

(Off record comments - voices lowering)

COMMISSIONER GIARD: So what happens in the case of GCI doing phone over cable because then you have -- that's something that I keep reading in the newspaper and other places that that, you know, may be on the horizon and not five or 10 years out, but maybe -- I don't know, I'll just make it up, tomorrow. So what happens with access lines under control of the carrier, I mean, that's something that -- I mean, I don't know really, but it could happen. So how would we be able to determine -- if they did that in Juneau or Fairbanks, somewhere where there isn't as much competition?

MS. KENYON: Well, under provision (a) I think that once GCI started providing local service over cable facilities the way I understand they're going to be doing it then (a) would happen faster, your automatic trigger would happen faster. As far as (c) where you're saying if a carrier holds monopoly facilities for the provision of local exchange loops I think arguably you could say the cable facility is providing competition on a facilities basis to the incumbent and then you'd have -- at -- once you decided that had happened you

could say well, the non- -- the incumbent's no longer dominant for a lot of these services that are listed in (c).

COMMISSIONER GIARD: So are -- you're satisfied that the way that this is drafted would allow the Commission adequate flexibility in the case of those type of technologies which may be here tomorrow?

MS. KENYON: I believe it is -- yes, for all of the wire based technologies which you.....

MR. TREUER: We're at cable modem line is considered a access line.

MS. KENYON: No, but a cable modem line wouldn't be considered an access line because that's a data service and it's a interstate service, I thought that last -- but if it's a local exchange cable line then I think it would be.

COMMISSIONER HARBOUR: So.....

COMMISSIONER GIARD: Does that address your concern, Commissioner Thompson?

COMMISSIONER THOMPSON: No. It makes -- it highlights what the problem might be because I think what I just heard is that it's not -- those aren't access lines. I know on a local exchange how you define it as a local exchange versus long distance, but.....

COMMISSIONER GIARD: Do we need item -- subsection (b)?

MR. TREUER: I'm not sure that that's -- .....

COMMISSIONER THOMPSON: Well, the exclusion.....

MR. TREUER: .....I necessarily agree that it wouldn't be an access line.

COMMISSIONER STRANDBERG: I think it.....

MS. KENYON: Well, you should speak up then.

MR. TREUER: I don't necessarily agree that it wouldn't be considered an access line, a cable modem line wouldn't be considered.

COMMISSIONER STRANDBERG: I think some of this may be resolved in the actual writing of the definitions, I mean, the definition of market share and the definition of an access line. It would seem that we would -- and maybe it's too granular for right now, I mean, we need to keep talking about concepts, but certainly that's something in the drafting that we might be able to work with Commissioner Thompson's concerns.

COMMISSIONER GIARD: Any other.....

COMMISSIONER THOMPSON: No. Yeah, I would support some -- you could either do it in the definition, but it seems kind of convoluted to have it -- a definition that includes lines here that aren't lines somewhere else. I would suggest that you just think of a new word, call it customer connections and define it yourself so it can be broader.

COMMISSIONER HARBOUR: Yeah, Commissioner Strandberg, last time I had to -- because of some other situations urged that we be constructing as we go along a definitions list that needed to be added and I think that goes to it and particularly if

we're creating new words to account for new concepts in technology.....

COMMISSIONER STRANDBERG: Right.

COMMISSIONER HARBOUR: .....and we need to do that.

COMMISSIONER STRANDBERG: I would support Commissioner Thompson's approach. Conceivably -- I think there's some work to be done on that though.

COMMISSIONER GIARD: Okay. I just have one other questions about holds a facilities monopoly and is Anchorage a facilities based monopoly, are there other facilities based competition in Anchorage?

MS. KENYON: It's rather limited right now. If you don't -- it depends on how you define facilities based monopoly. For this purpose it's the lines they actually control, it does not count UNE lines and since the majority of the lines, virt- -- almost all of the lines in Anchorage are still owned by the incumbent, they would clearly fall under (c). However once the competitor started having monopoly lines, if they ever did, they would also fall under (c).

COMMISSIONER GIARD: Are you read to move on, Mr. Chairman? Five minutes ago, right?

CHAIR JOHNSON: No. No, I think it's -- obviously there's some concerns here, it -- but may we move on?

COMMISSIONER GIARD: Okay.

COMMISSIONER THOMPSON: Sure.

CHAIR JOHNSON: Okay.

COMMISSIONER GIARD: And we're on page 11, item number 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 is the question the Staff proposed.

COMMISSIONER THOMPSON: I would say yes.

COMMISSIONER GIARD: Yes is the recommendation. Does anybody have any discussion points on that? Okay.

So we're on to section 53.230, discontinuation of service. I do not believe that we addressed that before because I have no notes on it, if anyone wants to correct me?

COMMISSIONER THOMPSON: I think we didn't.

COMMISSIONER GIARD: Okay.

CHAIR JOHNSON: It's new territory.

COMMISSIONER GIARD: All right. The first issue is item number 1, under what conditions may a carrier discontinue and abandon service. There are several options with option number 3 being the Staff's recommendation, I believe, correct me if I'm wrong.

COMMISSIONER THOMPSON: And there was a new option 3 or a new revision to option 3 that included one additional word, I'd appreciate clarification of why you added retail to (a)?

MS. KENYON: I added retail because I thought for any wholesale provision of service you would want more than 30 days

to review it. Wholesale implies the carrier has physical facilities in place. Most of your non-dominant carriers -- existing non-dominant carriers don't own any facilities or very -- you know, they may have a switch, but they don't really have any transport so that just -- it would kick them into the other category, but for retail they could abandon service.

COMMISSIONER GIARD: I think there's also the question of lines served again in this matter. If you designate a wireless as an ETC, is that going to be a problem?

COMMISSIONER THOMPSON: Yeah.

COMMISSIONER GIARD: Because you're talking about a 10 percent market share?

COMMISSIONER THOMPSON: What about customers?

COMMISSIONER GIARD: Right. It's just something to consider. Okay. Any other discussion on that item? Number 2, what abandonment of service rules should apply to rate deregulated carriers. Option 2 is by the staff where they would like to apply the same rules as those selected in the previous section. We did go over this before, I apologize.

COMMISSIONER THOMPSON: Uh-hum.

COMMISSIONER GIARD: Okay. So is there any further discussion on that because I did write that we went over this and we selected option or we had noted further discussion on option 2. Sorry. I'll crank this little sucker down here. Right. Sorry. You know what, I'll ask Commissioner Harbour if

I can share his? Okay. We had a big discussion on rate deregulation an detariffing, so I believe that we went through that section. That would be on page 19, are there any further comments?

We talked a great deal about rate deregulation and we were concerned with the term deregulation and so Commissioner Thompson made statements about detariffing. Are there any questions from Staff on that particular section?

MS. KENYON: I'm not sure I know what you want us to do on that section.

CHAIR JOHNSON: It -- if I might, and I have to admit at the last meeting I was thinking along some different lines here, but would this be -- it would be useful to me if we could make an effort to recap what decisions were previously made in this area.

COMMISSIONER GIARD: Okay.

CHAIR JOHNSON: And my -- I may have some -- it's -- are you prepared to do that, Lori, or do you have that kind of detail and.....

MS. KENYON: To my knowledge I don't believe you fully decided this issue.

COMMISSIONER GIARD: No, we moved on.

CHAIR JOHNSON: Okay.

MS. KENYON: And there were a number of Commissioners that were -- desiring to talk about an additional option not on the

list.....

COMMISSIONER GIARD: That's right.

MS. KENYON: .....having to do with under what conditions would you detariff or deregulate a retail service. And Staff has presented an option for your review though we personally within the section believe that rate detariffing is probably one of the more critical areas and that any checklist isn't -- we're not really comfortable with any checklist just because it's such a critical area. We'd rather that you look at these on a case by case basis as the issue comes up. And I think that that's where I remembered we'd left off.

CHAIR JOHNSON: Commissioner Thompson.

COMMISSIONER THOMPSON: Yeah, as the proponent of option 4 I appreciate -- I worked with Staff and did some drafting, we went back and forth and I'm still of a mind -- it's a different -- represents a different approach. It sets standards that must be positively met that are designed to reflect the important -- the role that the Commission would have to protect consumer interests in a competitive market. So rather than stating a standard as a negative it states them in the positive.

As soon as you meet these hurdles, these being things that we think are important to protect consumers in a competitive market, you can be economically deregulated.

(Off record comments - copies of option 4)

CHAIR JOHNSON: Could we -- let's go off record for just a few minutes and we can get that put together and.....

COMMISSIONER THOMPSON: Okay.

CHAIR JOHNSON: .....we'll allow people to kind of absorb the options. So let's go off record.

(Off record - 9:52 a.m.)

(On record - 10:06 a.m.)

CHAIR JOHNSON: We are back on record and during the unscheduled break we had distributed the option 4 which -- Commissioner Thompson did you want to speak to option 4?

COMMISSIONER THOMPSON: I do. And I thought.....

CHAIR JOHNSON: I know I have one question, but go ahead and speak to it now.....

COMMISSIONER THOMPSON: It had been.....

CHAIR JOHNSON: .....(indiscernible - simultaneous speech) my question.

COMMISSIONER THOMPSON: .....e-mailed to everybody, I apologize for people not having it here. There's one -- there's a couple of changes that I would make to what was distributed and as I explained the process was that it was edited again by Lori and she's been busy working on other things and so have I so we've gone back and forth a few times, but looking at it sitting here I would delete 3 -- sections 3 and 10 and I would change number (c) 5. The intent with that was to have as a safe harbor a requirement that basic service

be provided at unb' dled rates at or below our rate cap by all providers that woulu be subject to this. In other words that no matter what else happened a customer would know that they could at least get a basic connection. And somehow the concept of basic got lost in the drafting and redrafting.

I recognize what that will -- including that word will necessitate somewhere else a definition and I don't intend to take up the group's time talking about that today, but for purposes of discussion I -- if you eliminate the word the and substitute basic that better reflects the concept.

COMMISSIONER STRANDBERG: Yeah.

CHAIR JOHNSON: Interestingly enough I've -- we've been sort of working in parallel. I'd taken a slightly different approach in terms of the drafting of this, but before we get to that I guess the question that I would pose to you relative to option 4 -- and I'd ask you to contrast it with option 3, I believe that option 4 might unwittingly put us in a -- restrict our discretion when it comes to making decisions about detariffing whereas option 3 really preserves our -- the latitude for the Commission to make the kind of case by case inquiry that I think is most productive. Maybe you could speak to that?

COMMISSIONER THOMPSON: I think that you've raised a good concept and it does -- I think it -- option 4 provides clearer standards. My concern with option 3 is it's really not a

decision, it says will decide when we get the case presented to us which is the safest and always the way we as an agency can make sure we're making the right decision on the right case, but it's not helpful to industry. And I think what we heard loud and clear during the last session and during the last year was that there is a need for us to send -- make clearer what the standards would be for loosening regulatory control of some markets and option 4 is an attempt to set those standards out. It's an attempt to do it in a positive fashion by focusing on the issues that I think are important for us in terms of regulating a competitive market.

So rather than looking at it easing -- as easing restrictions it looks at it -- looks at the concept of deregulation as once these safeguards that -- which are the list of things we need to do to protect consumers are in effect there is no role for us in setting rates any longer. I think it's just good public policy to give people -- give industry clear signals about what the standards are.

CHAIR JOHNSON: And I don't think we're really having a sharp dispute here. I -- interestingly enough with my approach and I'm -- I have it roughly drafted although it's not quite in final form as yet would be to -- and it does not allow those -- this sort of detailed inquiry as you suggested, but allows the Commission to make designations of areas where we believe detariffing is appropriate. And then I've got -- interestingly

enough I just want to say I think -- and it's appealing to me is that -- I should probably get my language in front of me. It's right here.

Allow -- for example the approach that I have and I tried to draft language that would amend 240, it would read something like this follows, in service areas determined by the Commission. Obviously that -- we're back to the same problem where this discussion started,.....

COMMISSIONER THOMPSON: Uh-hum.

CHAIR JOHNSON: .....but then it would allow local exchange carriers to reduce rates and offer new and prepackaged services, I've rewritten existing language to some extent, upon 30 days notice. Excuse me, retail service without approval of the Commission after 30 days notice to the Commission. So that's similar to what we currently have operating in the Anchorage area today.

But then also provide -- and here's the basic service part, under this subsection a local exchange carrier in a competitive service area shall maintain a current tariff offering basic -- a basic service option available to all retail consumers in the area consisting of those services defined by the Federal Communications Commission 47 CFR 54.101(a), that's the.....

COMMISSIONER THOMPSON: Uh-hum.

CHAIR JOHNSON: .....basic offering. I do think that it

would be productive for us to define that -- or at least equate our basic service offering to some standard that's sort of.....

COMMISSIONER THOMPSON: Uh-hum.

CHAIR JOHNSON: .....universal application, but -- and then my approach would be that if a carrier that wanted to raise rates to the basic service offering would be subject to a full rate review and -- by the Commission. But that would be my.....

COMMISSIONER THOMPSON: Uh-hum.

CHAIR JOHNSON: .....thought. And I know that's a different -- somewhat different than what you've proposed,.....

COMMISSIONER THOMPSON: Uh-hum.

CHAIR JOHNSON: .....but I think we -- to a great I think we're moving along parallel paths here.

COMMISSIONER THOMPSON: Uh-hum. No, I agree. And I think that that concept of us just looking at the basic service rates is entirely consistent with this. I like the reference -- cross-reference to the FCC definition as a good option for defining basic service.

CHAIR JOHNSON: I can tell you -- I can put my language in front of the Commissioners either this afternoon -- probably this afternoon at 1:00 o'clock if that would help at all, but I know we may be deferring an awful lot of stuff here and so I'm concerned.

COMMISSIONER THOMPSON: Well, doing that would -- if you

give it to us before the break, I don't know if you're going to give it to us before or after, but then we could work on maybe integrating.....

CHAIR JOHNSON: Yeah.

COMMISSIONER THOMPSON: .....the two concepts. I'd be happy to look at that because I'm going to need to edit this one again anyway.

COMMISSIONER HARBOUR: I have a.....

CHAIR JOHNSON: Commissioner Harbour.

COMMISSIONER HARBOUR: Under option 4 under the main sentence (a) we say that we may allow detariffing when the following conditions are satisfied. And I also like (b) later on which is the (e) of this section,.....

COMMISSIONER THOMPSON: Uh-hum.

COMMISSIONER HARBOUR: .....not withstanding rate deregulation will allow. So we do have some discretion, but I'm wondering if a company comes to us and has -- and feels that it's -- believes that it's satisfied all of these conditions -- and it looks like an intimidating list although going through it it looks like, on analysis, factors all of which would logically have to be resolved anyhow. But what if one of them were arguable, I mean, of course all of them are arguable, but look at number 7. Let's say in good faith the applicant has done everything but it could be argued that a significant number -- whatever.....

COMMISSIONER THOMPSON: Uh-hum.

COMMISSIONER HARBOUR: .....someone can successfully argue is significant has occurred within two years. So the whole detariffing result is delayed because it's arguable that the company had a significant number of complaints sometime during the last two years. So what occurred to me is rather than using the word satisfied under (a) above, substitute with the words appropriately addressed because it's somewhat subject to judgment all the way through anyhow and I don't believe that appropriately addressed makes it any -- it still provides the guidelines and the signals, the measurements to the industry that you had wanted, but it doesn't say with the -- but with the word satisfied it looks as though all of those must be without exception carried out just the way we're.....

COMMISSIONER THOMPSON: Well, subsection (b) takes care of that issue which is notwithstanding (a) we can deregulate when it's deemed in the public interest. Appropriately addressed weakens the list, it says we just have to talk about them, you don't have to meet the things on the list. I think it's important for us to send a signal that these are the things that's important to us that you do if you're going to operate in a regulated environment because these are the things we need in place to make sure that your customers are protected.

COMMISSIONER HARBOUR: Well, I.....

COMMISSIONER THOMPSON: I appreciate the concern, you're

right, but that's what the first sentence of (b) is meant to address. And I agree -- it's with clenched teeth that I have significant number in there because it violates one of my general principles which is don't put in standards that are meaningless. But it's hard to say in struggling with that what -- because it's a relative concept, it's -- it may be significant, two complaints may be significant or 200 may not depending on what the context is.

So I decided we -- I have to leave with significant even though it's ambiguous because I can't define it meaningfully in here.

COMMISSIONER STRANDBERG: I guess I have one question and that is as the additional obligations we've got the basic service offering, I believe that you were talking about potentially putting that obligation in under subsection (c).

COMMISSIONER THOMPSON: Uh-hum.

COMMISSIONER STRANDBERG: And then what about the carrier of last resort responsibilities, are we feeling that those are adequately addressed by that being a condition for detariffing because we have the carrier of last resort listed in item (a) 8 as opposed to having an actual requirement that exists?

COMMISSIONER THOMPSON: Well, it doesn't have -- my concept of it was it doesn't have to be by the carrier that's -- I mean, as long as there is somebody providing the service in the area there's a carrier of last resort. Again that's to

make sure if -- that everybody gets service. Or are you trying to highlight that that -- even somebody designated as a carrier of last resort may be inconsistent? I suppose it depends on how you -- what responsibilities you attribute to that carrier. And those are things we have yet to discuss.

The other way that this interrelates with the other discussions is in section 5, because the standard of 40 percent may well need to change depending on what we do with the dominant, non-dominant definition.

COMMISSIONER STRANDBERG: And then I guess the other question was the item 6, that no subsidies are flowing, basically that takes -- that would take out -- off the -- wouldn't that take off the table Fairbanks? Basically this would pretty much regulate this whole thing to the Anchorage wouldn't it?

COMMISSIONER THOMPSON: Yes, and that is in some ways unfortunate, but I think it's necessary. Lori and I struggled with this and couldn't think of -- I couldn't think of another way out of it. The reason for that is that we have a responsibility as a state commission to certify appropriate use of federal Universal Service Funds and I don't know how we can fulfill that responsibility if we don't have some idea about how the costs are -- how they're using the revenues they are receiving to cover cost. So.....

COMMISSIONER STRANDBERG: But.....

COMMISSIONER THOMPSON: .....yes, it would effectively exclude, but again those may not be markets that are -- the markets who -- that currently receive Universal service support may or may not continue in the future based on changes in the program. This is designed to operate under whatever system exists.

COMMISSIONER STRANDBERG: So you're saying that you two thought about that and you don't find any way that we can, you know, certify that the funds are being used correctly if detariffing has occurred?

COMMISSIONER THOMPSON: I don't want to speak for Lori, she's very.....

COMMISSIONER STRANDBERG: Maybe we can ask Lori?

MS. KENYON: I guess in my personal opinion you should not give up control over how funds are spent in any way, shape or form. And by detariffing essentially you would lose the ability to determine how those funds were used to reduce local rates it at all at least for the incumbent. And I believe that it's in the best interest of the public for you to control and understand how those funds are used to the extent you can legally.

COMMISSIONER STRANDBERG: But there's no way to legally ascertain that the funds are used in accordance with USF rules unless we have the right to evaluate tariffs from a cost basis, I guess is basically what we're saying?

MS. KENYON: I'm not a lawyer so I can't tell you what's necessarily legal. Certainly you certify annually that GCI is providing service in accordance with the appropriate regulations that say you.....

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: .....have to use funds appropriately.....

COMMISSIONER THOMPSON: That's true.

COMMISSIONER GIARD: Right.

COMMISSIONER STRANDBERG: That's my point.

COMMISSIONER THOMPSON: Okay.

MS. KENYON: .....and you do not regulate them in a revenue requirement setting like you would for -- in a monopoly carrier.

COMMISSIONER STRANDBERG: Right.

MS. KENYON: But there is an additional -- part of what rationale you've used in GCI's case is that GCI's rates were below the incumbent's and that was sufficient rationale for you to be able to say that they appear to be -- they swore they were going to do it right, their rates appear to be in line, we find that they are acceptably using the funds.

If you then detariff all the carriers then you have no way of asserting to the FCC that we know that they're using the funds properly. And, in fact, your obligations to do so may lapse under federal rules because under federal rules if you do not have tariffing authority it could be questioned that they

wouldn't even file a certification with you because rate -- pardon me, deregulated carriers certify to the FCC on how they use funds, not to the state.

COMMISSIONER STRANDBERG: And we've been through this on a number of occasions and I don't want to get hung up on this, but I'd suggest that we do a little work on that particular part of it because I would personally like to make sure that this does not just focus on Anchorage, that it would be an enduring product for the rest of the state.

MS. KENYON: Excuse me, I'm not sure I heard you.

COMMISSIONER STRANDBERG: I'm saying that it seems to me that by putting 6 in here we are pretty much only allowing this to really apply to the Anchorage area which is really the only competitive areas here where there are not subsidies flowing.

MS. KENYON: Under (b) you could change that, but you're correct, the automatic -- I'm not sure if automatic trigger is the appropriate term here, but these checklists certainly would appear to make Anchorage different from the other areas because Anchorage doesn't -- I guess -- you might want to qualify 6 if you continue here to say loop support because they may get some other supports that are used to reduce interstate services and we wouldn't be interested in restricting those because we have no authority there.

COMMISSIONER STRANDBERG: And one last question, would it be possible for us to include a section in here to require that

notwithstanding the fact that we're detariffing the carrier's still required to live up to USF rules and, in fact, to certificate with us each year that they are, in fact, using those funds correctly?

MS. KENYON: But it gets into -- for me it would be confusing because the federal rules say that if you don't regulate them they follow the federal rules that say you certify with the feds. Now you've actually done that with Alaska Digitel though, you said as a condition of ETC status they have to certify with you and that would be an area where you have authority, but I'm not sure how much -- where you -- if you really get where you need to go by just having that one -- what you just proposed at least in my opinion.

COMMISSIONER GIARD: Lori, is there a big difference between having them certify with the feds versus certifying with us?

2700

(Tape change)

Tape 2

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MS. KENYON: Yes. The feds essentially -- they send a letter that says I use the funds properly and they get automatic authorization for -- I mean they fulfill their responsibility by sending the letter that simply says yes, I did it right. If you -- if they certify with you then your

standards are whatever you wish them to be. You could say you got to show to us a construction plan, if that's something you'd like to see. You got to show us that your rate of return is in order if that's something that you -- for carriers that do rate of return. You have a lot more control if it's -- if you define the rules.

COMMISSIONER GIARD: So is there a way that we can do, you know, as Ronald Reagan famously said, trust but verify? I mean is there some way that we could, you know, have the option, obligation if we're concerned, to audit at the entity's cost or -- I mean it seems like if we take the entire rest of the state out of this other than Anchorage, don't know that we've really achieved as much as we possibly could in this regulation. So I was wondering if -- because I don't know a whole lot about this particular area, if there wasn't some way that we could, you know, trust but verify.

MS. KENYON: Well, let's say you verified and you found out that you think their rates should be 10 percent lower than what they are. Pick your carrier.....

COMMISSIONER GIARD: Our rates should be 10 -- I'm only concerned about the Universal Service, right?

MS. KENYON: Well, let's say that you found from your investigation that the Universal Service Funds were not used appropriately and as a result of that investigation you believe the rate should be lower. If you've detariffed there's nothing

you can do about it.

COMMISSIONER GIARD: Other than send.....

MS. KENYON: At least seems.....

COMMISSIONER GIARD: .....a letter to the Universal Service Fund and let them know that we're very concerned.

MS. KENYON: Well, there is -- that is your main hammer. You could withdraw ETC status if you don't think that they're using the funds appropriately. Politically that's -- you have to have fairly strong grounds.....

COMMISSIONER GIARD: This is a body who doesn't care about politics.

MS. KENYON: The -- to address your other concern, Provision B under option 4 would give you the authority to deregulate any service anywhere. Matter of fact, you have that authority now and the Commissioner has exercised it in the past for things like voice mail.

COMMISSIONER GIARD: Um-hum.

MS. KENYON: So this doesn't really prevent you from detariffing other services as you see fit. What we're -- what this is about is under what conditions are you pretty much guaranteeing you're going to detariff if they meet the laundry list. And that's why it's so critical that it be -- it may be better to be more conservative rather than less conservative in this instance.

COMMISSIONER GIARD: Any other discussion issue on this

particular section? So Mr. Chairman?

CHAIR JOHNSON: I think that this is -- since this is essential we need to make sure amongst all of us which of these options -- do we like option 4 or do we -- where are we on this one? I just think that we probably got to the point where we need to make some decisions here to put those pieces of the pyramid into place. Thoughts on this?

COMMISSIONER STRANDBERG: Well, I do think I need to think about it more but I greatly appreciate Commissioner Thompson's efforts on this. And I think this is a good approach. I feel that we need some more work on this item 6 with this subsidy issue and I think that it's a pretty deep subject. There's been a lot of comments on what it takes to certificate funds here on a number of dockets here. Indeed some of us have felt that we need to look at rate of return, make sure that the rates are not too high. But there's been different positions stated, specifically that the Universal Service Funds are a revenue offset, so there's a number of different ways to look at this. And so I would just say I generally support the concept. I'd like to find a way that we don't have to relegate these conditions just to the Anchorage market.

CHAIR JOHNSON: Additional comments as to option 4?

COMMISSIONER THOMPSON: I'll rework this and give you a new version after lunch.

CHAIR JOHNSON: I guess my comment is I would like to tie

it specifically to the Universal Service definition, the basic option. The other thing that I find interesting, of course, is that my efforts actually would result in a higher level of regulation than the way you had proposed.

COMMISSIONER THOMPSON: Um-hum.

CHAIR JOHNSON: I would propose to continue to regulate that -- the price of that basic service offering whereas you would set a rate cap.

COMMISSIONER THOMPSON: Um-hum.

CHAIR JOHNSON: But with that -- and I'm -- I guess I'm concerned that -- I want to spend a little bit more time with the factors that you've listed, but by and large with, you know, the change that I've identified I think it -- I'm pretty comfortable with it.

COMMISSIONER THOMPSON: Okay.

CHAIR JOHNSON: So with that I think we have something -- Mr. Gazaway, did you have something to offer?

MR. GAZAWAY: Well, there was an issue you might want to consider is what access to their cost supporting information are you going to have even under detariff's environment if you request it?

COMMISSIONER THOMPSON: What do we need it for?

MR. GAZAWAY: Well, there's -- ACS's proposal was that you would be able to investigate below cost pricing and what-not, and without access to cost supporting information I don't see

how you can have any level of review of their rate.

CHAIR JOHNSON: You know supported by the Johnson Plan?

COMMISSION THOMPSON: Well, I don't understand why you would be investigating below cost pricing?

MR. GAZAWAY: Well, there's other issues involved too. I mean do you want to look at whether they're cross subsidizing or are there any kind of review you want to have? If you do you probably need to reserve some sort of writing or regulations to be clear on that.

COMMISSIONER THOMPSON: Um-hum. I think the only thing -- sounds like the only thing we care about, and I don't -- if I'm misstating what I think I'm hearing from colleagues, I'm sorry, correct me, but I think it's the basic service and the cost of those that we're concerned about. And you're right, if you're only looking at costs of one service you have -- you don't really know affectively that it's being priced correctly. But I think that's a leap we're willing to make.

CHAIR JOHNSON: If I may -- might point out, in the proposal that I have that you now have, I would retain a paragraph -- kind of a clean up paragraph right here.....

COMMISSIONER THOMPSON: Um-hum.

CHAIR JOHNSON: .....that allows the Commission to investigate circumstances where there's unfair pr[illegible]ing, that sort of thing. It's a predatory kind of environment. I think that's merited in existing regulation now.

COMMISSIONER THOMPSON: Um-hum.

CHAIR JOHNSON: But if we retain that authority, would that solve the problem that you've led to, Mr. Gazaway?

MR. GAZAWAY: It would give you a little more leeway as far as what you could investigate. I think another issue you might want to raise too is if you allow them to detariff, you currently have what they call a filed tariff doctrine that allows them to cover their liability.....

COMMISSIONER THOMPSON: Um-hum.

MR. GAZAWAY: .....against consumers. If you detariff you probably will no longer have that. They will no longer have that protection, plus you have the question of how they implement their customer contracts if there's no longer a tariff to follow. Will they do a standardized individual contract? I mean there's issues related to a detariffing proposal that aren't really necessarily addressed in what we have in front of us. I mean because they haven't been raised essentially by you.

COMMISSIONER THOMPSON: I'm aware of the filed rate doctrine and I think that's something that we will undoubtedly get comments on from the parties.....

CHAIR JOHNSON: Sure.

COMMISSIONER THOMPSON: .....when they're released. But that's something that impacts them rather than us. I think that they're the ones who are going to speak up about that.

The question for them is really what do you want? If you can't have both, if it -- this current regime offers some protection, is it more important to you to be able to price your services to customers without oversight from this Commission than it is to have whatever protection the filed rate doctrine offers you from liability?

MR. GAZAWAY: I guess my other question would be what is their redress? Is it necessarily in front of the Commission or is it also in front of the courts through a contractual theory?

CHAIR JOHNSON: Is that something you want to address in your regulations or you want to leave.....

MR. GAZAWAY: That's silent.

COMMISSIONER THOMPSON: You mean if the terms of the contract is violated?

MR. GAZAWAY: If a customer is not pleased with service and feels that they were inappropriately charged, do they need to come to the Commission or can they go straight to the courts under a breach of contract theory?

CHAIR JOHNSON: Yeah, I can see where it might be useful for us to clarify that point. Because if we're detariffing we're saying that we don't want to look at it on the one hand, and so I -- I think it might be necessary to at least provide some guidance on that point. Thanks.

COMMISSIONER HARBOUR: Well, Mr. Chairman, I think that's what this is all about, is detariffing involves the giving up

of control. And you either give it up or you don't give it up.

CHAIR JOHNSON: Yeah.

COMMISSIONER HARBOUR: What's you're suggesting is a middle ground where you give it up and keep the option in the case of flagrant abuse or.....

CHAIR JOHNSON: Well, it relates more specifically to the remedies though that the parties would pursue, and I think it's actually for the narrow legal point. I don't think it's -- but I -- we can have a broader discussion about this. I don't know about that but we can have a broader discussion about that.

MR. GAZAWAY: If I could, I guess the point I was trying to make was that this may be somewhat clear to the carriers but how are you going to make it clear to the consumers as far as what their rights and what their means of redress are?

CHAIR JOHNSON: Anyway, thank you, Mr. Gazaway. Thank you.

MS. KENYON: Can I just raise one issue.....

CHAIR JOHNSON: Ms. Kenyon?

MS. KENYON: .....before you go, on this. The carriers that are in the market will be using wholesale rates, at least in part to provide competitive services. And those wholesale rates are based on the retail tariff as it exists today. If you detariff I think that that raises wholesale issues that you should at least be aware of before you go down that road.

COMMISSIONER THOMPSON: Um-hum.

MS. KENYON: I mean one of the services that we do offer by continuing to review the tariffs would be that we could look at terms and conditions of service that may be anti competitive to the wholesale service provider even though it's a retail service that we're talking about. And you have a 72 hour turnover before they have changes that go into effect under this proposal. That may or may not be adequate time for the wholesale provider to take into consideration what they need to do. I guess if you have the tariff on line and you make sure that all of the service offerings are on line, that may satisfy the first concern about how does the carrier -- the wholesale buyer know what the retail tariff is so that they can get the deals they're supposed to get under your connection arrangements. You know.....

COMMISSIONER HARBOUR: Mr. Chairman.....

CHAIR JOHNSON: Commissioner Harbour?

COMMISSIONER HARBOUR: .....I would challenge staff to kind of keep an eye out for us on their nexus between various of these sections, carrier of last resort provision and all that kind of stuff. And while our overall effort is to assure fairness in the market place, to identify a competitive market place and to apply appropriate rules that are consistent with the goals of the '96 Act, we want to make sure -- I'm speaking for myself, that one of the results is not a little trap that causes us to reverse the intent of the '96 Act and put us right

back where we were, and over night have some kind of a trigger. Reverse what we're -- what our intent is. So I appreciate your comments.

MS. KENYON: Thanks.

CHAIR JOHNSON: Commissioner Thompson?

COMMISSIONER THOMPSON: I'll be quick, I promise. You're correct. And the wholesale rates are what I thought about when I was drafting this but I ultimately concluded that there may be more than one way to set wholesale rates. You're correct that under the current way where they're offered as a percentage discount off of retail, there would be implications in this proposal for wholesale rates. But that may not be the only way to set those rates. And we could talk about that another day.

COMMISSIONER HARBOUR: Let's do.

CHAIR JOHNSON: Are there additional comments as to option four and its implications? With that I think we'll move on.

COMMISSIONER GIARD: Okay. That would be item number 2 in the section on page 22. Should there be parity in the treatment of old carriers in competitive markets? Staff recommend option two which is complete parity of regulation for all carriers is not in the public interest at this time. Is there Commissioner discussion on this particular item?

CHAIR JOHNSON: Well.....

COMMISSIONER GIARD: There's option one which is treat all

carriers in the market the same.

CHAIR JOHNSON: Actually I think option -- I would propose option 3 because I really think -- personally I think that option 2 makes the wrong statement. Option 2 would be a -- if we were to adopt that, would be an affirmative statement by this Commission that we were not concerned about parity, but I think that's, in my estimation, the ultimate goal. Now we may not be able to go to the ultimate goal today, but I'll -- I'm not inclined to just reject that out of hand. So I don't like option 2 the way it's proposed. If we're going to pass on making an explicit determination as to parity of service, or parity of regulation I think we just need to be silent.

COMMISSIONER THOMPSON: Or -- I would say it somewhat differently and I think I'm agreeing with you. I know I'm agreeing with you, that it sends the wrong message. Again to finding a positively. Say there shall be parity except with regard to things like designation of carrier of the last resort and come up with a list of things that we are going to continue to treat carriers somewhat inequitably on. If we decide we have a carrier of last resort policy, obviously that's something that's going to apply to one carrier and not the other. So rather than saying no, they're not -- they're still not equal, define how they are unequal and think carefully about what goes on the list to make sure we've got all the important policy concerns addressed.

COMMISSIONER HARBOUR: Commission Thompson, aren't all of those that you referred to the ways in which there would not be parity, wouldn't virtually all of those be the result of federal mandate?

COMMISSIONER THOMPSON: No. Carrier of last resort is a state policy.

COMMISSIONER STRANDBERG: Well, my thought is that just by the nature of the beast where we have an investment intensive network here, we're not going to be able to treat everybody the same because one of them owns the network and the other people are using the network with them. So I think where I'm coming from on this is we're not going to be able to treat them the same but we're going to have to establish some degree of equivalence so that these people have somewhat the same competitive footings where we possibly can. I think that's perhaps the approach we need to take, and probably have to pass on this and then where the actual work is is in some of these other areas such as carrier of last resort, line extension, some of these other things that we're going to push hard to see if we can find solutions on.

COMMISSIONER HARBOUR: I have a more clear thought on that. What we're trying to do is achieve parity except where federal or state statutes dictate a particular approach.

COMMISSIONER THOMPSON: The right concept but it's not statutes in some cases the carrier of last resort policy. Some

of the things are going to be in the regulations. And -- but the idea is where there's an important public policy, that would dictate otherwise.

COMMISSIONER GIARD: Mr. Chairman, we have HB-111, policy 6, which is a pretty strong directive to the Commission, I think. It's not -- it tells us what the legislative intent was, which says, you know, upon application for a certificate, in areas where the Commission has determined there's -- it seems somewhat immediate parity. I'm concerned that.....

CHAIR JOHNSON: I'm not seeing the word parity in legislative -- in the.....

COMMISSIONER GIARD: Well, it's not in there but it's the.....

CHAIR JOHNSON: Right.

COMMISSIONER HARBOUR: Same tariff and standards.

CHAIR JOHNSON: In my estimation what we are addressing alleged policy 6 as to the specifics and we're not making a general statement as to parity. But.....

COMMISSIONER GIARD: Okay.

CHAIR JOHNSON: I think we're actually doing a better job than what this whole issue number 2. As my staff suggests, I just don't think we have to go there.

COMMISSIONER GIARD: Okay. So I'm going to write we're going to come back to this section.....

CHAIR JOHNSON: Well, I just think.....

COMMISSIONER GIARD: .....is that correct?

CHAIR JOHNSON: I don't think there's a whole lot to come back to other than the fact we need to fix it if we are going to adopt anything. It's just that we acknowledge that it's a desirable goal.

COMMISSIONER GIARD: Okay. Okay.

CHAIR JOHNSON: And, you know, from my standpoint I think we're making some pretty strong statements in terms of achieving that goal. But.....

COMMISSIONER GIARD: Shall we move on then, with your permission, to page 24, continued retail rate regulation of some kind. Item number 1 -- I'm sorry, I'll do this. Item number 1, should the dominant carrier retail rate standards be relaxed in competitive markets?

CHAIR JOHNSON: You know, if I might, I spent a lot of time going through these options here and I really think that there's a substantial melding, if you will, or merger or relationship between the proposal that Commissioner Thompson proposed, the detariffing here. I think if you go with option 4 the necessity of addressing the options under this section are -- is substantially reduced. But that's just my take on it. I would ask other folks if they would reflect on that. Reflect on the fact if we go with an option 4 as to detariffing, what does that do to the options under this section? For me, at least a substantially -- I'd sure like

somebody to correct me if that's wrong.

COMMISSIONER GIARD: I thought it went back to whether we have a dominant carrier or not.

COMMISSIONER THOMPSON: Um-hum. It would be helpful to me to have staff talk about the differences as you see them between 2 and 4.

MS. KENYON: I'm not sure what you mean by 2 and 4. You mean option 4.....

COMMISSIONER THOMPSON: Yes.

MS. KENYON: .....from the previous section for detariffing? And option 2 here?

COMMISSIONER THOMPSON: No. I was talking about options 2 and 4 here, this section.

MS. KENYON: Okay. All right. Option 2, apply the status quo to competitive areas means you would retain a dominant carrier standard. And you would have the anticipation that there may be a dominant carrier in the market. Option 4 says you keep the regulation there but for whatever circumstances may exist you really don't have a dominant carrier any more. Either you've declared them all to be non-dominant or by effect of regulation they're all non-dominant.

COMMISSIONER GIARD: There seemed to be a lot of discussion in the hearing that we had about, you know, shortening it up, and there was the seven day proposal and then there was discussion by the parties and we talked about some of

the wholesale issues and seemed like the incumbent wanted -- Anchorage incumbent wanted seven days and there was 30 days. I wondered if you guys had thought about, you know, coming to something like 15 days or two weeks, or some shorter period of time than 30 days?

MS. KENYON: Yes. And if I wouldn't mind, Phil has brought to my attention, I probably didn't answer the previous question correctly. I'd rather.....

COMMISSIONER GIARD: Oh, I'm sorry. Sure.

MS. KENYON: .....get that fixed and then go towards yours. Option 4, they totally eliminated what were dominant. It's the Rural Coalition's proposal. So in effect you wouldn't have -- all of the carriers would provide -- would be under the non-dominant provision. Option 2 has the understanding you may have an dominant carrier. Regarding the time, 15 versus 30 versus 2, given the number of tariffs that we get today, we get quite a number. If you want us to review them in any way, shape or form, and you want opportunity for public comment and to consider that public comment before you let something go into effect, you pretty much need 30 days. We're at the -- in my opinion, at the bottom of the -- as low as we can go on that.

MR. TREUER: May I.....

COMMISSIONER GIARD: Sure.

MR. TREUER: Just one thing. If you're talking about a

carrier with a rate -- proposing a rate increase, if you want customers to have the opportunity to switch carriers, you really need 30 days to give them the full amount of time to switch.

COMMISSIONER THOMPSON: To go back to Mark's original question, I think that if -- depending on how option 4 that we discussed previously comes out. You may not -- I mean it would impact how this is drafted and even the necessity for it perhaps.

COMMISSIONER GIARD: Okay.

CHAIR JOHNSON: As in it may not be necessary?

COMMISSIONER THOMPSON: Um-hum.

CHAIR JOHNSON: Yeah.

COMMISSIONER GIARD: Well, it'd be necessary for the rural areas perhaps but not Anchorage. So.....

COMMISSIONER THOMPSON: Well, depends on how you -- what kind of definitions you end up with.

COMMISSIONER GIARD: Under option 4? Because it looks like under option 4.....

COMMISSIONER THOMPSON: Well, I think option 4, what you'd have are markets that are not competitive at all and maybe this would otherwise be necessary for sort of the intermediate markets where there's some -- depending on how you define dominant, non-dominant or competitive service areas, or maybe markets where there's not -- they don't meet the standards in

the option 4 that we were discussing a few minutes ago, but there is some competition and you want to have some different degree of regulation in those markets.

COMMISSIONER GIARD: Okay. I'm comfortable with the 30 days because I think that we're going to address the Anchorage.....

COMMISSIONER THOMPSON: We're going to address the Anchorage market and -- earlier in the proceeding. I wasn't thinking about that sort of thing.

COMMISSIONER GIARD: Okay.

COMMISSIONER HARBOUR: Mr. Chairman?

CHAIR JOHNSON: Commissioner Harbour?

COMMISSIONER HARBOUR: Maybe I'm wrong, but I think the testimony reflected more a sense of the parties that there be an equal time period than it be a specific time period. Although some certainly advocated seven days, 30 days, 15 days, but there seemed to be more of a concern that it be the same.

CHAIR JOHNSON: Ms. Kenyon?

MS. KENYON: There was a lot of concern about parity in the regulations. And it goes back to who we decide is dominant and who isn't. Because if they're all non-dominant for a service then they all have the same time period. But if you believe that a carrier is dominant for a service you might want to have a different time period because that gives you more time to think about it before you let the filing go into

effect, and it can't automatically go into effect by accident.

CHAIR JOHNSON: Oh.

MS. KENYON: At least there's -- I shouldn't say can't, but there's less opportunity for that.

CHAIR JOHNSON: In addition, the differences in the time periods also is -- perhaps a necessity because it allows our staff more time to review a much more detailed filing in connection with a dominant carrier's change, is that correct?

MS. KENYON: That is correct.

CHAIR JOHNSON: Yeah. There's more review.

COMMISSIONER GIARD: There's less work because we're going right to the end of it.

CHAIR JOHNSON: In some markets. Maybe. Actually we're going to be -- anyway, it's.....

MS. KENYON: It's the ones that are the most complex that take up most of our time. There's dozens of tariffs that go into effect automatically. Dozens is probably an understatement -- that go into effect automatically without much of our review or attention. But it's that one out of a few that you get that you have to ask questions about because there's -- either the tariff isn't clear or there may be anti-competitive effects or discrimination issues. Those may still be here. So.....

CHAIR JOHNSON: Yeah.

COMMISSIONER GIARD: Probably will.

CHAIR JOHNSON: Comments on this?

COMMISSIONER STRANDBERG: So I understand you, your position is -- I think you're saying the dominant/non-dominant distinction is still quite valuable and you need 30 days.

MS. KENYON: Yes. And most of the time they don't come in for rate increases so we rarely see a 45 day filing. They're almost all -- in effect they're almost always 30 days anyway.

COMMISSIONER GIARD: Move on to page 27, item number 2, should the Commission eliminate the regulation that specifies the dominant carrier retail rate rules? There's not a lot of options under this one. Do the Commissioners have any discussion that they would like to have on this item? We then moved forward, I believe.

CHAIR JOHNSON: Yeah.

COMMISSIONER GIARD: Okay. We address number -- I guess number 3. Should -- item number 3, should the Commission delete the regulation requiring just and reasonable and non-discriminatory retail rates?

COMMISSIONER THOMPSON: I'm sorry, Kate. What page are you on?

COMMISSIONER GIARD: I'm on page 27 now, item number 3. Kind of buzz through those. The staff have promoted option number 3 which is do not delete and expand the regulation. Is there a discussion on this item by the Commissioners?

CHAIR JOHNSON: I'll just say for myself I'm not -- and

with all deference to staff, I think that expanding this is -- you know, it's a further exercise of our authority that I just don't think is going to be productive for us. And I would just leave it the same. I'm an option 2 fan here.

COMMISSIONER GIARD: Any further discussion by Commissioners?

CHAIR JOHNSON: I think maybe if we're trying to provide some closure to these issues, we can get a feel from everybody else where they are on that between option 2 and 3 actually. Like I say, I like option 2.

COMMISSIONER THOMPSON: It would be helpful to me to get some discussion from staff about what you think the words, conditions and carries are going to effectively do to modify this regulation.

MS. KENYON: Well, in practice we look at whether the conditions are just and reasonable, not just the rates. So I think by adding the word conditions, it makes it a little clearer what we're doing. However, since in practice we're applying it that way anyway and it may not be a necessary change, and -- you know, my personal opinion, I don't really have a problem with option 2, I just thought option 3 was -- perhaps provided a little bit more certainty that this regulation applies to both customers and carriers and conditions and rates.

COMMISSIONER STRANDBERG: I think I support option 2.

COMMISSIONER GIARD: Okay. Me too. Okay.

COMMISSIONER HARBOUR: Mr. Chairman, I'll go with number 2 too. However, I didn't read -- I thought that maybe staff used the word expand the regulations maybe have been more successful if the word clarify had been used. So, you know, I can see the merit in option 3 but we've got -- we can work another word through the selection.

COMMISSIONER GIARD: All right, Commissioner Harbour. We shall move to number 4, how should the Commission comply with the rate increase policy of the legislature? That's on page 28. The staff's recommendation is ahead on page 30 under option 5. And I was confused. Lori, how does this relate to the other decisions that we make?

MS. KENYON: Let me reread this again, please.

COMMISSIONER GIARD: Okay.

MS. KENYON: I think this is a variation of the status quo, related to whether or not you have a dominant carrier. And we're assuming that you maintain dominant/non-dominant carrier regulations but there is a point in time when you'd declare that the incumbent is no longer dominant for a service at which time it would be free to increase rates under the same rules. So that's essentially the variation -- it's essentially the status quo. You obviously would not be able to take this option if you totally -- I mean this option is only applicable assuming you do have dominant/non-dominant carrier regulation.

MR. TREUER: Under dominant carrier regulations the dominant carrier wouldn't necessarily be the incumbent.

CHAIR JOHNSON: Further discussion on this one?

COMMISSIONER GIARD: I was thinking that what we were talking about would be some kind of safety net approach on price caps for the basis service and then they'd be free to increase all they wanted whenever they wanted and everything else is.....

CHAIR JOHNSON: The other services, as I understand it, yeah, it could increase away at your own peril.

COMMISSIONER GIARD: So is that what option 5 does?

MS. KENYON: Depends on what you do as far as detariffing. If you detariff.....

COMMISSIONER GIARD: Okay.

MS. KENYON: .....then anybody could increase any rate they wanted. It -- in some ways detariffing means you don't have the option to do House Bill 111, Policy 9, because you could not deny a rate increase to protect the public interest. You'd just let the rate increase go into effect upon detariffing.

COMMISSIONER THOMPSON: Except the increase for basic services.

COMMISSIONER GIARD: Right.

MS. KENYON: It really doesn't limit -- I mean I'm less concerned in some ways for the basic service than I am for some

of the services where the carrier may retain market power. Or a higher level of market power.

CHAIR JOHNSON: Well -- but in the finish, I think option 4 gives the Commission the ability to look at those particular services, right?

MS. KENYON: It depends on how you craft it.

CHAIR JOHNSON: Okay.

COMMISSIONER THOMPSON: What kind of services are you thinking about?

MS. KENYON: Line extensions, private lines, subdivision agreements, access charges, those are the main ones I -- I would be extremely concerned about ever detariffing until you had a really good case that says to your satisfaction that there is a sufficient level of competition in the market to address concerns.

COMMISSIONER STRANDBERG: That's -- really, I think we've attempted to deal with that with Nan's option 4 previously.

MS. KENYON: It depends how it's crafted.

COMMISSIONER GIARD: Yeah. I can work with that. Okay. Item number 5 on page 30, how should the Commission comply with the rate decrease policy of the legislature? Staff recommendation, option 3, which is on page 32, I think. Oh, pardon me. Staff recommend option 5 which is on page 33. And they have crafted a new regulation which is documented below. Is there any Commissioner discussion on the proposal of staff?

They have a second option if you don't go for option 5, and that was the one I was referencing which was option 3.

COMMISSIONER STRANDBERG: To what extent does this modify what we're actually doing now?

MS. KENYON: Well, option 5, if you take it, applies to monopoly as well as competitive carriers because that's what we interpreted House Bill 111 to say you had to do. So you've broadened -- you've created more rate flexibility for the monopoly markets under this option 5. And you've also limited which -- in which cases you can disapprove a rate decrease and those cases are on page 34, if it violates an existing statutory requirement or it leads to predatory pricing, below cost pricing, in subsidization -- cross subsidization or at a competitive pricing practices. The first bullet, if it violates a statute, that's pretty much what we do today. If something violates a statutes we're going to bring it to your attention and you can review it at a tariff action meeting. Bullet 2, about predatory pricing, was an attempt to respond to the House Bill language about state and federal anti-trust law principals.

COMMISSIONER STRANDBERG: So is this for all telecommunications carriers?

MS. KENYON: Yes.

COMMISSIONER STRANDBERG: And this is in competitive and non-competitive areas as well?

MS. KENYON: Yes.

COMMISSIONER THOMPSON: Um-hum.

COMMISSIONER STRANDBERG: And so if you could just focus on non-competitive areas, how would this change how we deal with non-competitive areas?

MS. KENYON: All right. In non-competitive areas you are required to have a 45 day time limit and you could review in any way, shape or form you'd like a rate decrease. And normally they probably have to give you quite an extreme level of data in response. They may -- they still would have to provide you with the data because you haven't changed what the tariff filing requirements are for the monopoly carriers. But what you have done is you've given -- well, I think it's a good question. I'm not sure how much more you've given them because you -- certainly today, if they came in for a rate decrease and it violated statutory requirements or it was predatorially priced, you would suspend it if you suspect that was the case.

COMMISSIONER STRANDBERG: Right.

MS. KENYON: You'd suspend those at almost any time for the monopoly carrier today as you would under this. But I guess it clearly -- more clearly spells it out. I'm not sure that it -- I'm not sure that it does a whole lot effectively because you still have the statutory requirements you have to follow.

COMMISSIONER STRANDBERG: So they're still required to

make filings. It's -- what this does is to state how we're going to deal with those filings.

MS. KENYON: It states it and it provides a little bit more certainty as to when you would not allow a rate decrease. But since you comply with the statutes anyway, you're -- I guess what this says is you can't disallow a rate decrease on a whim. You know, if you can show the rate decrease may violate statutes or it may violate the predatory pricing and so on principals then you would suspend it for further review. And anything else you'd let go.

COMMISSIONER STRANDBERG: Right. And so you're not envisioning any changes on any filing requirements for a rate decrease, you know, to lessen the amount of paperwork?

MS. KENYON: No, I don't think you can. Not if you want to be consistent with House Bill 111, because it says you want to be -- the House Bill 111 implies you -- just states you have to do it within principals of state or federal anti-trust laws. I'm not sure that you can do that without knowledge of what the change is.

COMMISSIONER STRANDBERG: Okay.

COMMISSIONER HARBOUR: Mr. Chairman? But the intent of House Bill 111 uses the word unilaterally. That implies a minimal amount of approval. I guess we're -- you're saying that House Bill 111, policy 3, would contradict other Alaska statutes that require that it not be a unilateral decision on

the part of the utility.

MS. KENYON: I've asked our -- I didn't ask for Jenny, but Jeff Landry -- assistant attorney general Jeff Landry about what happens -- how do you read the House Bill 111 provisions in light of our statutes and he said you have to read them as a whole. And I guess I'll pause for Virginia to comment since.....

MS. RUSCH: Well, I wouldn't argue with that, you have to read them as a whole.

CHAIR JOHNSON: Ms. Rusch, could you use the microphone, please?

MS. RUSCH: I wouldn't argue with that. You do have to read them as a whole. I don't know exactly the thrust of his advice further than that.

MS. KENYON: I don't think he had further advice than that. He just said that you -- the statutes that say you have to have just and reasonable rates and all of the other statutes quoted earlier in this section, they continue. House Bill 111 doesn't trump them.

COMMISSIONER STRANDBERG: Let me ask, if this is possible from our counsel, Ms. Rusch, can you paraphrase what are the state and federal anti-trust laws that we are actually trying to comply with, or is that too complex a question for you and what's stopping us from reducing the amount of -- like I say, if you can't answer that question shortly, just tell me. But

I'm honestly wondering what the root of the reason is why we cannot reduce the tariff filing requirements on these rate decreases.

CHAIR JOHNSON: Could I just interject? I'm aware that a number of years ago the assistant attorney general Zoble authored an opinion that he submitted to this commission, or predecessor commission, relative to the scope of anti-trust laws. And although I've not reviewed that, that might be something that we can make available to the Commissioners. I recall the opinion as being quite lengthy and fairly comprehensive. That's just from my memory bank.

COMMISSIONER HARBOUR: Mr. Chairman -- excuse me. On that subject though, what happened was that the legislature put subject to state and federal anti-trust laws. I think it's almost a no brainer that we would not want to create something that was in violation of state or federal anti-trust laws. That's not the problem. The problem is that the language unilaterally reduce consumer rate seems to run into conflict with other laws that are not necessarily anti-trust laws. You know, just and reasonable and -- and I'm wondering -- and I appreciate the staff's effort to walk a balancing line here how do you develop an option that respects policy 3, but doesn't put us into conflict with existing statutes. And I think you've tried to do that. I'm wondering if on your option 5, the bottom of page 33, we say notwithstanding (a) of this

section, the Commission will disapprove and require modification. That in itself runs a little close to saying no, not unilateral.

COMMISSIONER GIARD: That's right.

COMMISSIONER HARBOUR: Right? But let's say we say that. How do we say it and not be at odds with policy 3, notwithstanding any of this section the Commission will disapprove or require modification of a rate increase that -- suppose we just said violates an existing statutory requirement? And then use that language -- including those concerning undue discrimination and provisioning of just and reasonable rates. Nobody could really argue with that. It seems to me that when we get down to 2, all of those predatory pricing, below cost, all of those flow from unjust and unreasonable any how. So maybe we would be ahead by eliminating the subsection 2 and just including subsection 1 in the (b) notwithstanding.

MS. KENYON: The reason why we put in section 2 was to try to address the -- what they meant by in compliance of state and federal anti-trust laws. Though I agree conceptually that a lot of what you see in option -- in bullet 2 is included in existing statutory requirements of bullet 1.

MR. GAZAWAY: Can I add one thing? You often have anti-competitive practices in there. And from a policy point of view you have examples in the past where a carrier's come in

with a five year term discount program where they get reduced rates for a five year period. And the proposed termination penalty on that proposal first, before it was addressed by the Commission, was to make the customer pay the entire five year term even if they terminated within the first year. And so I think there are some anti-competitive concerns that are also implicated by rate reductions that are not addressed by existing statute or by anti-trust materials.

COMMISSIONER GIARD: Let the buyer beware. You know, let the buyer beware. Someone is going to sign a contract, it's an independent operating entity.

MR. GAZAWAY: To what degree do we ensure there's some sort of consumer education by the utility?

COMMISSIONER GIARD: Let the buyer beware. In a free market enterprise it's the buyer's responsibility.

MS. KENYON: But these apply to monopoly areas as well because the legislature told us it had to be for all telecommunications carriers. And I'd like to add to one of the things I said earlier, to address the unilaterally concern. I think where we were going with that is the (a) which says a carrier may reduce rates without approval after notice. So that's something they don't have today. Right now you have to affirmatively approve a rate reduction in a monopoly area, but under (a) that they could do it after notice provided it looked like it didn't violate statutes or the predatory pricing

bullet.

COMMISSIONER HARBOUR: I think we need a little work on (b).

CHAIR JOHNSON: Further comments on option 5? I -- go ahead, Commissioner Thompson.

COMMISSIONER THOMPSON: I think it's fine but I'd like the opportunity to look at the AG opinion. That'd be helpful.

CHAIR JOHNSON: Yeah. I recall that it exists. I'm not sure if I have a copy myself. It is fairly lengthy. It's about a 20 page document.

MS. RUSCH: I'll see if I can locate it.....

CHAIR JOHNSON: Yeah.

MS. RUSCH: .....and distribute it to the Commissioners.

CHAIR JOHNSON: I'll just speak for myself. I think that -- I like option 5 in large part. I think there's maybe actually a way we can make the language parallel some other review elements that we have in some other areas. But -- anyway. Is there objection to moving on?

COMMISSIONER GIARD: Unh-unh. Do the Commissioner want to discuss item number 6, how should the Commission treat bundling of local and long distance services, or shall we just move on to bundling and deal with that when we get to bundling, Mr. Chairman?

CHAIR JOHNSON: Yeah. I think since we have a separate tab for it, maybe we could defer that discussion because.....

COMMISSIONER GIARD: Okay. So we won't go to the bundling right now. How should the Commission treat promotional offerings? How should we?

CHAIR JOHNSON: Well, in my estimation the solution to that question is to be found in the first sentence of this, issues concerning local promotional offerings were not raised in Docket R-3-03. And I just don't think we need to go there.

COMMISSIONER GIARD: I don't understand promotional offerings. It's in a different docket?

CHAIR JOHNSON: Mr. Strandberg?

COMMISSIONER STRANDBERG: The problem that has been with promotional offerings over the years that some of them just keep going and going and going, and.....

CHAIR JOHNSON: Deflect (ph) the money.

COMMISSIONER STRANDBERG: Yes. And it's been an issue. And I don't think it's a matter that we need to take up in this docket here.

COMMISSIONER GIARD: Okay. Okay. Then we are down to section -- item H, which is miscellaneous provisions. Billing and contract forms. There have been proposed two options. Do the Commissioners want to discuss this section at all? The staff have recommended option number 2, which is to require all carriers a 20 percent more market share to comply with 3 AAC 48.230.

CHAIR JOHNSON: Comments on this? I'll go out on a limb

and say that I like option 2. I think it's consistent with the notion of regulatory parity. But then that may just be me.

COMMISSIONER STRANDBERG: The Lord giveth and taketh.

COMMISSIONER THOMPSON: I would go even further out on a limb and say that for all of the issues that are raised in this subsection or miscellaneous, I agree with the staff recommendation.

COMMISSIONER GIARD: Okay.

CHAIR JOHNSON: Maybe we could just take a moment to scan through those.

COMMISSIONER HARBOUR: Yeah. I just have one comment on the word lines again. The -- Commissioner Thompson, in an earlier section, had suggested perhaps that be defined in a way that was technology neutral. And we want to make sure that the way we use these in the different sections is consistent.

COMMISSIONER THOMPSON: I agree. Which one are you talking about? Which.....

COMMISSIONER GIARD: Page 35.

COMMISSIONER HARBOUR: Option 2.....

COMMISSIONER GIARD: Option 2 under page 35.

COMMISSIONER HARBOUR: .....page 35.

COMMISSIONER THOMPSON: Okay.

COMMISSIONER HARBOUR: Lines.....

COMMISSIONER STRANDBERG: Indeed that's a new term. Been dealing with access lines, now.....

COMMISSIONER THOMPSON: Okay.

COMMISSIONER HARBOUR: Well -- and Commissioner Thompson has suggested another term all together. So.....

COMMISSIONER THOMPSON: Okay. But I agree we should be consistent.

COMMISSIONER STRANDBERG: What -- if I might ask, on option 2, page 36, what is your expectations of the effect, again considering where we are at now with the regulation and new definitions of dominant status, what's the practical effect of still requiring dominant carriers to comply with -- to make 275A filings -- A & H filings?

MS. KENYON: Well, if you -- presumably you could only have a dominant carrier for a service if you believe they had market power or could influence the rates in an inappropriate manner. And you'd be concerned that a rate increase was not justified, in which case you would want to have detailed information at the time the tariff was filed. And 275A provides you with that. It gets you the information to support a rate increase when made by a carrier that you believed is dominant. Now if you were to deregulate the market, then it wouldn't matter. I mean for a service or however you did it.

COMMISSIONER STRANDBERG: So where we're at now, just so I can keep focused on this, is that if we do adopt these new dominant definitions, in effect we're going to find that some of the areas don't have a dominant carrier and.....

MS. KENYON: Right.

COMMISSIONER STRANDBERG: .....so there won't be the 275A's going on there.

MS. KENYON: That's right.

COMMISSIONER STRANDBERG: All right.

CHAIR JOHNSON: Maybe just need to keep -- are there further questions about the cost support question?

COMMISSIONER STRANDBERG: I guess I'd make this comment. Regarding the allowance for unilateral rate decreases, and we're dealing -- you know, that -- the concern I have is the amount of filings that we're still requiring utilities to make state wide. And indeed, if we're -- where I think we're at here is that the previous issue that we dealt with with respect to rate decreases is that we're still going to require a fair amount of cost support for these filings, but we're better defining the criteria under which we will review those.

CHAIR JOHNSON: Yes.

COMMISSIONER STRANDBERG: I believe that's where we are at here. And to be frank with you, I'm going to have to think about that some more because we're moving through things pretty fast. But I think I do have it bracketed about where we are at on that.

MS. KENYON: The rate -- allowing rate decreases sounds like a really good thing. You know, who could argue that a rate decrease is not in the public interest? But when you look

at it you could use rate decreases to create any type of rate you want. You could selectively reduce the rates to the customers you liked and not the ones you didn't like. And there's -- it has a lot of potential public interest issues.

COMMISSIONER GIARD: I'm concerned in the rate decrease area that it would be very normal thing for a competitor to enter a market and the incumbent immediately goes into a rate decrease mode. And that -- because we've said that all telecommunications providers can get decreased rates whenever they want. And I don't know that we have any kind of -- you would think that the CLEC coming in would then say anti-competitive behavior, blah, blah, blah, but I don't know how we would prove that. I mean the legislator said all.

COMMISSIONER STRANDBERG: But balancing that, I mean we practically see these tariff filings come in and they are complex. You see rates going up with -- for some categories of service and going down for other categories of service. And I just don't see any way out of us requiring these filings. I am concerned about the amount of paper that flows through the darn place but -- I'll just make that comment here with respect to the tariff cost support point here.

MS. KENYON: In competitive markets we do not require 275A information for rate decreases. Now for rate increases, that's a whole different story. And then for the monopoly areas you require rate support for a variety of category of changes.

COMMISSIONER GIARD: I don't know the legislature really had it together when they made that recommendation.

CHAIR JOHNSON: I'm not going to ask anybody beyond the table here to comment. Probably in Juneau I think they crafted all this stuff for us. But anyway -- accounting standards.

COMMISSIONER GIARD: Lori, can we please go over option number 4?

MS. KENYON: All right.

COMMISSIONER GIARD: Page 38.

MS. KENYON: Option number 4 was intended to try to create parity between the carriers and the market.

COMMISSIONER GIARD: Right.

MS. KENYON: We're no longer saying if you're incumbent you got to do the accounting standards. We're saying if you meet these criteria you need to -- the first bullet says well, if we're going to give you state Universal Service Funds, you better show us how you're going to use them. And that's why you would need -- the USOA and the jurisdictional separations gives you that tool. Access charges, that's pretty much a done -- in my opinion that's -- you need that. That's not really debatable.

COMMISSIONER GIARD: Right.

MS. KENYON: The subscriber line charge depends on what you do in your access charge reform docket. One of the key proposals that's before you in that docket is to come up with a

subscriber line charge. And if you do, chances are you will need to figure out if the subscriber line charge rate is reasonable or not. In which case you may still need the tools, USOA and jurisdictional separations. Wholesale services, the reason that's in there is for -- you essentially -- the way I understand the way the Act works, is that wholesale services are avoided costs. Retail rates less of what it costs. And this -- keeping these USOA and jurisdictional separations allows you to better define what avoided costs are. Everybody knows what the USOA is. It's a commonly applied practice. The dominant carrier. Again, if you're -- if you really believe you have a dominant carrier then you want to be able to look at its rates. Occasionally, if not -- I mean occasionally when they want a rate decrease or whatever situation you believe is necessary, but you still need the tools if the carrier is dominant for a service. You know, if not, you know, they could -- they would need to show you why. But for any regulation you have here a carrier can always ask for waiver. But these are the presumptive standards we're proposing. That if you meet any one of these then you have to continue to use our accounting standards.

CHAIR JOHNSON: Is it an appropriate time for a question, but the thing about option 4 is, is this not imposing additional new regulations on carriers that are not now subject to these requirements?

MS. KENYON: Let me look at them again. I think the one where it might occur is let's say a competitor becomes dominant for a service. Right now none of them are.

COMMISSIONER GIARD: Right.

MS. KENYON: But if in the future one of them does, then the day that you sa that they're dominant for a service, I imagine that you'll also get a request for waiver of this requirement and you can deal with it at that time. But it would imply that they'd have to come in and use your accounting standards and your separations.

CHAIR JOHNSON: A little broader question, and.....

MS. KENYON: Oh, yeah. Carrier of last resort as well. That's.....

CHAIR JOHNSON: Okay.

MS. KENYON: .....another place. If they become a carrier of last resort, a non-dominant carrier, then it would.....

CHAIR JOHNSON: Well, my question becomes to what extent, and I'm searching my limited memory here, is there support for this type of approach in the comments that we received when we opened the docket?

MS. KENYON: Well, the comments that you've received, I think the closest to what I can think of is the Rural Coalition that basically says if you're in the state access charge pool then you have to continue to use the uniform system of accounts and jurisdictional separations. The reason why I say -- kind

of hesitant to say it's the same, because once you have competition in an area usually you let them leave the pool. So the standards would no longer apply. The -- I don't know that there's much discussion about this option because it really hasn't been before anybody yet. You've had some people that -- a lot of the commenters are trying to avoid continuing accounting -- continuing following these accounting practices. But these are the tools that you use. So.....

COMMISSIONER STRANDBERG: What's the practical effect of implementing option 4? What I'm seeing is we're going from just dominant carriers being required to, you know, a different set of criteria.

MS. KENYON: Well, if -- all other things being equal, I don't believe that there is much practical change in what would happen. Because the current incumbents would remain under the USOA and jurisdictional separations as they are today. The non-dominant carriers, to the extent they suddenly would fall under one of these options, I would anticipate that that's going to be a fairly significant event in your market. If, for example, you decide to share carrier of last resort responsibility, that's a significant event. And you will be very familiar at that time if you want them to continue -- to follow this regulations or if you agree with any waiver they might file. The problems with the USOA and jurisdictional separations is once you get away from your standard it's going

to be extremely difficult to go back. The incumbents currently follow this. So continuing to follow it has, I guess in my opinion -- I know there will be others who disagree with me, has this little incremental cost compared to having to go back to them if you let them -- if you relax the standard now and they follow some other method.

2700

(Tape change)

Tape 3

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COMMISSIONER GIARD: I guess my comment on this is the same as yours, Mr. Chairman, in that I was concerned that the criteria are such that a CLEC which hasn't had to comply would all of a sudden have to comply and that would be just a material and substantial cost to the CLEC. So I was wondering if there was any way that the uniform system of accounts actually benefits us, just say for example if the carrier were determined to be a carrier of last resort, do we really need the CLEC -- if that was a CLEC that was then determined, do we really need them to change to the uniform system of accounts, is that something that we really need to have in there?

MS. KENYON: You might. And the reason I put it in there is one of the things you're going to -- if I were looking at a carrier for last resort one of the things I would really love to know is how their maintenance expense changed over time, how

much they were investing, factors that are -- financial factors that may change over time. If you don't have a standardized way of looking at those then you lose the ability to have a time -- a time comparison.....

COMMISSIONER GIARD: Uh-hum.

MS. KENYON: .....so that you can tell exactly what they're doing. And they may define things differently than you do, what if they're -- they redefined what maintenance means under their uniform -- under their system of accounts so that it's not really the same as what you were thinking it was, then their financial records to you would provide a lot less information than you may need when you're concerned about a carrier of last resort.

COMMISSIONER GIARD: I don't have any more questions.

CHAIR JOHNSON: Mr. Gazaway, did you have a comment?

MR. GAZAWAY: Well, I was just going to mention that some carriers did raise this issue in the bundling docket as far as they thought that since were no -- I guess for a lack of better term competitive parity with demand, that perhaps some of these accounting standards be imposed upon.....

COMMISSIONER GIARD: Right.

MR. GAZAWAY: .....the larger CLEC.

COMMISSIONER STRANDBERG: And certainly if we have a basic service offering that we're going to have to look at from any one of these carriers we're going to want that underlying cost

data.

MS. KENYON: And if I may add, Phil mentioned something just a moment ago, a lot of the incumbents currently have to file the federal uniform system of accounts anyway. Now it's -- ours is different in many areas, but we are -- ours is based on the federal rules.

CHAIR JOHNSON: But isn't our -- but I look at our regulations, don't we just pare down the level of detail from the federal system primarily to form ours?

MS. KENYON: I think maybe the opposite, we have more detail under ours than the feds.

COMMISSIONER THOMPSON: I guess I didn't understand well enough the breadth of the recommendation before. So it's your intent that regardless that the same -- this USOA and jurisdictional separations regulations would apply under all of these circumstances? So I guess I'm not being very articulate. What I -- what struck me as inconsistent in the last couple of minutes is.....

(Off record comments)

COMMISSIONER THOMPSON: All right. I heard two things in the last couple minutes that struck me as inconsistent. One is a representation of gee, that this wouldn't -- this is -- would apply to carriers that are already doing this anyway so it's not going to be an additional burden. And then there was the discussion about it applying to all carriers who are carriers

of last resort and is we anticipate that obligation being shifted to people who are not necessarily incumbents now then I don't understand how this option would not broaden the number of carriers who are required to follow the USOA and jurisdictional separations procedures.

MS. KENYON: It would.....

COMMISSIONER THOMPSON: Okay.

MS. KENYON: .....if you do that. Yes, it's -- what -- my comment about it not being an additional cost was only referring to the ones who are currently using it.

COMMISSIONER THOMPSON: Okay.

MS. KENYON: You know, it would be a material and significant cost to carriers that are currently --.....

COMMISSIONER THOMPSON: Right.

MS. KENYON: .....at least in my opinion, I think it would.....

COMMISSIONER THOMPSON: Yeah, it would be, it would be huge.

MS. KENYON: .....be a significant cost to the ones who aren't using it yet.

COMMISSIONER THOMPSON: Well, then I have concerns as a policy matter with having carrier of last resort on the list because I think that's something as a matter of public policy we want to encourage people to do. And to make a part of assuming that obligation what will become a potentially huge

accounting expense is mixed signals. I mean, if we -- if carrier of last resort is something we really want to assure, we want carriers to be willing to step up to the plate and do it, why are we making it so difficult and burdensome for them.

MS. KENYON: There is some truth to that, that it could discourage some from becoming carriers of last resort if they felt they didn't want to have to do your -- their high level of accounting. At the same time you could give waiver for those that you felt had a good reason not to follow the uniform system of accounts because it was such a burden to them. So I think our -- my understanding is you'd address that concern through the waiver process.

COMMISSIONER GIARD: Let's move on.

CHAIR JOHNSON: What I'd like to -- we are at the time pretty much we indicated we're going to take a break and I do think that it's probably appropriate to take a break 'til 1:30 and allow people to get lunch and to recharge and regroup everybody. So that would be my intent to recess this hearing until 1:30 and we will come back here at that time, pick up at this point. Anything that needs to be addressed before we go off record? I'd like to thank folks, I think we've had a productive morning, we are making progress and.....

UNIDENTIFIED VOICE: Please, may I go (indiscernible - away from microphone).....

CHAIR JOHNSON: That would be fun wouldn't it? With that

we'll go off record and I -- although I did note that Mr. Rowe left, I guess the ATA showcase is currently underway and he wanted me to put in a plug for people visiting. I may go -- actually go over there and look around, but anyway thanks.

(Off record - 11:30 a.m.)

(On record - 1:35 p.m.)

CHAIR JOHNSON: And we are on record in -- thank you. We are back in record in this special public hearing to consider R-03-03 and its predecessor dockets. Commissioner Thompson, did you have something you wanted to start out by saying?

COMMISSIONER THOMPSON: Lori and I -- I just working on the promised option 4 and I don't expect people to read it and talk about it right now, but I'm handing it out and I have a bunch -- oh, you made a bunch of copies too?

MS. KENYON: Yeah. Do you have enough for the panel?

COMMISSIONER THOMPSON: Yes, I do.

MS. KENYON: Okay.

CHAIR JOHNSON: Okay.

COMMISSIONER THOMPSON: So when an appropriate time comes.....

CHAIR JOHNSON: Yeah.

COMMISSIONER THOMPSON: .....and I can tell you what I did if you want me to talk about it now, but I don't want to put everybody in the spot of having to discuss it not.....

CHAIR JOHNSON: No.

COMMISSIONER THOMPSON: .....having read it.

CHAIR JOHNSON: Yeah, let's do this. Let's -- we will have probably one or more breaks, we are going to take a break at 3:00 o'clock sharp, there are some other -- there are some things going on on the floor and we'll take a 15 minute break at that point in time so we'll be breaking from 3:00 to 3:15 for the benefit of the public and the staff here. And there may be some other opportunities we can double back and certainly coming out of that break might be a good time to talk about this.

COMMISSIONER THOMPSON: Okay.

CHAIR JOHNSON: Or sooner if (indiscernible - simultaneous speech).....

COMMISSIONER THOMPSON: All right.

CHAIR JOHNSON: But I did want to sort of pick up where we had left off and we were discussing, I believe, accounting standards. I'm not sure if that had been resolved, but roughly we were on page 34, 35.

COMMISSIONER THOMPSON: I thought we were on page -- all right. We were talking about option 4 on page 38 though, right?

COMMISSIONER HARBOUR: Yes. Accounting standards.

CHAIR JOHNSON: So had we reached a decision about our preferences on the accounting standards and jurisdictional separations? Anybody want to say anything further about this

subject, maybe we had -- I'm not sure if we know or what we had agreed to at all in this area?

COMMISSIONER THOMPSON: I'll take a stab at it. We were sort of leaning towards option 4. I have concerns about including carrier of last resort in on the list and I think we talked about, but I didn't hear a strong support for any of the other options.

CHAIR JOHNSON: Does it work if that section is deleted from option 4? Maybe I'll pose the question that way, do you have any thoughts on that?

MS. KENYON: I'm looking at it. I think it could still work, my preference is to have the carrier of last resort there, but I think it works if it's not, you know, but that's just this -- depends on how much information you want to keep at what detail for the carrier that is the carrier of last resort.

CHAIR JOHNSON: Is that your.....

COMMISSIONER STRANDBERG: And.....

CHAIR JOHNSON: Commissioner Strandberg.

COMMISSIONER STRANDBERG: .....if I could ask, what is the reasoning behind requiring those or the -- just so we understand, requiring these accounting standards for the carrier of last resort?

MS. KENYON: If you have a carrier of last resort you probably want to understand how much maintenance it's doing,

how much plant it continues to invest over time, whether or not it's letting its plant go to seed, how much maintenance expense it has from year to year so that you can compare and compare it to other utilities. Including -- keeping of the carrier of last -- I mean, the USOA for carrier of last resort give you a standardized accounting system to be able to allow that to happen. Otherwise a carrier is able to change its accounting system from year to year and there really -- it's going to be very difficult for you to determine exactly how much it'd devoted to those critical functions of a carrier of last resort.

COMMISSIONER STRANDBERG: I don't think I'd include it.

CHAIR JOHNSON: Additional thoughts on this?

COMMISSIONER GIARD: I'm wondering if we shouldn't put in a statement in there which says if you're not doing it now you don't have to do it in the future. It's a big, big, big change.

CHAIR JOHNSON: Here's.....

COURT REPORTER: I can't hear you.

COMMISSIONER GIARD: It's a big change.

CHAIR JOHNSON: Here's my question is that it seems to me that these entities have to keep their records -- their financial records in some format and if they're not using the uniform system of accounts they're using some other method. I guess why does it reflect that much of a burden, they've got to

use a standard one, I use the uniform system of accounts as proffered by the FCC.

MS. KENYON: They have to use a standard and they're using their own, general accounting principles are -- I think is what they call it. They probably don't have the same formats as the accounts used for the USOA so it means that they'd have to take every piece of property the way it's recorded on their books and recategorize it into the expenses, revenues and plant buckets that the USOA uses. You'd have to do it once and once you've done it it's probably -- your continuing expense isn't that difficult, it's just that one time to convert to the new system which is fairly burdensome.

COMMISSIONER THOMPSON: And I would also note they may have to be using the method they are now for other reasons so it might require them basically to create another set of books and.....

COMMISSIONER GIARD: It will, another whole set of books.

COMMISSIONER THOMPSON: .....create and maintain. So it's not just while creating it may be expensive, you're going to end up -- you're putting them in a position of having to maintain two accounting systems.

CHAIR JOHNSON: Let me ask -- let me pose the question this way just to kind of get some more background. Do interexchange carriers operating in the state now, intrastate interexchange carriers, do they comply with the uniform -- with

the operating account system, the FCC account system?

MS. KENYON: Alascom complies, I believe, with both the state and the federal account systems, but none of the others do to my knowledge.

COMMISSIONER THOMPSON: And complains about that. They.....

MS. KENYON: Yes, Alascom -- one of their proposals before you is that they would not have to use the state USOA.

COMMISSIONER THOMPSON: Uh-hum.

CHAIR JOHNSON: Okay. And the others do not?

MS. KENYON: The other non- -- the non-dominant IXCs do not have to use any accounting standard that I'm aware of, I think that's -- remember MCI World Com scandal and all of that is.....

COMMISSIONER STRANDBERG: Yeah, I remember that.

CHAIR JOHNSON: I'd rather not go into that. Okay. I'm just trying to get an understanding here. Further comments.....

COMMISSIONER GIARD: Mr. Chairman, you've heard that there's the tax set of books, there's the financial set of books, what you'd be asking for is to do a complete set of general ledger, all transactions, everything has to be done a third time. It is a -- I can't emphasize to you what a huge undertaking and how every single ILEC in the state would like to be away from the burden of doing it, it's a tremendous

amount of effort at a very granular level. So I hesitate to, you know, put that on someone if there isn't a really good reason.

CHAIR JOHNSON: Okay. I certainly understand that. I guess, what -- why I'm looking for that competitive parity, you know.

COMMISSIONER GIARD: Well, we could always take it off the ILECs.

CHAIR JOHNSON: Yeah. Well,.....

MR. GAZAWAY: Can I put out there we're also going to deal with the same issue in the interexchange market?

CHAIR JOHNSON: Yeah.

MR. GAZAWAY: And they're talking about a subsidy in that market is one of the proposals. And as I believe Staff's recommendation has to do with basically the same recommendation to impose it on both parties if they seek access to inter -- to subsidies particularly.

CHAIR JOHNSON: Well, I guess the discussion we've had so far to me, what I hear it saying is that this is a -- for an entity that has to comply with this, this is a large burden.

COMMISSIONER THOMPSON: Uh-hum.

COMMISSIONER GIARD: Huge.

CHAIR JOHNSON: And so I guess I -- at that point I get more sensitive to the issues that have been raised from ILECs regarding the burden. That's all the discussion leads me to be

concerned about. At the same time I can't imagine -- to impose burdens on somebody that's not currently, you know, required to comply with the standard is equally distasteful, so I'm not sure if this is a real happy place to be in life.

MS. KENYON: There's two burdens that I could see being argued, one is the burden of conversion and the other is burden of maintenance. And they've been under the burden of maintenance for -- since the '70s or '80s, however -- I forget when we instituted the USOA. And it just -- it comes down to what tools you think you think to have.

COMMISSIONER STRANDBERG: And I would comment that one of the other criteria is any carrier that receives State Universal Service Funds so there is quite a number of carriers that do receive that. So I guess in the context of considering the effect that option 4 would have, I think we need to be careful about this.

MS. KENYON: For option 4 I think there may only be three carriers that currently receive State Universal Service Funds excluding Lifeline, but that may change depending upon what you do with your access charge reform.

COMMISSIONER STRANDBERG: Uh-hum. So in a sense the impact of this -- the actual impact really is determined -- is -- really depends on where we go in other parts of this?

COMMISSIONER THOMPSON: Yeah, that's a good point, Lori.

CHAIR JOHNSON: So having heard all this is there a

consensus or agreement as to any of these options?

COMMISSIONER GIARD: Well, I would ask maybe that as we go through and make some firm decisions on the other areas we consider whether those companies that we detariff and the markets that we make significant changes in, whether really it's necessary and if we don't look at the parity issue a little bit more between competitors in a market.

COMMISSIONER STRANDBERG: I guess I'd like to see where we come out with other aspects of this before I make a determination.....

CHAIR JOHNSON: Okay. So we're going to revisit on this one, but understand our time for revisiting a lot of this stuff is getting kind of short, shortish.

COMMISSIONER GIARD: Not kind of.

COMMISSIONER STRANDBERG: Yeah, well, what's.....

COMMISSIONER GIARD: About this big.

COMMISSIONER STRANDBERG: .....the option then, the option is to write a list, adopt option 4, look at the list and maybe.....

CHAIR JOHNSON: Read the comments when they come in I guess.

COMMISSIONER THOMPSON: I'd say option 4 without carrier of last resort. I think I hear some agreement to get rid of that.

COMMISSIONER HARBOUR: Let's do that to start.

COMMISSIONER STRANDBERG: I agree with that.

CHAIR JOHNSON: I'll hold my nose on that one I guess and move forward. All right. That's not a real happy choice for any of us.

COMMISSIONER THOMPSON: No.

CHAIR JOHNSON: Tariff advice letter formats, maybe I could just ask Staff to explain a little bit about option 2. I didn't have the full text of 52.390 in front of me and if you could just explain how adding the new subsection is going to impact this whole situation?

MS. KENYON: Okay. Currently when a carrier files a tariff advice letter is has to include some information including 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 the proposed rates. Now that's a requirement that we make them do and if they don't include that information we reject the tariff filing. However in most cases we don't really need that information at least not from a practical level, we look at it mainly if they want to discontinue a service because we want to see how many customers are affected. It is useful however during rate increases as we found out recently. So I guess what we're proposing here -- I want to reread it to make sure I know exactly what it says. It allows them to exclude this information except for when they're trying to dis- -- planning

on discontinuing a service, but we are allowed to ask for it if we need it. And I'm tempted to try to amend this by saying proposes to discontinue or increase the rate for a service under this proposal because I can see how under a rate increase you might want to know what that -- how much revenues are involved and how many customers are involved, but in most other cases we probably don't care.

MR. GAZAWAY: Can I point out that in application this is somewhat of an unequal criteria because a new carrier has no customer base for which they can base any estimates on, it's purely speculative.

CHAIR JOHNSON: Just so I'm clear though as to option -- is it a fair statement to say that option 2 is a relief of some portion of regulatory burden?

MS. KENYON: Yes.

CHAIR JOHNSON: Okay. I personally like option 2.

COMMISSIONER THOMPSON: Me too.

COMMISSIONER GIARD: Okay.

CHAIR JOHNSON: Moving forward and perhaps to one of the more difficult issues our carrier of last resort.....

COMMISSIONER HARBOUR: I just -- as we.....

CHAIR JOHNSON: .....discussion.

COMMISSIONER HARBOUR: .....turn to that, Mr. Chairman,.....

CHAIR JOHNSON: Commissioner Harbour.

COMMISSIONER HARBOUR: .....I'd like to make note of the note that Staff put in there about considering option 2 for the IXC.

CHAIR JOHNSON: Yeah. Carrier of last resort, I will -- at the risk of always serving as some sort of a lightening rod, I'd -- and I know that the analysis suggests that the option 3 proposed by GCI in Docket R-02-06 has some -- requires some filling out, but I can tell you that I'd sure like to start from -- philosophically that's where I like to start from is I think there ought to be an effort on our part to develop some sort of framework to provide for sharing of carrier of last resort responsibilities in certain markets. With that I'll invite comment.

COMMISSIONER THOMPSON: Did you just support option 3?

CHAIR JOHNSON: I think so. With -- and I acknowledge that it's deficient and I think that that's -- in terms of specifics, but.....

COMMISSIONER STRANDBERG: You mean it's just not developed enough?

CHAIR JOHNSON: Well, obviously Staff points out that there are problems with what is advanced here by GCI.

COMMISSIONER HARBOUR: Mr. Chairman, I think option 5 that Staff suggested gives the Commission the option of going toward a 3 direction or a 6 direction.

COMMISSIONER THOMPSON: And I would also -- I had marked

option 5 because I think -- I agree that a 35 percent bench mark's a good standard, it's one we should apply, but it may not in all circumstances to be appropriate to shift the burden when you reach the -- that limit or that number and number 5 allows you to take that into account.

COMMISSIONER GIARD: Well, Mr. Chairman, I think I'm comfortable with the 35 percent that GCI came up with. I'd be comfortable with option 3 if we were to review it. I'm concerned that we are still requiring ourselves to, you know, make decisions on items and not have enough triggering mechanisms.....

COMMISSIONER THOMPSON: Uh-hum.

COMMISSIONER GIARD: .....in and so.....

COMMISSIONER STRANDBERG: Right.

COMMISSIONER GIARD: .....I'm concerned that those can become long, drawn out battles when maybe somebody doesn't want to become a carrier or share the carrier of last resort.

COMMISSIONER THOMPSON: Your point is well taken.

COMMISSIONER STRANDBERG: And I concur with Commissioner Giard, I think I do support the 35 percent, it's more of a definitive treatment.

COMMISSIONER THOMPSON: Okay. It sounds like you got.....

CHAIR JOHNSON: Well, but -- you know, I guess the part for me is yeah, if you look at this you get to a 35 percent threshold and the important part is then what, you know, then

what do we do.

COMMISSIONER THOMPSON: Okay. Well, that.....

COMMISSIONER STRANDBERG: It's not developed enough,.....

CHAIR JOHNSON: Yeah.

COMMISSIONER STRANDBERG: .....but I think the basic concept is that we provide a trigger.....

COMMISSIONER GIARD: Right.

COMMISSIONER STRANDBERG: .....and we give some additional direction to the market.

COMMISSIONER THOMPSON: How about we say to Staff that we like option 3, but we would ask them to the extent that they're able, to flesh it out a little bit, explain what happens when you get to 35 percent. In other words, do you end up with a proceeding, do you end up with -- what do you share, how do we decide what you share?

COMMISSIONER STRANDBERG: And how do you share.

MS. KENYON: We can come up with proposals, but the more that you can talk about that now and tell us what you like that would help. For example let's say that we have a -- I think you two types of situations that come to play, one is where you've got a new exchange and you try to figure out who has to be the carrier of last resort.

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: And then you've got line extensions where you have to figure out who gets to serve a subdivision that nobody

wants to serve.

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: Or is it a question of do you -- if you have a volunteer, if your existing carrier of last resort comes forward and installs a facilities, is that a situation where you're happy and will let them do that or do you insist upon them sharing in some monetary manner where they come in. I -- it's just such a broad question, it would help me if you.....

COMMISSIONER THOMPSON: Well, it would also -- I think would help to frame the discussion if you talked about what being carrier of last resort means and maybe your two examples -- I mean, it means that you have to serve everybody that's in your service territory, right?

MS. KENYON: Right. And as an ETC they already have that responsibility under reasonable request.

COMMISSIONER THOMPSON: Right.

COMMISSIONER STRANDBERG: And.....

MS. KENYON: So I think what we're talking about is who gets to build, I think that's where the issue is here.

COMMISSIONER STRANDBERG: And is that in -- are we going to differentiate between competitive and noncompetitive areas or does that -- obviously, I mean, if we're in noncompetitive areas we are going to have an exchange?

MS. KENYON: If you're in a noncompetitive area then you don't have anybody else putting forth.....

COMMISSIONER STRANDBERG: Right.

MS. KENYON: .....a carrier of last resort -- you don't have any other carrier of last resort but the incumbent, so it would only be in competitive areas this would come up.

COMMISSIONER STRANDBERG: Right.

CHAIR JOHNSON: Is it appropriate to say that -- use your phraseology, you said who gets -- in case of new areas who gets to serve, is it not better to put that in terms of who is required to serve?

MS. KENYON: Who has to build.

COMMISSIONER THOMPSON: Right.

CHAIR JOHNSON: Yeah, yeah.

MS. KENYON: In every market -- competitive market that you have, you have at least two fairly -- two carriers with fairly strong presence that are both ETCs. So you have two carriers that are required to serve a customer upon reasonable request. What comes into play is where -- which one -- which carrier has the obligation to build out facilities to meet the needs of the public and it -- in some areas there's a little bit of overlap too because obviously in your ETC proceedings how -- who has to build has come into play though the requirement is that you only to own some facilities, you don't have to build facilities, you just have to serve by resale. It may -- I mean, plus some (ph) facilities for an ETC. I'm not sure I've explained that very well, but.....

COMMISSIONER HARBOUR: To help you I think we need to make a fundamental decision before going on to the details and that goes back to the lines definition. If we're going to include wireless in that then a -- 35 percent is composed of wireless then provisioning wireline is a non-issue.

COMMISSIONER STRANDBERG: And I would comment that actually this technology transparency issue to a certain extent when we talk about these ETCs, you know, we've had recent dockets where we've got the build out by -- for example wireless carriers is considerably different from the build out in a wireline carrier.

COMMISSIONER GIARD: I would make an adjustment to GCI's -- I'm not quite sure why the last sentence on option 3 is there, but I would delete it. I'm not really sure why to the extent that a non-dominant carrier contributes to a carrier of last resort obligations a non-dominant should receive appropriate discounts or credits. I don't know that that should be mixed up in there if we are considering GCI's recommendation. I.....

COMMISSIONER THOMPSON: Well, that's part of the commercial relationship between the two of them and I think I agree with you that I don't --.....

COMMISSIONER GIARD: Right. They can.....

COMMISSIONER THOMPSON: .....I don't know if I want to get involved in that.

COMMISSIONER GIARD: I wouldn't want to put that into regulation in particular, let them battle that out.

CHAIR JOHNSON: Well,.....

COMMISSIONER GIARD: No offense, Mr. Chairman. I was comfortable with the bench marking concept.....

CHAIR JOHNSON: Okay.

COMMISSIONER GIARD: .....I guess is what I would like to say.

CHAIR JOHNSON: Let me -- and I'm -- at the risk of sort of speaking out loud here and I -- nobody can be held responsible for this, I just want to throw this out as an idea. Is -- if, in fact, we have a circumstance where the 35 percent threshold is exceeded and the trigger pulled if you will, what is the problem with this Commission on a periodic basis.....

COMMISSIONER GIARD: Right.

CHAIR JOHNSON: .....sitting down and conducting a proceeding for purposes of assigning by geography carrier of last resort obligations to various areas and then allocate the cost -- and we might have to look backward at this, but based on market shares that currently exist. If you have two carriers and one has 40 percent of the market and the other one's got 36 percent of the market, why wouldn't we go and assign those responsibilities based on those percentages and we could look at the costs, I guess, on a cost basis. Is that too complicated? Extremely.

COMMISSIONER THOMPSON: It's kind of what I was thinking. It's an intriguing concept and it would certainly achieve a fair result, but is it worth the complexity.

CHAIR JOHNSON: Yeah.

COMMISSIONER THOMPSON: I mean, there's a lot of ways you could do it, one is you could say okay, every time there's an unserved area you have to do one, you got to do the next one.

CHAIR JOHNSON: Right.

COMMISSIONER THOMPSON: Just do one after the other. The other issue take a map and you say where's the -- you know, the unbuilt areas, we're going to carve those up. And you take some risk that no building's ever going to occur in some of those areas, but you decide that the perfect is impossible to achieve or at least not worth the cost. And you do it -- I don't know how often this is really an important issue in competitive markets. I can recall a couple of times in the last years where it's come up.

CHAIR JOHNSON: Yeah.

COMMISSIONER STRANDBERG: Right.

CHAIR JOHNSON: I can tell you that I'm looking at a similar kind of concept in the IXC context, with us conducting a.....

COMMISSIONER STRANDBERG: Right.

CHAIR JOHNSON: .....comparative hearing.....

COMMISSIONER STRANDBERG: One.....

CHAIR JOHNSON: .....to address these issues.

COMMISSIONER STRANDBERG: .....issue is.....

CHAIR JOHNSON: Where are we?

COMMISSIONER THOMPSON: She couldn't hear your last comment.

CHAIR JOHNSON: I am looking at this concept in the context of the IXC marketplace where it would involve us conducting a comparative hearing on a period basis, it might be annually to basically assign responsibilities for carrier of last resort by geography or other means.

COMMISSIONER STRANDBERG: I would make the comment that we're kind of dealing with different animals here. In the LEC situation.....

CHAIR JOHNSON: Yeah, sure.

COMMISSIONER STRANDBERG: .....in competitive areas we have -- if I can use the term incumbent, that actually owns the network and the way that we've been having competition actually developing is either through resale or through UNEs or indeed we have the concept of other platforms coming in, another -- indeed different technologies serving. So I think that just blithely (ph) saying that we're going to share this carrier of last resort, we're going to have to consider actually the implementation of that. Indeed if we have a subdivision coming into existence how does that work, does the subdivision developer put the lines in and then bequeath them or put them

into the network or does the utility purchase -- build that build out, the owner of the network. Is it right that we would require somebody who's renting the majority of their network to actually do the build out. Any comments on that, Ms. Kenyon?

MS. KENYON: I agree completely that there's a lot of unanswered questions. It almost seems to me that you're being asked to buy a blind pig in a poke, you don't have a good proposal before you, but you're being asked to agree with it essentially in philosophy and the details may not work out well. For example the telecommunications plant, some of it lasts up to 40 years, that may implicate how often you want to look at the carrier of last resort who has to build -- there's -- how they even interconnect their physical facilities. And what if the customers want one but not the other in an area that you've assigned carrier of last resort.....

COMMISSIONER STRANDBERG: Right.

MS. KENYON: .....responsibilities to company A instead of B.

COMMISSIONER STRANDBERG: I think this is one where yes, we need -- this is a good idea to share this carrier of last resort, but the actual development of the rules here are going to be very complex, very difficult.

COMMISSIONER HARBOUR: This is why, Mr. Chairman, that while I like others am attracted to the concept of a trigger, because one likes triggers doesn't necessarily mean that a

trigger applies in every instance. And in this case I think this discussion we've had illustrates exactly why Staff recommended option number 5 because it acknowledges that within the Commission resides the ability on a case by case basis to make these decisions. And if we come up with any kind of a concept, any kind of a concept that I've heard mentioned today, you do -- you provision this one, you provision this one, what I -- we should be looking for simplicity out of this whole project, not added complexity. And the minute we -- the minute somebody hits a 1/3 or 35 percent trigger and then is told that every other one you're going to have to do they're going to argue that only every third one should they have to do. And then because some divisions are more expensive than other subdivisions they're going to argue that there's a valuation difference. And we've discussed that and we've all agreed it's an interesting concept, but not nearly well enough fleshed out to suggest and draft regulations at this time. So I stay with option 5 for that reason.

COMMISSIONER STRANDBERG: Well, let me ask this question, is this something that we have to put regulation -- draft regulations out under this docket? I believe it's already in one of the other dockets, is it not

MS. KENYON: If you're trying to get away from a dominant status, dominant carrier status and if you accept Staff's recommendation of how you define dominant carrier, then in some

markets for some services you might not have a dominant carrier in which case you have to change -- if you want a carrier of last resort you're going to have to make a change because right now it's based on dominance.

COMMISSIONER THOMPSON: So my comment is then if we're not going to make much more progress because there's too many details to flesh out today, for purposes of drafting regulations that go out to notice that we go back to 5. And there's certainly the opportunity in the context of those comments for any party to submit a more completely detailed proposal that might become acceptable, but we're not going to figure that out today.

CHAIR JOHNSON: Yeah.

COMMISSIONER STRANDBERG: No.

CHAIR JOHNSON: I think it's just concluding, and I agree with that, I do think that we could have an entirely -- we'd have an extremely large and detailed and anguishing inquiry if this were the only issue in a docket.....

COMMISSIONER STRANDBERG: Right.

CHAIR JOHNSON: .....and so I.....

COMMISSIONER HARBOUR: Mr. Chairman, I had one thing we haven't spent much time discussing, one of the carrier of last resort options suggested by at least one and I think a couple of the parties which involved the application of AUSF as the way to solve it. And we haven't even gone into that and

that.....

CHAIR JOHNSON: Yeah.

COMMISSIONER HARBOUR: .....could be part of a formula that was triggered too. So with that in mind I think option 5 gives -- makes all that available.

COMMISSIONER GIARD: Well, I don't like option 5, I don't think it moves, I don't think it does anything.

CHAIR JOHNSON: I would say this that option 5 is consistent with the legislative intent, House Bill 111.

COMMISSIONER GIARD: I think we're well beyond option 5 in a couple of our markets, I don't think that it's -- I mean, we're going to have to hold an entire hearing to determine whether, you know, we should have carrier of last resort sharing in the Anchorage market. And just.....

CHAIR JOHNSON: And that could be a --.....

COMMISSIONER GIARD: It's against (indiscernible) market.

CHAIR JOHNSON: .....that could be a detailed inquiry. I mean, we're talking about significant burdens. I -- and we may want to put together a much more -- a much deeper record than what we -- on that subject to make that determination. That's just my thought on it, I don't know if we have quite enough to go on to figure out to assign those responsibilities based on what's been offered here.

COMMISSIONER STRANDBERG: And if I remember the actual hearing there were some questions asked and I think the

industry people themselves said well, we haven't got that developed, but there's a -- there may be a way that we can get together and develop this and I would just advocate that approach, that we put something in here that makes everything hang together and then hopefully we will be able to work with the industry and -- to actually develop some decent rules that work.

COMMISSIONER GIARD: Well, Commissioner, I think that that's what has already been done and the industry has come in and carrier of last resort was a pretty significant item. And I guess putting the regulation together which says that, you know, until the Commission directs otherwise, it's basically saying well, we'll just sit and wait for the industry to come forward again. I mean, I imagine ACS will be in here the day after saying, you know, we'd like to share the responsibilities. GCI came forward with a very responsible recommendation and -- so anyway. I'm -- I just -- I mean, I see a trend developing that I'm concerned with which is that, you know, many of the particularly key components because we're under the burden of time, I worry that we're not going to flesh them out as well as maybe we could.

CHAIR JOHNSON: Well, it.....

COMMISSIONER THOMPSON: Well, you're right, but we also need a good record in order to flesh it out and I think the most responsible thing to do at this point since we're under a

deadline that the Legislature gave us is to get something out.

COMMISSIONER GIARD: Okay.

COMMISSIONER THOMPSON: And we'll have plenty of time, we'll get comments and we'll have plenty of time to talk about this again several times I'm sure before we reach a conclusion. I agree absolutely that ultimately just saying we'll figure it out later is not the right answer, but I don't think we have before us a record that'll --.....

CHAIR JOHNSON: Right.

COMMISSIONER THOMPSON: .....would allow us to figure it out today.

CHAIR JOHNSON: If I might I think -- and in fairness I think from my perspective we've already made some significant decisions even here today. And I know that there's always going to be somebody that's going to be satisfied we didn't go further, but when looked at in the aggregate I think this work product will reflect a fairly substantial shift in a number of areas.

COMMISSIONER GIARD: Okay.

COMMISSIONER HARBOUR: Mr. Chairman, I just had one comment especially for the record today. The AUSF concept as it applies to carrier of last resort is an important new idea. It was not submitted in great detail nor was there a formal proposal as to exactly how it would be executed nor any representation of industry consensus. If parties want us to

seriously consider that then I think our process is going to allow some coalition of thinking to occur on that subject. And that could well be the answer to a lot of the complexity that we've discussed. And although it presents some challenges, but I think option 5 keeps the door open, it's a place marker as Commissioner Strandberg referred to and it does not prohibit us as Commissioner Giard is concerned for developing a final resolution being as that the Legislature required the implementation of draft.....

CHAIR JOHNSON: Yeah.

COMMISSIONER HARBOUR: .....regulations by November 15th, not final regulations.

CHAIR JOHNSON: Just to -- maybe the last word on this, I'd.....

COMMISSIONER GIARD: You think you're going to get the last word.

CHAIR JOHNSON: I'm not sure. I do believe.....

COMMISSIONER GIARD: I'm comfortable with that.

CHAIR JOHNSON: .....from the comments made earlier that there is a lot of support here on the panel for some sort of trigger and I think there's -- you know, we need to pick up and move with that, I'm just not sure if we're capable of moving on that one today.

COMMISSIONER GIARD: Okay. I'm gone -- I'm good.

CHAIR JOHNSON: Okay.

COMMISSIONER THOMPSON: We've got to rock and roll, we're not even halfway through.

CHAIR JOHNSON: We are cruising.

COMMISSIONER STRANDBERG: Yeah, but she wants us to rock and roll.

CHAIR JOHNSON: I've turned the page, I'm on page 42.

COMMISSIONER THOMPSON: Yeah, I am too, but you're still not halfway through.

COMMISSIONER HARBOUR: We done all the hard stuff though.

COMMISSIONER STRANDBERG: Commissioner Giard, are you able to move us forward?

COMMISSIONER GIARD: Oh, I didn't know.....

COMMISSIONER THOMPSON: Crack that whip.

COMMISSIONER GIARD: .....that my job -- okay. They just only do that to stop me talking about the other thing. It's a ruse, I'm aware of it though. Section 53.290(e) statement that no implicit modification of waivers are intended. The Staff recommends retain provision (e). Does anybody have any comments about this section at all?

CHAIR JOHNSON: No, I like the Staff recommendation.

COMMISSIONER GIARD: Okay. I have some discussion on notice requirements.

CHAIR JOHNSON: Notice requirements.

COMMISSIONER GIARD: Pardon me.

CHAIR JOHNSON: No, go ahead, Kate.

COMMISSIONER GIARD: There was kind of just housekeeping change frankly that was recommended by the Staff and ACS and the Rural Coalition. Does anybody have any discussion about this particular area? No. Okay. Seven day rule for transferring customers. Okay. There -- option 3 is no changes are proposed which is the Staff recommendation.

CHAIR JOHNSON: Yeah, I think that's the -- probably the wise course because I do think that the other two options although they may have some interest were both propounded in a different docket and maybe they need to be addressed there. I think that the prudent course here is to go with option 3 and note the -- that the triennial review may be involved in this.

COMMISSIONER THOMPSON: Well, there's a number of things. It's -- we may -- there's a hot cut process that we will have to -- issue we'll have to address out of that order. The 7 day rule, there's a couple of dockets that it's been -- an interpretation of it has been at issue.

COMMISSIONER STRANDBERG: Yes.

CHAIR JOHNSON: Okay.

COMMISSIONER THOMPSON: It may end up getting changed, but not here.

COMMISSIONER GIARD: Okay. Item number J, section 53.299 definitions.

COMMISSIONER STRANDBERG: Excuse me, Commissioner Giard, I think we had some other miscellaneous changes.

COMMISSIONER GIARD: You know I just ignored it because I know we're going to go into corporate restructure. Does anybody have any problems with.....

COMMISSIONER STRANDBERG: No.

COMMISSIONER GIARD: .....or discussion on definitions?

COMMISSIONER STRANDBERG: Commissioner Harbour, did you want to talk about definitions today?

COMMISSIONER HARBOUR: Again?

COMMISSIONER STRANDBERG: But we need to move on, I shouldn't be.....

COMMISSIONER GIARD: Okay. We're into the area of restructuring freedom.

CHAIR JOHNSON: Oh, your favorite.

COMMISSIONER THOMPSON: Passed the halfway mark, no we didn't.

COMMISSIONER GIARD: Okay. The issue that's before us is should the Commission amend its rules to allow a greater degree of structural freedom. And there were -- recommendation of the Staff at this time is to make no change, is there discussion on the other options that were presented by the industry?

CHAIR JOHNSON: I would just -- from my perspective on this docket I'd -- I do believe that the Staff accurately points out that this matter may be outside the scope of the requirements of House Bill 111. And without really reflecting on the merits of the proposals I think we'd be wise not to

embrace some of this stuff right now. We've got other stuff.....

COMMISSIONER GIARD: Okay. So we're moving onto bundling. Bundling.

CHAIR JOHNSON: We are -- are we not cruising now?

COMMISSIONER THOMPSON: We're almost to the halfway point in Staff's memo. It's.....

COMMISSIONER GIARD: Okay. On page 50, issues A, should the bundling of local exchange and intrastate interexchange service be allowed in competitive service areas, if so, should there be any restrictions. And I think from my perspective there was a lot of information that probably came to the Commissioners prior to my being seated here about this. It was a very interesting area,.....

COMMISSIONER THOMPSON: Uh-huh.

COMMISSIONER GIARD: .....I couldn't see why you wouldn't allow it.

COMMISSIONER THOMPSON: Long story.

COMMISSIONER GIARD: I gathered that. So I'll just let you guys kind of discuss that.

COMMISSIONER STRANDBERG: (Indiscernible) background.

COMMISSIONER THOMPSON: So does that --.....

COMMISSIONER GIARD: Seemed logical to me.

COMMISSIONER THOMPSON: .....is that an expression of support on your behalf for option 1?

COMMISSIONER GIARD: Yeah, I don't --.....

COMMISSIONER THOMPSON: Okay.

COMMISSIONER GIARD: .....I knew that I didn't know enough about it because it seemed pretty easy to me to make a decision so I knew that I was missing something. What in particular am I missing, there's something geographic averaging, is that what really is the barrier here?

COMMISSIONER THOMPSON: Part of it. And part of it is you're coming into it when there are -- there is competition. And the history -- the time -- it's a timing issue like it is with a lot of things, you know, when is the market committed and we need transition, but I don't think there's much disagreement that it's appropriate for competitive service areas.

MR. GAZAWAY: Can I give you some historical perspective on it? It was introduced when several incumbent local exchange companies were seeking IXC certificates and competition was in its infancy so to speak, wasn't -- wasn't in existence in any area except for Anchorage. And as a means of insuring that the incumbent local exchange carrier did not use its point -- its role as the primary point of customer contact and control of their essential facilities for an unfair competitive advantage, at that time the Commission, which was actually the APUC, decided it was appropriate to restrict the incumbents from bundling local exchange and long distance services. That's

just basically your historical basis for that restriction.

COMMISSIONER STRANDBERG: I believe -- correct me if I'm wrong, but the reason for the bundling restrictions was -- was that on the LEC side or was that on the IXC side?

MR. GAZAWAY: There were restrictions imposed on interexchange carrier certificate, in other words they applied to be -- local exchange carriers applied to have a interexchange carrier certificate and as part of that approval process restrictions against bundling were imposed along with the restrictions you just glazed over on corporate freedom, restructuring freedom.

MS. KENYON: Imposed on the local carrier.

COMMISSIONER STRANDBERG: On the LEC?

MS. KENYON: Local carrier.

COMMISSIONER THOMPSON: Right.

MS. KENYON: Yes.

COMMISSIONER STRANDBERG: Right. Right. That was -- I was trying to remember which -- where the restrictions were.

MR. GAZAWAY: The restrictions were placed on the interexchange carriers approval process, actually it was imposed in the dockets addressing the interexchange carrier's applications.

MS. KENYON: Right.

COMMISSIONER GIARD: I have a question for Staff if I may, it says here bundling makes it nearly impossible for the RCA to

insure that USF funds are only used for intended purposes.

MR. GAZAWAY: Unrestricted bundling where you don't have any kind of cost allocation between your different revenue sides?

COMMISSIONER GIARD: Right.

MR. GAZAWAY: That point was actually raised by the Rural Coalition.

COMMISSIONER GIARD: I saw that.

MR. GAZAWAY: And their -- I believe their perspective on that is if you do not know what portion of the revenues from a bundled package are allocated to the local exchange side you have a harder time determining their revenue picture for determining USF needs and whatnot.

COMMISSIONER GIARD: How did Staff overcome that and make the recommendation that they made which was option 1, are they comfortable with that?

MR. GAZAWAY: You mean as far as allowing it? Well, that goes to the next question which is what restrictions should you impose once you decide.....

COMMISSIONER GIARD: Okay.

MR. GAZAWAY: .....to allow it.

COMMISSIONER GIARD: Should we just move on? Is there any discussion with Staff recommendation of item number 1, which is to allow bundling of services in competitive areas?

CHAIR JOHNSON: Well, at the risk -- I just want to ask

the Commission, there is a complete and open docket at this time that addresses bundling. Bundling is not, to my knowledge, mentioned in House Bill 111 at all. I don't know how efficient it's going to be for us to try to embrace and decide this issue in this docket when there are other avenues, I mean, they're not imaginary, they're actual dockets in front of this Commission that we can pick up this issue at anytime and pursue it in greater depth. I would note that based on the comments there's only one proposal by the commentors, it's reflected in here today as it pertains to bundling. I just -- I'm pretty uncomfortable in proceeding on this basis.

COMMISSIONER THOMPSON: The reason Staff has it included in here at the risk of speaking out of turn, is that it really fits -- it's an issue that fits in with all these other ones and it makes sense to think about them at the same time if what you're trying to do is comprehensive restructuring. It -- I'd rather see us do -- I think we could do a better job if we thought about all the important issues together rather than saying we don't have to do that one now, let's just skip it. And then you have to come back and figure out how to fit it in. This is one that -- it's an important part of how carriers operate in competitive markets.

MS. KENYON: The only -- pardon me, the only thing I would add is that for example let's say you thought that bundling was so important that you wouldn't allow it or that you had -- you

would allow it under strong restrictions, that may affect your decision on whether or not you want to deregulate certain services and under what conditions.

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: You just -- those seem to go together in some degree.

COMMISSIONER STRANDBERG: Well, it -- again it seems that maybe we don't have, you know, complete draft regulation on this, but certainly we're going to be hard pressed not to allow it. It, in fact, is occurring and indeed the definition of what bundling is now is quite different from what it was even two years ago given the changes in technology. So I guess I'm going to have to support the Staff recommendation on this one, I think they're reading the tea leaves so to speak in a lot of ways.

COMMISSIONER GIARD: I think they're reading the tire tracks on the road, I mean, bundling it happens and it's just the way life is today.

MR. GAZAWAY: Can I point two things out regarding this? One is that.....

COMMISSIONER STRANDBERG: Yes, Mr. Gazaway.

MR. GAZAWAY: First of all let me say I don't think you necessarily need a draft regulation, this rule is not in the regulations right now.

COMMISSIONER THOMPSON: Uh-hum.

COMMISSIONER STRANDBERG: Right.

MR. GAZAWAY: And you're --.....

COMMISSIONER THOMPSON: Right.

MR. GAZAWAY: .....there are some bundling inquiries underway at the federal level. If you were to adopt a regulation you would have a harder time changing those rules because of the process involved in regulations than you would if you were to issue a Commission order addressing the issue. That being first that -- the second thing I guess I would point out that -- I didn't mean to bore you, but the second thing I would make out is I kind of do think this is ripe, this is an issue that if I can speak for one of the carriers, I think they have raised it as a issue of competitive parity and they are very concerned with the Commission's -- well, I hate to use this term, creditability, but regulatory lag in dealing with it. So I think at least in competitive areas there is some urgency to find a resolution.

COMMISSIONER STRANDBERG: So if we don't have any draft regulations how are we dealing with it?

MR. GAZAWAY: That goes back to the first point.....

COMMISSIONER THOMPSON: On a case by case basis.

MR. GAZAWAY: .....which is I don't think we need to do it through draft regulations, we can do it in the order that issues the other regulations for comment. I should probably defer to Virginia on that, but that would be my take.

COMMISSIONER THOMPSON: No, it's been -- if you'll recall it comes up in the context of tariff reviews and I would -- it's been handled on a case by case basis. I'm sorry.

MS. KENYON: Oh, while she's thinking about whether we should allow bundling by order or by regulation, just to point out the time lines, if you want a complex order on bundling November 15th is coming awful quick.

COMMISSIONER GIARD: How about a simple order on bundling. Let's.....

COMMISSIONER HARBOUR: Well, Mr. Chairman, I think if we again put the Staff recommendation in as a place keeper, if we -- we can through the -- after the draft is initiated and through the following comment period, if in that period of time an order is issued then that makes the regulatory approach moot. But meanwhile we have a place keeper.

COMMISSIONER GIARD: I think those local competitors who want to bundle will probably make recommendations for us if we put it in there as a place holder. I think if they didn't I would be very disappointed.

COMMISSIONER STRANDBERG: And what do you mean by put -- I mean, what do you -- what would you mean by putting it in as a place holder, would that.....

COMMISSIONER GIARD: We just say.....

COMMISSIONER STRANDBERG: .....be a statement in our order just.....

COMMISSIONER GIARD: I think just allow bundling of services in competitive areas. I don't know, Virginia knows and so we send something out there.

MR. GAZAWAY: I guess my inquiry is are you actually -- are you assuming that they haven't commented on the bundling issues, that's --.....

COMMISSIONER GIARD: No, they've commented.

COMMISSIONER THOMPSON: Right.

MR. GAZAWAY: .....this binder here is all comments on bundling.

COMMISSIONER THOMPSON: No, there's a lot of comments on it.

CHAIR JOHNSON: Yeah.

COMMISSIONER GIARD: Okay. So it's well commented on. Maybe we should move onto the next issue (indiscernible - simultaneous speech).....

COMMISSIONER THOMPSON: I think that's a good idea.

COMMISSIONER GIARD: .....bothering us. How should geographic rate average discrimination issues be addressed.

CHAIR JOHNSON: I think that the caterpillar just ran over me so that's all right.

COMMISSIONER THOMPSON: So we read the tire tracks? I like that one.

COMMISSIONER GIARD: Okay. The Staff have a variation which is an option 2. There's a UUI variation and a Staff

variation of option 2. So -- I'm sorry, we're on page number 55.

COMMISSIONER THOMPSON: I guess I've got a question which is if you're going to require them to offer those services in a bundled packaged also individually, doesn't that kind of undermine the ability to bundle?

MR. GAZAWAY: That actually goes to not necessarily -- are you talking about the last sentence that --.....

COMMISSIONER THOMPSON: Right.

MR. GAZAWAY: .....of option number -- the Staff's variation of option 2? That actually goes to not necessarily the carrier -- the larger carriers that you're used to dealing with here, we had an application process at one time where a carrier proposed to come in state and wanted interexchange and local exchange certificates and the only way you could get local exchange service was to take it along with their interexchange service. That's what that sentence is intended to address.

MS. KENYON: So would it be fair to say that you're talking about having a discrete service offering, but it might be at a different rate than in the bundle?

MR. GAZAWAY: I'm sorry, say that again?

MS. KENYON: Is it fair to say then that you'd have a discrete -- if you had this example, local and IXC services in the same bundle, they'd have to have discrete offerings for

local and for IXC, though it may be at a different rate than what's in the bundle, is that what you're trying.....

MR. GAZAWAY: Well, actually you put the sentence in, I've had a hard time responding to that.

MS. KENYON: Well, no. My concern was what he was saying is that if you allow the consumer to be able to purchase an unbundled service is they want to and that you're not forcing them to buy this bundle, that's what that was intended to be?

COMMISSIONER THOMPSON: Uh-hum. I think that's kind of what the point of bundling is from the company's perspective though. They figure out what they can offer economically as a group and.....

MS. KENYON: Well, that's -- you're not saying they couldn't bundle, but you're saying that if you do bundle you also have a separate service off -- a separate plan for (indiscernible) service or a separate rate that says okay, I can also buy this individually if I want to, I'm not forced to all buy the bundle and only buy the bundle.

MR. GAZAWAY: Let me rephrase that. I think the question is can they only allow bundled offerings and no other services period.

COMMISSIONER STRANDBERG: This may be a question of letting go.

COMMISSIONER THOMPSON: Yes.

COMMISSIONER STRANDBERG: I mean, if it's a competitive

market this may be the time just to -- okay, we're going to stand back and let them duke it out on a competitive level.

COMMISSIONER THOMPSON: Stand back and watch the train wreck.

CHAIR JOHNSON: Here, here.

MR. GAZAWAY: So I guess my question would be does that mean you're going back to option 1?

COMMISSIONER THOMPSON: No, I think that what I'm talking about is option 2 without the last sentence.

COMMISSIONER STRANDBERG: Right.

MR. GAZAWAY: So the option 2, UUI, United Utilities variation?

COMMISSIONER THOMPSON: No. Option 2, staff variation without the last sentence.

MR. GAZAWAY: That's option 2,.....

COMMISSIONER THOMPSON: Okay.

MR. GAZAWAY: .....UUI's variation.

COMMISSIONER THOMPSON: Okay.

CHAIR JOHNSON: Yes, I'm sorry, so did we go with option 2.....

COMMISSIONER THOMPSON: Well, we haven't voted yet on option 2, UUI, which is very similar to option 2,.....

CHAIR JOHNSON: Yeah.

COMMISSIONER THOMPSON: .....GCI.

CHAIR JOHNSON: Okay. Further thoughts by the Commission?

MR. GAZAWAY: And I think you could have basically implied option 2 for GCI and UUI are the same, it's just UUI stated it a little more refined.

COMMISSIONER THOMPSON: Yeah, I'm having trouble understanding the difference and the difference is the words at rates specified in the bundle. The problem with that is if it's a bundle.....

COMMISSIONER GIARD: Right.

COMMISSIONER THOMPSON: .....you don't specify individual rates. So I'm not quite sure how that works.

MR. GAZAWAY: No, we recommend that they do specify individual rates. For one reason for allocating the revenues amongst different jurisdictions.

COMMISSIONER THOMPSON: Okay.

COMMISSIONER STRANDBERG: Allocate revenues between different jurisdictions?

MR. GAZAWAY: There's kind of two issues involved too, they also have to determine what long distance rate is applicable because -- this is where I probably -- because they want to -- we want to make them have that rate available statewide, not just in competitive areas and so without knowing what the rate is obviously you can't do that.

MR. TREUER: It may be useful to distinguish between bundling where you have a single rate for two services and tying where you have a package where you're required -- in

order to get one service you're required to get the other service, but you have two separate rates within the bundle.

2700

(Tape change)

Tape 4

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COMMISSIONER HARBOUR: Question, if the bundle is for local and long distance service, local implies that you've got a local service area somewhere. If you've got a local service area somewhere how can you separate -- how can you make that rate available statewide if you don't serve statewide locally. You just serve a local area. And therefore if it's a bundle and you can't force 'em to make the bundle available because of the long distance capability in Barrow if the -- if the local area that's part of the bundle is Anchorage because there is no local service in Barrow by that carrier.

MS. KENYON: And I think what they're saying is they wouldn't have to serve -- they wouldn't have to sell the local part of it statewide, only the long distance part.

COMMISSIONER HARBOUR: But I don't think that's what we've just been discussing as being distasteful to us is forcing them to because the bun- -- the economy to the company of the bundle is the bundle not to our forcing them to split apart the bundle and saying that economy you achieve in the bundle now we want you to make it available unbundled up in Barrow.

COMMISSIONER STRANDBERG: Well, I don't think --.....

MR. TREUER: But that's -- that's where we run in.....

COMMISSIONER STRANDBERG: Excuse me. I'm not sure that's where we've arrived. I think where we arrived was -- at least what's on the table now I believe is a requirement for the long distance rates to be expressed in the bundle so that we can verify that, in fact, they are providing those under our geographic rate -- under our milage -- with the mileage rates, is that's correct? It's unartfully stated.

MS. KENYON: I think you're both correct. We're talking about if you have a long distance offering within the bundle how will you figure out that you maintain geographic averaging across the state unless you offer that rate everywhere.

COMMISSIONER HARBOUR: Right. And if you do that you defeat the purpose of the bundle to the company.

MS. KENYON: Not in the local market per se.

COMMISSIONER HARBOUR: Right.

MS. KENYON: In the local market those customers get the advantage of both.

COMMISSIONER HARBOUR: Well, the company gets the advantage of selling both as a bundle in the locally served area, but if it's forced to split out an offer -- the long distance component statewide, it may mean that -- it may be to that company stand alone long distance at that rate segregated out of the bundle is not economic to the company.

COMMISSIONER GIARD: Okay.

MR. TREUER: That's part of geographic rate averaging, I mean (ph).

COMMISSIONER GIARD: Right. I think I've just got to tell you what my goals are for bundling. I think it would be decent to be able to have one somebody, I don't care GCI, ACS, I don't care who, to be able to put together long distance and local in the market. And as long as they could do that and sell it as a bundle that would be fine.

I imagine that all of the industry understands geographic rate averaging and what they have to do for access charges far better than I do and they understand that always has to be some kind of separate component 'cause that's particularly for Alaska. So I don't think that it's anticipated by the industry that they would price their -- that rate for long distance would go down. I don't.....

MS. KENYON: Well, just to add more background here we regularly have been recommending suspension of tariff filings that would attempt to bundle a local market with a long distance service and the only place you could get the long distance service is in the local market because it's not statewide averaged any more. It's limited. You can only get it in Anchorage, perhaps, if that's where the bundle applied.

So I guess the basic question is how do you want do deal with that because either -- I think you either have to have

something like Staff is proposing or you have to sacrifice the statewide averaging.

COMMISSIONER STRANDBERG: Right. And it seems to me that may be a point we want to get to is to really consider do we still want the statewide rate averaging or do we want to let go further and just say this is a competitive market.

COMMISSIONER GIARD: Commissioner Strandberg.....

MS. KENYON: But you also unfortunately have federal requirements that require comparable, if not geographically averaged long distance rates. It's just not the state requirement, though you do have a state statute that says competition should be shared throughout the state.

COMMISSIONER STRANDBERG: So let's just -- while we're here, just quickly let's focus on why we cannot or what are the reasons why we cannot geographically rate the average.

MS. KENYON: I don't have it in front of me, but there is a federal requirement under the Telecommunications Act of 1996 that requires comparable -- I believe it's -- I'd like to have it in front of me instead of trying to quote it from memory. I think Phil is going to get it, but if I understand it, it's either comparable, local and rural long distance rates or it's averaged, the same rates in all areas.

MR. GAZAWAY: It's actually in here. It says on page 51 if you read the last paragraph. It refers to the Telecommunications Act Section 254(b)(3). It's part of the

Universal Service principles and that's basically -- well, let you read for yourself. It's the consumers in all regions of the nation, including low income consumers and those in rural, insular and high cost areas, shall have access to telecommunications and information services including interexchange services and advanced telecommunications and information services that are reasonable 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.

MS. KENYON: And you.....

COMMISSIONER HARBOUR: Okay. Then in a bundle if it can be shown that the components of the bundle, the local and the long distance, of those two components the long distance being advertised for that bundle in Anchorage, for example, that long distance rate does not exceed the statewide average then that should fit within -- safely within the requirements, right, without having to make the carrier offer it statewide.....

MS. KENYON: Wouldn't it be.....

COMMISSIONER HARBOUR: .....at that lower rate?

MS. KENYON: .....lower? Wouldn't you be more concerned if it was lower in Anchorage than it was elsewhere, not over? Let's say they offered a two cent per minute rate in Anchorage and a 15 cent minute rate in Bethel,.....

COMMISSIONER HARBOUR: Yeah.

MS. KENYON: .....you know, there -- there may be -- someone may say that's not really comparable.

COMMISSIONER HARBOUR: It's not because it's part of a bundle. I mean, that is what a bundle is. It discounts the parts in order to provide an attractive product for somebody to buy and if it's not as a bundle lower priced than it's not marketable.

MS. KENYON: Now, I almost hate to say this, but if I'm a bright carrier in the market I know what I would do, I would say all my discounts are on the local side and the long distance rate is what it is and I offer it everywhere if you make me do this. I guess you could have the question come up then whether their rates on the local side get so low that they violate some of the other statutory requirements, but.....

COMMISSIONER STRANDBERG: Well, I -- you certainly satisfied me. I just needed to get indexed on that particular point. Thank you, Lori.

COMMISSIONER GIARD: So shall we leave bundling, Mr. Chairman, or shall we more forward into bundling?

MS. KENYON: If you wouldn't mind clarifying which, if any, of these.....

COMMISSIONER STRANDBERG: Right.

MS. KENYON: .....options you've landed on?

COMMISSIONER STRANDBERG: About the UUI variation.....

COMMISSIONER GIARD: I'm back to option 1, waive it.

CHAIR JOHNSON: I'm not sure if anyone else supports you in that.

COMMISSIONER GIARD: No, I'm -- I was just being facetious. I like we should look at option 2.

COMMISSIONER STRANDBERG: UUI.

CHAIR JOHNSON: I cannot say those initials, so I.....

COMMISSIONER THOMPSON: Oh, me too.

COMMISSIONER GIARD: UUI?

CHAIR JOHNSON: But I like the one with the initials.

COMMISSIONER STRANDBERG: Yeah.

COMMISSIONER GIARD: Okay, all right. Wear 'em down long enough they'll go for UUI.

Okay. Item number B, how should competitive service areas be defined with regard to bundling rules. It's on page 56.

COMMISSIONER THOMPSON: I would note that we have finally passed the halfway mark in Staff's memo. And also note that if the option 4 that we discussed this morning is very similar to what this talks about, a competitive checklist, it might peeler (ph log 400) nicely into this suggestion.

CHAIR JOHNSON: Yeah, there ought to -- I agree there needs to be closely linked -- I mean, I would use the same definition. Same definition to the extent we can.

COMMISSIONER GIARD: Okay. Item number C, should bundling by CLECs be allowed in locations that are not sufficiently competitive to relax the bundling restriction imposed on ILECs.

Try that.

CHAIR JOHNSON: Maybe I'll try this one, the -- on the top of page 57 the Staff notes, this issue involves noncompetitive areas that are not within the purview of House Bill 111 and thus do not need to be resolved within the abbreviated time line provided by House Bill 111.

COMMISSIONER GIARD: Such clever Staff. Let's move on, should the Commission consider any restrictions on the bundling of.....

COMMISSIONER HARBOUR: Excuse me,.....

COMMISSIONER GIARD: Pardon me.

COMMISSIONER HARBOUR: .....Commissioner Thompson made a point that while -- earlier while it may not be fully embraced by 111 language, the spirit of 111 could embrace it.

COMMISSIONER THOMPSON: I'd put this one outside my -- because the issue where it's come up is not whether we should further extend bundling obligations, but where we should relax them and so I'm satisfied if we deal with the relaxation requirements and I'll punt on the others or deal with them later.

COMMISSIONER HARBOUR: Good, okay.

COMMISSIONER THOMPSON: So I agree with Mark (ph).

COMMISSIONER GIARD: The spirit of 111. I mean, with Halloween coming on talking about the spirit of (indiscernible - interrupted).....

COMMISSIONER THOMPSON: So does mean we get to dress appropriately?

COMMISSIONER HARBOUR: So do you want to go to item number D now?

COMMISSIONER GIARD: Okay, yes.

CHAIR JOHNSON: The night terror (ph) of 111.

COMMISSIONER THOMPSON: (Simultaneous speech) good idea.

CHAIR JOHNSON: And we're not talking about cable TV here so we just moved on.

COMMISSIONER GIARD: Okay. They moved us on.

CHAIR JOHNSON: Now, this should be easy, this wholesale pricing stuff.

COMMISSIONER THOMPSON: Yeah, right.

CHAIR JOHNSON: Yeah.

COMMISSIONER GIARD: Okay. Mr. Chairman, Section 53.250 LEC wholesale rate -- service and rates. The Staff has given us some legal cites and come issues. Item number 1 is should the Commission modify its LEC wholesale service and rate provisions. They were on (ph)..... regulated local exchange service with non-regulated services such as cable TV.

CHAIR JOHNSON: Are there opening comments on this? Would it be useful for Staff to make some opening comments, folks?

COMMISSIONER HARBOUR: Yes.

CHAIR JOHNSON: Mr. Treuer.

MR. TREUER: I guess where Staff came down on this as we

noted that under the Telecommunications Act the incumbent carrier is required to provide discounted wholesale services under Section 251(c). And that there seemed to be a conflict with our existing regulations that required other carriers to potentially provide wholesale services.

I think the reason why we had that in regulations is that we pretty much wholesale copied the interexchange market rules and adopted them as our local exchange market rules which -- and our interexchange market rules had a provision for wholesale rates that didn't necessarily -- was not necessarily limited to the incumbent.

We have a problem if we require wholesale rates of, for example, all large local exchange carriers of how we're going to require the pricing. How are we going to require them to price those services.

The incumbent's wholesale price is spelled out in the Telecom Act, but because it's Section 251(c) we can't impose those same pricing standards on non-incumbent carriers so we just took the easy solution of eliminating the requirement for wholesale rates in our local regulations and propose to rely on the wholesale rules that are in the Telecom Act and regulations as specified by the FCC for pricing, so are you still glad you asked.

COMMISSIONER STRANDBERG: That's interesting.

CHAIR JOHNSON: I do know.....

COMMISSIONER THOMPSON: What are you looking for?

COMMISSIONER STRANDBERG: What are you looking for?

COMMISSIONER GIARD: I have the -- do you want to look at the section?

CHAIR JOHNSON: I wanted to look at 53.250.

COMMISSIONER GIARD: I have it.

COMMISSIONER STRANDBERG: Here it is right here.

CHAIR JOHNSON: Thanks.

COMMISSIONER STRANDBERG: How much of a market is there for -- realistically for wholesale services, wholesale rates?

MR. TREUER: By the incumbent or in Anchorage or by CLECs?

COMMISSIONER STRANDBERG: By CLECs.

MR. TREUER: I don't know that any CLEC is offering resold services. They may have it in their tariff, I'm not sure.

MS. KENYON: It may not be much of a market now, but I heard that in various comments that once GCI gets its cable system up and running, allowing local services over the cable, that the incumbents might be interested in purchase of that. Whether that might be by wholesale or UNE rate elements is another story though. I know that AT&T uses the incumbents wholesale quite extensively.

MR. TREUER: Are you talking about, for example, the Aurora Subdivision where GCI built its own facilities and that ACS -- I think this is Elmendorf Air Force base there's a subdivision where GCI built.....

COMMISSIONER STRANDBERG: Right.

MR. TREUER: .....facilities and ACS doesn't have facilities there.

COMMISSIONER STRANDBERG: Well, more than anything I was just trying to glean how much this regulation is actually being used right now, if any and to the extent that if we eliminate it and we transfer back over to the federal what effects, if any, that's going to have on the market?

MR. TREUER: I think if we eliminate it there won't be a big problem. I think there's still a statute that requires interconnection and the Commission can set rates for interconnection if the incumbent wants to purchase from the competitor.

COMMISSIONER GIARD: Okay. Without further adieu, Mr. Chairman, may we move?

CHAIR JOHNSON: Just so I'm clear here then are we accepting the Staff option 3?

COMMISSIONER THOMPSON: I believe so (simultaneous speech).....

COMMISSIONER STRANDBERG: I believe so.

CHAIR JOHNSON: Okay. Just (indiscernible).....

COMMISSIONER GIARD: I think the next item is IXC.

CHAIR JOHNSON: No, my next.....

COMMISSIONER THOMPSON: Not in my book.

CHAIR JOHNSON: .....tab is UNEs.

COMMISSIONER GIARD: Oh.

CHAIR JOHNSON: Although did you -- is there interest in discussing the UNE section?

COMMISSIONER GIARD: I thought at the beginning when you had talked about this earlier -- I mean, you had said that wasn't.....

CHAIR JOHNSON: I'm not detecting from my previous discussions with the Commissioners that there was a whole lot of support for adopting specific rules as it relates to UNEs. Are there.....

COMMISSIONER GIARD: Thus I was going to go right into IXCs.

CHAIR JOHNSON: Are there Commissioners that want to address UNEs? I hear silence on this point.

COMMISSIONER THOMPSON: And we did depreciation.

CHAIR JOHNSON: Okay.

COMMISSIONER STRANDBERG: IXCs, I believe.

COMMISSIONER THOMPSON: (Simultaneous speech).....

COMMISSIONER GIARD: IXCs, okay, thank you.

CHAIR JOHNSON: This -- I'm just looking at the clock. We had planned to take a break at 3:00, do we want to keep using this 10 minutes and begin our discussion about IXCs? It could be a little involved. People nodding they want to keep going. We're keeping -- we're going.

COMMISSIONER GIARD: We're going. Okay. We talked about

IXC market issues. From -- the issue is how should existing interexchange market regulations be revised to advance HB 111 principles and policies. We have some -- several different areas and a lot of different options. We can talk to option number 2 or option number 3 which are Staff -- or option number 4, excuse me. Option number 4 Staff recommendation. Does Staff want to brief us on their recommendation?

MR. GAZAWAY: I guess there's a presumption involved in that recommendation and that is that we would retain dominant carrier status, but at the same time recognize in the market -- in the retail MTS market there may be no dominant carrier based on current market share, I think, so that the presumption is a more efficient form of reform would to -- be to address how to determine -- how to class- -- how to reach a dominant carrier classification or get relief from one I guess more appropriately rather than to rewrite our regulations to eliminate all dominant carrier references.

MS. KENYON: And just to add, there's a typographical error. We have to fix what happens if a carrier has 60 percent market. I think there's a minor gap there. We can revise this is you take option 4 to say, for example, under A 60 percent or more as opposed to more than 60 percent. It's a minor, technical change, but we would make that change.

COMMISSIONER STRANDBERG: I guess this may be covered in the regulation, but market share, the measurement of statewide

MTS market, do we have the data able to determine that? I'm on page 85, Item (a) dominant classification with more than 60 percent of the statewide message telephone service (ph).

MR. TREUER: If we measure based upon access minutes I think we have the information.

MS. KENYON: Be close enough is you used access minutes. I think that they'd be -- all your measurements would be sufficiently far away from 60 percent that if there was any ambiguity in the formula it might not matter.

MR. GAZAWAY: We do have a definition right now in our regulations of market share, so we would have to address those and it says in Section 3 AAC 52.399(10) it defines market share means an intrastate interexchange carriers retail minutes of use divided by all intrastate interexchange carriers retail minutes of use based on a 12 month period no longer than the previous calendar year.

MR. TREUER: So that would be different than access minutes.

MS. KENYON: We'd go with the standard that's in the regulation.

CHAIR JOHNSON: Could I ask are there any triggers under option 4, the 60 percent, and we are looking MTS and other -- and (indiscernible) distinction (ph) based on services so we have that breakout. How does the Staff recommendation differ in terms of the examination of factors? I notice your list in

subsection D versus the proposal of the AT&T Alascom variance with the GCI proposal, are those the same?

MR. GAZAWAY: I'll start off. I think Lori might add to this, or Phil.

CHAIR JOHNSON: And, I guess, part of the differences or what is the intent of the difference, if any?

MR. GAZAWAY: Sure. One of the distinctions is that their analysis, I believe, was based on market share in general, not broken down by line of serv- -- service classification, MTS private line, wholesale. I believe that's the (indiscernible).

COMMISSIONER STRANDBERG: That's GCI you're saying?

CHAIR JOHNSON: I'm asking to compare the Alascom option 2 versus our option 4 is my question.

MR. GAZAWAY: Well, actually let me take you in a gradual step. If you look at option 3 which is Staff's alternative recommendation, that's basically AT&T's proposal language add regarding general service categories. Then is you take it to option 4 I think a lot of the deliberations dealt with having more of a brightline approach to how to decipher -- how to make a determination of market share which would not involve a drawn out process for the Commission necessarily when it wasn't a close (ph) question.

MS. KENYON: The only thing I would add is that the AT&T proposal would like you to evaluate market power in the market as a whole while we're proposing no such restriction and you'd

probably do a more gradual (ph) analysis than that because as a market as -- in the market as a whole is pretty broad and.....

CHAIR JOHNSON: But we retain the ability under the Staff approach to, you know, look at in a whole if we wanted to, is that a fair statement or do we have to engage in that granular (ph) analysis?

MS. KENYON: Well, the way it -- let me see, I don't think you're restricted. Under our option 4 you could do it as -- on the market as a whole, I believe.

CHAIR JOHNSON: Okay.

COMMISSIONER THOMPSON: So if I understand what you just said about the distinctions between the different options, it was your intent in 4 to pretty much encompass the standards that are set that were suggested by industry as amended by Staff, but you wanted to make it more automatic. In other words, you'd have the 60 percent trigger explicit and list the specific criteria for cases -- for us to use in cases where it was a close call?

MS. KENYON: Yes.

COMMISSIONER THOMPSON: Okay. I like 4.

COMMISSIONER STRANDBERG: And option 4 only deals with the statewide message telephone service, is that correct?

CHAIR JOHNSON: No.

MS. KENYON: No, C.

CHAIR JOHNSON: Subsection C encompasses all

(indiscernible) lines (ph).

COMMISSIONER GIARD: Okay. Number 2 is rate increases. There's options proposed by Staff as in option number 3, dominant carriers are allowed to reduce retail rates under the same standards applicable to non-dominant, but dominant carriers file rate increase requests under a 45 day notice period with cost justification.

CHAIR JOHNSON: Opening comments on this? Mr. Gazaway, did you want to.....

MR. GAZAWAY: I was going to say there's a note below there that basically you're -- if you look at the MTS market there's a strong likelihood that you won't apply these regulations because you won't have a dominant carrier.

COMMISSIONER THOMPSON: Um-hum.

COMMISSIONER GIARD: So I was.....

CHAIR JOHNSON: Are we done there (ph)?

COMMISSIONER GIARD: .....kind of looking at option 2, just eliminate them (indiscernible) just -- we wouldn't have these -- we won't have them (ph) to discuss then. We wouldn't have it in regulation or we would still have something in regulation?

MR. GAZAWAY: I'm sorry, could you say that -- ask the question again?

COMMISSIONER GIARD: So we should still keep something in regulation regarding price increases?

MR. GAZAWAY: Staff's recommendations is to leave the regulations as they are written. Basically what AT&T's recommendation does is it has you treat the dominant carriers as you treat non-dominant carriers now if you were to reform the regulations in that regard.

COMMISSIONER STRANDBERG: So correct me, what's happening is that we're alternating definitions so, in fact, there is no dominant player in this particular market leaving the regulations in tack and saying that we're really approaching the problem in a different fashion. We're changing definitions so that when somebody actually does achieve dominant status the regulations are really -- still remain meaningful under.....

MR. GAZAWAY: Well, I hate to speak.....

COMMISSIONER STRANDBERG: .....that circumstance?

MR. GAZAWAY: I hate to speak for the carriers, but I believe it achieves AT&T's purposes which was to be -- that a rate increase basis be treated on an equal basis with non-dominant or the other interexchange carriers.

MS. KENYON: That would apply for MTS only. If they.....

MR. GAZAWAY: Correct.

MS. KENYON: .....had a private line rate increase you would still be dominant if you had monopoly facilities that used that private line.

CHAIR JOHNSON: I would like to know -- you probably want to move on, but I do note that it's 3:00 o'clock. Do we -- can

we conclude this line real briefly here or do we want to break right now, come back with this when we resume?

COMMISSIONER GIARD: This is a fairly substantial section.....

COMMISSIONER THOMPSON: I'm not ready to vote. I want to think about this.

CHAIR JOHNSON: Okay. Let's take a break here. Now, I'm trying to keep the train running on time folks. It's now 3:00 o'clock plus 25 seconds. I want to reconvene here at 3:15. The sooner we start, the sooner we finish. Thank you. We'll recess for 15 minutes and go off record.

(Off record - 3:02 p.m.)

(On Record - 3:20 p.m.)

CHAIR JOHNSON: We are on record. Ms. Kenyon, had a comment.

MS. KENYON: I had a question. And we were talking on break about the bundling decision that you made and the question is have you reached a final decision on building or are you saying this is the policy we want to notice?

COMMISSIONER THOMPSON: I think it's the latter.

CHAIR JOHNSON: Oh, yeah, from my standpoint,.....

MS. KENYON: All right, thank you, that.....

CHAIR JOHNSON: .....but then I've got the track marks on me, so.....

(Off record comments)

COMMISSIONER HARBOUR: Mr. Chairman, earlier in this proceeding we had agreed maybe there's a change to that, but my understanding was that all of our activities are focused on developing a product to notice and does not reflect votes of the Commission at this point.

CHAIR JOHNSON: Is there comment on that point.

COMMISSIONER THOMPSON: We don't have any regs to vote on,.....

CHAIR JOHNSON: Right.

COMMISSIONER THOMPSON: .....so, yeah,.....

CHAIR JOHNSON: But I - .....

COMMISSIONER THOMPSON: .....of course.

CHAIR JOHNSON: .....I have to adm- -- from my standpoint I had always envisioned our work effort is going to lead to proposed regulations that we would issue.....

COMMISSIONER THOMPSON: Um-hum.

COMMISSIONER STRANDBERG: That we would vote on (simultaneous speech).....

CHAIR JOHNSON: .....and obviously receive additional comments from industry, so industry will have, you know, a further opportunity to reflect on the direction that we're going.

COMMISSIONER GIARD: So, Mr. Chairman, are we back to still continuing the discussion on rate increases or IXCs? I think that when we left, Commission Thompson, did you have any

further discussions on issue number -- or Item A to rate increases?

COMMISSIONER THOMPSON: I'm still struggling with the differences between these options. And the different implications of why they might be important. So I guess I don't -- if I understand the difference between 2 and 3 it's basically AT&T's proposal is to -- I would char- -- do what I would characterize as liberalize the requirement for increases to the same standard as for decreases or -- no, same standards as for dominant and non-dominant which may or may not work if we don't have dominant or non-dominant carriers.

And the other option is just keep it the way it is and -- which would mean that dominant carriers have to file cost justification for rate increases and they have a 45 day notice period.

(Off record comments)

COMMISSIONER THOMPSON: So that's sort of a question. I'll ask.....

MS. KENYON: Yes.

COMMISSIONER THOMPSON: .....the question to help you. I'm trying to understand the difference between 2 and 3, is that it? What am I missing.

MR. GAZAWAY: I think you just said it, that's --.....

COMMISSIONER THOMPSON: Okay.

MR. GAZAWAY: .....you just described the difference.

COMMISSIONER THOMPSON: Okay.

COMMISSIONER GIARD: So as a policy do we want to eliminate the disparate treatment of the state's largest IXCs, is that what we're trying to achieve as a global policy on this one?

COMMISSIONER STRANDBERG: That's not been the Staff's approach I would comment.

COMMISSIONER GIARD: Right. I was just asking if that would be, you know, policy that we were interested in.

MR. GAZAWAY: I mean, if you want a response to that, I assume -- I guess I would say that AT&T is, kind of, arguing that there are some unequal rules that are imposed through --.....

COMMISSIONER THOMPSON: Um-hum.

MR. GAZAWAY: .....or more cumbersome requirements that are imposed with them right now and they would like to see that a little more comparable in the requirements imposed upon themselves and in their main competitor.

COMMISSIONER STRANDBERG: Let me ask, how does maintaining the status quo respond to the industry concerns?

MR. GAZAWAY: I think.....

MS. KENYON: For the MTS market it makes it more equal, either of them -- the two major carriers can increase rates or decrease rates under the same standard for MTS services 'cause they would probably -- you (ph) probably would not have a

dominant carrier under our proposal.

However, in those areas where Alascom would still have a facilities monopoly, and there's quite a number of them, you -- there are services that rely on those facilities and you'd still treat them as dominant for those services. For example, a private line that is a point to point connection. The rate averaging requirement doesn't apply to it.

There's also -- this is connected to your rate averaging policies because one of the reasons that we feel that you can relax the rate increase -- rate increase obligations in the MTS market is because you do have rate averaging. If you didn't have that then they could have differential prices that says if I'm in a rural area maybe I'll just up those rates a little bit more than the other urban areas.

MR. TREUER: I was just going to also add that under the dominant carrier provisions that Staff has recommended you could also find them to be non-dominant. Lori, correct me if I'm wrong, but you could still find them to be non-dominant in certain services like private line. It just wouldn't be automatic.

So in areas where they still have facilities monopoly you could decide that they're non-dominant if after conducting an investigation you felt that they were non-dominant. So you could have a situation where Alascom is totally non-dominant for all services depending on the outcome of your investigation

in which case under either option 2 or 3 they would be able to lower or raise rates on 30 days notice.

COMMISSIONER STRANDBERG: I'm just looking at the pros and cons in option 2 and to help me get focused here -- and maybe this is a little bit unfair, but what are the primary reasons why would you -- why you would recommend we not adopt the AT&T approach?

MR. GAZAWAY: I think one reason is what if you end up finding a carrier retains market power in the future how do you rebuild the wheel? I mean, after you've dismantled it. This -- these will have regulations in place at that time to address a situation where a carrier all of a sudden gains market power, for example, another -- one of the other primary carriers is going out of business.

MS. KENYON: Yeah, under the AT&T proposal they take the word dominant entirely out. It says all carriers have the same requirements.

Under our proposal if you have a dominant carrier you retain a standard, whether or not you use it is at your discretion.

COMMISSIONER STRANDBERG: So do you feel that under your recommendation that we would have the tools then to address the AT&T concerns on a case by case basis?

MS. KENYON: Yes. And maybe not to -- I mean, obviously they have a desire to be treated equally under all fronts and

this doesn't give them pure equality, but it gives the opportunity for them to explain why that's deserved.

MR. TREUER: You might find GCI to be dominate, too, as well.

MS. KENYON: Yeah, especially if you decide to share carrier of last resort responsibilities that may make a difference.

COMMISSIONER STRANDBERG: Well, there's silence here from the rest of the Commissioners. To try to get this off of top dead center we are issuing regulations for comment and I would make the statement I am concerned about AT&T being able to function efficiently. And they do bring up a point about being able -- about rate flexibility, but for the purposes of noticing a regulation for comment we need to get something on the street here and it would seem to me that the Staff has laid out a path that we would have the ability really to address this utilities concerns and I'd lay it on the line there.

I think probably -- I think where I'm at is that I would go with the Staff's recommendation on it with the understanding that we will take comment and see what the utilities have to say.

COMMISSIONER THOMPSON: I'd vote with what I heard Commissioner Giard say initially at the beginning of the discussion, option 2. I think there's enough presence of competition in this market that I'm not as concerned although I

agree with Mr. Gazaway. I think once we deregulate it's pretty much impossible to go back. I'm not sure that going back is something that's ever going to be necessary in that particular market.

MR. GAZAWAY: But you're dealing with all three markets if you go to AT&T's approach. You're not just dealing with MTS service.

COMMISSIONER THOMPSON: When -- okay, when I say market I'm thinking interexchange not type of service, but, okay, now I understand.

COMMISSIONER HARBOUR: I support option 3 and that's conditional on our carrying through on Staff's dominant carrier definition because when that happens I think AT&T's concerns are going to be addressed and I do think it's good to have within our regulations the understanding that there could some day again be a dominant player and there should be a way to address that.

COMMISSIONER GIARD: Can Staff tell me what the current statewide allocation of market power is? I mean, what does GCI have versus AT&T versus -- I guess those are the two big players (indiscernible).....

MS. KENYON: For MTS I thought it was between 40 and 50 percent for both of them.

COMMISSIONER THOMPSON: Um-hum.

MS. KENYON: For private line I've seen -- if I remember

right, it was 70 percent for Alascom and 30 percent for GCI, but that figure is old. I know that GCI at one point in time said it had no interstate private lines so it's -- maybe that 70 percent figure is -- well, I think I better just leave it at that. We have other -- I could look that up and get you exact data.

COMMISSIONER GIARD: No, I just -- I think that that gives is, kind of, a point of (simultaneous speech).....

CHAIR JOHNSON: (Simultaneous speech).....

COMMISSIONER THOMPSON: That's very useful. You said three markets -- or Rich said three markets and you gave us data for two. What's the third to which you're referring and what's the split?

MR. GAZAWAY: We're talking wholesale rate -- the wholesale.....

COMMISSIONER THOMPSON: Okay.

MR. GAZAWAY: .....service market.

MS. KENYON: And for the wholesale I think that that one is an obvious whoever has the facilities is the dominant carrier and if you don't have facilities competition it's hard to argue that you're not dominant. Matter-of-fact the FCC has declared -- has not relaxed their rules for Alascom in Alaska for their wholesale market and we're proposing that wholesale -- wholesale would remain -- they'd remain dominant.

CHAIR JOHNSON: Is -- maybe I could try to -- and I know

this may be (indiscernible) sidestepping the issue to some extent, but is there a way that we can proceed with the understanding that when we do issue regulations we could pick one or the other, but we could -- the order accompanying the issuance of the proposed regulations could specify that we are, in fact, looking at both of these options and ask that -- folks to comment on both of them? That way we'd have some additional input from industry in light of the other changes that we are proposing.

COMMISSIONER THOMPSON: See, I'll make it easier. I'm going to change my vote 'cause I didn't realize that there was a 70/30 split in the private line market. I'm interested in the accurate figures, but I didn't understand that before and that would impact which option I'd prefer so I think you've got enough.....

CHAIR JOHNSON: Option 3.

COMMISSIONER THOMPSON: Yeah.

CHAIR THOMPSON: Option 3. Kate, you're option 2?

COMMISSIONER GIARD: Right, because -- no, I'm fine with option Staff's option -- because if we adopt the Staff's recommendation we have an automatic trigger 60 percent,.....

COMMISSIONER THOMPSON: Right.

COMMISSIONER GIARD: .....boom,.....

COMMISSIONER STRANDBERG: Right.

COMMISSIONER GIARD: .....we're done with it.

COMMISSIONER THOMPSON: Okay.

COMMISSIONER GIARD: .....as far as I'm concerned and then it doesn't really matter what sits here in regulation.

CHAIR JOHNSON: Okay. Now, the (indiscernible).....

COMMISSIONER GIARD: Item number B, competitive parity, page 90.

CHAIR JOHNSON: Carrier of last resort. I have a proposal.

COMMISSIONER GIARD: Okay.

COMMISSIONER THOMPSON: Okay.

CHAIR JOHNSON: I -- and I'll just -- I'm putting this out for purposes of discussion. I like option 1, the AT&T option, provided that it is, in fact, married with something that's included in one of the deficiencies outlined by Staff.

I will propose that we go with option 1 and then have a -- which requires shared carrier of last resort responsibility, but that we would establish a regime wherein on an annual basis we would conduct a comparative hearing amongst facilities based carriers to determine whether or not it's appropriate for us to assign carrier of last resort responsibilities on a regional basis and that would be the way that we would divide up and assign these responsibilities.

I think that it would certainly add to our burden, but I think it would be an appropriate way for us to assign these burdens based on the realities of the market place today. I'll

just throw that out.

COMMISSIONER HARBOUR: Mr. Chairman, a quick response. I think the -- that puts the burden on then the Commission and it'll be -- while it's an exciting concept, it could even be a full time job keeping up with that one.

I like option 3 because it indicates our openness to consider the sharing of carrier of last resort responsibilities, but shifts the burden to doing that on one who would make such a proposal, so.....

COMMISSIONER GIARD: What was it, Commissioner Harbour, that you would advocate?

COMMISSIONER HARBOUR: Option 3.

COMMISSIONER GIARD: So in the regulations we say that we may consider sharing.....

COMMISSIONER HARBOUR: Yes.

COMMISSIONER GIARD: .....caller (ph) responsibilities, but we're going to -- so would we have to open a new docket or a new regulation?

COMMISSIONER HARBOUR: Well, correct me if I'm wrong, but I think an advocate would propose a sharing to us and obviously if they would do that in league with another affected party it would be more effectively proposed to us, but I guess presumably one party can come to us with a proposal.

MR. GAZAWAY: That was a presumption -- can I ask one question, too? In option 3 there was an updated version of

this section of the memo that had some highlighted section and I'll just read it to make sure you all have the entire -- what's currently.....

COMMISSIONER HARBOUR: I have the revision.

MR. GAZAWAY: Okay. It has some highlighted areas. We're including a revision to 3 AAC 52.390(c)?

COMMISSIONER HARBOUR: Yes, beginning with the work A which I think should be and.

MR. GAZAWAY: We'll go with that.

MS. KENYON: Yeah.

COMMISSIONER HARBOUR: Yeah, my biggest contribution today.

COMMISSIONER STRANDBERG: That was huge.

CHAIR JOHNSON: Further comments?

COMMISSIONER THOMPSON: So, I guess, you're -- I don't see what you two are discussing is so necessarily inconsistent and I kind of like the idea of putting out for comment the idea that, yeah, we'll share, but we're going to figure out how we share in this annual proceeding, you know, another version of access charges or something, something that you get to do every year, but.....

COMMISSIONER STRANDBERG: Every two years.

CHAIR JOHNSON: But understand there may be years where we don't have inquiry,.....

COMMISSIONER THOMPSON: Right.

CHAIR JOHNSON: .....right?

MS. KENYON: Could I ask a question for clarification? You say sharing, are you implying we pick the locations and tell them who is the carrier of last resort or are you thinking of a dollar amount where they -- we shuffle money between carriers to pay for the burden of carrier of last resort responsibilities?

COMMISSIONER THOMPSON: The former.

MS. KENYON: We pick the locations.....

CHAIR JOHNSON: Yeah, I was thinking.....

COMMISSIONER STRANDBERG: Right.

CHAIR JOHNSON: .....in terms of the former. Although I think you've, you know, did a good job of highlighting some -- two of the approaches that we might use, but my first thought was to use a geography based approach.

COMMISSIONER GIARD: Okay, what are we doing, option 1?

CHAIR JOHNSON: We're talking about.

COMMISSIONER STRANDBERG: We're talking.

MR. GAZAWAY: Do you mind if I ask, if you step ahead for a second and come back 'cause you're dealing with a subsidy (ph) issue next and.....

COMMISSIONER THOMPSON: Um-hum.

COMMISSIONER STRANDBERG: Right.

MR. GAZAWAY: .....that may tie into your decisions on whether you open a docket on carrier of last report.....

COMMISSIONER STRANDBERG: Right.

MR. GAZAWAY: .....or -- or if you intend to entertain proposals how you deal with them. The two of them seem to go somewhat hand in hand to me.

COMMISSIONER STRANDBERG: I would make the comment that at the beginning of the proceeding there would be a fairly significant divvying up of the responsibility across the state I would presume and then once that would be done then we would have more-or-less maybe some changes to the responsibilities depending on what's actually happening in the market place. That may be what's happening here, what might happen in the future.

MS. KENYON: Is it -- you anticipate that you'd require a carrier to build facilities where it currently is not a carrier of last resort once you do this dividing it up?

CHAIR JOHNSON: We would be assigning that responsibility, yeah, that's one of the -- that's part of the -- one of the elements of doing business in this state in the interstate interexchange market.

MR. TREUER: You might not want to do it on an annual basis then.

CHAIR JOHNSON: Well, I said annual. I just used that. I mean a periodic basis or as a on an as needed basis. It may not come up. I know the last time this came up was five years ago perhaps, something of that order and there's a -- Staff

probably knows about the proceeding that there was a very small community and I'm not sure if the Commission ever ultimately determined that there was a necessity to provide service or not. I'm trying to recall the name of the proceeding.

MS. KENYON: Chisana.

CHAIR JOHNSON: Chisana. That's exactly right.

CHAIR JOHNSON: Yeah.

MS. KENYON: Is it then to maybe understand further what you're saying, we're only talking about new construction.....

CHAIR JOHNSON: Yes. Yes.

MS. KENYON: .....and not existing construction?

CHAIR JOHNSON: Yes.

COMMISSIONER THOMPSON: AT&T meant existing, I'm sure.

COMMISSIONER STRANDBERG: Yes.

MS. KENYON: I think A&T meant everything.

CHAIR JOHNSON: No, but my discussion is it relates to new requests. New communities, you're right. A huge distinction there, thank you.

COMMISSIONER THOMPSON: Well, I think that if you're going to do that you ought to look at how the responsibility is allocated everywhere, because there's a huge issue, an investment issue for these companies. And the argument is gee, one of the reasons we can't upgrade the plant that we have out there now is because we've got -- we're spread too thin we -- if we have a responsibility to invest everywhere. And in some

of these communities there's duplicate facilities.

COMMISSIONER STRANDBERG: I mean it would almost be that we say as a policy we want the carrier of last resort shared and then look to the industry, we set the rules and have them divvy it up in the most efficient way. That might be one approach here.

COMMISSIONER THOMPSON: Well, I'm sure if we have a proceeding we'll hear from both of them.

COMMISSIONER STRANDBERG: Yeah.

MS. KENYON: This may be complicated to the point where you either have to accept proposals or open a proceeding. For example, one of the more logical ways to divvy it up is by market share. Well, that's probably 40/60, but when you come down to it GCI only has about 50 locations that they serve in your most rural areas, there's 200 some -- actually maybe 60, not 50, 60 out of 200 some.....

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: .....which is far different from their market share. So I -- and I really can't see them necessarily reaching agreement that one would be willing to plunk down a new earth station at a cost of perhaps $300,000 per location and not having it be controversial.

COMMISSIONER STRANDBERG: Yeah. In fact, the dynamic of how the distribution goes, the DAMA project, they built 50 of these earth stations and they selected a number of different

places throughout the state so the practical matter is that we have earth stations, we have microwave facilities, and we have a number of different technologies serving, so I can see this is a complicated issue if we want to divvy it up.

CHAIR JOHNSON: From my perspective the comparative hearing would enable us to consider.....

COMMISSIONER THOMPSON: Uh-hum.

CHAIR JOHNSON: .....all those issues on -- you know, on a new record.....

COMMISSIONER STRANDBERG: Yes.

CHAIR JOHNSON: .....each time we were to undertake such a proceeding.

COMMISSIONER THOMPSON: Yup.

COMMISSIONER STRANDBERG: Yeah, I agree.

COMMISSIONER GIARD: So what are we going to do?

COMMISSIONER THOMPSON: So I think we're talking about option 1 with the qualification that it -- how facilities be -- are divided up is determined in some type of proceeding.

CHAIR JOHNSON: Yes.

COMMISSIONER GIARD: Okay.

CHAIR JOHNSON: Just by way of background, there's a certain amount of legal precedent in the regulatory law for us -- I mean administrative law to -- for the conduct of comparative hearings to bring parties in front of the Commission and require filings from them on specific issues as

to which party is more fit, willing and able to serve a given community than the other. To some extent they might be trying to argue against their ability to do it, but nonetheless, you'd have the parties in front of you and you would have -- the Commission would have the ability to compile a record as to -- and introduce the facts as to the ability of the parties to serve. And I think it's a -- once again, the proceeding could be, you know, complex, but hey, if you haven't noticed most of our proceedings are complex.

MS. KENYON: A point of clarification. Who are you going to bring into the proceeding? Is it going to be the top two carriers, are you going to make it all the ankle biters, too, or.....

COMMISSIONER GIARD: No.....

CHAIR JOHNSON: All Facilities based IXCs.

MS. KENYON: Okay.

MR. GAZAWAY: So let me clarify what you want us to do is -- that is draft a proposed regulation that announces that the carrier of last resort will be determined through.....

COMMISSIONER THOMPSON: A proceeding.

MR. GAZAWAY: .....a proceeding opened for -- to address those. Okay.

COMMISSIONER STRANDBERG: That would be (indiscernible).

MR. GAZAWAY: You want us to do a draft regulation is my question.

CHAIR JOHNSON: Yes.

COMMISSIONER THOMPSON: Yeah.

CHAIR JOHNSON: I believe that, Rich, there's a provision that's in the Administrative Procedures Act that addresses comparative hearings. You might want to just take a quick look at that, I think.

COMMISSIONER HARBOUR: Mr. Chairman, I haven't been a part of as many hearings that haven't been contested in that sense. Not as a lawyer, but just as an observer they appear to be pretty comparative to me. And as long, you know, consciously we know we're walking down the path of assuming the burden for divvying up carrier of last resort that's one thing. And I think option 3 sets the default as the incumbent and then opens our proceedings to parties who want to submit a proposal. And that in turn triggers, if you wish, a comparative hearing or could. So I think it's a question of how we want to approach it. And apparently the majority seems to want to approach it in a way that we take the initiative to do that and I'm struggling with how that's not a we know best attitude rather than allowing the industry to through its own initiative make us a proposal. I'll leave it at that.

CHAIR JOHNSON: I guess I would not characterize -- well, I guess I wouldn't look at it or characterize it as a we know best approach. I do think that this is an issue that this Commission has a responsibility to take on and that's part of

the job description here is kind of my approach. Not because I want to, it's just because it's one of the things I have to do.

COMMISSIONER STRANDBERG: This is a -- one of those we have to deal with this issue matters.

COMMISSIONER GIARD: Okay. Gentlemen, we're going to move forward, is that all right with you? Interexchange carrier subsidy is page 91. My personal opinion, this may surprise you, is that we decline to consider this matter here.

COMMISSIONER THOMPSON: That would be option 2?

COMMISSIONER GIARD: It would be option 3.

COMMISSIONER THOMPSON: Well, I agree, it's -- okay. Suzie. I agree that we -- our decision in the access charge docket may impact this and it may be better to wait and do it and see what we end up with in that docket.

CHAIR JOHNSON: I'm appalled (ph).

COMMISSIONER GIARD: What?

CHAIR JOHNSON: No.

COMMISSIONER GIARD: Okay. Any other comments? There's issues on reporting requirements for trouble report, service quality. Staff recommended that we look at option number 2.

COMMISSIONER HARBOUR: Excuse me, I know I'm one step behind everybody, but since we haven't launched into it. We went over the last one so fast, can somebody tell me why a matter pretty thoroughly in our hearing as a part of the answer to carrier of last resort issues we don't want to further

discuss?

COMMISSIONER GIARD: Well, I didn't feel that it was a strong part of HB 111. It seemed to be something that tied in with the overall interexchange matter in Alaska, but it seemed really out in the weeds in terms of this particular hearing. So that's why I made that kind of presumptive comment and disregarded in the matter because it just seemed so far out.

MR. GAZAWAY: One thing as well. If you're dealing with shared carrier of last resort responsibilities I wouldn't say you've eliminated AT&T concerns, but you've reduced them somewhat.

COMMISSIONER THOMPSON: And the reason -- my reasoning was a little different than Kate's, which is that we have an open docket. We've noticed a model.

COMMISSIONER HARBOUR: Right.

COMMISSIONER THOMPSON: Depending on what we do with access charges the concern that has prompted AT&T's request for subsidy may be diminished or reduced.....

COMMISSIONER HARBOUR: Right.

COMMISSIONER THOMPSON: .....or eliminated or maybe not.....

COMMISSIONER HARBOUR: Okay. That.....

COMMISSIONER THOMPSON: .....but we ought to finish that up and see what's left of the problem after a couple of things that are open now are done.

COMMISSIONER HARBOUR: Okay. All I caution is when we start talking about the complexity of apportioning cost work responsibilities under carrier of last resort and we discuss all the methods for doing that and we shouldn't do that without discussing this because this is a serious concept that the commenters presented for our consideration. I'll just leave it at that.

MR. GAZAWAY: They also may end up unless you tell them not to, to raising that issue again after you've issued your proposal on shared carrier of last resort.

COMMISSIONER THOMPSON: Uh-hum. And likely will.

COMMISSIONER STRANDBERG: This issue will be back with us.

COMMISSIONER HARBOUR: Thank you.

COMMISSIONER GIARD: Okay. Under page 94 trouble reports, Staff recommendation, would you like to go into this -- that's fine. I thought the Staff recommendation was fine.

CHAIR JOHNSON: Yeah, but they want us to fix (ph).

COMMISSIONER THOMPSON: I thought it was okay to offer (indiscernible - voice lowers). I'll pick the second one for purposes of discussion. If we're going to share carrier of last resort responsibility we ought to keep track of the status of the equipment that's being used to fulfill that requirement.

COMMISSIONER STRANDBERG: Well, (indiscernible) the carrier of last resort. Well, what about the rest of the facilities based IXCs? Am I not reading this right?

2590

(Tape change)

Tape 5

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MS. KENYON: Technically you could do both.

COMMISSIONER THOMPSON: But why do we care for the noncarrier class resort?

COMMISSIONER GIARD: Right.

COMMISSIONER STRANDBERG: Well, we do care about the consumer. And from what I've seen we do have -- this is one of the aspects of life in Alaska where there are some difficulties in maintaining quality of service in remote areas. And I guess I would make the case that I think there are at least two small communities where it's been helpful for us to have information on trouble. And at least that's my impression is that this has been an issue in your regulatory business.

COMMISSIONER GIARD: The lack of reports?

COMMISSIONER STRANDBERG: No, the availability of reports. Specifically I think there was a case in Hollis where we had difficulties in service. And those apparently are being resolved now, but we've been through the mill on this.

COMMISSIONER GIARD: So are you supporting the second option, Commissioner?

COMMISSIONER STRANDBERG: I'd like to hear from Staff on the worth of levying trouble report requirements on major

facilities based IXCs in Alaska?

MS. KENYON: This is of most value to you if one of your major facilities based carriers is in the process of updating its facilities and your non- -- well, I'll even make it simple. There -- historically there was a situation where you had two carriers serving an area with the same earth stations, but one who had better quality than the other. And Alascom had -- was in the process of upgrading its earth station but had not yet done so. I could understand a situation where the consumers may want to know when the better quality earth station or microwave shot if there ever was one was having problems. There may be situations where you may care whether any and all the major facilities based carriers are providing adequate service because the consumers may be depending upon those.

It mainly would happen in a situation where the -- a facilities based carrier wasn't a carrier of last resort, but they still had critical facilities that you cared about.

MR. TREUER: The first option might more likely give you immediate parity than the second option until you -- initially you're going to have a carrier of last resort, a single one, until you have a proceeding.....

COMMISSIONER STRANDBERG: Right.

MR. TREUER: .....where you pick a second one. And so you're more interested in getting trouble reports for purposes of market analysis and service quality right away, the first

option would probably be better, but if you're not.....

CHAIR JOHNSON: For the benefit of the other Commissioners, I've actually in my former life was involved in preparing these reports and although they are a burden they are not, I don't think, particularly onerous. Anyway, leaving it at that I think if we do extend this additional new burden to existing IXCs there's no question there is a burden, I do not think it is a large one. I would offer that.

COMMISSIONER HARBOUR: Mr. Chairman, I'd go for option 1. I can't remember in the brief time I've been here where a Commission does the decision making turned on trouble reports of one type or another. Maybe there have been some where that was introduced, but you know, I do know of instances where consumer related concerns came to our level if they weren't dealt with at a lower level or by the utility. And there probably would be some Staff use from time to time, but in the interest of efficiency and lacking a showing of significant reason for it I'd go for option 1.

COMMISSIONER GIARD: I think for the discussion on.....

CHAIR JOHNSON: I can't believe I'm going to argue, maybe I'll go this far again. Like I say, I think the real value is not in terms of how this data is utilized at the Commission, although I think we -- it's -- there's a value in the Commission being a repository of this kind of information for historical purposes or for assessing issues as they come along.

But in my experience what the preparation of these trouble reports does is that it really forces the utility to start thinking in terms of how it intends to address particular problems that have arisen particularly out in Bush Alaska. Unless you're required to sit down and develop an assessment of the status and report to somebody you're not likely to do that. And in my experience it helped bear substantially to focus our thinking in terms of how we're going to ultimately restore service in an area.

And actually in my former employment we were the joint venture partner with AT&T Alascom and in many cases I was the person that was looked to to put this kind of documentation together. And I think it does have a use and I think it's a positive one and the effects are positive for consumers and people that are by themselves that are out of service for some reason, so I.....

COMMISSIONER HARBOUR: Just to respond to your comments. I agree with you. I think that it has value. And very much like a security situation, it's a judgment call. The more security I desire the more I'm going to pay for it. And the question is to me, my question that I'm facing is am I seeking greater security for ratepayers or citizens or am I seeking greater acknowledgement of the competitive environment? And I'm more focused on the second than on the first right now because I believe that there are adequate consumer protection

devices in place. And that's not to belittle or undermine the value that you as an insider saw on the value putting these reports together.

I grant that there may be value. The question is what we're willing to force industry to pay for them. And it may be that the -- talk about the -- I don't think you used the term de minimis but modest cost involved may be modest for one utility in a given area, but it may have a much different impact for a statewide and more complex utility. I don't know.

COMMISSIONER THOMPSON: So which one are you advocating for?

CHAIR JOHNSON: I like 2A myself.

COMMISSIONER THOMPSON: Okay.

COMMISSIONER STRANDBERG: And I'm 2A.

CHAIR JOHNSON: And even in making that advocacy I do believe that, you know, we are imposing an additional burden and that's sort of contrary to what I ordinarily like to do, but in this case I don't believe that the additional burden is large.

COMMISSIONER THOMPSON: Okay. Well, just in the interest of time I'll switch from 2B to 2A so we can move on.

COMMISSIONER GIARD: I don't think it matters 'cause if they've got the market share percentages it means they're both going to be reporting anyway. All right. Page 96 item number 4, reporting and recording requirements. There's some

interesting options. Option number 2 is recommended by the Staff, impose above reporting requirements on non-dominant facilities based IXCs with sufficient market share. And we were talking about uniform system of accounts.

MS. KENYON: All right. Oh, boy. I think we're actually advocating option 4. It may be misleading in the document.

COMMISSIONER GIARD: Oh, okay.

COMMISSIONER THOMPSON: I don't like that one for the reasons raised earlier when this issue came up because I don't think we should be creating barriers or disincentives to becoming carrier of last resort.

COMMISSIONER STRANDBERG: I'm in agreement.

COMMISSIONER THOMPSON: I would be interested in Staff's comment on the breadth of impact of option 2. How many additional folks who don't now have to use these procedures will have to if we extend them to non-dominant facilities based IXCs with sufficient market share?

MS. KENYON: It depends on where you hit your standard. For the most part the carriers -- I think Alascom and GCI are somewhere in the 40 to 50 percent range. I think the next largest carrier may be ACS Long Distance. And that's probably under 5 percent.

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: So.....

COMMISSIONER THOMPSON: Well, so if you assume that we had

a 10 percent threshold who else that doesn't now.....

MS. KENYON: That would be GCI.

COMMISSIONER THOMPSON: Okay.

MS. KENYON: And -- yeah, that would be GCI.

COMMISSIONER THOMPSON: And now we're back to our extra (indiscernible - background noise) issue.

COMMISSIONER GIARD: What information do you get, you know, what about option number 1 just eliminating the requirements for IXCs?

MS. KENYON: Well, if I'm not mistaken Alascom still has to follow the federal USOA which is different from ours. And one of the key differences which was debated before you in another proceeding had to do with how they reported their facilities. If you want to be able to tell at least some degree of how much microwave plant they have or satellite plant, the state uniform system of account gets you that information. The federal has not. They've eliminated that sub-categorization.

So the things that you get with the uniform system of account is it's along the same lines as I said before, if you have a carrier of last resort especially with these really small rural routes where they're arguing that their finances are -- they're not making enough money, that they need a subsidy, those uniform system of accounts would be extremely useful to you to tell and compare from year to year how much

they have in plant, what type of plant it is, whether or not they're moving away from satellite, if you think that satellite is not the thing to do. I know that Alascom has a variety of different type of plant out there in microwave and satellite both, you know, you'd be able to tell how it cost for the two different types of facilities, how much maintenance they're putting in the place, how much they're upgrading, whether their maintenance costs are varying from year to year and that would be for any of the carrier of last resorts that you may have.

COMMISSIONER GIARD: You know, I'm really hesitant, I'm really hesitant to put this uniform system of accounts. I think that there are probably ways that the Commission can gather that information if we say they must maintain their books and records in sufficient detail such that we can determine on a site by site basis. I mean there's ways of -- I mean everything comes down to an invoice and writing a check. There are ways to get the information. I just would really hate to impose this on GCI or I guess I hate to do it to them.

COMMISSIONER THOMPSON: Does that mean you're arguing for option 3?

COMMISSIONER GIARD: I was initially arguing for option 1 which is just eliminate them for IXCs.

CHAIR JOHNSON: What about the missing option, option 5 which is the status quo?

COMMISSIONER GIARD: Well, then you have one person with

maybe 40 percent market share.....

CHAIR JOHNSON: That's true.

COMMISSIONER GIARD: .....being required to like.....

COMMISSIONER STRANDBERG: Well.....

COMMISSIONER GIARD: .....you know, do something that one person with 50 percent market share isn't required to do. That's kind of unfair.

MS. KENYON: Well, they do have -- remember, whatever you do here applies not just to the MTS, it applies to the private line markets and the wholesale market. Wholesale, I personally believe it would be very hard for them to argue that they don't have control of those facilities for which they have a monopoly.

COMMISSIONER GIARD: Right, but we can pare it down so that they have to maintain -- I mean they have the ability within their systems, I'm positive, to break it up by line of business. So for this line of business which is private line you have to maintain your system of accounts, for the rest of your lines of business -- I mean we could tell them how to do that and we could say, GCI you have to comply in this area, but the rest of your general ledger you don't have to change.

MS. KENYON: That may be very difficult because, for example, the president's salary, you know, how are you going to easily identify that between the two lines of business, the MTS market, the private line, the wholesale. Some of the

facilities are common for all three. Like they use the same antenna in earth stations for all three businesses. And if you have to make them do it for one line of service it would be probably more complicated for them than to have a different one for the other lines of service.

I'm not sure we could accurately get a good picture if you do that.....

COMMISSIONER GIARD: Okay. So the information that we're trying to get to is that you're maintaining your areas and you're spending money on those areas that we identify you as a carrier of last resort on. So really we're trying to -- is that correct?

MS. KENYON: That's part of it. The other part of it is if you ever want to review the rates in areas where you deem them to be dominant or whoever deems to be dominant the uniform system of accounts is an extremely useful tool.

COMMISSIONER GIARD: I think it's going back to Commissioner Strandberg's, the thing where he says, really, really, I think it's a question of how much more -- are we in a period or will we likely be in a period in the future where you'll need that information where you really see out into the horizon that you're going to need it and that you will not be able to require it.

COMMISSIONER STRANDBERG: I guess where I'm at is I'm going with Commissioner Thompson that I think this carrier of

last resort, this is going to be a tough cookie. And I just can't see us levying some extensive accounting requirements on a company that we're going to tell, you know, you've got to take over this responsibility.

COMMISSIONER GIARD: Right.

COMMISSIONER STRANDBERG: So at least for now I think where I'm at is I'm not into that and we may have to deal with it later on how to deal with potential requirements for them to report some cost information to us, but at this time I don't think I want to go in here with a big overhead item. We know that we're probably going to get there, but right now I don't think I'm into that.

COMMISSIONER GIARD: Well, your risk is if you weigh the risk in the marketplace your risk is that you're going to lose some, you know, granular data. You're going to lose some granularity. And in exchange you're going to shift the burden of carrier of last resort around the carriers in Alaska, so there's a benefit and a detriment. And what I think needs to be weighed is, you know, and I can't make a very intelligent decision because I haven't been here long enough. All I can tell you is that it is a burden. It is a lot to ask someone to do. And I personally would not ask them to do that.

I would actually require that the companies provide us with the information that we need and identify the information that we need, and then release both of them from this, but

require them to provide the data that we need. They have accounting staff. They have audit firms.

COMMISSIONER THOMPSON: And win that argue for option 3 which is figure out which is defer consideration to a separate docket. I agree. I don't think we have enough of a record about what information it is we're talking about to make a good decision that they don't have to file it anymore. I think it's an important issue and I agree that there's a principle that there should be some kind of parity, but I'd take it up and build a separate record on that issue.

COMMISSIONER GIARD: Well, I would rather choose option 3 than this regulation impose an accounting burden on (indiscernible). I just would rather do option 3.

COMMISSIONER THOMPSON: Uh-hum.

COMMISSIONER STRANDBERG: Does that get us where we need to go? Right now we have basically the dominant carrier being required. Is that -- maybe we need to just cover where are we at right now on this?

COMMISSIONER GIARD: Well, we had this discussion about carrier of last resort earlier in the day.

COMMISSIONER STRANDBERG: What I'm saying is.....

COMMISSIONER THOMPSON: I think his question is who has to file this now?

COMMISSIONER STRANDBERG: Yes.

COMMISSIONER THOMPSON: The answer is only AT&T.

COMMISSIONER STRANDBERG: It's only AT&T.

COMMISSIONER THOMPSON: Right.

COMMISSIONER STRANDBERG: So if we go to item 3 -- or option 3 we elect to deal with this later, then that leaves us with a situation where AT&T is required.

COMMISSIONER THOMPSON: To do something that GCI isn't until we finish that docket.

COMMISSIONER STRANDBERG: That's right.

COMMISSIONER THOMPSON: That's true.

MR. GAZAWAY: You might want to look at it the other way around. Who's not required to do it? I mean 'cause in the local exchange market everybody except for.....

COMMISSIONER THOMPSON: Right.

MR. GAZAWAY: .... the main facilities based -- I mean the main competitors are going to do it. And the same thing is in existence in the long distance market.

COMMISSIONER GIARD: Yes, but what I'm hoping for is an opportunity once we go back and we firm up competitive market and we finish building our pyramid that we may be able to in certain areas, you know, it may not be necessary for the other LECs. I mean it may not be as competition -- it's a reward that they get. They get to fire some accounting staff, you know, as competition develops in a market, I would hope.

MS. KENYON: You'll always have a problem until you reform your access charge rules.....

COMMISSIONER GIARD: Right.

MS. KENYON: .....because those are essentially a non-competitive market where it is standing right now. And that's a LEC problem. The IXC market, the closest comparable you have is wholesale. And I guess the only thing I can say is if you ever want to review the wholesale rates or the rates at which Alascom provides services to other carriers, then I think I need that uniform system of accounts.

If you ever want to look at whether the rates are for a private line or any service you may deem to be dominant, they may have the only -- they may have a monopoly control over a particular service for which you've decided they should remain dominant, but I need the USOA. If you want to be able to tell what their rate of return is I need the USOA, otherwise they can give you a return but you really don't have any confidence as to what went into it and how accurate it is.

COMMISSIONER STRANDBERG: I would just pose this, the question today and I honestly don't know what the answer is, I'm wrestling with it, is whether we let go or whether we -- I think Lori has given some very good discussion about retaining control so that in the future we would have the ability to review, to go into areas that we may well need to. So I think that's where we're at here is option 1 would be really releasing quite a bit.

The option 3 that Commissioner Thompson spoke of we would

keep the status quo basically with AT&T, but agree to open up a docket to look at this.

COMMISSIONER GIARD: I'm fine with opening a docket. I think it's time to open a docket. (Inaudible). Is there any other discussion on option 3?

CHAIR JOHNSON: Does that bring us to the end of this section?

COMMISSIONER THOMPSON: I think it does. And I think we decided the first day not to do ABC (ph).

CHAIR JOHNSON: Can I.....

MS. KENYON: Just a point of clarification before you get off of IXC. If you're down the shared carrier of last resort road you may have to evaluate your quality of service standards 'cause right now those only apply to the incumbent or the dominant carrier.

COMMISSIONER THOMPSON: I made myself a note about that.

MS. KENYON: Okay.

CHAIR JOHNSON: Cool.

MS. KENYON: Is there any particular way you want us to deal with that issue?

CHAIR JOHNSON: I doubt if we can give you that guidance right now at least I can't.

COMMISSIONER THOMPSON: I easiest would be to make those apply to carrier of last resort, but I think we're going to have to look at what they are because they were written

sometime ago.

CHAIR JOHNSON: So would this be the time for me to renew my request to the Commission that we spin the eligible telecommunications carriers policies out into a new docket? In fairness I think I proposed this once before and I did not have takers for it, but I'll try again since we're here.

COMMISSIONER STRANDBERG: Now that we're all wore down.

COMMISSIONER THOMPSON: In terms of timing it's probably going to happen anyway, but as I noted before this is an issue that the FCC and the Joint Board's actively considering so while I think it would be appropriate for this Commission to await -- you're not going to have to wait very long, some guidance before charging down this road, but there's plenty of other work to do in the interim.

COMMISSIONER HARBOUR: I'd agree with that. Urge that all the records so far that applies to ETC be applied to the new docket.

COURT REPORTER: I can't hear you.

COMMISSIONER THOMPSON: No cookies, Dave, next time.

CHAIR JOHNSON: Are there items in the time -- and I'll just note, I have a note from one Commissioner, a desire to terminate this proceeding at 4:30 today, that gives us 15 minutes. I think we've always proceeded under the notion that we're going to engage in some doubling back. Are there issues - do we want to take a moment, do we want to go off record for

a little while to consider if there's things -- oh, we do have the -- go ahead.

MS. KENYON: We have option 4 that you probably still want to talk about.....

CHAIR JOHNSON: Right, would this be a good time.....

COMMISSIONER THOMPSON: Uh-hum.

CHAIR JOHNSON: .....Commissioner Thompson?

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: But could we clarify where you're at on the ETC? I'm not sure I understood what option -- procedural option you wanted to take?

CHAIR JOHNSON: I tried to spin that into a new docket, but I think I found my support lacking at this stage so.....

MS. KENYON: So.....

CHAIR JOHNSON: .....we apparently are not going to take that issue up.

MS. KENYON: Okay. Thank you.

CHAIR JOHNSON: That brings us to a revised version of the option 4 on detariffing. Are we calling that deregulation or are we calling this rate and detariffing?

COMMISSIONER THOMPSON: I'm calling it rate deregulation.

CHAIR JOHNSON: Okay.

COMMISSIONER THOMPSON: I'll talk about the changes that have been made. And when I've been sitting here I noticed a few other typo like errors that we can fix later, but anyway, I

worked on this -- I worked through this with Ms. Kenyon, too, and we don't agree on all this entirely so I'm going to defer to her to give you her side of the story in cases where I know she still disagrees.

The first change is to eliminate what was number 3. And Ms. Kenyon wanted that as a back-up option. I'll let her explain why. I feel like that we're adequately covered with what's now 3.

COMMISSIONER GUARD: I think that you're going to see a wide variety of different types of things come before you. And the more tools you have to deal with that variety the better off you are. The old option 3 which was deleted basically says no carrier owns monopoly facilities related to the service that enables the carrier to exercise market power. It gives you another tool should you decide that you need it because that seems -- owning monopoly facilities is a very key component to whether or not you can deregulate a service.

You know, I know that we have -- we're somewhat relying on the new option -- new bullet 3, you know, that if you have monopoly facilities then the carrier has allowed access to those facilities, but I'm just not comfortable that those have worked smoothly in the past. And I know that they probably haven't, so.....

COMMISSIONER THOMPSON: Well, I don't think they work particularly smoothly every time anyway, but I guess I just

don't see the need if we have the provision that says if they are monopoly facilities they've got an obligation to figure out to provide access to take the next step, but that's an area we just don't agree.

I changed what should be numbered 4 that is 5 on here in response to a comment by Commissioner Johnson, what he handed me that he later shared with me that he didn't even think that was such a great idea. I thought it was a good idea. It was the standard for market share. It used to say at least 40 percent of the customers receive service from competitors. The question is well, what if there's a lot of little carriers who collectively comprise 40 percent, but they're still one big carrier that's 60, is that when you want to back off? And his standard had two carriers that each shared more than 30 percent of the relevant market which I thought was better 'cause it avoids the one carrier versus two little ones or many little ones problem.

CHAIR JOHNSON: And I'll try not to take too much credit for this inspiration?

COMMISSIONER GIARD: And we do we need item number 1?

COMMISSIONER THOMPSON: Yeah. What that would ensure would be that customers have access to competitors. I think that's important if we're going to.....

CHAIR JOHNSON: Well.....

COMMISSIONER THOMPSON: .....the idea that you're going to

rate deregulate is dependent upon customers being able to switch effectively from carrier to carrier so they need to have access to at least two.

COMMISSIONER STRANDBERG: How does.....

COMMISSIONER GIARD: Then are we doing number 5?

COMMISSIONER STRANDBERG: How do items 2 and 5 relate?

COMMISSIONER THOMPSON: Good question.

CHAIR JOHNSON: Well, I think there are a couple of different things going on there. I -- oh, I'm sorry, you asked about 2? I thought the question was about 1.

COMMISSIONER THOMPSON: It's about the relationship between the two.

COMMISSIONER STRANDBERG: Yeah. I mean we have some criteria for what is a dominant carrier.....

COMMISSIONER THOMPSON: Okay.

COMMISSIONER STRANDBERG: .....and let's make sure those mesh.

COMMISSIONER THOMPSON: Okay. Point is well taken. I guess I'm back to the drafting board.

CHAIR JOHNSON: Did you have a question about the relationship between 1 and 5 though, was that your question?

COMMISSIONER STRANDBERG: Yes.

CHAIR JOHNSON: Commissioner Giard?

COMMISSIONER GIARD: Uh-huh.

CHAIR JOHNSON: Well, I think 1 identifies that we are --

that defines a particular breed of cat, a certificated local exchange service competitor, and whereas 5 just speaks in terms of carriers. I don't think -- I think item 1 ensures that there are certain -- two carriers that have certain minimum qualifications whereas 5 is a bit more general and I think others could -- other carriers that are not certificated LECs could meet that 5, that's the way I interpreted it at least.

COMMISSIONER GIARD: Uh-hum.

COMMISSIONER STRANDBERG: Well, are you opening that then to like a cross technology type thingy where I hear you're saying.....

CHAIR JOHNSON: That would be the implication, yes.

COMMISSIONER STRANDBERG: Yeah.

COMMISSIONER THOMPSON: Wow.

CHAIR JOHNSON: Thingy. Got to be that thingy.

COMMISSIONER THOMPSON: Okay. On number 6 I changed it in response to Commissioner Strandberg's concerns to try and identify what we really wanted which is enough information to be able to certify appropriate use of Universal Service Funds.

10 I got rid of because I think that's another double backup. It would be nice, but we don't necessarily need it. And there's also -- there was a double negative in there which is always difficult to prove.

COMMISSIONER STRANDBERG: It's not that I don't like those.

CHAIR JOHNSON: I think it -- no evidence is also a bad one, too.

COMMISSIONER THOMPSON: Yeah.

CHAIR JOHNSON: Yeah.

COMMISSIONER THOMPSON: Yeah. Anyway, B2 is the next big change. I added in response to -- I changed this in twc ways in response to Mr. Gazaway's concerns which were good ones. The first that each of these companies must establish or notify their customers of a customer complaint process. I'd hope they'd have them anyway, but just to make sure they do. And they also have to notify their customers of their right to contact us if the complaint isn't resolved to their satisfaction.

And I changed on the following page the reporting requirements to include customer's name and contact information as well as all the information they're required to collect about -- because I want our Staff to have the ability to verify or spot check if they want to, if they need to.

Then the next substantial changes to paragraph 5 and that incorporates Commissioner Johnson's language about what a basic service is to make it consistent with how the FCC defines it. I changed carrier to provider again for the reasons we've talked about lots of times already. And I added a number 7. I was originally thinking of some kind of nondiscrimination requirement, but it was pointed out to me by the ever able Ms.

Kenyon that's in the statute anyway. And that there are other statutory requirements so perhaps just a reference to statutory requirements would be enough.

COMMISSIONER HARBOUR: Mr. Chairman, I like the -- I appreciate the effort on this. I had two questions. One on number 5, we go from basically a 40 percent threshold to a 60 percent. And I'm wondering if there's any -- if that imposes a barrier that's higher than we would really like. Would some figure short of 30 percent since two are required each with that amount be more reasonable?

CHAIR JOHNSON: Well, just speaking for myself, I think that this is a -- we are establishing a pretty significant trigger point here for detariffing.....

COMMISSIONER THOMPSON: Uh-hum.

CHAIR JOHNSON: .....and I think it's appropriate to set that hurdle, if you will, somewhat high. There's no question that under 5 that you are talking about a highly competitive local exchange market.....

COMMISSIONER HARBOUR: Right. What if.....

CHAIR JOHNSON: .....that's the intent of the language.

COMMISSIONER HARBOUR: What if, you know, some people would consider a market to be pretty competitive if you have an incumbent and then one competitor had 32 percent and the other had 24 percent? I mean....

COMMISSIONER THOMPSON: Well.....

COMMISSIONER HARBOUR: .....that's a pretty high threshold to suggest that two have to.....

COMMISSIONER THOMPSON: Well, who has the rest of the market? Aren't you.....

COMMISSIONER HARBOUR: Yeah.

COMMISSIONER THOMPSON: I think you're covered.

CHAIR JOHNSON: And we may want to come back if -- I think we could easily debate that 30 percent number a little bit back and forth.

COMMISSIONER HARBOUR: Okay. I'm sorry.

CHAIR JOHNSON: That's an easy discussion we can have.

COMMISSIONER HARBOUR: Yeah. No, I was reading it wrong. Now I understand and I appreciate your patience.

Back on the bottom of the page on number 2.....

COMMISSIONER THOMPSON: Uh-hum.

COMMISSIONER HARBOUR: .....adding to the customer satisfaction. I'm wondering if that isn't imposing on the company more than a company should be reasonably asked to assume to be able to verify to us that each of the cases dealt with was to the customer's satisfaction. Does that imply that he collects a statement from every customer saying I'm satisfied? I don't think the nature of customer service is very naturally embraces a requirement to ensure that each complaint was resolved to the customer's satisfaction.

COMMISSIONER THOMPSON: Which is why it says if.

COMMISSIONER GIARD: Yeah.

COMMISSIONER HARBOUR: Yeah.

COMMISSIONER THOMPSON: Yeah. And I think I'm not intending that they have to get some kind of certified statement from the customers, but I think they're going to know when the customer stops calling back or if -- what the customer asked for was delivered, that there was (indiscernible - simultaneous speech).....

COMMISSIONER HARBOUR: I just think that's a regulatory requirement and it's another line that customer service has to be instructed to somehow ask and obtain knowledge of whether or not the customer was satisfied after complaining and being through basically a contentious process because it is -- every time a customer complains it's a somewhat contentious process. And then we're asking to determine whether or not the complaint was resolved to the -- now maybe the customer was -- stopped objecting, but to affirmatively say that the customer was satisfied I think is asking a little much.

CHAIR JOHNSON: Well, if I might, I think, once again, this is simply notice that it be provided to customers. Frankly, the way to do this is through a bill stuffer or.....

COMMISSIONER THOMPSON: Uh-hum.

CHAIR JOHNSON: .....notification in a bill and utilities do this all the time. There's a contest for the limited space that's available on a bill or there's a cost associated with

the bill stuffer.....

COMMISSIONER HARBOUR: Right.

CHAIR JOHNSON: .....but that's what we're talking about here.

COMMISSIONER HARBOUR: Yeah. No, and I support you on that. The last -- the underlying portion does that. And I think.....

COMMISSIONER THOMPSON: He's talking about this.

COMMISSIONER HARBOUR: Yeah. I think.....

CHAIR JOHNSON: Oh, I see.

COMMISSIONER HARBOUR: .....if you were to leave out the earlier reference to customer satisfaction you will accomplish what you want by the underlying language.

COMMISSIONER THOMPSON: Oh, okay. Well, I don't see that as a big deal. If the complaint resolved is fine.

COMMISSIONER STRANDBERG: That could be handled in drafting to get it.....

COMMISSIONER THOMPSON: Yeah.

COMMISSIONER STRANDBERG: .....written right (ph).

COMMISSIONER GIARD: What -- why do we put in carrier customer complaints? Does this mean that GCI calls up ACS every day and talks about the nature of its complaint and how and if it was resolved? If it was resolved to GCI's satisfaction and then we never hear from them again? I don't know. I mean carrier customer. I'm sure they talked -- I'm

sure they're not going to call every day.

COMMISSIONER THOMPSON: Well, if that's the -- I mean hopefully some day there might be a satisfactory process for transitioning customers so that they don't have to complain, but some of these -- I was thinking that rather than GCI and ACS, I was actually thinking about Alascom who is a wholesale -- significant wholesale customer and I think.....

COMMISSIONER GIARD: I don't mean -- we're talking about consumer complaint process in this. I don't know if we just really want to sneak carrier customer complaints in there. I mean the goal is to protect the consumer and the carrier probably has.....

COMMISSIONER THOMPSON: They're consumers, too. Yeah, I think the carriers are consumers, too, I don't know, I think about that one a little more.

COMMISSIONER STRANDBERG: Let's see now, we're deregulating retail services here.

COMMISSIONER GIARD: Retail, right.

COMMISSIONER THOMPSON: Yeah.

COMMISSIONER STRANDBERG: We're not.....

COMMISSIONER GIARD: All right. So it's AT&T Alascom is going to be calling up ACS.

COMMISSIONER THOMPSON: Uh-hum.

COMMISSIONER GIARD: I mean they're big companies and they'll duke it out.

COMMISSIONER STRANDBERG: Well.....

COMMISSIONER GIARD: And then they'll come to us (indiscernible).....

COMMISSIONER STRANDBERG: .....I mean at the top it says here rate deregulation of a retail service or group of services. Does that include a service being provided to another carrier? Is that the scope?

COMMISSIONER THOMPSON: It could, I guess, but.....

COMMISSIONER GIARD: I'm not sure of that.

CHAIR JOHNSON: I'm not sure on that one.

COMMISSIONER THOMPSON: I'm not sure either. Okay.

MS. KENYON: I think as drafted retail almost always implies you're not talking about another carrier.

COMMISSIONER THOMPSON: Okay. So I'll get rid of and (ph) carrier customer.

CHAIR JOHNSON: Okay. I'm just watching the clock here, Commissioner Thompson.

COMMISSIONER THOMPSON: Yeah, okay. Gone.

CHAIR JOHNSON: Is there further discussion about option 4?

MR. GAZAWAY: Can we ask a couple of clarification points from a practical application point of view? For example, are you going to require information to be filed if you get a customer complaint or not? If so what level of detail is that information going to have?

COMMISSIONER THOMPSON: I think the regulation requires that they file -- the level of detail is what's (indiscernible) in 2 and 3.....

CHAIR JOHNSON: Yeah.

COMMISSIONER THOMPSON: .....and they're supposed to file with us monthly.

CHAIR JOHNSON: Rich, we may not be able to provide that much more than what we already have here for right now.

MR. GAZAWAY: I mean if they're in a detariff process where they are no longer (indiscernible).....

CHAIR JOHNSON: Let's.....

MR. GAZAWAY: .....on our approval of the.....

CHAIR JOHNSON: .....open up that door again.....

MR. GAZAWAY: .....tariff to validate the terms of their service why are they coming to us for complaints?

MS. KENYON: I thought about that, too, and I think what I was thinking -- why I thought that might be good that we at least get the report of the consumer complaints is if we have a whole bunch of them then under A, and I forget what number it is, I think A7 you can re-regulate essentially. Not that that's a convenient or desirable option, but if you do get everybody complaining something it leaves you free to take action.

CHAIR JOHNSON: We have another -- hopefully have we come to an end of the discussion on option 4 for right now,

Commissioner Thompson?

COMMISSIONER THOMPSON: Uh-hum.

CHAIR JOHNSON: Yeah. We have another hearing scheduled for Friday and I'm not precisely sure of the time. It's in the afternoon. I guess when I had some discussion with some of the other Commissioners I think the expectation is, and I know it's going to put a burden on the Staff but I doubt if you will be entirely surprised by this, but we're probably going to want to get a recapitulation of the items that we have decided and what we are currently looking at, so we may be able to reconsider and think of those items kind of as a whole. Is that going to be possible, Ms. Kenyon?

MS. KENYON: Yes. We were planning on giving that to you on Thursday.

CHAIR JOHNSON: I know that.....

MS. KENYON: It may be -- we were thinking by maybe mid-afternoon.

CHAIR JOHNSON: Just let me say in advance that I know that's going to be a difficult project and that we really appreciate that so that, you know, we know it's a lot of work. And we're not making light of it. I think it's just great that you can do that for us.

At any rate, the plan is to reassemble on Friday and once again, like I say, take advantage of the Staff work and consider these items obviously, and after the report is made

available to us on Thursday and hopefully come to some final conclusion about items that may still be outstanding here or we want to make modifications to. Is there any further comment from the Commission as to where we've been today?

COMMISSIONER THOMPSON: I don't want to talk about where we've been. We've been here all day.

CHAIR JOHNSON: I know. I think we've done some fairly heavy lifting. We do have Other Business item on today's agenda. Is there other business to come before the Commission this afternoon?

COMMISSIONER STRANDBERG: Move to adjourn.

CHAIR JOHNSON: There is a move to adjourn.

COMMISSIONER THOMPSON: Second.

CHAIR JOHNSON: There's a second. Is there objection? None noted. Thank you everyone.

(Recessed - 4:33 p.m.)

1560

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 Special Public Meeting held on October 29th, 2003, was taken by Suzan K. Olson, 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 K. Olson and transcribed by Wanda Ventres, Lynn Hall, Suzan Olson and myself.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this October 31, 2003.

_____
Notary Public in and for Alaska
My Commission Expires: 10/10/06

31

STATE OF ALASKA

REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Mark Johnson, Chair
Kate Giard
Dave Harbour
James S. Strandberg
G. Nanette Thompson

REGULATORY COMMISSION OF ALASKA
701 West Eighth Avenue, Suite 300
Anchorage, Alaska

SPECIAL PUBLIC MEETING

October 31, 2003
1:30 o'clock p.m.

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PROCEEDINGS

Tape 1

0015

(On record 1:33 p.m.)

CHAIR JOHNSON: We are -- it is the 31st of October, 2003 this is a special public meeting of the Regulatory Commission of Alaska. I'm Mark Johnson, Chair of the Commission and with me are Commissioner Strandberg, someone who appears to be Commissioner Thompson, an unidentified man on my right and Commissioner Giard, oh, I think it's Commissioner Harbour,.....

COMMISSIONER HARBOUR: Thank you.

CHAIR JOHNSON: .....all are here. This session here today is -- actually first of all there is a public participation element in our meeting. Are there members of the public that are present here today that desire to address the Commission on items relevant to the Commission's business? Hearing none and seeing no requests, we will close that portion of the meeting.

The second item on our agenda is continuing consideration of the options that are available to the Commission in connection with Docket R-03-03. And also included within that docket are Dockets R-02-06 and R-01-01 -- 2, excuse me, R-01-02. We did want to -- those are on the notice as well. The Staff has prepared in response to our activities on Wednesday a rough effort at trying to define and summarize those choices

and other selections we made in this area pursuant to the comments of the parties in this docket. And I believe those papers have been distributed to members of the Commission and hopefully our members -- available to members of the public that may be present as well.

I had a request before the meeting that we consider going through the proposed Staff document page by page. I'm personally gratified that it turned out to be a lot shorter than the decisional document and it will help us to, I think, address in an expeditious manner how this docket unfolds from here. Is there an objection to going through this item beginning on page 1?

COMMISSIONER GIARD: Let's do it, Mr. Chairman.

CHAIR JOHNSON: Let's do it. Maybe we could just start and maybe I'll -- departing from our earlier approach, maybe I'll undertake to sort of walk us through. Obviously the one I'm going to work off of is the document entitled Draft 10/30/03. It would be my intention to -- I -- the one that I worked off of is the one with highlights. They provided two versions of the document to provide a little bit of a break out as to some of the changes that have been included in here from perhaps a prior version. Is -- that's the document I'm going to work off, are people amenable to that approach? I think -- I'm getting, fine, yes.

The first item are some -- a proposed change, this is on

page 2, an amendment to 3 AAC 48.315 Telecommunications Carrier Rate Reductions and Staff suggest as I understand it deletion of a current paragraph in subsection (b), is that correct, am I reading this correct?

MS. KENYON: No, what you are seeing is.....

CHAIR JOHNSON: Okay.

MS. KENYON: .....a whole new section and the deletions are there to show a change from the previous proposal that was before you and that is all.

CHAIR JOHNSON: Okay.

MS. KENYON: We weren't -- in this area we weren't sure exactly what your final decision was, I think there may not have been consensus on the panel, so I wanted to show that this may be an area where you -- we may need more instructions.

CHAIR JOHNSON: Yeah, thank you. Is.....

COMMISSIONER HARBOUR: Mr. Chairman.

CHAIR JOHNSON: Commissioner Harbour.

COMMISSIONER HARBOUR: Yeah, I've got a question of Staff, I think the way it's worded now the Commission can disapprove and require modification of rate decrease that violates existing statutes or represents undue discrimination provisioning of just and reasonable rates. That in essence includes the former subparagraph 2, doesn't it, so that embraces any of those situations that could arise?

MS. KENYON: I agree, I really didn't -- can't give you --

I mean, I think the reason 2 was in there was just to try to mirror the language that was in House Bill 111, but it's included in bullet 1 or what used to be bullet 1.

COMMISSIONER HARBOUR: So it's basically an economy of language then by using 1 and not including 2?

MS. KENYON: Uh-hum.

COMMISSIONER HARBOUR: Thank you.

COMMISSIONER STRANDBERG: If I might just get a clarification. The shaded and the lined out are items that you're bringing to our attention and you're recommending that we take out?

MS. KENYON: Yes.

COMMISSIONER STRANDBERG: And then the shaded ones mean?

MS. KENYON: That was just an indication that I wanted you to be aware a change had occurred there.

COMMISSIONER STRANDBERG: Okay. Thank you.

COMMISSIONER HARBOUR: But just because it's shaded that could be either a current addition or a deletion,.....

COMMISSIONER STRANDBERG: Right.

COMMISSIONER HARBOUR: .....that's just brought to our attention?

COMMISSIONER STRANDBERG: Right.

MS. KENYON: Yes.

COMMISSIONER HARBOUR: Okay.

CHAIR JOHNSON: I may be the most confused person here

now. I'm trying to figure out where and at what stage of the prior discussions we discussed this,.....

COMMISSIONER GIARD: I was just looking.....

CHAIR JOHNSON: .....can you provide me with a little further reference,.....Okay.

CHAIR JOHNSON: .....Ms. Kenyon?

MS. KENYON: I can -- I think I can summarize where we were at. If you were to -- let's see.....

CHAIR JOHNSON: And I have my Staff notebook in front of me.

MS. KENYON: If you'd give me a moment to find the page,.....

CHAIR JOHNSON: Sure.

MS. KENYON: .....I think I can show you what was originally proposed. Well, subject to check 33 and 34 according to Rich here. Yes, that's where we had provided you with an option 5 and you'll see how it was originally proposed. And based on discussions at this meeting on Wednesday I really didn't have a good answer for you as to why we had 2 in there, bullet 2, except for the fact that it is trying to mirror some of the language that's -- was in House Bill 111 and it would appear to be repetitive in concept. So in this next version we're proposing to take that out however it probably doesn't do any harm to have 2 in there. That it's -- I wasn't really sure where you -- what you wanted us to do.

CHAIR JOHNSON: Okay. Is there -- does that help the Commission a little bit? Did people have thoughts on that as to -- and once again you're recommending that we take out the paragraph 2?

MS. KENYON: Yes.

COMMISSIONER THOMPSON: I think that's what we decided before, I think that this change appropriately reflects the discussion as I recall.

MS. KENYON: Okay.

CHAIR JOHNSON: Is that accurate? I think since we are going through this thing sort of as the last cut let's take a little time here and make sure that we get it right. I don't think we are under the kind of time constraint that we were under on Wednesday and previously.

COMMISSIONER STRANDBERG: Looks good. Looks good to me.

COMMISSIONER THOMPSON: Good.

CHAIR JOHNSON: I personally like the original option 5, but that's okay I guess, if people want to go with the amendment we'll go with it in that way. I -- with that I've turned onto page 3, are there questions? I guess I had a question, I had understood that we were going to be rewriting the section -- the options -- the choices on depreciation to speak in terms of lives as opposed to rates, could you just clarify that for me a little bit, Ms. Kenyon,.....

MS. KENYON: That is.....

CHAIR JOHNSON: .....as to why this appears to be in terms of rates?

MS. KENYON: Could you identify where you're seeing that that's rates -- says rates, are you referring to bullet -- to paragraph (a)?

CHAIR JOHNSON: I am. And then also to the -- obviously the -- (b) also speaks in terms of depreciation rate development. I just.....

MS. KENYON: Okay.

CHAIR JOHNSON: .....want to clarify that we had made the shift from rates to lives, I under -- that was the Staff recommendation, I'm just trying to make sure that what we have in front of us makes that --.....

MS. KENYON: Okay.

CHAIR JOHNSON: .....clarifies -- is consistent with that.

MS. KENYON: Paragraph (a) is an introduction that basically says when a utility is going to be using these provisions to develop its rates, (b) says well, when you are developing your rates you can use the life and the net salvage tables that the Commission propose -- has -- is going to adopt. But you need clarification that -- they still have to come in and show you the rates that they develop based on those tables and that's why the last sentence in (b) is there and why it refers to rates, just to add clarity that it's not just something they look up in the table and they implement on their

own because you could do various types of rates as a result of what's in those tables.

CHAIR JOHNSON: Sure. I understand. I guess my second question was is as I understood the proposal that the Commission embraced and somebody correct me if I'm wrong here, that we were going to make specific reference to FCC ranges, is that correct or is that not correct?

MS. KENYON: I didn't get that impression and you do have people on the record that suggested that the FCC ranges may be a good start, but you may need to tweak them for state purposes.

CHAIR JOHNSON: Okay.

MS. KENYON: So that's why we didn't include those, but we -- that's something you could do if you desired.

CHAIR JOHNSON: But certainly the language that you've proposed here would allow us to start from that -- from -- considering a full record that included FCC as well as other potential asset lives?

MS. KENYON: Yes.

CHAIR JOHNSON: Right.

COMMISSIONER GIARD: Mr. Chairman, I have some modifications.....

CHAIR JOHNSON: Go right ahead.

COMMISSIONER GIARD: .....to this particular write up. And I have actually further modifications to what I've written

up. So I think my recommendation would be that this section particularly needs to be a little meatier in terms of implementation of the simplified depreciation table. And so I rewrote it and I put in a period by which the utilities need to adopt those tables and other items. How should we go about talking about that?

CHAIR JOHNSON: I think for openers that the thing that we want to do is make sure everybody has copy of your proposal in front of them,.....

COMMISSIONER GIARD: Okay.

CHAIR JOHNSON: .....Commissioner Giard.

COMMISSIONER GIARD: Well, that -- I didn't do that, but I can get that.

CHAIR JOHNSON: We could -- this would -- you know, since we're on the subject do we want to take a quick break here.....

COMMISSIONER GIARD: Okay.

CHAIR JOHNSON: .....and we can make copies and I'd make sure that we get copies for the Staff and also for the public that may have an interest. Mr. Treuer I think can take care of this for us.

COMMISSIONER GIARD: Oh, thank you.

CHAIR JOHNSON: Thank you, Phil. And let's go off record here for a moment while we do that.

(Off record - 1:47 p.m.)

(On record - 1:54 p.m.)

CHAIR JOHNSON: And we are back on record. Commissioner Giard, you had a proposal that you were.....

COMMISSIONER GIARD: Okay.

CHAIR JOHNSON: .....putting in front of us.

COMMISSIONER GIARD: I went back to the Rural Coalition because they had proposed some rules of depreciation and so I kind of pieced together the outline of what I hoped we could work a little further on and then put into the regs. So backing up and looking at it I thought it might be helpful as long as we're going to go through the time to develop a simplified depreciation table that we put an adoption period and this simplified depreciation table becomes the required depreciation table for all LECs for the entire state of Alaska as of a date certain such that everybody will be using it. Now no one has to use it because they can still come in and spend a couple years doing depreciation analyses before us. So it -- the door's not closed however at a date certain I think that it would be helpful for adoption.

CHAIR JOHNSON: I'm sorry was there a motion sort of informally, did you make a motion?

COMMISSIONER GIARD: No,.....

CHAIR JOHNSON: Okay.

COMMISSIONER GIARD: .....am I supposed to make a motion?

CHAIR JOHNSON: You don't have to, I think we've been trying to avoid some of that. Is there discussion --.....

COMMISSIONER GIARD: Commissioner Thompson nodded.

CHAIR JOHNSON: .....is there discussion on the.....

COMMISSIONER THOMPSON: I was just doing a -- like the motion for deem (ph), Commissioner Johnson noted that the word deemed is here and so.....

CHAIR JOHNSON: I have to admit that -- I'll just comment that I believe that subsection (b) in my estimation probably goes farther, indeed much further, than we ought to go.....

COMMISSIONER GIARD: Okay. Well, we'll step back and.....

CHAIR JOHNSON: .....in these proposed.....

COMMISSIONER GIARD: .....we'll talk about (b) then. Because I was going to give you.....

CHAIR JOHNSON: I was.....

COMMISSIONER GIARD: .....an overall strategy. But I think if we're going to go into a simplified depreciation table and the Commission is going to have the option and we're going through a -- either a regulation or a docket to get there, it would be efficient and effective for both the Commission and the carriers to have a date certain when they -- when everybody uses the same table so you have consistency. The other piece the Rural Coalition put in that I thought was interesting was they had a paragraph where it talked about for purposes of this section depreciation rates in use already prior to a date certain would be in effect until the Commission had modified it. That was taken out of the Staff's recommendation so I put

it in and I changed it a bit. And my feeling was that if this Commission had approved depreciation lives and net salvage values in the past two years prior to December 31 those rates, those lives are appropriate unless subsequently modified by the Commission or until the utility adopts simplified depreciation table. So what that says is in essence, I hope, that if they've gone through a depreciation study and they -- we have approved their rates in the last two years prior to December 31, 2003 they don't have to come in again if they decide to adopt the table, the depreciation table. So they're not going to have to do every 3 years, they're not going to have to come in.

COMMISSIONER HARBOUR: Mr. Chairman, a question?

CHAIR JOHNSON: Commissioner Harbour.

COMMISSIONER HARBOUR: Under -- maybe you're not wanting to get it -- get into (c). In -- on C (b), the second sentence we talk about the increase could be substantial.....

COMMISSIONER GIARD: Right.

COMMISSIONER HARBOUR: .....and should be amortized over 3 years. Could you explain why you think it's necessary to force a 3 year phase-in?

COMMISSIONER GIARD: Well, as I was thinking about this, I do believe that there is some chance that a utility will adopt the simplified depreciation table and that there would be a substantial change between the rates that may have been used in

the past and the rates under the simplified table. So that change needs -- not go into the rate base all at once, that's kind of a potentially big number that would go into the rates immediately. So my thought was that we would amortize whatever that change is because -- over a transition period. So because if you have the opportunity to adopt this or you do adopt it as of a specific date there's going to be a change in your depreciation expense. Now it may be that the depreciation expense goes down, that's.....

COMMISSIONER HARBOUR: Right.

COMMISSIONER GIARD: .....not likely, it's likely to go up because the utilities broken free of regulatory restraint will run to the, you know, most aggressive depreciation that we allow in the table. So their depreciation is expense is likely to go up and so there should be for prudence sake an implementation period whereby this goes into effect. So that's what that is about.

COMMISSIONER HARBOUR: Could I ask staff a follow up to that?

COMMISSIONER GIARD: Uh-hum.

COMMISSIONER HARBOUR: I'm a little uncomfortable in setting rules based on theories that are not very well quantified based on fears of a certain thing happening. The problem with this -- with this provision is that it applies on a case by case basis and in every different case it could have

a different affect, it could be a benign affect in one case and a substantial affect the next I assume. I'm wondering if it wouldn't be more appropriate to require the 3 year period if some threshold in change were reached in a given situation rather than just force all into the 3 year rule?

MS. KENYON: I have to admit I'm not sure how this works so it's hard for me to answer your question. I think the threshold idea is -- well, can we get clarification, can I give you an example, you tell me how this works? Let's say I have a carrier and its existing depreciation expense is $100,000 per year. And if they implement this their next depreciation expense -- if you implement it immediately would be $300,000 per year. And it's $300,000 per year from then on. So what are -- what could we -- what would we phase-in given that it's 300,000 per year?

COMMISSIONER GIARD: Right. I had thought about that just before I came down and I wondered if there shouldn't be an earlier implementation where they gradually get to the depreciation table. In that instance that would be a more prudent exercise for the ratepayers to adopt the depreciation table over a period of years where you come up to the 300,000 which is why I think -- one reason that this section needs to be fleshed out, you know, a little bit more than it was in the Staff's memo and certainly a little bit more here. My preference in regulation is to -- I guess number one, establish

a depreciation table for all LECs that they can adopt by a date certain so all LECs are using the same table. If they want to come in and use a different number there's an opportunity for them to do that in regulation, but generally speaking all LECs are going to be on the same page for depreciation by January 1, 2008. Okay. That was the first premise. The second was then how are you going to deal with the change that's likely to occur in depreciation expense without going and putting your ratepayers into rate shock. And my initial thought on that was there would be a big change in the first year and you are correct, there could be a big change which I thought we'd defer and we would amortize over time. But that doesn't deal with what -- the successive big changes that occur. And so then as I was walking down the stairs I thought well, perhaps the better thing to do then is to allow the -- an earlier adoption date and then move up to whatever the rate table is over -- step it up over a period of time such that if the change to the depreciation table increases your depreciation expense by more than $100,000 a year you have a 4 year implementation or a 3 year implementation period. And that way they can still implement the depreciation table, there's some barriers we put up to making significant changes immediately, but yet there still is the potential for depreciation to be standardized as it can be throughout the LECs in this state.

CHAIR JOHNSON: Additional comments?

COMMISSIONER GIARD: Those are my thoughts.

CHAIR JOHNSON: Commissioner Strandberg.

COMMISSIONER STRANDBERG: Maybe we can just get this down to the lowest common denominators about how the depreciation rates actually show up in a rate and maybe I'm not understanding what you're saying, Commissioner Giard, but from the standpoint of adopting depreciation study, you know, we have a -- we set the rates at the time of a rate case and then we wait to change those rates until we come to the next rate case. And what happens on an interim basis between those rate cases is that the utility goes along and takes care of its books. So what I'm -- I guess what I'm not understanding is how we would actually have the rate shock that you speak of because during the rate case the Commission would render decisions and typically at the time of that rate case we take into consideration the concept of -- or the possibility of rate shock and oftentimes we will not allow new rates -- we require the utility to phase-in the rates at that time. I'll make that comment and I'm not sure that that's helpful, but.....

COMMISSIONER THOMPSON: I appreciate the thought and intent of this, but I have a question for Virginia that may help us decide about whether we want to change the proposed regulation that's in here. Which is -- it seems like what Commissioner Giard's proposing lays out a procedure for how we're going to implement or how we're going to -- how these

depreciation standards will be put into effect. Is this something that should be appropriately done in the regulation or is this something we could do in the order at the conclusion of the -- whatever proceeding we hold to set those new rates? In other words these are implementation details. What she's thinking about which I agree is a good thing to think about is how we're going to transition these companies from where they are not into these tables and I'm wondering if this is something that we need to put in the regulations or is this something that we could do in the context of an order adopting whatever depreciation rates we -- not rates, lives, we decide are the appropriate standard?

MS. RUSCH: Well, I don't have a ready answer to that I'm afraid. The issue is also always that under the definition of regulations, you know, policy should be in regulations. There is an exception of course for utility rate making. And I guess I'm just not prepared right off the bat to give you an opinion about whether that would be rate making or whether it should be something that should be in the regulations.

COMMISSIONER THOMPSON: Okay.

COMMISSIONER HARBOUR: Mr. Chairman, in light of that comment I like the creativity that Commissioner Giard suggested, I think that there have arisen a couple of unanswered questions and I propose we go for the time being with the language that's before us in the document. And that

in the event that we can -- that Commissioner Giard to her satisfaction with Virginia's help and maybe some input from Staff could be comfortable then that could be suggested at -- when we draft the -- issue the final draft and amend it at that time.

MS. KENYON: I'm sorry, I couldn't hear what you said, there was coughing going on. Are you -- could you -- are we -- are you suggesting that we go with Commissioner Giard's draft?

COMMISSIONER HARBOUR: No.

COMMISSIONER GIARD: I wouldn't either.

COMMISSIONER HARBOUR: I'm suggesting that we go with the original draft before us.

MS. KENYON: Okay.

COMMISSIONER HARBOUR: And that -- but I expressed appreciation for the creativity of this and some of the issues addressed and maybe after working on it with the -- Assistant Attorney General Rusch and yourself we may come up with language that Commissioner Giard might want to use as an amendment when we discuss the final issuance.

MS. KENYON: There is another option as well in the order that releases these regulations we could have a section on depreciation that says we release a certain set of regs, but we also want you to comment on how we can improve them by including a cap perhaps on which you could use them.

CHAIR JOHNSON: Yeah, I think that the approach that Staff

has suggested would allow us to preserve all those options, Commissioner Giard.

COMMISSIONER GIARD: I think that's a fine idea, really the purpose was the discussion and not to adopt whatever I had down here.

CHAIR JOHNSON: If I might and I know we may be about at the end of this, I'm concerned that your proposal -- and I don't think this is intentional, but one of the casualties from the Giard proposal if I might call it that does appear to be the subsection (d) of the Staff draft which is in my estimation essential for us fulfilling the mandates of House Bill 111, that is to provide a check -- that depreciation also to some extent reflect actual lives. So.....

COMMISSIONER GIARD: Well, in the Staff's version I think that when we put this simplified rate table together that really -- that process that you initiate, Mr. Chairman, should have some statement in it that it has to consider actual useful life depreciation.....

CHAIR JOHNSON: Yeah.

COMMISSIONER GIARD: .....for the facilities. I don't think there's, you know, anything wrong with leaving that in here. I would assume that when we go through and develop the table with the industry that would be one of requirements that you want in there. Now keep in mind that that may lead to a more aggressive depreciation than what we've done in the past,

but I think that's really kind of where the Legislature was pointing.

COMMISSIONER HARBOUR: Mr. Chairman?

CHAIR JOHNSON: Commissioner Harbour.

COMMISSIONER HARBOUR: Yeah, on paragraph (d) I appreciate your reference to that important paragraph and I wanted to ask Staff -- frequently in the record the subject of the effect of technological -- rapid technological change affecting depreciation has come up. In your mind does the term actual useful life consider rapid technological change?

MS. KENYON: I think it does because it's how long you expect the plant will be useful and that estimate is based on technological changes as well as other factors.

COMMISSIONER HARBOUR: Okay. Well, I agree with that and I'm wondering if the Commission would agree that actual useful life probably deserves a place in the definition section along with that intent language embracing rapid technological change as a number of the parties suggested in their comments?

COMMISSIONER GIARD: I will caution the Commissioners and the industry that actual, the word actual useful life, could either -- you know, it could be a double edge sword because the actual useful life means how long does it actually -- how long is that cable actually going to be in the ground rather than an economic useful life or just useful life, it may imply that we need to look at the 50 years that a cable has been in the

ground instead of the 20 years that it's going to have an economic life. The word actual is very challenging and it could -- it doesn't leave us a whole lot of room and I would think that the industry would want that word, you know, taken out or that we would want to not use the word actual. I understand what the Legislature was trying to do, but boy, that could be difficult, that word actual.

COMMISSIONER STRANDBERG: Well, I -- if I might make the comment actual in this term -- I mean, that means what is.....

COMMISSIONER GIARD: But depreciation isn't.....

COMMISSIONER STRANDBERG: .....happening, but.....

COMMISSIONER GIARD: .....real.

COMMISSIONER STRANDBERG: .....it's -- it's really more of a predictive term, the -- you know, the usual life is something that we predict and so the term actual is somewhat of a different application, I think, in this particular -- and we're kind of struggling with that to a certain extent because we're always going to be predicting useful life and that's what depreciation is, predicting how long this equipment will last. So.....

MS. KENYON: Yeah, if I might add I agree pretty much with what's last been said and it's going to be very difficult to identify all of the factors that you might want to consider in a depreciation case because there's the technology involved, there's the nature of the plant, there's a variety of other

things that if you try to define them you will restrict yourself. And depreciation, I think, as someone has once said is more of an art than a science in some cases. So you -- you're more flexible if you don't define it and you go with exactly what the Legislature said.

COMMISSIONER STRANDBERG: I really don't think we have any option but to just leave it as it because it's what the Legislature told us we had to do.

COMMISSIONER GIARD: And for the record they're just definitely not a wacky group of people.

MS. KENYON: And you -- previously you had asked me -- or the Chair had asked me about the rates, did we mean to say rates when we talking about our draft here, and it was brought to my attention we probably have errors in paragraph (a) that it says rates too many times. Rather than trying to fix paragraph (a) I propose we just delete it because I'm not sure we need it. And then we would just reorder all the rest of the sections.

COMMISSIONER GIARD: Okay. The other -- one comment I have is under the simplified rate development. I think I went back to the FCC's statement and really they just need to file a letter, are you anticipating that we would need to -- what kind of approval submitted -- what kind of approval were you anticipating, Lori?

MS. KENYON: They would file a application to change their

depreciation rates. It would identify the lives they selected, the net salvage they've selected, the methodology that they used to develop the rate, if they're using remaining life they'll have to tell us what remaining life rate they want because the table right here that we're talking about is a projection life, they still would have to come up with the remaining life and explain to us how they did that. It simplifies what they have to do, but they still have to explain and that explanation in rationale terms is what I'd expect to see.

COMMISSIONER GIARD: Okay. I'm just going to read you the paragraph from the FCC which says in order to simplify this process the Commission has prescribed ranges of acceptable values for projected lives and future net salvage percentages. The ranges are treated as safe harbors such that carriers incorporate values within ranges into their depreciation filings will not be challenged by the Commission. Carriers that submit life and salvage values outside the prescribed range must justify their submissions with additional documentation and support. Are we following -- or is our intention to follow that process?

MS. KENYON: Yes, I believe so because they didn't -- the paragraph that you read to me didn't explain how they filed their rates and we would do exactly what they said. At least that's the intent from the.....

COMMISSIONER GIARD: Right.

MS. KENYON: .....language before you that if they're within the lives table or the net salvage table, were not going to contest it.

COMMISSIONER HARBOUR: Mr. Chairman, in the case of a cable that might be a 20 year cable or a 50 year cable or a 70 year cable, if a new technology makes that cable irrelevant then, you know, it's -- logically its useful life terminates a lot earlier than its physical life in the ground or its capability to do what it was designed to do. So as long as the record shows that we have -- we kind of acknowledge that actual useful life even though we don't define it can embrace areas outside of an accounting definition or in addition to, I'll be comfortable. I'll give you one other example is that maybe I'll ask your opinion on, Ms. Kenyon, and that's stranded investments. Some parties during the course of this were quite concerned that new technology could strand investment that regulatory processes would require that they invest in. And I'm wondering if actual useful life would further be defined to embrace a situation where stranded investment became in essence obsolete?

MS. KENYON: There -- it's almost like there are two separate concepts. I understand that they're interrelated, but normally when you look at the depreciation rates you try to predict how long that life will last for that plant taking into

consideration that it may become obsolete quicker than originally planned. That's where you -- the concept of maybe it gets stranded before I thought it would comes into play, but if you actually end up with stranded investment my understanding is if a plant is no longer used and useful you take it -- it's not employed in the rate making process unless they can get special amortization from you for that expense. An example might be they had a fire at the central office and the entire plant was destroyed. You -- in the past you probably would have allowed them to recover that investment over time because it's a catastrophic failure that was not planned for. However stranded investment is a very tricky thing, there could be -- it could be stranded due to imprudent business decisions and -- so you don't want to make a commitment on how you're going to treat it.

COMMISSIONER HARBOUR: Right. I don't think the record that we've experienced to date in this docket has addressed a situation where stranded investment resulted from imprudent business decisions, it's focused on the subject of stranded investment that results from acts that occur outside of the control of the person making the investment.

MS. KENYON: That's true, a lot of the comments were in that area, but when you set regulations they apply to all cases and if you open a wide door you let a lot in. All I'm suggesting is I think that you get where you want to go by this

-- by the language that's here, that says actual useful life. It -- to me it seems there's -- you should be able to make a rationale decision about what the depreciation rate should be under (d) actual useful life and you are also allowed to waive any of your own regulations for due cause. If -- for ever -- if I'm wrong you can waive it. I don't think that that's going to likely happen that somebody's going to argue that technological obsolescence should not be considered, they may disagree as to how long the plant's going to last, but I don't know that anybody would argue that technological obsolescence is a factor you should ignore.

COMMISSIONER HARBOUR: Thank you.

CHAIR JOHNSON: Additional questions?

COMMISSIONER GIARD: I'm good, we can work on it a little bit later.

CHAIR JOHNSON: Okay. So we're going to work on it in the context of the actual comments we put out to industry for comment when we notice language, is that where we are?

COMMISSIONER THOMPSON: And in the proceeding just set these rates I'm sure as well.

CHAIR JOHNSON: Sure, yeah. Moving on -- is that -- let's move on to page 4, I think we've got obviously some discussions in front of us. Maybe since we are getting to some pretty meaty stuff here, Ms. Kenyon -- well, it's -- let's just continue, are there questions on page 4 as to the -- and just

some -- I'm working off the highlighted version and am I to assume that the -- we are being asked to proceed as if the -- all the language that's underlined would be adopted? What about the.....

MS. KENYON: Right.

CHAIR JOHNSON: .....the gray line stuff,.....

MS. KENYON: It.....

CHAIR JOHNSON: .....the just and reasonable requirement in the middle of page 4?

MS. KENYON: For purposes -- I'm sorry, for purposes of your review if you just ignore the gray line stuff, totally ignore it. As a matter of fact all copies that are distributed to the public don't have the gray line stuff, the page numbers are identical. The gray line stuff is just more of a hint to me and to you that there are questions there.

CHAIR JOHNSON: Okay. So maybe using this document's not the best way to go then?

MS. KENYON: It's up to you.

CHAIR JOHNSON: Okay. But I'll -- thank you. Given that we'll just proceed. Commissioner Strandberg.

COMMISSIONER STRANDBERG: I would comment that on item (a) it looks like the changes have been made along the lines of what we talked about from my notes. So I was satisfied with that.

CHAIR JOHNSON: Anything else on page 4, folks?

COMMISSIONER GIARD: Well, what's just and reasonable treatment of competitors?

COMMISSIONER STRANDBERG: Well, I was just looking at that.

MS. KENYON: In the original draft it said fair treatment of competitors and consumers and there was discussion at the public meeting that fair wasn't defined, maybe we should use just and reasonable instead of fair.....

COMMISSIONER STRANDBERG: Right.

MS. KENYON: .....because just and reasonable is a standard that the Commission has used in the past and is fairly well understood and that's why that change was made.

COMMISSIONER GIARD: Uh-hum.

MS. KENYON: But it wasn't clear to me if you all had agreed to that, that's why I have it shaded. I wanted to make sure before -- that you knew that that was there.

CHAIR JOHNSON: Okay.

COMMISSIONER STRANDBERG: I believe that this one is -- I'll just say I believe this one is good enough for us to issue for comment and we probably will get comment. And I would just say we're going to have to move through here in order to get done.....

CHAIR JOHNSON: Okay.

COMMISSIONER STRANDBERG: .....today.

CHAIR JOHNSON: Yeah, that's right.

COMMISSIONER STRANDBERG: Not rushing, but I believe what I'm doing is trying to go to my notes and to see if what she's done is actually representative of what we had decided.

CHAIR JOHNSON: Okay.

COMMISSIONER GIARD: It's just all about love.

CHAIR JOHNSON: Did you want to put that in the form of a motion, Commissioner Giard?

COMMISSIONER GIARD: No, just and reasonable, it's just about love, that's all.

CHAIR JOHNSON: Okay. I just turned the page to page 5. I would note for the benefit that there's proposal to repeal an readopt 53.220 and that means that there's probably significant content in all what -- that appears on pages 5 and 6. Are there questions or comments or concerns about what appears on page 5?

MS. KENYON: While you're thinking about that, the two substantive changes that I made from your last -- what you last saw on Wednesday was to provide a definition for the lines issues, remember there was a lot of discussion what's a line. Replaced the term line with customer connections and defined it in the definitions section. And the only other what I would call substantive change is to add the paragraph (g) to explain what happens in the interim while you're trying to determine your proceedings on -- that you may have on dominant carrier status, (g) just says things stay the same until you change

them.

COMMISSIONER STRANDBERG: And you added (g) just to make the regulation work?

MS. KENYON: Yes.

COMMISSIONER STRANDBERG: So it's set -- okay.

CHAIR JOHNSON: I had a question here, you'll have to pardon me. I'd like to ask and I probably could do this myself, are the factors that are set out in subsection (f) on page 6 -- to what extent do those parallel the factors that are set out, dominant carrier determinaticn in the IXC context on page 17, are they the same?

MS. KENYON: I'll confirm one way or the other in a minute.

CHAIR JOHNSON: I can see that if we're talking about some sort of parity between markets where -- it might be useful to kind of maintain that.

MS. KENYON: I think there's a difference -- one difference in that the IXC version refers to geographic rate averaging which is not.....

CHAIR JOHNSON: Okay.

MS. KENYON: .....you would consider under the IXC -- under the LEC market. And that was excluded. But.....

CHAIR JOHNSON: Oh, and certainly it's got -- we've got.....

MS. KENYON: Oh, yeah, and number 7 under the LEC version

it talks about the number of customers transferred to a competitor. That point is not in the IXC issue because it's not as material a factor in the IXC market, there doesn't appear to be as definitive an issue that you may have a competitor that's in the market, but that it doesn't really affect the number of incumbent carrier's customers because it might not be a pure substitutable service. So 7 seemed to be -- the number of customers transferred seemed to be a more important issue to consider in the local market than the IXC and that's why we've listed it. And otherwise I believe they're identical.

CHAIR JOHNSON: My question is it not -- and I probably should get it in front of me here, but it appeared to me as I went through here that the proposed subsection (g) was inconsistent with one of the precepts of House Bill 111?

COMMISSIONER THOMPSON: I'm confused, what are you suggesting explained?

CHAIR JOHNSON: (G) says that until changed by the Commission the incumbent carrier in any service area is a dominant carrier. But I thought that House Bill 111 had a different statement on that point.

COMMISSIONER GIARD: It's on page 7 of the Staff book if you want to take a look.

CHAIR JOHNSON: In determining whether a carrier's a dominant carrier for purposes of setting rates, it's not

relevant that carrier in a competitive market is the incumbent carrier.

COMMISSIONER GIARD: Is that what you're looking for?

CHAIR JOHNSON: That's the text I was trying to compare.

MS. KENYON: That may be, but how do we get around that you need to explain who's.....

CHAIR JOHNSON: Just posing a question.

MS. KENYON: .....do we need to say then that all existing carriers stay their current status, does that solve that problem?

CHAIR JOHNSON: Okay. I just wanted to highlight that it was -- we know what we're doing here.

MS. KENYON: Well, is it something that you want me to change, I guess, I need to know?

CHAIR JOHNSON: I was asking the questions, I'm not.....

MS. KENYON: Yeah.

CHAIR JOHNSON: .....really advocating a position here.

COMMISSIONER HARBOUR: It's not inconsistent.

COMMISSIONER STRANDBERG: I would comment that the policy says in determining whether a carrier is the dominant carrier which would mean that what they would like us to do is that when we actually have a proceeding to make that determination.

CHAIR JOHNSON: Yeah.

COMMISSIONER STRANDBERG: So it seems like it is consistent.

CHAIR JOHNSON: Okay. I just -- I was just asking a question is all I wasn't --.....

COMMISSIONER STRANDBERG: It's a good question.

CHAIR JOHNSON: .....I'm not advocating a particular approach.

COMMISSIONER GIARD: I was wondering on item (g) it says until changed by the Commission, does that mean that this automatic trigger which goes in under (a) and that automatic trigger goes into effect is that a change by the Commission, do we have to do something?

MS. KENYON: You get to evaluate whether (a) happened. You -- what I was trying to forestall was a carrier coming to you and saying well, we looked at it under your regulations, we believe that we are no longer dominant and they don't really -- I mean, and you may not agree. So I believed that it was necessary for you to make the decision that that condition was met.

COMMISSIONER STRANDBERG: So -- go ahead.

COMMISSIONER THOMPSON: I was going to say, Commissioner Giard, I think what it contemplates is an order.

COMMISSIONER GIARD: Right.

COMMISSIONER THOMPSON: That the utility makes some kind of filing that says we think we met all the conditions, we look at it, we adjudicate it and issue an order saying yes or no.

MS. KENYON: It can be very simple, yes.

COMMISSIONER STRANDBERG: And what that forestalls is them just starting to do business that way as opposed to actually coming to us and getting the approval.

CHAIR JOHNSON: Any additional comments or questions on page 6?

COMMISSIONER GIARD: Are we going to put a time limit in to when we can consider whether that change is made? I mean, you have a trigger and then you say well, you have to come in for -- I mean, you have a trigger that's really not a trigger, it doesn't actually shoot the gun, we shoot the gun. So I'm concerned that for example in this market ACS comes in and says hey, you know, we fall under (a) and then, you know, we have this elongated hearing and then in the end a year later or two years later they do fall under (a).

CHAIR JOHNSON: No.

COMMISSIONER GIARD: No?

CHAIR JOHNSON: We -- well, you know, that's the backdrop, we do have our existing statutory time lines, certain --.....

COMMISSIONER GIARD: Okay.

CHAIR JOHNSON: .....I can tell you from my experience those are pretty aggressive.

COMMISSIONER GIARD: Okay.

CHAIR JOHNSON: It certainly -- though they may be as aggressive as some of the parties want as various times, but I think it puts a lot of pressure on this Commission to act in a

timely manner.

COMMISSIONER STRANDBERG: I was going to say that I believe that that may be a subject of some discussion.

CHAIR JOHNSON: Yeah. I know.

COMMISSIONER STRANDBERG: And if I could make this comment, during this hearing.....

CHAIR JOHNSON: You can please some of the people some of the time.

COMMISSIONER STRANDBERG: Yes.

CHAIR JOHNSON: It's very difficult to please all the people all the time.

(Off record comments - costumes)

CHAIR JOHNSON: Page 7 and once again this is a repeal and readoption of a section on discontinuance, suspension and abandonment of service. Any questions here?

COMMISSIONER THOMPSON: Yes, I have a question about the deletion in (a), and I couldn't find it -- I'm confused about --.....

MS. KENYON: All right. This is why I did.....

COMMISSIONER THOMPSON: .....and I can remember the discussion.

MS. KENYON: There was no discussion.....

COMMISSIONER THOMPSON: Okay.

MS. KENYON: .....particular to this deletion, but we -- Staff was asked to clarify what lines meant and to make them

consistent. So what we did is we made -- took out all of the line references, made them all customer connections, defined it at the back end and because the sentence that's deleted said for purpose of this section only and that's just not right any more because we're not.....

COMMISSIONER THOMPSON: Right.

MS. KENYON: .....consistent.

COMMISSIONER THOMPSON: Okay.

MS. KENYON: It's gone.

COMMISSIONER THOMPSON: Okay.

COMMISSIONER HARBOUR: Mr. Chairman?

CHAIR JOHNSON: Commissioner Harbour.

COMMISSIONER HARBOUR: On that subject could I direct our attention to page 16, please, on the definition of customer connections? Just a couple points while we're on that subject. A couple of points on that subject, this is paragraph 11, going down to the last sentence, lines capable of service. I believe we would want to insert the word to?

MS. KENYON: Yes.

COMMISSIONER HARBOUR: In the sentence -- in the first sentence, I wondered whether you would agree that we should end that sentence with the phrase whether or not -- after the words local exchange service end with the phrase whether or not the Commission regulates the provider to make it clear that for purposes of counting customer connections it's not necessary

that a company whose connections are counted be a regulated entity? Because I think clearly we're referring here to customer connections as -- you defined as -- or we are defining here as a cable television provider line is one type of a customer connection, would that clarification be helpful?

COMMISSIONER STRANDBERG: You know, I wasn't sure that we were talking about cable television, I thought we might be talking about cable telephony which as far as I know if they're providing the phone service we're still regulating them.

COMMISSIONER HARBOUR: That led me in my third point. I wanted to suggest we consider whether or not cable television should be replaced with the term VIOP or something similar?

COMMISSIONER STRANDBERG: Telephony.

COMMISSIONER THOMPSON: Well, actually what I was going to suggest since we're skipped to page 16 with the Chairman's indulgence if we can keep -- do you want to keep talking about his now?

CHAIR JOHNSON: Let's do it.

COMMISSIONER THOMPSON: Okay. I was going to suggest deleting everything from means to use in that sentence so that it instead reads a customer connection means any connection used to provide local exchange service. Because as it is now it talks about a couple of technologies, it doesn't talk about some that might later be used and I'm not sure the television reference is correct either. And if what we really mean is

anything -- any technology that's used to provide local exchange service we ought to just say that.

COMMISSIONER HARBOUR: Good. The only question -- could I ask you a question? Would -- in your opinion would an unregulated type of technology still fit within that definition?

COMMISSIONER THOMPSON: I'm not sure why if it's unregulated it needs to. I mean, it isn't -- here the definition's not based on whether something's regulated or not, it's just based on what it does, the utility of the service. If it's used to provide local exchange service then it's a customer connection under the definition here. When you use the term regulated I'm not sure whether you mean economically regulated, regulated in the sense it has to be certificated, there's a lot of different words -- meanings of that word and it's not clear to me from the way you're inserting that or proposing to insert language in the sentence what you mean or why it's important.

COMMISSIONER HARBOUR: I think your suggestion is cleaner and shorter and we ought to adopt it.

CHAIR JOHNSON: Is.....

COMMISSIONER THOMPSON: Did you get it?

MS. KENYON: I've got it. The only question I had is you eliminated the term -- the phrase under control of the telecommunications provider and that was a concept that we

needed somehow to fit in there, not necessarily in that first sentence, but the idea is when you're counting which ones are you counting, you're not counting the market as a whole, you're counting the ones that are only controlled by the company. So that phrase perhaps needs -- maybe needs to be put in the second sentence?

COMMISSIONER THOMPSON: I understand the concept, but the reason I took it out was a different one.....

MS. KENYON: Uh-hum.

COMMISSIONER THOMPSON: .....because I was thinking about voice over IP which is in legal never never land these days. And arguably there it's a connection that's not under the control of the provider, it's under the customer's control.

MS. KENYON: True.

COMMISSIONER STRANDBERG: And indeed that context, Ms. Kenyon, that you speak of, that would -- you know, I believe that that context would be brought in when this definition's actually used in a specific question,.....

MS. KENYON: Okay.

COMMISSIONER STRANDBERG: .....if that makes sense to you. I believe this is a definition.

MS. KENYON: Uh-hum.

COMMISSIONER HARBOUR: Thanks, Mr. Chairman, for letting me go out of turn,.....

CHAIR JOHNSON: That's okay.

COMMISSIONER HARBOUR: .....but I think it's important to get the definition down.....

CHAIR JOHNSON: Okay.

COMMISSIONER HARBOUR: .....early so that in our further discussion of that matter we'll have more clarity of the definition.

CHAIR JOHNSON: Okay. Additional questions on page -- returning to page 7, are there additional questions as to page 7? If not, I just turned over to page 8.

MS. KENYON: Oh, excuse me. Could we make a minor change to that last -- bullet 11 we were talking about on page 16?

COMMISSIONER THOMPSON: Uh-hum.

MS. KENYON: The very last sentence, it says lines cable of, can we change that to lines used to provide or to -- pardon me, lines used to serve multiple because there may be lines capable of doing it, but you want to count the lines that are actually used.

COMMISSIONER THOMPSON: I think that's a good change, I understand.

MS. KENYON: So it's lines used to serve multiple customers.

CHAIR JOHNSON: At page 8 a proposed new 3 AAC 53.235 rate deregulation and I believe this embraces the option 4 that we discussed extensively on Wednesday. I had one item, is that there a long list here of conditions that we would have to

investigate and satisfy and I think this may have been a -- inadvertently omitted, but when we have a long list of things like this we need to determine if these are a composite list and I have and whether or not we wanted to make this an and at the end there between 8 and 9?

COMMISSIONER THOMPSON: And I guess, Virginia, tell us whether you do it, I agree with the concept and it's probably my fault it got dropped because I -- when I worked on it we talked about it. You're right, the question is whether you want to satisfy all the following conditions or whether you want to make -- do the semicolon, semicolon on each of them and then and at the end? But I think the concept that we want to describe in whatever appropriate manner is that you have to meet everything on the list.

MS. RUSCH: All? Okay. So then there should be an and in there.

CHAIR JOHNSON: I guess the problem when you start having a -- like I say a comprehensive list is when you get to paragraph 1 it starts out with a few exceptions and that gets pretty elastic right off the -- right from the get go.

COMMISSIONER THOMPSON: Okay.

CHAIR JOHNSON: I certainly believe that this -- these are the sort of factors we ought to be looking at, the question is to me is whether or not we bind ourselves to a consideration of these factors and requiring us to go through a checklist for

(indiscernible) approach. Actually I'm comfortable with all the factors,.....

COMMISSIONER THOMPSON: Okay.

CHAIR JOHNSON: .....I would prefer not to be constrained as to make affirmative findings as to each one to get to where we need to go. I think we need to have some flexibility somewhere in this process and.....

COMMISSIONER THOMPSON: Okay. Well, I think and is probably the better.....

MS. KENYON: And I think that (b) solves your -- resolves -- addresses your concern because it says notwithstanding (a) you can deregulate or rate regulate any service you desire.

CHAIR JOHNSON: And that's -- and I agree with that that.....

MS. KENYON: Okay.

CHAIR JOHNSON: .....(b) probably does that. My intent if I was sitting on a matter that would involve the application of these factors I would like to get to the point where we could look at all of them and if we had, you know, eight really sure winners and one we're just a little bit questionable that we need to have the ability to make those decisions. And so I think (b) probably is a sufficient saving thing, but I think we ought to note from the outset that this is not a straightjacket for us. That's just what concerns me, other than that I think it's good.

COMMISSIONER GIARD: Next question on number 9?

CHAIR JOHNSON: Okay. On page 9, we just turned the page folks, I hope that's good.

COMMISSIONER GIARD: Number 9 on (a) 9. I don't know that that really fits in there, Commission approved system must exist for the prompt transfer of customers between carriers, isn't that more like in the -- shouldn't that be in the competition area rather than rate deregulation?

MS. KENYON: Well, it.....

COMMISSIONER GIARD: How does that really fit with rate deregulation?

MS. KENYON: I see it as a condition. If the rate deregulation is based on the theory that there is enough competition in the market that customers can be adequately protected by having an easy opportunity to go somewhere else if they don't like the service they're getting so I.....

COMMISSIONER GIARD: Right.

MS. KENYON: .....the reason it's here is because it's important to have a system for transferring customers. And the reason it says Commission approved is because we -- it's been something that this agency has had experience with not being handled smoothly from carrier to carrier.

CHAIR JOHNSON: May I -- could I make a proposal on that? Would it be possible to delete Commission approved and simply put an adequate system must exist and so we would be in a

position to determine the adequacy of any system?

COMMISSIONER THOMPSON: That's fine.

COMMISSIONER HARBOUR: Good.

COMMISSIONER STRANDBERG: Uh-hum.

CHAIR JOHNSON: Does that solve your concern, Commissioner Giard?

COMMISSIONER GIARD: Yeah, I just wasn't really where sure where that fit into rate deregulation, I was thinking that that particular piece of it should go into competition area, but it's fine if we just put an adequate system.

CHAIR JOHNSON: Okay. Additional questions on this section? Comments?

COMMISSIONER STRANDBERG: I'm finding the item (5) with respect to the Universal Service Funds, that language there are adequate provisions of filing of whatever information is necessary for the Commission to insure appropriate use of Universal Service Funds, we might be able to get a little more artful there.

COMMISSIONER THOMPSON: Okay. Filing of.....

COMMISSIONER STRANDBERG: To insure.....

COMMISSIONER THOMPSON: .....the would probably work instead of whatever.

MS. KENYON: I'm sorry, I can't hear you folks very well.

COMMISSIONER THOMPSON: I'm sorry, we can probably just -- he's talking about the first line on page 9,.....

MS. KENYON: Uh-hum.

MR. ROBINSON: .....where -- he wants to get rid of whatever and I'm -- I suggested that the word the would probably be sufficient.

CHAIR JOHNSON: Whatever.

MS. KENYON: Of the information necessary for .....

COMMISSIONER THOMPSON: Yeah.

MS. KENYON: .....get rid of is as well?

COMMISSIONER THOMPSON: Right.

COMMISSIONER GIARD: Oh, get rid of two words.

CHAIR JOHNSON: Okay. Any other comments, questions as to -- I assume we're on pages 8, 9 and 10?

2700

(Tape change)

Tape 2

0015

COMMISSIONER HARBOUR: Mr. Chairman, on page 10, item 3, I think we ought to really think about the imposition of this obligation of a monthly report. You know, I think there's some sense -- some good sense in requiring that figures be maintained but here's the problem. This goes back to experience that may not be comparable, but in a prior life I was involved with some activities that required people to do certain things and then when they didn't there was an enforcement obligation. So seems to me whenever you make a

requirement you have to link that with enforcement. And if you don't then it remains very arguable and contentious. And then if a filing does occur on a monthly basis but it's not quite in the format that may please a particular staff person that month, then does that become contentious. So I don't know. I just urge us to think about imposing filing requirements that are not critical.

CHAIR JOHNSON: I could -- I guess, Commissioner Harbour, I guess from my standpoint I think it's important to keep in mind that this whole section represents a substantial letting go, if you will, of some of the authority this Commission has. And to ask carriers in exchange for that substantial new freedom to provide a report that -- you're right, it may be onerous from the standpoint that it's a monthly report, but I believe that these are complaints that are filed with them. It's the kind of data that would ordinarily be part of their management system. And I think it's a worthwhile data base for folks to be aware of.

COMMISSIONER HARBOUR: I think you're logical. And I understand that. Here's the problem. What if a supervisor in a company says uh oh, we've got -- looks like we're going to get 12 complaints, it's not that any management person or corporate culture would condone it, but it's awfully easy to lose a few of those so that you don't get beyond six. Now, my point is if you're going to be it as an obligation, do we not

-- does the Commission not have an obligation to enforce that it be done right? And if we put in an obligation to enforce, how is that done? And does that involve a lot of investigation and hassle that the industry doesn't want and we don't want. I just say if we put it in, fine. But it ought to be enforceable if you put it in.

CHAIR JOHNSON: Comments on.....

COMMISSIONER GIARD: Yeah. If you don't mind I'd like to chime in a little bit. A little bit -- a few drafting changes. Under item number 2, an establishment periodically notify their customers of consumer complaint process, I think that in that consumer complaint process you can just insert a line that says including the right to contact the Commission and you could eliminate the last sentence of that. Because if you're going to require them to establish (sic) their customers of the computer complaint process, you can just have them notify them about the Commission's role the same -- in the same sentence.

Then item number 3, I wonder if there's any consensus to having them file on the internet a monthly report of consumer complaints rather than filing with the Commission. I was looking at it from a different angle in that it's a lot of responsibility for our Staff to receive those monthly reports. It probably would be helpful for the telephone company to put that summary on their internet and we could also go look at on the internet and monitor it that way. That way it's out there

for the general public to see as well, and it is not as transparent frequently when it's filed with the Commission. So then you would want to remove the requirement that they file the customer's name and contact information, but if the Commission wants that information based on what we look at on the internet, we can require them to get it. So I would see if anyone was interested in making an amendment to that.

COMMISSIONER THOMPSON: I think -- as to your first change, I think that's a good one to 2. As to the discussion about number 3, I would also file monthly -- rather file with the Commission on a monthly basis, those editorial. As to approaching the web site, customer name and contact information, the purpose of customer name and contact information is to allow Staff to verify. It gets to the point that they've raised that, you know, we need to be able to enforce it. The -- and Commissioner Giard correctly noted -- I apologize for Commissioner Harbour, Dave, that it should be -- we shouldn't have customer name and contact information posted on the internet. Although I do think having that summary information on the company's web site is good, although then I can imagine all kinds of ways to put it on there differently. And probably if a customer was -- wanted to look up a particular company's track record, having a single source where the data is prepared in a way that could be easily compared, like on the Commission's web site, might be more useful. So I

think that's not a bad idea. But I'm -- then you're going to require the utility to file the two versions of the same information, some with customer name and contact information, some without.

COMMISSIONER STRANDBERG: I would like to chime in and support it. I think that Commissioner Giard's -- I think it's very well taken that what would seem, when we start having trouble, is we do have these customers come to us. There is a rather direct line to us if there is a difficulty and so I think notifying them that we are available for individual complaints, that we can handle them on an individual basis, is important.

With that being said, we do have a significant problem here with the amount of paper that does come in here. And I would think that the web base reporting with the names of the individual customers removed, of course, you know, that may be a package that we can deal with.

CHAIR JOHNSON: Can I make a proposal to the Commission. I'd like to suggest that what we do is single out for mention in the order that parties are asked to comment on the best way to disseminate this sort of information to the Commission and to the public. And that way we can get the benefit of the people that may actually be charged to do this, what they think might be the best way to approach it.

COMMISSIONER THOMPSON: The other purpose of having that

contact information available is to give Staff something to work with. So, for example, if they get a call they can first check whatever information they've got from the company or maybe go back to the company's -- if it's on the web site they're not going to be able to verify it to figure out whether this is a customer that's already dealt with the company or not, and what problem was addressed by the company before. I just think it'd be useful to Staff because they may get some of these calls on a secondary basis to have the track record that this information would provide. But I support Commissioner Johnson's suggestion to note in the new order that this is something we would like some help from industry on figuring out the best way to do.

CHAIR JOHNSON: Ms. Kenyon?

MS. KENYON: If we -- I think that Staff would likely want to see that information filed on paper anyway even if it was on the internet web site. And the reason I say that is if you just have them do it on the internet, chances are they'll say during the month of May we had so many complaints. We'd like to also know what they had in previous months but the internet web site probably won't have that information or have a limited retention schedule. This way the retention schedule is within our control. If you just have it on the internet we may end up printing it out, causing us to have more time devoted to this. That's just something that I thought you might want to consider

if you really want us to keep tabs on the history of what's happened to complaints over time. We may need to keep the paper anyway.

CHAIR JOHNSON: Yeah. I think from my standpoint I like the notion that we're compiling a data base, you know.

COMMISSIONER GIARD: It's just a question, Mr. Chairman, of whether we compile the data base or we tell the companies to compile the data base and what kind of information to put out there.

CHAIR JOHNSON: Do you need further definition.....

MS. KENYON: Yeah. I think I understand what you've done for bullet 2. What I'm not sure is what changes you want to bullet 3. I certainly -- I think the order part is clear. We can ask them the questions in the order, but I don't know what your desires are for bullet 2 as far as changes.

COMMISSIONER THOMPSON: So are you asking -- I think the easy one was the editorial one which is filed monthly with the Commission rather than on a monthly basis. The other one is whether we want to add language that requires them to file and post on their utility web site. And then you'd have to do something with the customer name and contact information. You may have to make it a separate sentence.

COMMISSIONER HARBOUR: Mr. Chairman, hold it. Originally we had discussed the internet as a substitute for to make it easier. So, you know, if we're going to also have to require

written, then actually posting on the internet becomes another expense for the.....

COMMISSIONER THOMPSON: Except some day companies will be able to file thing electronically with this agency too. It's not too far from now.

COMMISSIONER GIARD: I guess I'd chime in on Commissioner Harbour's. I think monthly is too frequent and I don't believe that we would really look at it that frequently. So if we're going to have to file paper, I would be a proponent of filing a quarterly report. And I don't think -- we have a whole section dedicated to taking consumer complaints and we are telling people in item number 2 where they can go if they don't get their complaint dealt with.

COMMISSIONER STRANDBERG: I would suggest that we include in the order elements of this discussion and ask for comment on the best way to approach that and then we can make the decision on the basis of those comments.

CHAIR JOHNSON: Well, as to the media of filing information the -- that period that it would be filed and any other relevant considerations.

COMMISSIONER STRANDBERG: I'm sure there'll be plenty of opinions on the best way to do that.

MS. KENYON: But we still need to know what you want us to put in the appendix.

COMMISSIONER GIARD: I'm fine with you putting it out the

way that it's written now. We've had enough discussion on the record. So.....

MS. KENYON: Okay.

COMMISSIONER GIARD: .....I'm comfortable with the way it is.

CHAIR JOHNSON: And I believe the parties are well represented here today. So -- I'm sure they've made extensive notes. Mr. Jackson has been making intensive notes the whole time. With that can we move on? And we're going to make some real time here. There's nothing proposed that's -- oh, there is a change on page 11, which is the repeal of the wholesale rate -- the service and rate provision. Let's talk about that a little bit. Maybe you could tell us.....

MS. KENYON: I'll try, but I.....

CHAIR JOHNSON: You're responsible.

MS. KENYON: Yeah. Sorry. The reason we took it out is we didn't feel that we used this provision. The wholesale provisions that are normally applied fall under the Federal Telecommunications Act and federal policies. And that the state provision under 250 actually generated confusion on the part of carriers. They didn't know if they needed to file the tariff with us or if their interconnection agreement was enough, or if their interconnection agreement should be filed under tariff. So we felt it wasn't -- it was doing more harm than good.

CHAIR JOHNSON: Any -- go ahead.

COMMISSIONER STRANDBERG: We had a rather discussion on this. We've been.....

COMMISSIONER GIARD: We did.

COMMISSIONER STRANDBERG: I think we generally agreed that it should.....

CHAIR JOHNSON: All right. With that we'll move on. Page 12, we have miscellaneous amendments to miscellaneous provisions.

MS. KENYON: And this section looks more complicated than what it is. Section A is an attempt to format all of the decisions you made and still keep the A notation instead of having to create a new paragraph later down the section that didn't fit in. So it essentially does three things. It talks about -- it preserves what you have in your original regulations about 48.275, because you didn't suggest any changes there. It provided that 230, which has to do with billing and collection forms, have to be filed by the larger carriers even if they are not dominant. And then section 3 identifies those carriers that you believe should be providing the accounting, that's 277. And the uniform -- and the jurisdictional separations, which is 430, those accounting roles. And then you'll see the bullets that we talked about on Wednesday.

CHAIR JOHNSON: Could I just pose a question. In

paragraph 2 there's the 20 percent market share requirement. And the question that I had is I know we have a 30 percent market share requirements in one of the prior sections and that there is a 10 percent market share as to another element. Is -- does the 20 percent match up with anything else?

MS. KENYON: Not really. And.....

CHAIR JOHNSON: So -- but the question is wouldn't be simpler if we just had a simpler regime whereas if you exceeded a 10 percent market share you certain things and if -- or if you want to make that 30. I'd just -- if you got a variety of levels we're going to have a little bit more complex regulatory regime.

MS. KENYON: The 10 percent for abandonment of service we suggest that you maintain, because the higher standard should be applied to that restriction. For everything else, it's almost like it doesn't matter because the -- well, I guess I shouldn't say that. There's.....

CHAIR JOHNSON: Well, it's changing, the O&S.

MS. KENYON: It is changing. And I was under the -- I spoke incorrectly. I was thinking about the IXC market. For the local market it gradually increases. For the IXC market there's a big gap between 10 and 50 percent. But for the local market all I can say is that there's -- 20 percent is about where the -- it's still a fairly high level of market share. Thirty percent, to me, would be too high because at that point

in time you're talking about deregulation. And we're still maintaining this really would apply to regulated carriers. So I'd say either change it to 10 or keep at 20.

CHAIR JOHNSON: My request would be that we consider changing it to 10 to provide just a little bit more uniformity in regulatory pattern. But -- I appreciate input from the other members of the Commission on that.

COMMISSIONER THOMPSON: Now I'm confused about which one you're going to change. You're talking about A2?

CHAIR JOHNSON: I would suggest change.....

MS. KENYON: Page 12.

CHAIR JOHNSON: .....ing A to instead of a 20 percent market share, to make that a 10 percent market share for the filing of the billing forms.

COMMISSIONER THOMPSON: I got you.

CHAIR JOHNSON: And that does -- you know, I suppose we're increasing the regulatory burden I guess on some carriers. I don't know how many -- if there's anybody out there that's in a 10 to 20 percent range, but.....

MS. KENYON: I think you're adding one, at least at this point maybe. Maybe. Well, for.....

CHAIR JOHNSON: I would argue that that ensures a little bit more regulatory parity.

COMMISSIONER THOMPSON: Yeah. I think that's a good idea. Yeah.

CHAIR JOHNSON: I don't have any further comments on 12. Anything else on page 12? Page 13.

COMMISSIONER HARBOUR: Mr. Chairman, earlier I didn't know if a couple of my colleagues were laughing at my costume or at my suggestions. Don't make me laugh, I lose my costume.

CHAIR JOHNSON: Please continue, Commissioner Harbour.

COMMISSIONER HARBOUR: Or at my suggestions for the editorial changes. But with the Chair's permission I have about seven or eight changes that are non-substantive. And if there's general agreement I'll just discuss those with you as docket manager and if you agree with those you can implement those without taking up the time of the group.

CHAIR JOHNSON: I guess -- are you saying that some of those are on like page 13? Is that right?

COMMISSIONER HARBOUR: Yes. And successive pages.

CHAIR JOHNSON: I guess what I'd like to do, why don't you just go ahead and go through those since we're here and we might as well get it resolved.

COMMISSIONER GIARD: It was the costume, Commission Harbour.

COMMISSIONER HARBOUR: Thank you. Okay. Where are we now? What page?

CHAIR JOHNSON: We are on page 13.

COMMISSIONER GIARD: Now we're laughing at you.

CHAIR JOHNSON: Lucky 13.

COMMISSIONER HARBOUR: I'm laughing at myself.

COMMISSIONER GIARD: We're all waiting and hoping your mustache falls off.

COMMISSIONER HARBOUR: I guess. Well, I already passed by a couple in earlier pages, thinking.....

COMMISSIONER THOMPSON: Well, maybe Commissioner Harbour had a good idea, which was to talk them over with the CDM.

CHAIR JOHNSON: Well, I'm watching the clock here a little bit.

COMMISSIONER HARBOUR: They're not that substantive. No, I -- I'm not going to.....

COMMISSIONER GIARD: Okay. Whatever.

COMMISSIONER THOMPSON: You've been overruled, Mr. Chairman.

CHAIR JOHNSON: We will -- I'll overrule myself.

COMMISSIONER GIARD: It can happen. It can happen.

COMMISSIONER HARBOUR: I knew that couldn't last. Mr. Chairman, I want to ask the clerk, does that show up as indistinguishable? I'm sorry. Never mind. Withdrawn.

CHAIR JOHNSON: May I pose a question to Staff, and I -- if I zoned out. I'm going -- I'm at page 14 with the subsection H, and I just don't recall us ever discussing this provision. And maybe -- and if we did, I apologize. But maybe you could explain where this is coming from.

MS. KENYON: We had discussed it and in summary what it --

what this is about is there are certain mandatory requirements that carriers file with their tariff filings. And it has to do with estimated number of customers and effected revenues. A lot of the times we don't use that information at all. It's file. It adds a complexity because when a carrier doesn't submit it we reject the tariff filing and that just is burdensome. But we still need it for things like discontinuing service and for rate increases when you really do want to know in detail how many customers are going to be potentially harmed by a discontinuance or a rate increase. Maybe harmed isn't exactly the right term, but effected is probably a better term. And the revenues involved give us also a better idea of the impact of the change. So that's why we're saying we're adding this section H and it's in response to an ACS concern that they had originally raised that this information was necessary for many of the filings.

CHAIR JOHNSON: Questions or comments on this?

COMMISSIONER THOMPSON: Maybe it's a philosophical questions, why does the number of customers matter for rate increases? I mean I've seen some go through that effect one that troubled me as much as those that effect 500.

MS. KENYON: It gives us a better idea of the nature of the rate increase. Like if you know that it's one customer and it's a $30,000 change, that gives you more information about how much it's going to impact the customer. But if it's like

30,000 customers and a $10,000 change, you get a better feel.

COMMISSIONER STRANDBERG: You were saying you were addressing an ACS comment with us?

MS. KENYON: ACS had originally proposed a total where you eliminate the tariff advise letter filing requirement and at hearing they clarified that they really didn't mean to quite go that far but their concern were these two issues about the revenues and tex customer counts that they felt they didn't really want to have file all the time. And I think rightly so, because a lot of times we don't use that information. But I think that there are still limited case when we do. And that's what this is intended to do.

COMMISSIONER STRANDBERG: So this really lessens the filing requirements, is that correct?

MS KENYON: That is correct.

COMMISSIONER STRANDBERG: So that we are only going to get the filings when they propose to discontinue or when they propose to increase the rates?

MS. KENYON: That's right.

COMMISSIONER STRANDBERG: Okay.

CHAIR JOHNSON: Page 15, definitions under chapter 53. Is there a need to further tweak any of these definitions that are set out on page 15? If not, I'm going to turn the page and go to page 16. And we had partly made some modifications to the customer connection, definition number 11. Is there anything

else under the definition sections that the Commissioners want to discuss?

COMMISSIONER THOMPSON: I want to talk about bundling, but we can do that at the end, so it sort of isn't a Staff's problem.

CHAIR JOHNSON: Just to note, on these definitions, these were the definitions that would apply within this particular chapter, the regulations chapter 53. So they would not have an application outside of that. Okay.

COURT REPORTER: Who said that is correct?

CHAIR JOHNSON: Ms. Kenyon said that is correct.

COURT REPORTER: Thank you.

CHAIR JOHNSON: Page 17. Is that all right? Are we on 17? Okay.

MS. KENYON: And on this page you see some deleted text. We wanted to show you what we deleted. Staff talked about this section. We realized amongst ourselves that we didn't know why we needed the language that was deleted. We thought it was clearer without it.

CHAIR JOHNSON: Could I just ask, since this is a repeal and readoption, is that -- I mean is that correct? Do we have the existing language in front of us with deletions proposed, or what do we have here?

MS. KENYON: No. What you have here is basically a whole new text. The deletions are only to show you changes from

Wednesday. My understanding, this is the version that you liked or preferred for public notice on Wednesday, but I wanted to show you what we changed from.....

CHAIR JOHNSON: Thank you.

MS. KENYON: .....instructions you gave us.

CHAIR JOHNSON: Okay. Are there questions on this matter, the dominant status, termination of the Act (ph) in market?

COMMISSIONER GIARD: Is item number B required? I mean if it's more than 60 percent, then they're dominant. Do we need to say less than 60 percent, they're not dominant? I mean that's kind of -- what are they if they're not dominant?

MS. KENYON: You may be right. I'd like to defer to my other Staff members who are present if they have a suggestion here.

MR. GAZAWAY: This somewhat echoes what we have in existing regulations where we do the same thing. We -- it basically provides that -- it designates a dominant carrier, then it basically defaults others to the non-dominant status. The question is, is it necessary? Well, I'll leave that to your discretion. I would assume it doesn't harm to leave it in.

CHAIR JOHNSON: What is the pleasure of the Commission?

COMMISSIONER STRANDBERG: I like it in.

CHAIR JOHNSON: Commissioner Giard, did you want it out?

COMMISSIONER GIARD: That's fine. It's just not

necessary.

COMMISSIONER STRANDBERG: Looking to the law on regulation in some views. Let the regulations writers deal with it to make sure it's clear, I suppose.

CHAIR JOHNSON: Okay. Page 18 does not set forth amended material as provided for background as to retail rates and wholesale rates in the IXC market. And then on page 19 begins a section on carrier of last resort. Mr. Gazaway, did you want to discuss this a little further?

MR. GAZAWAY: Well, this was subject to a significant amount of discussion at our last public meeting. Part of the process was the Commission had a couple of concerns, as I recall, and there was a discussion of comparative hearing process. Basically we have a -- when you have competing applications for local exchange service in certain areas you have a way of dealing with those and it's comparing the two applications -- well, it's dealing with both the applications at the same time. I believe the concept of a comparative hearing was somewhat the converse of that, where you're trying to impose a burden on two carriers at the same time and having a hearing with both of their interests being represented.

CHAIR JOHNSON: And I'll -- just go ahead. I'll comment on that a little further. Go on, Eric.

MR. GAZAWAY: We basically left the incumbent as a carrier of last resort pending such a determination. And then at that

time you had wanted to have the opportunity to invite comment on the issue of shared carrier of last resort responsibilities. So that's what this was attempting to achieve. The only thing I believe I would add other than that is it has pursuant to petition or unrezoned motion, which would allow the Commission to react to a filing by a company or take action under its own volition. And then also I guess the other thing I'd add is that it has -- it's imposed -- possibly imposes carrier of last resort responsibilities on the facilities based carriers.

CHAIR JOHNSON: Further comments on the -- maybe I'll just start by this -- I know I'm sort of the genesis of this proposal. I think it's important when we look at this entire process to keep in mind that although we would be dealing with requests for new service in an area, in a particular instance, that what we'd have before us at that time is, in my estimation, a -- and a more complete description, is what you have is the carriers determine to do business in the state and they do business in the state in the IXC markets in a variety of places. I think what you're really looking at is that there is an overall benefit from a carrier doing business in the state. The carrier of last resort obviously shifts the terrain because then we're talking about things that they might not ordinarily want to do based on the pure economics. But in my mind, given that that terrain has shifted, it's appropriate for us to look at carriers that are facilities based, that are

serving broad areas of the state, to look at those requests for new services and match them up to the carriers in the state that do provide -- I'm not being articulate here, but I don't think it's appropriate just to isolate on the fact that we're imposing a burden because it's clear that the carrier also obtains significant benefits from this state wide service. And I think that is the best approach to take to these applications is that yes, carriers are serving the state, we are looking at potentially increasing at some marginal level the burden that would be borne by those carriers, but at the same time the Commission needs to recognize that those same certificated carriers also have and attain benefit from providing that service. So certainly it's a stretch. It's a new approach to all this. I believe it's appropriate for us to examine this. I've been doing some work since Wednesday and I know that there is -- there have been proceedings in the states of Nebraska and Colorado that I want to take a further look at. But I do believe that it is possible for us to design a process that will effectively result in the sharing of this burden and I think it will make sense. And I would urge the Commission to stay the course and -- with the plan that is suggested and outlined, albeit somewhat general terms, what's before you here today.

MR. GAZAWAY: If I could add one thing to that. I think the AT&T's position on this was that they are overly burdened

and it's somewhat of an unequal competitor treatment for them to be the only carrier of last resort and the other carrier be allowed to pick the locations that it serves. And I think that's their genesis behind proposing this.

CHAIR JOHNSON: I would -- I guess I do encourage additional comments from the Commission. This is a big step.

COMMISSIONER THOMPSON: I thought I was clear about what we were doing.....

CHAIR JOHNSON: I know you were.

COMMISSIONER THOMPSON: .....until very recently. And so I guess I want to make.....

CHAIR JOHNSON: Please do.

COMMISSIONER THOMPSON: .....sure I understand. I thought when we talked about this before we were talking about having some kind of initial proceeding to review all carrier of last resort assignments, or whatever we want to call it, and then on a periodic basis or when we got a petition, we would then make a decision on a new circ area or do that.

CHAIR JOHNSON: Right.

COMMISSIONER THOMPSON: Is that still your idea?

CHAIR JOHNSON: Yes.

COMMISSIONER THOMPSON: Okay.

CHAIR JOHNSON: Yes. And I -- and that is consistent with the notion that it's important for us to look at this, not just in the isolated circumstance of an application for new.....

COMMISSIONER THOMPSON: Okay.

CHAIR JOHNSON: .....service, but in the totality of what's going on in the market place.

COMMISSIONER THOMPSON: Okay.

COMMISSIONER STRANDBERG: So I guess what I'm working with in my mind right now is how that particular approach practically responds to the concerns of not only AT&T, but the market place. Is it saying that yes, we recognize that there's a -- there are new conditions, there are market conditions that we have to react to. But are we looking for, under this approach, carriers to petition us to make changes or are we looking for.....

CHAIR JOHNSON: That could be the case. But the other thing that could happen is potential consumers could be petitioning for service. Communities, if you will. And that's and appropriate thing for this Commission to deal with.

COMMISSIONER STRANDBERG: So there's really two different areas. One is unserved customers who may come to us and say we need service and then we would have to look in that area and name a carrier of last resort, or the other situation is where there are existing communities and a carrier says -- may petition us and say this is not fair, we'd like you to redistribute the carrier of last resort responsibility. And I support that approach, that we need to get the ball rolling upon this. And again, under our Commission processes I want to

make sure that these rules will allow us in fact to get the ball rolling and to get us to recognize the market conditions that is there right now so that we can comply with the legislature. And that's where I'm at.

CHAIR JOHNSON: Pages 20 -- bundling, page.....

COMMISSIONER HARBOUR: Mr. Chairman?

CHAIR JOHNSON: Mr. Harbour?

COMMISSIONER HARBOUR: I agree with what has been said. Personally I'm -- I don't want to send a signal that this one person declines to consider an inter-exchange carrier subsidy. You know, we can talk about that or I'll just shut up. But, you know, I'd be more inclined if we did include something about that to say the Commission declines to consider inter-exchange carrier subsidy at this time.

CHAIR JOHNSON: Yeah. I had understood where this discussion trailed off previously is that we were decided, although that issue might come up in some other context, particularly the state Universal Service Fund issues, that we were not going to deal with it in this docket at this time. Is that an accurate statement?

COMMISSIONER HARBOUR: That's the way I recall it.

CHAIR JOHNSON: Is that inaccurate?

COMMISSIONER THOMPSON: No, I think that's correct. And I don't know why you have to give notice of that unless it was everybody's intent to throw it out again for further

discussion. I mean if what we're doing is giving notice of proposed regulations, that isn't a regulation.

COMMISSIONER HARBOUR: Right.

CHAIR JOHNSON: Right.

COMMISSIONER THOMPSON: And so it seems like silence might be appropriate.

MR. GAZAWAY: What this is, it's basically showing you what you've done on any step of the process.....

COMMISSIONER THOMPSON: Okay.

MR. GAZAWAY:.....from what the outline is. This isn't to be something you would submit for comment.

CHAIR JOHNSON: Okay. I apologize. I sort of jumped ahead. We still have the reporting requirements section, middle of page 19. Any questions on that?

COMMISSIONER HARBOUR: If I could, I'd like to ask Staff again along the lines of the earlier comments that some of us made about reporting requirements. In light of those comments any -- do you have any different view of the way this was approached, or other Commissioner's do? I'm a little troubled by requirements that you have a hard time validating or enforcing.

MS. KENYON: The difference between the reports here and the ones previously discussed is that the previous reports were for a market that you would have largely regulated. Here these reports would apply to what may continue to be a regulated

market and you may even want more reports available to you if you start sharing carrier of last resort responsibilities. Because that's relatively new ground for us and it may be new ground for whoever becomes a new carrier of last resort. So while I think it does increase the burden that may be there for some existing non-dominant carriers, it may be a burden well spent, especially when you look at how difficult it is to serve some of our rural areas of the state. High levels -- I mean just the arctic conditions, the special construction that you need, the difficult costs involved. Rich, is there anything you would like to add?

MR. GAZAWAY: I'm sorry. I was.....

CHAIR JOHNSON: Kind of distracted.

MS. KENYON: Oh, okay.

COMMISSIONER HARBOUR: That has a logical ring to it but I just wanted to ask the people more experienced in drafting regulatory language than I am whether or not that's more properly -- a volition more properly vested in the outcome of a given order than it is in the regulation.

MS. KENYON: If you want them to do it and you want a general rule, my understanding is it has to be in the regulation.

MR. GAZAWAY: If you impose it without getting the chance to comment on the obligation, I think you're walking a much more Draconian.....

COMMISSIONER HARBOUR: Wait. Now I'm not.....

MR. GAZAWAY: .....line.

COMMISSIONER HARBOUR: .....suggesting that in a given docket it may be that certain requirements could be imposed in order to provide protections desired. That may be too broad in regulation as applying to all. But -- what do you think?

COMMISSIONER STRANDBERG: Commissioner Harbour, we talked about this, as I recall -- happen to have a selected remembrance of this discussion and I think that -- at least where I stand on it, is that I support the reporting requirement. I have been cognizant of the burden and the amount of paper coming through the place, but in this case we have remote customers and they're -- and sometimes it's hard to know what's going on. And I think these reports are going to help.

MS. KENYON: Perhaps to assist in the long distance market this requirement would apply to facilities based carriers that have more than 25 percent market share. There aren't very many of those. It's -- there's Alascom and GCI right now.

COMMISSIONER THOMPSON: Well, they'll probably comment.

CHAIR JOHNSON: They're discussing their comments right now.

COMMISSIONER GIARD: They're not yawning though.

CHAIR JOHNSON: Anything further on this section? Page 20 -- page 21, bundling.

COMMISSIONER THOMPSON: I've got a question about what is the second sentence of both 52.378 and 53.275, where you require the carriers to specify rates for the services included in the bundle. It seems like that defeats the purpose of bundling. And isn't what you really want, and this also -- my question also gets to the bundling/tying distinction that I think Mr. Treuer tried to call to our attention at the last meeting, isn't what you really want to prevent the type of arrangement where a customer has to buy services they don't want to buy in order to receive services that they do. And so don't you really want the carriers to offer everything that they offer in a bundle separately and individually?

MR. GAZAWAY: I think that you guys shot that proposal down at the last meeting. Basically.....

COMMISSIONER HARBOUR: Yeah.

MS. KENYON: Done.

MR. GAZAWAY: .....what this is doing is this is part of the Unicom -- or United Utilities proposal to make sure that the carriers make their rates available state wide, and by specifying the rates, especially the inter-exchange rate.

MS. KENYON: We have to clarify what they have to file under tariff essentially.

COMMISSIONER HARBOUR: I agree with Commissioner Thompson, Mr. Chairman. I cannot imagine if this were promulgated, anybody proposing a bundle.

COMMISSIONER THOMPSON: Um-hum.

COMMISSIONER HARBOUR: It would be useless.

COMMISSIONER THOMPSON: Um-hum.

CHAIR JOHNSON: Well, we do have the ability to get further comments on this if we're going to put specific language out in front of us. So.....

MR. GAZAWAY: It appears you're going back to the ACS proposal on at least the two.....

COMMISSIONER THOMPSON: I'm not going to either party's proposal. I'm just thinking about the concept of a bundle. And I guess I don't -- if -- as a regulator, if they want to offer services together as a package, local, long distance together, for a price that might be attractive to a customer because it's cheaper than buying the two services individually, that's great. What I want to avoid is a customer being put in the position where they have to buy something they don't want in order to get something they do want. So what I want to require them to do is if they're going to put a service in a bundle, they have to offer it individually.

MR. GAZAWAY: Well, that was Staff proposal in the initial Wednesday public meeting that was rejected. We instead went to what was the UUI variation, United Utilities proposal, and that was -- so that the language drafted is based on that decision.

COMMISSIONER THOMPSON: Well, I guess I wasn't understanding tex discussion the first time then, cause that's

not what.....

MR. GAZAWAY: Well, we.....

COMMISSIONER THOMPSON: .....it could have been late in the day but that's not what I thought the discussion was. But.....

MR. GAZAWAY: The Staff discussed that issue and had a concern as well. I don't think I speak out of turn for anyone here that we agree with your concern.

COMMISSIONER GIARD: The UUI variations has allowed bundling of local exchange and long distance services, required carriers to make long distance services included in the bundle, available state wide at rates specified in the bundle. And I've got that circled. So that's the UUI version. The important part of that was, in my mind, that if you're going to have long distance services it has to be available state wide.

MS. KENYON: Would it help if we just quoted the language that's on page 54 under the UUI variation and stuck that in the regulation? Because if it's a matter of semantics, and you all agree to the language that was in the Staff memo, then maybe that's what we should put in the regulation. Or paraphrasing it. I think we tried to do that and maybe it's a matter of clarity.

COMMISSIONER HARBOUR: Excuse me. Just -- I'm just trying to think along. If we have local service A at a given price, and long distance service B at a given price, offered

independently, those are approved rates in the market served, it's to the customer's benefit to allow -- I think I'm hearing us say, it's to the customer's benefit to allow a company to offer a bundling of the two which represents a price that's less than the sum of A and B. Now if you force that company then to make the price of A and B within the bundle equal to A and B sold separately, there is no bundle. So what I hear Commissioner Thompson saying is -- is not that we don't -- here I don't want to use double negatives, is that bundling is okay, but we don't want to force the local customer to swallow long distance in a bundle and not have the option of just the local option.

MS. KENYON: Maybe -- I think I'd phrase it differently. And I'm not trying to.....

COMMISSIONER HARBOUR: I'm sure you could do a better job.

MS. KENYON: .....dis -- I think I understand your concern but let's say you've got option A, local service, option B, long distance service. They want to price those at a bundle. What I think the UUI proposal says is the option B, long distance service, has to be available state wide. It doesn't say what happens to option A, local service. That doesn't have to be state wide. Okay. So they could price this wherever they want. The long distance service, they've got to explain to you how that meets the rate averaging requirement.

COMMISSIONER THOMPSON: Right.

MS. KENYON: Now there might -- let's say we one step further and I'm a customer and I don't want option A and option B. I want option C which is just long distance service. Would you be willing to let -- are you going to require a carrier to offer a single option C which is long distance service, a stand-alone long distance service. Doesn't have to be the same rate as the bundle. And the same is true for local. Do you want them to have a stand-along local rate that's outside the bundle so that a customer isn't forced to buy what they don't want.

COMMISSIONER STRANDBERG: If I might comment, under -- let's assume hypothetically that we have a regulated local exchange carrier and it has a long distance side of its business that is in a competitive market. I think the problem comes up where someone, in order to get their long distance service, must take the local exchange service. And what I'm trying to work through is the matrix of situations that a customer might actually reside in where they could be deprived of some regulated service. I believe that's the thinking.

COMMISSIONER GIARD: Mr. Strandberg, why would we be in a position of not allowing the LEC to do exactly what you just suggested? If you want our long distance service you take our local service.

COMMISSIONER STRANDBERG: I am not -- in fact, I'm trying to argue the converse. That I'm not seeing any matrix

situation here where a customer would be negatively impacted by the free allowance of bundling under these circumstances.

COMMISSIONER THOMPSON: I think it's real simple. That -- and -- that a customer might be in a position where they have to buy something, pay for something they don't want.

COMMISSIONER GIARD: Well.....

COMMISSIONER THOMPSON: And they may get something they do want.

COMMISSIONER GIARD: .....then they go to the other company and they get long distance and local service from the other one. Why are we.....

COMMISSIONER STRANDBERG: Right. See, the point is that they're always going to be able to get the local service because that's regulated. But what they may not be able to get is the long distance service that the regulate company is offering in a bundle. But it's the market. The question is how are they hurt.

COMMISSIONER THOMPSON: Well, I was asleep when this was discussed the first time and I'm out voted. I'll be quiet and we'll see what the comments say.

COMMISSIONER STRANDBERG: All right.

CHAIR JOHNSON: Well, I guess I'll try again. I believe that when this issue came up previously I stated my preference that we continue to address this in a currently open docket that exists on bundling, and address it there. Addressing

bundling is not a requirement of the House Bill 111 process. And so it remains my preference that we continue to deal with that in the other docket. But.....

COMMISSIONER GIARD: Okay.

CHAIR JOHNSON: .....whatever the Commission would -- deems most appropriate. Keep in mind that's an open docket, we can bring that up next week and put it on a parallel path. But I just -- I'm concerned that we haven't thought through the implications thoroughly, nor have we a consensus as a body as to how this matter ought to be approached.

COMMISSIONER THOMPSON: I would concur that there's a lot of implications to this policy that have not been discussed. So I think that's a good idea.

COMMISSIONER STRANDBERG: And I think it's a good idea too.

CHAIR JOHNSON: Good. And I just want to add by saying that. Commissioner Giard has said that I -- I think there are some things that are worth looking at in greater detail. This is -- I don't want -- I'm not putting this issue aside. I'm just saying that there's no requirement that we address it in this docket. We have another docket that's already open, that's ready to go. As a matter of fact, we could take this item up if the Commission deemed appropriate at the next public meeting. I'm not necessarily suggesting we do that, but I just don't think -- and I'm -- I was concerned previously and I'm

also interested in exploring the time concerns that have been raised by Mr. Treuer, and that's of particular concern to me. So I'm just -- whatever.....

COMMISSIONER GIARD: My silence wasn't opposition.

CHAIR JOHNSON: Okay.

COMMISSIONER GIARD: I wasn't opposed.

CHAIR JOHNSON: Okay.

COMMISSIONER GIARD: I just.....

CHAIR JOHNSON: I just think it will.....

COMMISSIONER GIARD: .....think it's in another.....

CHAIR JOHNSON: .....simplify our task here and we will not get bogged down and we will not make a mistake if we decide not to take this up today and simply move on and address it just the next breath down the road.

COMMISSIONER GIARD: As long as we have some assurance that we are going to -- I mean is it a 03 Docket or a.....

CHAIR JOHNSON: I'm the docket manager of the bundling.....

COMMISSIONER GIARD: You're the bundling man.

CHAIR JOHNSON: .....issue. I guess, yeah.

COMMISSIONER GIARD: Okay.

CHAIR JOHNSON: And I'll commit to you that you'll see that maybe sooner than you want to see it.

COMMISSIONER GIARD: Okay. I just wonder is there bundling unfairness going on right now? Is there unfair

bundling?

MR. GAZAWAY: You know, I think that was address in comments. And it was addressed in a couple ways. ACS's position was that they were the only car -- well, I shouldn't put it that way. I think it was GCI's position was that the only restriction on bundling was that the incumbent local exchange carrier could not bundle their package, local exchange service and intrastate inner exchange service. Staff's position was that GCI also was subjected to that restriction but through a different mechanism. That is, through the wholesale rate of geographical rate averaging requirement.

MS. KENYON: And I think they supported -- GCI stated that at hearing as well.

COMMISSIONER THOMPSON: There's more to the story. But.....

MS. KENYON: Yeah, I know. I don't know but I'm getting from all of the more experienced commissioners that there is more to the story. So I'll go with whatever it is that the more experienced body desires.

CHAIR JOHNSON: That brings us to the end of this prepared document. The question that I posed to the Commissioners are there other issues related to this -- substantive issues that need to be addressed before we sort of turn this over to Staff to craft an order for dissemination prior to November 15th.

COMMISSIONER THOMPSON: Do you need a motion, Mr. Chair?

CHAIR JOHNSON: Actually I would. But I would like to just put this in proper context. And actually I just invited the Commissioners on the substantive question. No more substantive questions? Ms. Kenyon, is there anything that you would like to bring up that's additional on substantive issues?

MS. KENYON: Thank you, but no.

CHAIR JOHNSON: Okay. Ms. Kenyon and I had discussed -- I think I'll just put this out now -- a schedule for the dissemination of these proposed regulations for comment. And she'd given me several scenarios. One -- actually there are about five or six different versions. Some call for a very, very short comment period and then an equally short reply period. Some involved a much more lengthy period. And I was looking at the calendar and started seeing how it impacted. My current thinking -- my thinking, and actually before I announce my thinking maybe I should ask Ms. Kenyon what her recommendation is to the Commission in terms of the comment noticing periods.

MS. KENYON: I just wanted to mention I revised my recommendation to you and I would make it the second option I gave to you earlier, the longest cycle I have offered to you. That's all I wanted to mention.

CHAIR JOHNSON: Could you state that.....

MS. KENYON: The 60 days, 45 days, what I'd recommend. I just go to thinking there'd be -- we're going to get quite a

lot of comments and response. The first round of comments and 30 days reply opportunity might be a little short.

CHAIR JOHNSON: I would say that -- I guess where I was was to try to go with the 45/45 approach, which -- but.....

COMMISSIONER THOMPSON: I think more time is better, especially this time of the year and these are really -- there were very substantive changes. There would be a lot of parties to comment. I think it would be helpful to give them more time.

CHAIR JOHNSON: Other thoughts from the Commission?

COMMISSIONER GIARD: So what's your proposal? That we send this out for 45 days?

CHAIR JOHNSON: Yeah. I guess -- and I know that -- Mr. Strandberg, did you have something?

COMMISSIONER STRANDBERG: Well, I believe the 60 to 45 -- I would comment that we are October 31st right now and 60 days from now is going to be essentially January 1st.

CHAIR JOHNSON: Well, actually by the time we get the order issued, 13 January would be the.....

COMMISSIONER STRANDBERG: All right. So January 15th would be the time for the first set of comments. And I guess my concern is that we have enough time. This is a particularly bad time of the year.

COMMISSIONER THOMPSON: That's right.

COMMISSIONER STRANDBERG: So 60 may not be enough.

COMMISSIONER GIARD: Give them 30. Why do they need 60 days? You tell them to get to work. They want these things passed more than we do. I mean I don't understand 60 days. It seems like a tremendous amount of time.

CHAIR JOHNSON: I would, just in defense of my 45/45 approach, my interest is in trying to show some very, very significant progress to the legislature while the legislature is in session and they're going to realize that we have done a pretty good job on -- a pretty aggressive job and a timely job of addressing their concerns. So that's where I'm going with my 45/45 recommendation. But having said that.....

COMMISSIONER THOMPSON: Well, some of the parties who will be -- who have a significant interest in these regulations are going to be in this hearing room doing various proceedings over the next couple of months. And they're going to need some time -- I want to get good comments. They're going to need some time to think about. So while 60 days may seem like a long time, it's not like they have nothing else to do in the next two months.

COMMISSIONER GIARD: Boy, I really would hate for these comments to come back in. January 15th, you have no time to react to it. The Legislature is getting into session and all you have are comments and you don't even have reply. So all you have laying before you in front of the legislature is comments on the work that you've done. That's not where I

think we want to be, with comments. Comments are not something you want to finish with or enter the legislative session with.

COMMISSIONER THOMPSON: We're not -- no matter what we do not we're not going to have a record in order to make a decision before the legislature because.....

CHAIR JOHNSON: What I'd like to do is maybe we're at the point -- and I think it's appropriate to get this discussion out here before, I'd like -- the Chair would like to entertain a motion to adopt the Staff recommendation and then whoever makes the motion can include a -- as part of that, a recommendation that we noticed this at a given cycle and we can vote this up or down.

COMMISSIONER THOMPSON: Then Mr. Chairman, I would move that we put the staff draft regulations as amended in the meeting today out for comment to the public. To get the order out hopefully by the middle of November and allow 60 days for initial comments and 45 for reply.

COMMISSIONER STRANDBERG: Second, for the purposes of discussion.

CHAIR JOHNSON: Is there discussion on the motion by Commissioner Thompson?

COMMISSIONER GIARD: I believe that 60 days is not -- given the amount of testimony already in the record and that we've already had a hearing, and that we've had a public meeting -- this is our third public meeting, I think that the

industry would -- has participated significantly and probably is already involved in preparing to submit comments. I think 30 days and then 45 days are -- an abbreviated period is more reasonable given what the legislature wanted us to accomplish.

CHAIR JOHNSON: Could we --.....

COMMISSIONER HARBOUR: Mr. Chairman.....

CHAIR JOHNSON: .....could we just take a brief at ease and -- I think it's worthwhile for us to at least converse a little bit about what some of our options are here. Can we just go off record for a moment?

(Off record - 3:44 p.m.)

(On record - 3:47 p.m.)

CHAIR JOHNSON: We're on record.

COMMISSIONER THOMPSON: I would like to, with the Chair's permission, amend my previous motion to have a 60/30 day comment cycle.

CHAIR JOHNSON: I think we'll need permission of the second. So.....

COMMISSIONER THOMPSON: He's granting permission.

CHAIR JOHNSON: Commissioner Strandberg?

COMMISSIONER STRANDBERG: Okay.

CHAIR JOHNSON: Did you hear the motion to amend.....

COMMISSIONER THOMPSON: I amended my motion to 60/30 day cycle.

COMMISSIONER STRANDBERG: Okay.

COMMISSIONER THOMPSON: That was the second.

CHAIR JOHNSON: Is there objection?

COMMISSIONER GIARD: No.

CHAIR JOHNSON: No objection. With that we are adopted on that subject. That brings us to the end of consideration of -- Ms. Kenyon, are there other procedural aspects that relate to this matter, to RO-3-03 that we should be aware of?

MS. KENYON: Not that I'm aware of.

CHAIR JOHNSON: Is there a need for us to meet again prior to the dissemination of a order to comply with the legislative deadline?

MS. KENYON: I don't believe so. And what I would -- if this is acceptable procedure to you, Staff will develop a draft order for you to circulate amongst yourselves and there may be optional paragraphs in there that, you know, you may or may not want to have. That's the only question I would have and I think you could probably strike them out if you see it come by your desk and you don't want a paragraph to be there. But if you want to discuss the order, that's the only thing I could see perhaps having a public meeting for.

CHAIR JOHNSON: Okay. Could I just maybe put this question to Ms. Rusch. I know she's not the regulation attorney but she is our riser. Is it appropriate for us to encompass all the proposed regulatory changes that we have outlined here in a single order or is there -- would it be

appropriate for us to look at this in a variety of projects -- more than one project?

MS. RUSCH: Well.....

CHAIR JOHNSON: Are getting into any trouble there by bundling too much stuff together?

MS. RUSCH: Uh oh, bundling?

COMMISSIONER GIARD: Oh, wrong word.

CHAIR JOHNSON: Grouping.

COMMISSIONER GIARD: Thank you.

MS. RUSCH: I think this is all related to the telecommunications issues that the Legislature did tell you to address. And I might just go back and review whether there's any -- there isn't a single subject quite in the same way that it applies to legislation. So I don't think that's a problem. But I will review the manual a little bit and see.....

CHAIR JOHNSON: Okay.

MS. RUSCH: .....if I can.....

2700

Tape change

Tape 3

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CHAIR JOHNSON: Could we just -- with the Commission's permission should we receive advice from the Department of Law for the need to bifurcate some part of this at some later stage that it will not be deemed a procedural problem with the

Commission?

COMMISSIONER THOMPSON: We always do what our attorney tells us.

CHAIR JOHNSON: Okay. So with that if we do receive contrary advice we will -- that's implicit in the action we take today and we will make that appropriate modification.

That is all that we have before us as to this item on our agenda. We do have a request for an executive and then any other business that the Commission wants to take up. Maybe for clarity, let's -- is there other business that the Commission would like to address this afternoon?

COMMISSIONER HARBOUR: Mr. Chairman, I was honored when you asked me to head up our Share campaign for United Way within the Regulatory Commission. I think we're about at the end of our process and it's appropriate to report that over a third of our Commission employees have joined the Share program which is about three times the 2002 State statistics for involvement. Our employees have given from five to $600 a piece with the average contribution being about $200.

And in the course of doing that the reason I told you I was honored to serve as the volunteer coordinator is that in the course of that employees shared privately with me some of their own rationale for why they have participated, what effect Share and United Way have had on their own families and their friends over the years during times of trial. And it meant a

lot to me to hear some of those stories. Consequently, the Share program that the State undertakes officially that's utilities, private companies throughout the state undertake through United Way is much more meaningful to me personally. And I wanted to express my appreciate to the employees and to you for that honor. Thank you.

CHAIR JOHNSON: Thank you. Is there any additional other business to come before the Commission. With that the Chair would like to entertain a motion to go into executive session.....

COMMISSIONER STRANDBERG: I move.

CHAIR JOHNSON: .....for the purposes of hearing from our attorney.

COMMISSIONER HARBOUR: Second.

COMMISSIONER STRANDBERG: I move that we go into executive session. And we do not anticipate taking any action further for the members of the public after the executive session so you are free to go. And let's go off record.

(Off record - 3:53 p.m.)

(Executive session)

(On record - 4:06 p.m.)

CHAIR JOHNSON: We are back on record. And we've been off record hearing a report from our attorney on pending litigation. That report is not concluded. Is there a motion?

COMMISSIONER THOMPSON: Motion to adjourn.

COMMISSIONER STRANDBERG: Second.

CHAIR JOHNSON: Is there objection? If not we are adjourned and the time is 4:06. Thank you.

(Recessed - 4:06 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 Special Public Meeting held on October 31st, 2003, was taken by Suzan K. Olson, commencing at the hour of 1:30 o'clock p.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 and transcribed by Wanda Ventres, Lynn Hall and myself.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this November 3rd, 2003.

_____
Notary Public in and for Alaska
My Commission Expires: 10/10/06

32

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Rules Regarding	)	
the Pricing of Unbundled Network Elements	)	WC Docket No. 03-173
and the Resale of Service by Incumbent Local	)	
Exchange Carriers	)	
	)	
	)	
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: September 10, 2003 **Released:** September 15, 2003

Comment Date: 60 days after Federal Register publication of this Notice
Reply Comment Date: 105 days after Federal Register publication of this Notice

By the Commission: Chairman Powell, Commissioners Abernathy, Martin, and Adelstein issuing separate statements; Commissioner Copps approving in part, dissenting in part, and issuing a separate statement.

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), the Commission begins its first comprehensive review of the rules applicable to the pricing of unbundled network elements (UNEs) pursuant to section 252(d)(1) of the Communications Act of 1934 (the "Act"), as amended by the Telecommunications Act of 1996 (the "1996 Act"). The Commission adopted

its current UNE pricing rules, which base UNE prices on the Total Element Long Run Incremental Cost (TELRIC) of a UNE, in 1996 in the *Local Competition Order*.[1] The Commission stated at that time that it would continue to review its pricing rules based on the results of state arbitration proceedings and provide additional guidance as necessary.[2] We have not undertaken a comprehensive review of the TELRIC methodology in the seven years since it was adopted, and it is appropriate to conduct such a review at this time.

2. Our concerns in evaluating the TELRIC pricing rules are somewhat different than those present at the time the Commission adopted its *Local Competition Order*. At that time, local competition was largely a theoretical exercise and we placed a premium on the need to stimulate entry into the local exchange market. To ensure that UNE prices provided appropriate economic signals for competitive and investment purposes, we adopted a forward-looking cost methodology that calculates the cost today of building and operating an efficient facility, as opposed to the cost of an existing facility at the time it was built.[3] In stating that forward-looking costs were intended to send appropriate economic signals, we mean that UNE prices in excess of forward-looking costs would encourage competitors to build facilities when the more efficient course might be to lease facilities from the incumbent LEC, while prices below forward-looking costs might encourage them to rely on the incumbent's facilities when the more efficient course might be to construct their own facilities. At the same time, we anticipated that UNE prices based on forward-looking costs also would not discourage investment by incumbent LECs because such prices would allow them to recover their costs.

3. Today, now that competition has taken root in many areas of the country, we initiate this proceeding to consider whether our pricing methodology is working as intended and, in particular, whether it is conducive to efficient facilities investment. To the extent that the application of our TELRIC pricing rules distorts our intended pricing signals by understating forward-looking costs, it can thwart one of the central purposes of the Act: the promotion of facilities-based competition. While our UNE pricing rules must produce rates that are just, reasonable and nondiscriminatory, consistent with the Act's goal of promoting sustainable competition, they should not create incentives for carriers to avoid investment in facilities.[4]

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[1] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom. Comp. Tel. Assoc. v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and remanded, AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); *on remand Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000) (*Iowa Utilities II*), *reversed in part sub nom. Verizon Communications, Inc. v. FCC*, 535 U.S. 467 (2002) (*Verizon v. FCC*).

[2] *Local Competition Order*, 11 FCC Rcd at 15813, para. 620.

[3] *Id.* at 15844, para. 672 ("We believe the prices that potential entrants pay for these elements should reflect forward-looking costs in order to encourage efficient levels of investment and entry.").

[4] *See, e.g., Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338, FCC 03-36, para. 682 (released Aug. 21, 2003) (*Triennial Review Order*) ("Establishing UNE prices based on an unreasonably low cost of capital would discourage competitive LECs from investing in their own facilities and thus slow the development of facilities-based competition."). The Supreme Court found that competitive LECs had invested $55 billion from 1996-2000 and that "a regulatory scheme that can boast such substantial competitive capital spending

4. This NPRM solicits comment on tentative conclusions and modifications to our current UNE pricing regime that seek to preserve its forward-looking emphasis and its pro-competitive purposes, while at the same time making it more transparent and theoretically sound. Specifically, we propose to simplify TELRIC pricing, while simultaneously improving the accuracy of its pricing signals, by resolving one of the key internal tensions that marks its current application: the assumption that for some purposes rates should reflect a market with widespread facilities-based competition but, for other purposes, rates should reflect a market with a single dominant carrier. We seek comment on an approach that bases UNE prices on a cost inquiry that is more firmly rooted in the real-world attributes of the existing network, rather than the speculative attributes of a purely hypothetical network.

5. The Supreme Court in *Verizon v. FCC* affirmed our choice of TELRIC as a permissible methodology for states to use in ratemaking proceedings.[5] The court held that the Commission's decision to adopt a forward-looking cost methodology was a reasonable interpretation of the statute and that the Commission did not err in rejecting alternative methodologies advocated by the incumbent LECs.[6] The court also rejected arguments that various aspects of the TELRIC methodology were unlawful.[7] Nevertheless, the TELRIC rules have proven to take a great deal of time and effort to implement, and have been the subject of extensive criticism. In particular, critics argue that the TELRIC methodology is flawed due to an alleged emphasis on unrealistic efficiency assumptions. They contend that these unrealistic assumptions result in rates that are so far below an incumbent LEC's "actual" costs that neither incumbent LECs nor competitive LECs have an incentive to invest in new facilities.[8]

6. Since 1996, virtually all states have conducted at least one round of cost proceedings under these rules. State pricing proceedings under the TELRIC regime have been extremely complicated and often last for two or three years at a time.[9] State commissions

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over a 4-year period is not easily described as an unreasonable way to promote competitive investment." *Verizon v. FCC*, 535 U.S. at 517. As of 2002, that figure had increased to $71 billion. *See Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket Nos. 02-33, 01-318, 01-321, Letter from Jonathan Askin, General Counsel, Association for Local Telecommunications Services, to Marlene H. Dortch, Secretary, FCC, Attach. at 11 (filed July 17, 2003). As one court of appeals has noted, however, "the existence of investment of a specified level tells us little or nothing about incentive effects. The question is how such investment compares with what would have occurred" under a different regulatory regime. *United States Telecom. Ass'n v. FCC*, 290 F.3d 415, 425 (D.C. Cir. 2002).

[5] *Verizon. v. FCC*, 535 U.S. at 497-529.

[6] *Id.* at 507-08 ("Having considered the proffered alternatives and the reasons the FCC gave for rejecting them, we cannot say that the FCC acted unreasonably in picking TELRIC to promote the mandated competition.").

[7] *Id.* at 523.

[8] *See infra* notes 98 and 100.

[9] *See, e.g., Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services, Inc., for Authorization to Provide In-Region, InterLATA Services in Rhode Island*, CC Docket No. 01-324, Memorandum Opinion and Order, 17 FCC Rcd 3300, 3312-15, paras. 21-26 (2002) (*Verizon Rhode Island 271 Order*) (Rhode Island Public Utilities Commission conducted a four-year series of proceedings to establish UNE rates); *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth*

typically are presented with at least two conflicting cost models, and hundreds of inputs to those models, all supported by the testimony of expert witnesses. These cases are extremely complex, as state commissions must make dozens of detailed decisions regarding the calculation of the forward-looking cost of building a local telecommunications network. The drain on resources for the state commissions and interested parties can be tremendous. We also note that, for any given carrier, there may be significant differences in rates from state to state, and even from proceeding to proceeding within a state. We are concerned that such variable results may not reflect genuine cost differences but instead may be the product of the complexity of the issues, the very general nature of our rules, and uncertainty about how to apply those rules. The resulting rates might not, therefore, achieve fully the Commission's goal of sending appropriate economic signals.

7. Part of the difficulty that states and interested parties have encountered springs from the excessively hypothetical nature of the TELRIC inquiry. Because of the general nature of our rules, state commissions have wide latitude in applying the "most efficient technology" standard under the current rules. This creates the potential for a TELRIC proceeding to become a "black box" from which a variety of possible rates may emerge. In the absence of more specific guidance, this can make network modeling opaque and make it difficult to understand how actual UNE rates are derived. The lack of predictability in UNE rates is difficult to reconcile with our desire that UNE prices send correct economic signals. Moreover, these complicated and time-consuming proceedings may work to divert scarce resources from carriers that otherwise would use those resources to compete in local markets.

8. We also request comment in this proceeding on our resale pricing rules. Section 251(c)(4) requires incumbent LECs to "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."[10] Section 252(d)(3) of the Act requires that state commissions establish wholesale rates for resold services based on the incumbent LEC's retail rates, "excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."[11] This section of the Act is independent of section 252(d)(1), which sets forth the pricing standard for UNEs and interconnection.[12] The Commission's resale pricing rules were vacated by the U.S. Court of Appeals for the Eighth

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Long Distance, Inc., for Authorization to Provide In-Region, InterLATA Services in Florida and Tennessee, WC Docket No. 02-307, Memorandum Opinion and Order, 17 FCC Rcd 25828, 24840-44, paras. 24-31 (2002) (*BellSouth Florida/Tennessee 271 Order*) (Florida Public Service Commission conducted a two-year proceeding to set UNE rates (for the second time); Tennessee Regulatory Authority established UNE rates over four years in a two-phased proceeding); *Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, WC Docket No. 02-314, Memorandum Opinion and Order, 17 FCC Rcd 26303, 26412-14, paras. 186-190 (2002) (*Qwest 9-State 271 Order*) (Colorado Public Utilities Commission established UNE rates (for the second time) in a 25-month proceeding).

[10] 47 U.S.C. § 251(c)(4).

[11] 47 U.S.C. § 252(d)(3).

[12] *Compare* 47 U.S.C. §§ 251(c)(4)(A), 252(d)(3) (resale standard) *with* 47 U.S.C. §§ 251(c)(3), 252(d)(1) (UNE standard).

Circuit in 2000.[13]

9. Our objective in this proceeding is to modify or clarify the Commission's rules in order to help state commissions more easily develop UNE prices and resale discounts that meet the statutory standards established by Congress in section 252(d) and to provide more certainty and consistency in the results of these state proceedings. Based on the wealth of experience that has been developed over the last seven years, we hope to compile a substantial record on a broad range of issues related to UNE pricing and resale discounts. We are particularly interested in the perspective of the state commissions on the successes and failures of our current rules, and the possible modifications that would most help them in fulfilling their important statutory role in setting UNE prices and resale discounts.

II. BACKGROUND

A. General Ratemaking Principles

10. "Cost of service" ratemaking methodologies,[14] whether based on forward-looking cost, historical cost, or some other methodology, follow a common approach to estimating recurring monthly charges.[15] Specifically, a recurring rate set in a regulatory ratemaking proceeding generally will be based on the sum of three separate cost components – operating costs, depreciation expense, and return on capital.[16] In addition to recurring rates, regulators generally establish non-recurring charges (NRCs) that allow a carrier to recover the cost of certain labor activities at the time the activity is performed. We discuss each of these components briefly below.

11. Operating Costs. Operating costs are the non-capital costs associated with

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[13] *Iowa Utilities II*, 219 F.3d at 754-756, 765 (vacating rules 47 C.F.R. §§ 51.609, 51.611), *rev'd on other grounds sub nom. Verizon v. FCC*, 535 U.S. 1646.

[14] Cost of service ratemaking is different from price caps and other forms of price regulation that adjust prices from one period to the next based on factors other than a carrier's cost of providing service, such as anticipated productivity and inflation.

[15] *See Verizon v. FCC*, 535 U.S. at 487-88 ("The enduring feature of ratesetting from *Smyth v. Ames* to the institution of price caps was the idea that calculating a rate base and then allowing a fair rate of return on it was a sensible way to identify a range of rates that would be just and reasonable to investors and ratepayers."). The Supreme Court recognized that TELRIC essentially follows this same approach, but with a rate base "valued in terms of . . . equipment an incumbent may not own." *Id.* at 501.

[16] ALFRED KAHN, THE ECONOMICS OF REGULATION, PRINCIPLES AND INSTITUTIONS, Vol. 1 at 26-27 (1970) (KAHN) (Regulators "need to make determinations about which costs they were prepared to authorize for inclusion in the computed company cost-of-service; and of these, which could be charged directly as operating expenses and thus included in annual revenue requirements dollar for dollar, and which capitalized, thus entering the cost of service in the form of annual allowances for depreciation and return on the undepreciated portion of the investment."); JAMES C. BONBRIGHT, ET AL., PRINCIPLES OF PUBLIC UTILITY RATES at 200 (2d ed. 1988) (BONBRIGHT) ("Under the usual forms of regulation, a fair return is the excess in operating revenues over operating expenses for which a commission will make provision in a rate case as a component of the company's annual revenue requirements. The operating expenses include allowances for depreciation and for nearly all taxes, not even excepting corporate income taxes.").

operating a network, including maintenance expense, administrative expense, and an allocation of other common and overhead costs. Under an historical cost methodology, rates are designed to recover all operating costs unless disallowed by the regulator.[17] Under a forward-looking methodology, operating costs may be estimated in a variety of ways. For instance, they may be estimated by multiplying the projected investment by an expense factor, sometimes referred to as an annual charge factor (ACF), which is typically the ratio of current expenses to current investment.[18] Alternatively, expenses may be estimated by applying productivity and inflation factors to a carrier's current expenses.[19]

12. Depreciation Expense. Depreciation expense represents an effort to recover the decline in the economic value of capital assets over time.[20] There are various ways to estimate depreciation expense. For example, under straight-line depreciation, the initial capital investment in an asset is divided by its useful life to derive an annual depreciation expense.[21] Economic depreciation, in contrast, is intended to reflect the actual decline in the economic value of a capital asset between one period and the next. The difference between the two is largely one of timing, as both approaches recover the same total investment over the life of the asset. Depreciation expense is difficult to estimate because it requires the regulator to predict the service life of the asset and how its value declines over time. The economic value of a capital asset is likely to decline more quickly if new, more efficient (*i.e.*, more productive or less expensive) capital assets are introduced that would increase the net present value of expected cash flows associated with the new assets. Consequently, to estimate economic depreciation it is necessary to estimate the likely decline in the value of an existing asset that will result from improvements in technology.

13. Return on Capital. The return on capital is estimated by multiplying a firm's cost of capital by its investment base. The cost of capital is the cost a firm will incur in raising funds in a competitive capital market.[22] The cost of capital is generally estimated as a weighted average of the cost of equity and the cost of debt. The rate financial markets will demand before they are willing to purchase a particular company's debt or equity will depend on the market's

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[17] CHARLES F. PHILLIPS, JR., THE REGULATION OF PUBLIC UTILITIES at 255 (3d ed. 1993) (PHILLIPS) (citing *Mississippi River Fuel Corp. v. Federal Power Comm.*, 163 F. 2d 433, 437 (D.C. Cir. 1947) ("Expenses . . . are facts. They are to be ascertained, not created, by the regulatory authorities. If properly incurred, they must be allowed as part of the composition of rates. Otherwise, the so-called allowance of a return upon investment, being an amount over and above expenses, would be a farce.")).

[18] *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-160, Tenth Report and Order, 14 FCC Rcd 20156, 20301-02, 20304, paras. 341, 346 (1999) (*USF Inputs Order*), *aff'd sub nom. Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

[19] *Qwest 9-State Order*, 17 FCC Rcd at 26419-20, paras. 202-04 (rejecting argument that a 4 percent reduction in expenses to reflect productivity, net of inflation, was inconsistent with TELRIC requirements).

[20] KAHN at 32 (Depreciation "is an imputed cost, introduced to take account of the fact that the economic life of capital assets is limited; to distribute the decline in their value – which is a genuine cost of production – over their economic life, in order to assure its recoupment from customers.").

[21] *Id.* at 117; BONBRIGHT at 276-77.

[22] KAHN at 45.

assessment of that firm's overall risk.[23] As with depreciation, the calculation of the cost of capital is complicated and subject to dispute. One reason that a cost of capital is difficult to calculate is that the calculation depends on an assessment of a particular firm's risk going forward. Regulators, however, generally only have data on the cost of debt and equity that particular firms or groups of firms have experienced in the past.[24]

14. Non-recurring costs Estimating non-recurring costs and determining how to recover them raise issues different from recurring costs. In the regulatory context, non-recurring costs are one-time costs that a firm incurs in supplying a facility or service to a customer or other carrier. Examples of non-recurring costs include the cost of having a technician turn up (or install) a second line to a customer, the cost of a technician cutting over a loop to a carrier's collocation cage, and the cost of removing load coils so that digital subscriber line (DSL) service can be provided over copper loops. One important characteristic of non-recurring charges is that they generally represent a sunk investment to the customer or carrier that must pay them, and they therefore can constitute a barrier to entry.[25]

B. Ratemaking Under the 1996 Act

1. UNE Prices

15. Under the ratemaking process for UNEs established in the 1996 Act, incumbent LECs and requesting carriers in a given state may negotiate an agreement with respect to UNE prices. The state commission must approve such an agreement unless it is discriminatory or otherwise contrary to the public interest.[26] If parties are unable to agree and an arbitration is necessary, section 252(d)(1) of the Act provides that rates for interconnection and UNEs shall be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element" and "may include a reasonable profit."[27] The prohibition on reference to a rate-base/rate-of-return proceeding renders section 252(d)(1) "radically unlike all previous statutes" in that it "appears to be an explicit disavowal of the familiar public utility model of rate regulation."[28]

16. In the *Local Competition Order*, the Commission adopted guidelines to be applied when parties cannot agree and state commissions are called on to arbitrate disputes regarding the prices for interconnection and UNEs pursuant to section 252(d)(1).[29] Specifically, the

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[23] ROGER A. MORIN, REGULATORY FINANCE, UTILITIES' COST OF CAPITAL at 20 (1994).

[24] KAHN at 45-46.

[25] *Local Competition Order*, 11 FCC Rcd at 15875-76, para. 749.

[26] 47 U.S.C. § 252(e)(2).

[27] 47 U.S.C. § 252(d)(1).

[28] *Verizon v. FCC*, 535 U.S. at 1661.

[29] *Local Competition Order*, 11 FCC Rcd at 15844-56, paras. 672-703. The Commission also concluded that rates for reciprocal compensation under section 252(d)(2) should be based on the same principles. *Id.* at 16023, para. 1054.

Commission adopted a forward-looking economic cost (FLEC) methodology, which it called "Total Element Long Run Incremental Cost" or "TELRIC." TELRIC is based on the assumption that competition would constrain the value of an incumbent LEC network and the price that could be charged for use of that network. In other words, the "cost" of the element for purposes of section 252(d)(1) equals the price that an incumbent LEC would be able to charge for an element in a competitive market.[30]

17. The Commission's TELRIC pricing rules equate the incumbent LEC's cost of providing network elements with the cost today of building a local network that can provide all the services its current network provides, using the least-cost, most-efficient technology currently available.[31] The Commission added one additional constraint on the design of this reconstructed network: the new network must take as given the existing wire center locations.[32] Because of this constraint, the TELRIC methodology adopted by the Commission often is characterized as a "scorched node" approach to costing. In describing this methodology, the Commission stated that regulators should use economic depreciation in calculating depreciation expense, and that they should adjust the cost of capital to reflect the risks faced by the incumbent as competition is introduced into its local market.[33]

18. The TELRIC methodology assumes that the relevant increment of output is all current and reasonably projected future demand, *i.e.*, it is designed to calculate the total cost of building a new, efficient network.[34] UNE prices are then calculated by dividing the total cost for a particular element by the number of units of that element. For example, if the TELRIC of all outside loop plant were $10 million and the network had one million loops, then the TELRIC of a loop would be $10. In other words, TELRIC calculates the long-run *average* incremental cost of a network element.

19. In the *Local Competition Order*, the Commission concluded that, as a general rule, rates for unbundled network elements should recover costs in the manner in which they are incurred.[35] The Commission stated that recurring costs should be recovered through recurring charges.[36] The Commission further stated that non-recurring costs could be recovered either through non-recurring charges or recurring charges (provided that the regulated firm did not

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[30] *Id.* at 15846, para. 679 ("Adopting a pricing methodology based on forward-looking economic costs best replicates, to the extent possible, the conditions of a competitive market.").

[31] *Id.* at 15848-49, para. 685; 47 C.F.R. §§ 51.501 – 51.511.

[32] *Local Competition Order*, 11 FCC Rcd at 15848-49, para. 685 (the assumption of existing wire centers "mitigates incumbent LECs' concerns that a forward-looking pricing methodology ignores existing network design, while basing prices on efficient new technology that is compatible with existing infrastructure"); 47 C.F.R. § 51.505(b)(1).

[33] *Local Competition Order*, 11 FCC Rcd at 15856, para. 703.

[34] *Id.* at 15850, para. 690.

[35] *Id.* at 15874, para. 743.

[36] *Id.* at 15874-75, para. 745-48.

recover more than the total forward-looking cost).[37] The Commission's primary focus in the *Local Competition Order* was the calculation of recurring costs. It said little about how a state regulator should provide for recovery of non-recurring costs, although it did require the use of forward-looking costs.

20. The TELRIC rules were the subject of lengthy litigation over both the Commission's jurisdiction to establish them and whether the Commission reasonably interpreted the statute in establishing them. The Supreme Court upheld the Commission's jurisdiction to establish a pricing methodology for UNEs and interconnection in *AT&T v. Iowa Utilities Board*.[38] The court found that section 201(b) of the Act gives the Commission authority to prescribe rules and regulations necessary to carry out the Act, including the local competition provisions in sections 251 and 252.[39] The court stated that this authority is not diminished by the Act's delegation of ratesetting authority to the states under section 252(c)(2).[40]

21. Subsequently, in *Verizon v. FCC*, the Supreme Court affirmed the substance of the Commission's TELRIC rules.[41] As noted above, the court rejected arguments by incumbent LECs that the statute requires a pricing standard that considers historical costs.[42] The court found that the Commission's decision to adopt a forward-looking cost methodology was a reasonable interpretation of the statute.[43] In particular, the court found that the Commission's rules "may provide incentives and opportunities for competitors to build their own network elements" and that competitors had in fact done so in the four years following passage of the 1996 Act.[44] The court also rejected arguments that various aspects of the TELRIC methodology were unlawful, and it found that the constitutional claims advanced by the incumbent LECs were premature in the absence of a challenge to a specific TELRIC-based rate.[45]

22. In the *Triennial Review* proceeding, several parties requested that the Commission clarify or modify the TELRIC methodology.[46] In response, we clarified the existing rules with

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[37] *Id.* at 15875-76, paras. 749-50

[38] *AT&T v. Iowa Utils. Bd.*, 525 U.S. at 378-85.

[39] *Id.* at 378.

[40] *Id.* at 384 ("The FCC's prescription, through rulemaking, of a requisite pricing methodology no more prevents the States from establishing rates than do the statutory 'Pricing standards' set forth in section 252(d).").

[41] *Verizon v. FCC*, 535 U.S. at 523.

[42] *Id.* at 501.

[43] *Id.* at 507-08.

[44] *Id.* at 507 ("Inefficiencies built into the scheme may provide incentives and opportunities for competitors to build their own network elements."); *id.* at 516 ("The entrants have presented figures showing that they have invested in new facilities to the tune of $55 billion since the passage of the Act.").

[45] *Id.* at 523.

[46] Letter from Cronan O'Connell, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission at 12 (Oct. 28, 2002) (Qwest TELRIC Letter); Letter from Chris Frentrup, Senior Economist, WorldCom, to Ms. Marlene Dortch, Secretary, Federal Communications Commission at 8 (Oct.

respect to two key components of TELRIC – cost of capital and depreciation.[47] The Commission made clear that, in establishing a TELRIC-based cost of capital, state commissions must reflect the risk of participating in a market with facilities-based competition.[48] With respect to depreciation, the Commission declined to mandate a particular set of asset lives. We did, however, clarify that it was appropriate for state commissions to employ accelerated depreciation in order to reflect accurately the anticipated decline in the value of assets in a competitive market.[49]

2. Resale

23. Section 252(d)(3) of the Act requires that state commissions establish wholesale rates for resold services based on the incumbent LEC's retail rates, "excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."[50] As noted above, this section of the Act is independent of section 252(d)(1), which sets forth the cost-based pricing standard for UNEs and interconnection.[51]

24. In the *Local Competition Order*, the Commission adopted a "reasonably avoidable" standard governing the costs that must be considered avoided when calculating the wholesale discount.[52] That is, the Commission found that any costs that "reasonably can be avoided" by the incumbent LEC when it provides a service at resale must be considered avoided in determining the wholesale discount.[53]

25. The Commission's original resale pricing rules were vacated by the Eighth Circuit in *Iowa Utilities II* because the court found that the rules were inconsistent with the plain meaning of the statute.[54] In *Iowa Utilities II*, the Eighth Circuit found that the appropriate standard for determining avoided costs is not those costs that "can be avoided," but rather "those costs that the [incumbent LEC] will actually avoid incurring in the future."[55] Further, the court

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23, 2002); Letter from William M. Daley, President, SBC Communications, Inc., to Hon. Michael K. Powell, Chairman, FCC (Sept. 4, 2002); Letter from James W. Cicconi, General Counsel and Executive Vice President, AT&T, to Honorable Michael Powell, Chairman, Federal Communications Commission, Attach. at 3 (July 26, 2002); Letter from William P. Barr, Executive Vice President and General Counsel, Verizon, to Honorable Michael Powell, Chairman, Federal Communications Commission (July 16, 2002).

47 *Triennial Review Order* at paras. 675-91.

48 *Id.* at para. 680.

49 *Id.* at para. 690.

50 47 U.S.C. § 252(d)(3).

51 *See supra* para. 8.

52 *Local Competition Order*, 11 FCC Rcd at 15956-15957, para. 912.

53 47 C.F.R. § 51.609(b).

54 *Iowa Utilities II*, 219 F.3d at 754-756, 765.

55 *Id.* at 755.

explained that, when determining avoided costs, the state commission may not assume that the incumbent is acting as a wholesaler only, but rather must assume that the incumbent provider is acting as both a wholesale and a retail provider.[56] The Commission has not conducted any further rulemaking to provide additional guidance on establishing wholesale discounts.

C. Review of UNE Prices Under Section 271

26. Pursuant to section 271(d) of the Act, the Commission is responsible for reviewing applications by Bell Operating Companies (BOCs) for authority to provide in-region interLATA services.[57] As part of that review, the Commission considers whether a BOC offers access to UNEs at prices that comply with section 252(d)(1).[58] In reviewing state pricing decisions in the section 271 context, the Commission does not conduct a *de novo* review. Rather, given that the purpose of our section 271 review is to determine whether a BOC has opened its local market to competitors, the Commission determines whether the state has established rates that are within the range that a reasonable application of TELRIC principles would produce.[59]

27. In a number of cases, the Commission found that various aspects of state pricing decisions appeared to be inconsistent with the forward-looking cost principles on which our rules are based.[60] Because an error in one component of a pricing decision does not necessarily mean that UNE prices do not comply with TELRIC, the Commission developed an alternative method, known as benchmarking, by which BOCs can demonstrate that their UNE rates are in the range that TELRIC principles would produce.[61] Under the benchmarking alternative, a BOC can demonstrate that its rates in a particular state, adjusted for known cost differences, are at or below the level of rates in another state in its region that the Commission already has found to be

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[56] *Id.*

[57] 47 U.S.C. § 271(d).

[58] 47 U.S.C. § 271(c)(2)(B)(ii).

[59] *See, e.g., Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6266, para. 59 (2001) (*SBC Kansas/Oklahoma 271 Order*), *remanded in part sub nom. Sprint Communications Co. v. FCC*, 271 F.3d 549 (D.C. Cir. 2001).

[60] *SBC Kansas/Oklahoma 271 Order*, 16 FCC Rcd at 6275-76, para. 80; *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, 16 FCC Rcd 8988, 9006-07, paras. 38-39 (2001) (*Verizon Massachusetts 271 Order*); *Verizon Rhode Island 271 Order*, 17 FCC Rcd at 3318-19, paras. 34-45.

[61] *See, e.g., Verizon Massachusetts 271 Order*, 16 FCC Rcd at 9006-08, paras. 37, 40; *Verizon Rhode Island 271 Order*, 17 FCC Rcd at 3320-21, paras. 38-40; *Qwest 9-State 271 Order*, 17 RCC Rcd at 25429-30, 26458-60, paras. 228, 280-82.

TELRIC-compliant.[62]

28. Because it is difficult to demonstrate that state pricing decisions fully comply with TELRIC principles during the statutory 90-day review period for section 271 applications, the BOCs have made frequent use of the benchmarking alternative. Indeed, in a number of cases, BOCs reduced rates below the rate established by the state commission in order to satisfy our benchmarking test.[63] Thus, to the extent that errors in applying TELRIC rules may have resulted in inappropriately high UNE rates in some states, the benchmarking process has acted to constrain these rates. The Commission has no comparable process, however, for identifying or correcting rates when an error in applying the TELRIC rules results in rates that are inappropriately low.[64] Although we have addressed some specific cost input disputes as they have arisen in section 271 proceedings, our disposition of those disputes has provided no systematic guidance on pricing issues. We embark on this proceeding to provide states and interested parties comprehensive guidance lacking in our consideration of section 271 applications.

III. FORWARD-LOOKING METHODOLOGY

29. Before addressing the detailed issues related to UNE pricing, we first must determine whether to alter the Commission's fundamental decision to use a methodology that sets prices on the basis of the forward-looking cost of providing UNEs. Although some incumbent LECs continue to press for UNE rates based on an historical cost methodology, in this proceeding we reaffirm our commitment to forward-looking costing principles. As the Supreme Court has made clear, an approach based on forward-looking cost is an entirely reasonable approach to follow under section 252(d)(1).[65] Below we briefly examine a number of alternative pricing theories, as well as the relative merits of a forward-looking cost methodology.

30. Forward-Looking Cost. A forward-looking costing methodology considers what it would cost today to build and operate an efficient network (or to expand an existing network) that can provide the same services as the incumbent's existing network. The benefit of a forward-looking approach is that it gives potential competitors efficient price signals in deciding whether to invest in their own facilities or to lease the incumbent's facilities. That is, if construction of new facilities by a competitive LEC would cost less than leasing facilities at prices based on FLEC, the efficient result is for the new entrant to build its own facilities.[66]

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[62] Relative cost differences among states are determined by reference to the results of the Synthesis Model that the Commission uses for universal service purposes. *See, e.g., SBC Kansas/Oklahoma 271 Order*, 16 FCC Rcd at 6276-77, paras. 81-84; *Verizon Massachusetts 271 Order*, 16 FCC Rcd at 9007-08, para. 40.

[63] *See, e.g., Qwest 9-State 271 Order*, 17 FCC Rcd at 26431, 26433-34, 26436-37, 26439-40, 26442, 26444-45, 16448, 25451, 26460, paras. 230, 235, 241, 246, 249, 255, 261, 268, 283.

[64] As discussed in paragraph 40 *infra*, the Commission did state in the *Local Competition Order* that it would consider incumbent LEC claims that particular rates were confiscatory.

[65] *Verizon v. FCC*, 535 U.S. at 507-08.

[66] As we discuss in section IV.H *infra*, the effectiveness of FLEC-based UNE prices in signaling whether it is efficient for a carrier to enter a particular market may depend in large part on whether retail rates are cost-based.

Assuming that the modeling method is accurate, a forward-looking cost approach more closely approximates the costs that would exist in a competitive market than does an historical cost approach by revealing potential efficiencies that might not otherwise be apparent.

31. As noted above, the Commission's rules have been criticized for some of the assumptions incorporated into the forward-looking approach adopted in 1996. For example, critics argue that the assumption that new technology will be deployed instantaneously and ubiquitously is unrealistic even in the most competitive markets.[67] We note that these criticisms are directed at the version of forward-looking cost adopted by the Commission, and are not criticisms of forward-looking cost *per se*.[68]

32. Historical cost. Traditional rate-base/rate-of-return ratemaking has generally been based on the use of historical costs, *i.e.*, the costs the regulated firm incurred in building its network and providing service and that it recorded in its books of account. As an initial matter, an historical cost approach is highly dependent on the accuracy of an incumbent LEC's accounting records, which potentially creates a significant information asymmetry that benefits the incumbent LECs. In addition to the problems associated with reliance on incumbent LEC accounting records, the use of historical costs does not necessarily provide efficient investment signals to potential entrants. As many economists have noted, it is forward-looking costs, not historical costs, that are relevant in setting prices in competitive markets.[69] If historical costs are higher than the forward-looking costs an entrant would face, setting rates on the basis of historical cost could result in UNE prices that deter entry generally, or cause entrants to build their own facilities even when it is inefficient to do so. Conversely, if historical costs are lower than forward-looking costs, UNE rates based on historical costs might cause entrants to lease facilities when it was more efficient either to build their own or not to enter a particular market.

33. The Supreme Court found that "the statutory language places a heavy presumption against any method resembling the traditional embedded-cost-of-service model of ratesetting."[70] The court noted that any use of embedded costs would allow LECs to pass on to competitors the results of past inefficiencies, which is at odds with the objective of forcing all

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[67] Alfred E. Kahn, Timothy J. Tardiff and Dennis L. Weisman, *The Telecommunications Act at three years: An economic evaluation of its implementation by the Federal Communications Commission*, 11 Info. and Econ. Policy 319, 326-27 (1999).

[68] *Id.* at 324-25.

[69] *Id.* ("Among economists, there is widespread agreement in principle that (1) the costs that would be the basis for efficient prices would be forward-looking, rather than historical and (2) the prices set on that basis should emulate the ones that would emerge from local exchange competition, if it were feasible."); ARMEN A. ALCHIAN AND WILLIAM R. ALLEN, EXCHANGE AND PRODUCTION at 222 (3d ed. 1983) ("Once [an item] is acquired, [its cost is] irrelevant to the setting of price in competitive markets."); N. GREGORY MANKIW, PRINCIPLES OF ECONOMICS at 291 (1997) ("The irrelevance of sunk costs explains how real businesses make decisions."); PAUL A. SAMUELSON AND WILLIAM D. NORDHAUS, ECONOMICS at 167 (16th ed. 1998) ("One of the most important lessons of economics is that you should look at the marginal costs and marginal benefits of decision and ignore past or sunk costs.").

[70] *Verizon v. FCC*, 535 U.S. at 512.

carriers to make efficient choices.[71]

34. Efficient Component Pricing Rule (ECPR). The ECPR posits that interconnection and UNE rates should be based on the incumbent's incremental cost of providing the service, where that incremental cost includes the incumbent's opportunity cost, measured in terms of foregone profits. Advocates of the ECPR claim that this rule most closely parallels the method a firm in a competitive market would employ when faced with the opportunity of selling inputs to firms that intend to compete with it in the final product market.[72] Advocates further claim that the ECPR not only will ensure that the incumbent will be indifferent between selling inputs to a competitor versus selling final products to end-user customers, but that it will also ensure efficient entry.[73]

35. In the *Local Competition Order*, the Commission rejected the ECPR approach. It found that ECPR would discourage competition because it relies on prevailing retail prices (which are not cost-based and may reflect monopoly rents) in setting the rates new entrants pay incumbents for inputs.[74] The Supreme Court agreed that ECPR had flaws similar to a historical cost methodology because the "opportunity cost" of providing the UNE is based on the amount of lost revenue, which in turn is a function of embedded costs, or is not related to cost at all.[75]

36. Ramsey Pricing. The Commission in 1996 also considered and rejected Ramsey pricing, which is a method for allocating common costs among retail services.[76] Under this approach, common costs are allocated among services in inverse proportion to the elasticity of demand for a particular service. The Commission found that Ramsey pricing would raise prices for the most critical bottleneck elements and therefore would undermine the pro-competitive objectives of the 1996 Act.[77] The Supreme Court agreed with the Commission that Ramsey pricing is inconsistent with the Act because rates would be highest for those elements that are most difficult to replicate, thus deterring the competitive entry that is one of the principal goals of the Act.[78]

37. We conclude that our decision remains sound to base UNE prices on the forward-looking cost of providing UNEs. This approach is supported both by the Supreme Court's endorsement of our forward-looking cost methodology and its concerns regarding alternative

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[71] *Id.*

[72] J. Gregory Sidak and Daniel F. Spulber, *The Tragedy of the Telecommons: Government Pricing of Unbundled Network Elements Under the Telecommunications Act of 1996*, 97 Columbia L. Rev. 1081, 1093-94 (1997).

[73] *Id.* at 1098-99.

[74] *Local Competition Order*, 11 FCC Rcd at 15859-60, paras. 709-11.

[75] *Verizon v. FCC*, 535 U.S. at 514.

[76] *Local Competition Order*, 11 FCC Rcd at 15853, para. 696.

[77] *Id.*

[78] *Verizon v. FCC*, 535 U.S. at 515-16.

pricing methodologies that rely in whole or in part on embedded costs. We also note the general absence of criticism showing that a forward-looking costing methodology *per se* is flawed or unreasonable. Accordingly, we decline to open an inquiry into alternative pricing theories. Instead, this NPRM will focus on, and solicit comments regarding, clarifications or modifications of the current FLEC-based rules that will more fully satisfy the Commission's policy goals and the statutory requirements of section 252(d)(1).

IV. UNE PRICING

A. Overarching Issues

1. Goals of UNE Pricing

38. In the *Local Competition Order*, the Commission found that a UNE pricing regime should achieve two objectives. First, UNE prices should be set in a manner that sends efficient entry and investment signals to all competitors.[79] Second, UNE prices should provide incumbent LECs an opportunity to recover the forward-looking costs of providing UNEs.[80] We ask parties to comment on whether these should remain the primary goals of the Commission's UNE pricing rules. If not, parties should identify alternative pricing goals and explain what circumstances have changed since 1996 that would justify changing the Commission's objectives.

39. Because the Commission designed UNE prices to serve two distinct objectives – providing appropriate economic signals with respect to efficient competitive entry and investment while providing incumbent LECs with the opportunity to recover the forward-looking costs of providing UNEs – determining whether UNE prices for a given carrier in a given state have been set at the "correct" level is an extremely complicated task. With respect to the first objective, we seek comment on how the Commission could measure empirically whether those prices are sending appropriate signals with respect to competitive entry and investment? What should we expect to see in the market if UNE prices are sending correct economic signals? At what speed and over what period of time would we expect entry and investment to occur?

40. With respect to cost recovery, we note that the Commission offered incumbent LECs the opportunity to seek relief from the TELRIC pricing rules if they could demonstrate the rules had been applied to produce confiscatory rates, and the Commission did not foreclose the possibility of establishing a separate mechanism to recover embedded costs not recovered through UNE rates.[81] Does the availability of this relief diminish the need for us to be concerned

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[79] *Local Competition Order*, 11 FCC Rcd at 15844, para. 672 ("We believe that the prices that potential entrants pay for these elements should reflect forward-looking economic costs in order to encourage efficient levels of investment and entry.").

[80] 47 U.S.C. § 252(d)(1). UNE prices need not, however, provide for full recovery of historical costs. *Local Competition Order*, 11 FCC Rcd at 15857-58, para. 705 ("Neither a methodology that establishes prices for interconnection and access to network elements directly on the costs reflected in the regulated books of account, nor a price based on forward-looking costs plus an additional amount reflecting embedded costs, would be consistent with the approach we are adopting.").

[81] *Local Competition Order*, 11 FCC Rcd at 15872, para. 739.

with whether UNE rates provide for full cost recovery? In measuring the reasonableness of UNE prices, is a comparison to an incumbent LEC's historical costs relevant? We note in this respect that the Supreme Court called into question whether historical costs were even accurate.[82] Does this criticism undermine our ability to make any kind of reliable comparison? Are there other comparisons that would provide a more useful measure of whether UNE rates are providing an appropriate level of cost recovery?

41. Are there other goals the Commission should consider in establishing a UNE pricing methodology? For example, two goals identified in the universal service context – transparency and verifiability – also may be relevant to a state commission's ability to determine UNE costs in a reasonable time frame.[83] By transparency we mean that the logic and algorithms of a cost study or cost model should be revealed to and understandable by the parties and regulators. For example, if a cost model were presented in an electronic spreadsheet, but all the formulae were concealed so that parties could not ascertain the underlying assumptions, the model would not be transparent. By verifiability we mean that data or inputs that are used to estimate costs should be derived from public sources, or they should be able to be verified or audited without undue cost and delay. We ask parties to comment on the importance of transparency and verifiability. Are these goals as important as the investment and cost recovery goals discussed above? Is there any way for the Commission to measure whether these goals are being achieved?

2. Impact of Triennial Review

42. In the *Triennial Review Order*, the Commission made a number of significant changes to the regime for determining what elements must be unbundled by an incumbent LEC. In particular, the Commission adopted a new interpretation of section 251(d)(2) for determining whether requesting telecommunications carriers are entitled to access to an unbundled network element.[84] We seek comment on the relationship, if any, between this new interpretation and the Commission's UNE pricing rules.

43. The unbundling obligations set forth in the *Triennial Review Order* with respect to hybrid fiber/copper loops are limited.[85] What implications does this limitation have for a pricing methodology based on forward-looking costs? The Commission's TELRIC methodology attempts to measure the cost of discrete network elements, rather than that of particular network

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[82] *Verizon v. FCC*, 535 U.S. at 512 ("[T]he temptation would remain to overstate book costs to ratemaking commissions and so perpetuate the intractable problems that led to the price-cap innovation."); *id* at 1676 ("the 'book' value or embedded costs of capital presented to traditional ratemaking bodies often bore little resemblance to the economic value of capital"); *id.* at 518 ("[B]ook costs may be overstated by approximately $5 billion." (quoting *FCC Releases Audit Report on RBOCs' Property Records*, Report No. CC 99-3 (rel. February 25, 1999)).

[83] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776, 8915, para. 250 (1997) (*USF First Report and Order*) (subsequent history omitted).

[84] *Triennial Review Order* at paras. 55-172.

[85] Specifically, incumbent LECs are not required to provide unbundled access to hybrid loops for the provision of packetized broadband services. Incumbent LECs must continue to provide unbundled access to TDM features, functions and capabilities of their hybrid loops. *Id.* at paras. 285-97.

technologies, in order to minimize the difficulties inherent in allocating joint and common costs.[86] Previously, UNEs were, with limited exceptions, not defined with regard to technology. What adjustments, if any, should states make to recognize this more limited availability of UNE loops? Should the price of an entire copper loop be the same as the price of the portion of a hybrid fiber/copper loop that must be unbundled? In either case, how should prices for these loop elements be developed? How should the costs of fiber be allocated given the limited availability of hybrid fiber/copper loops? In addition, the Commission's new UNE loop rules limit the availability of fiber loops.[87] If a competitive LEC leases a copper loop that has been otherwise replaced by a fiber loop (and therefore depreciated fully), is a price based on forward-looking cost still appropriate? What adjustments should be made so that requesting carriers are not charged for operating costs, such as maintenance, associated with deployment of fiber networks to which they have limited access?

44. In addition to limiting unbundling requirements with respect to the local loop, the *Triennial Review Order* also limited unbundling obligations with respect to high-capacity loops, switching, and transport.[88] Specifically, under the new rules, high-capacity loops and transport elements might not be available in all geographic areas. Similarly, the switching element may not be available in all geographic areas or for all customer classes. How should states develop costs for UNEs that no longer are required to be provided throughout a carrier's service area (*i.e.*, if the "total element" no longer is unbundled)? For example, does our finding that competitive LECs are not impaired without access to unbundled local circuit switching when serving the enterprise market change the manner in which unbundled switching costs should be developed? We encourage parties to identify other ways in which decisions in the *Triennial Review Order* should affect the Commission's UNE pricing rules.

3. Relationship to Universal Service

45. In the *Universal Service* proceeding, the Commission decided that funding should be based on the forward-looking cost of providing universal service.[89] The Commission identified criteria to guide the selection of a forward-looking universal service cost model.[90] It then applied these criteria in developing a computer cost model (the Synthesis Model) and selecting the inputs necessary to develop forward-looking costs.[91] Currently, the Commission

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[86] *Local Competition Order*, 11 FCC Rcd at 15852, para. 695 ("Because the unbundled network elements correspond, to a great extent, to discrete network facilities, and have different operating characteristics, we expect that common costs should be smaller than the common costs associated with the long-run incremental cost of a service.").

[87] *Triennial Review Order* at paras. 273-84.

[88] *Id.* at paras. 201-02 (summarizing high capacity loop requirements), 419-28 (summarizing switching requirements), 359-60, 534 (summarizing transport requirements).

[89] *USF First Report and Order*, 12 FCC Rcd at 8776, 8888, 8889-90, 8903-17, paras. 199, 223-226, 232-251.

[90] *Id.*, 12 FCC Rcd at 8912-16, para. 250.

[91] *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-160, Fifth Report and Order, 13 FCC Rcd 21323, 21335-62, paras. 26-92 (1998) (*USF Platform Order*); *USF Inputs Order*, 14 FCC Rcd at 20171-350, paras. 29-439.

uses the model to determine high-cost support for non-rural carriers based on a comparison of forward-looking costs among states.[92]

46. In developing the model and inputs necessary to calculate universal service funding, the Commission did not intend to provide any systematic guidance to states in the area of TELRIC rate-setting. Indeed, the Commission emphasized at the time that its decisions on particular inputs were made solely for the purpose of calculating universal service support and may not be appropriate for the calculation of UNE prices.[93] For these reasons, we continue to discourage states from using the nationwide inputs for the purpose of developing UNE prices.

47. In the absence of more specific guidance from the Commission, however, some state regulators have utilized our *USF Inputs Order* to reach conclusions regarding the TELRIC-based cost of building a network. Although we understand why state regulators might refer to the *USF Inputs Order* in developing forward-looking costs, in at least some cases there might be unintended and undesirable consequences that result from extrapolating from statements made in the context of universal service funding. For example, the Commission stated in the *USF Inputs Order* that it is necessary "to assume that the telephone industry will have at least the same opportunity to share the cost of building plant that existed when the plant was first built."[94] This statement was intended to address only the issue of structure sharing in the universal service model, but it has been interpreted by some states as endorsing a backward-looking approach for other inputs in a TELRIC model, such as the relative frequency of various construction types (*e.g.*, boring through concrete, trenching through dirt).[95] Applying this particular statement from the *USF Inputs Order* out of context erroneously assumes away not just the features of an incumbent LEC's existing network but also attributes of the real world in which incumbents and competitors operate.

48. Our approach is not to single out these applications for special critique, but to suggest more broadly that imposing some real-world boundaries on the UNE cost inquiry is needed to ensure that appropriate pricing signals are sent to the market. The questions we ask in this proceeding are directed solely at our UNE pricing rules. In a number of places, however, we seek comment on the relevance of Commission statements in the universal service context for specific UNE pricing rules. We also invite parties to comment on the relationship between the

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[92] *See Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001) (affirming *USF Inputs Order* but remanding non-rural high-cost support methodology for further explanation). The Commission currently has in place for rural carriers an interim, five-year plan under which they receive support based on embedded costs. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order, 16 FCC Rcd 11244 (2000).

[93] *USF Inputs Order*, 14 FCC Rcd at 20172, para. 32 ("The federal cost model was developed for the purpose of determining federal universal service support and it may not be appropriate to use nationwide values for other purposes, such as determining prices for unbundled network elements. We caution parties from making any claims in other proceedings based upon the input values we adopt in this Order.").

[94] *Id.* at 20261, para. 244 n.504.

[95] Qwest TELRIC Letter at 9.

two sets of rules.[96]

B. Network Assumptions

1. General Theory

49. Perhaps the most controversial aspect of the TELRIC rules is the assumption that the cost of a UNE should be calculated based on the cost of ubiquitous deployment of the most efficient technology currently available.[97] In implementing this requirement, current TELRIC models typically are designed to answer the following question: If a single carrier were to build an efficient network today to serve all customer locations within a particular geographic area, taking as given only the locations of existing wire centers, how much would it cost to construct and maintain the network?

50. One of the central internal tensions in the application of the TELRIC methodology is that it purports to replicate the conditions of a competitive market by assuming that the latest technology is deployed throughout the hypothetical network, while at the same time assuming that this hypothetical network benefits from the economies of scale associated with serving all of the lines in a study area. In the real world, however, even in extremely competitive markets, firms do not instantaneously replace all of their facilities with every improvement in technology.[98] Thus, even the most efficient carrier's network will reflect a mix of new and older technology at any given time.

51. Simultaneously assuming a market inhabited by multiple competitors and one with a ubiquitous carrier with a very large market share may work to reduce estimates of forward-looking costs below the costs that would actually be found even in an extremely competitive market.[99] It therefore may undermine the incentive for either competitive LECs or

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[96] However, we will not consider any changes to the model or inputs used in calculating universal service support in this proceeding.

[97] *Local Competition Order*, 11 FCC Rcd at 15848-49, para. 685; 47 C.F.R. § 51.505(b)(1).

[98] *See, e.g.*, Dennis L. Weisman, *The (in)efficiency of the "efficient firm" cost standard*, Antitrust Bulletin (Spring 2000) ("If regulators had sufficient information to implement the efficient-firm cost standard, competition would be wholly unnecessary. In this respect, the efficient-firm cost standard is fatally flawed because it confuses mandating the competitive outcome with fostering the competitive process."); Kahn, Tardiff and Weisman, 11 Info. and Econ. Policy at 326 ("In a world of continuous technological progress, it would be irrational for firms constantly to update their facilities in order *completely* to incorporate today's lowest -cost technology.") (emphasis in original); *id* at 322 ("[C]ompetitive prices will not tend, in a technologically dynamic industry, to be equated to the lowest cost of duplicating a service with the most recent technology."); *but see* David Gabel and David I. Rosenbaum, *Who's Taking Whom: Some Comments and Evidence on the Constitutionality of TELRIC*, 52 Fed. Comm. L. J. 239, 254 (2000) ("As regards the so-called 'hypothetical nature of the regulatory judgments' required for the implementation of the TELRIC methodology, it is uncertain as to whether the factual inquiry required for the conduct of a proper TELRIC study is any more hypothetical in nature than the judgments called for in determining whether or not capital costs, some of which were incurred decades ago, were 'prudently' made or 'used and useful.'").

[99] The clarifications we made to our TELRIC rules in the *Triennial Review Order* begin to address this concern. Specifically, by clarifying that a consistent set of assumptions is to be used for all the components of TELRIC (operating expenses, cost of capital, and depreciation) and that accelerated depreciation may be used to reflect the

incumbent LECs to build new facilities, even when it is efficient for them to do so.[100] We seek comment on this concern.

52. We tentatively conclude that our TELRIC rules should more closely account for the real-world attributes of the routing and topography of an incumbent's network in the development of forward-looking costs. We seek comment on whether such an approach would address claims that our TELRIC rules currently distort a competitor's decision whether to invest in new facilities or to lease an incumbent's existing facilities. Yet we also wish to ensure that a reformed TELRIC methodology does not swing in the other direction and give incumbents undue advantages. We seek comment on this tentative conclusion and, in particular, on how such an approach may differ from the practices of state commissions in UNE pricing proceedings.

53. We seek comment on proposals that would achieve these objectives. We seek comment on whether it is appropriate to assume that the cost of an existing element is the cost of that element if it were being replaced today. Under this approach, the cost to the incumbent LEC of using its existing facilities is the cost that would actually be incurred (including actual placement costs) to place new facilities in the same location. As discussed above, the UNE pricing methodology, while forward-looking, must be representative of the real world and should not be based on the totally hypothetical cost of a most-efficient provider building a network from scratch. To that end, the UNE cost study should be based upon the incumbent LEC's actual network topography and currently available, forward-looking technologies.

54. Alternatively, we seek comment on whether we should define the relevant network as one that that incorporates upgrades planned by the incumbent LEC over some objective time horizon (*e.g.*, three or five years), as documented, for example, in an incumbent LEC's actual engineering plans. Although this approach would take as given whatever existing facilities will remain in the network at the end of the designated period, it also should capture technological evolution within that period. Such an approach may provide an appropriate middle ground between the hypothetical assumptions required under our current rules and the replacement cost approach described in the previous paragraph. Finally, we seek comment on any other alternatives that would ground our TELRIC rules in the attributes of an incumbent's existing network. We ask parties to comment on whether any or all of these approaches would produce results that are more consistent across states and send better entry and investment signals to incumbents and competitors.

55. In the *Local Competition Order*, the Commission defined the term "long run" to

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anticipated decline in value of assets over their useful life, we have provided state commissions additional guidance that should help to avoid unreasonable rates that might be caused by inconsistent assumptions.

[100] *See, e.g.*, Thomas M. Jorde, J. Gregory Sidak and David J. Teece, *Innovation, Investment and Unbundling*, 17 Yale J. Reg. 1 (Winter 2000) ("[M]andatory unbundling confers a second-mover advantage and substantially decreases a CLEC's incentives to make a sunk investment."); Sidak and Spulber, 97 Columbia L. Rev. 1081 ("If the incumbent LEC, the putative owner of the local network, no longer can recover the costs of investments that it would make on a forward-looking basis – let alone keep any economic rents accruing to such investments – then entrants become free riders and the incumbent LEC's incentive to make further investment in the local exchange network evaporates."); *but see* Gabel and Rosenbaum, 52 Fed. Comm. L. J. at 264-65.

mean a period long enough for all of a firm's costs to become variable or avoidable.[101] Does our tentative conclusion compel us to shift from a long-run average cost methodology to a short-run average cost methodology? If so, what are the consequences of such a shift? To the extent the cost of a UNE under such an approach would in part be based on the existing incumbent LEC network, is such an approach consistent with the "heavy presumption" against the use of embedded costs?[102] Would it be more effective to retain a long-run pricing methodology, but provide specific guidance to the states on the appropriate long-run assumptions upon which to base network inputs?

56. We ask parties to suggest other ways of defining the network that is to be modeled in a UNE pricing proceeding. To what extent should network assumptions reflect evidence of the network decisions made by competitive LECs? Parties should explain in detail the network assumptions they advocate and the competitive assumptions implicit in their proposals. Parties also should explain whether they are proposing a theory based on short-run costs or long-run costs, and how their proposed definition of the network will produce more accurate economic signals and more consistent results than our current regime.

57. The dispute as to the relevant network for pricing purposes is in large part a dispute over what constitutes efficiency. Is our current approach of looking at efficiency at a single point in time consistent with the longer time horizon, and corresponding uncertainties, that carriers actually consider when deciding to invest in long-lived assets that are expensive, if not impossible, to redeploy? What is the efficiency standard that the Commission should use in order to achieve UNE prices that send the correct economic signals regarding investment, while still achieving the necessary level of cost recovery? To what extent is the efficiency standard related to assumptions about the state of competition? For example, the requirement in the current rules to assume the most efficient technology currently available is based on the assumption that competitors would deploy the most efficient technology on a widespread basis, thereby constraining the value of the incumbent LEC network. We ask parties to be very specific in defining the standard of efficiency and explaining how to determine whether a network is optimized for economic efficiency.

58. A central principle of the current UNE pricing rules is that competitive LECs should not pay UNE rates that compensate incumbent LECs for past inefficiencies.[103] We ask parties to comment on whether there is any reason to depart from this principle. One of the reasons that the Commission moved from rate-of-return regulation to price cap regulation of some carriers was to create a strong incentive for carriers to operate as efficiently as possible. Given that most large incumbent LECs have been subject to forms of price cap regulation at the state level for some time and at the federal level since 1991, is there reason for the Commission

[101] *Local Competition Order*, 11 FCC Rcd at 15845, para. 677; *see also USF First Report and Order*, 12 FCC Rcd at 8913, para. 250(3).

[102] *Verizon v. FCC*, 535 U.S. at 512.

[103] *Id.* at 511-12.

to find that an incumbent LEC's practices presumptively are efficient?[104] Why or why not? We ask incumbent LECs to comment on what portion of their networks were installed since the onset of price cap regulation. What would be the effect of a presumption of efficiency on a state commission's pricing proceeding? What type of evidence would be sufficient to rebut this presumption? How difficult would it be for competitive LECs to develop such evidence? What effect should any asymmetry in access to information about incumbent LECs' practices and their costs have on any presumptions we may create? If we modify our network assumptions to track more closely the incumbent LEC's existing network, how will CLECs that purchase UNEs receive the benefit of efficiency gains that should be occurring in the network? Is the adoption of some sort of productivity factor a necessary part of any transition to network assumptions that rely on the existing network?

59. Parties that propose changing our network assumptions should explain whether assuming a different network than under the current rules would lead to higher UNE prices. Will that create more situations in which a competitive LEC will choose to build its own facilities, rather than lease from the incumbent LEC? What is the consequence of such an approach in situations where it is not economically feasible for a competitive LEC to build its own facilities? In assessing the potential impact on UNE rates of a change in network assumptions, we note that any move away from the Commission's current assumptions about competition and technology affects other aspects of the rate calculation. For example, the cost of capital might be lower under a regime that looked at an incumbent LEC's existing network, rather than the "most efficient" network available today, because keeping existing facilities might be less risky than investing in new facilities.[105] We ask parties that favor a change in network assumptions to identify how such a change would affect each component of the pricing rules (*e.g.*, operating expenses, cost of capital, depreciation).

60. We ask parties to discuss whether a regime focused more closely on the existing network of an incumbent LEC would be easier for state commissions to implement than the current TELRIC regime. The results produced under the current TELRIC rules depend in large part on the assumptions made by the regulator with respect to the level of competition and the spread of new technology. Even if the current approach is correct as a matter of economic theory, the resulting decisions are predictive, and reliance on these assumptions may increase the likelihood of error. Would an approach based on real-world attributes of an incumbent LEC's network eliminate much of the speculation that now takes place within the context of a UNE pricing proceeding? Are there benefits to a "scorched node" approach that outweigh the potential for error? For example, we note that any move toward a version of forward-looking cost that places greater reliance on the attributes of an incumbent LEC's existing network raises issues of transparency and verifiability. Unlike most ratesetting regimes that rely on contested proceedings, the Commission's TELRIC rules put the parties to a pricing dispute on relatively

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[104] As noted by the Supreme Court, the "price-cap scheme starts with rates generated by the conventional cost-of-service formula." *Id.* at 487. The court also stated that "price caps do not eliminate gamesmanship," but "they do give companies an incentive to 'improve productivity to the maximum extent possible.'" *Id.* (quoting *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6787-88, paras. 7-9 (1990)).

[105] *Triennial Review Order* at paras. 680-82.

equal footing because information on the current cost of current technology is not solely under the control of the incumbent LEC.[106] In contrast, an approach that relies more heavily on information regarding the incumbent's existing network or planned upgrades could give the incumbent a significant advantage in a rate proceeding. We seek comment on whether focusing the cost inquiry on an incumbent's existing network might place competitive LECs at an informational disadvantage in litigating any factual issues about which the incumbent LEC, as owner of that network, may have better information.

61. We welcome proposals for concrete procedural safeguards designed to minimize risks of an informational imbalance resulting from the methodological reforms discussed in this NPRM. For example, states might require that the parties engage in a limited discovery period before submitting their cost proposals, to ensure that both the incumbents and competitors are working from the same data. At the same time, we seek comment on ways in which UNE pricing proceedings, which often last for years under our current rules, can be streamlined without placing any party at a material informational disadvantage. For example, can and should we provide guidance to the states as to the appropriate topics of discovery for particular categories of cost disputes? Can and should we obviate the need for excessive discovery by identifying, whenever possible, objective sources of inputs to be used in calculating TELRIC rates? If so, what should those sources be? Are there other procedural requirements that we could establish that might facilitate resolution of UNE pricing proceedings?

2. Specific Network Inputs

62. In addition to our tentative conclusion that a forward-looking pricing methodology should more closely account for the real-world attributes of the routing and topography of an incumbent LEC's network, we believe there are a number of aspects of the current "efficient network" assumption that might benefit from clarification or modification. We discuss some of these issues below, and we encourage parties to identify additional steps we might take to produce prices that satisfy the objectives that we have identified.

a. Network Routing and Construction

63. To establish prices based on forward-looking costs, states must make assumptions about how a network will be routed and what construction techniques will be used in building it. We seek comment on the network routing assumptions that would be consistent with our tentative conclusion that prices should account for the real-world attributes of the routing and topography of an incumbent LEC's network. Specifically, how critical are the locations of existing rights-of-way, existing poles, and existing conduit (all of which are located on existing roads and routed around existing natural obstacles) for all wireline carriers (incumbents and new entrants) when new facilities are built? Is there any theoretical basis for an approach that does not assume the existence of existing roads, buildings, and natural obstacles?

64. Regardless of whether we adopt our tentative conclusion, should we modify the "scorched node" theory and adopt routing assumptions more closely tied to an incumbent LEC's

[106] *See Verizon v. FCC*, 535 U.S. at 522.

existing network? One approach, for example, might be to extend the assumption of existing switch locations to other parts of the network (*e.g.*, existing feeder routes, existing remote terminal locations). Another approach might be to require that states assume that the network is built along existing rights-of-way, and that those rights-of-way are in their current condition (*e.g.*, paved or unpaved). Parties supporting this approach should explain how states can best determine current right-of-way routes, whether a standard based on existing rights-of-way provides parties other than the incumbent LEC an opportunity to participate effectively, and how such routes can be compared to the routes of incumbent LECs and the routes generated by computer cost models.

65. We seek comment on other principles we could apply in deciding on the appropriate network routing and construction techniques for costing purposes. Parties should explain how their proposed network principles reflect the variables that incumbent and competitive LECs consider in making routing and construction decisions. To the extent parties propose principles based on the real-world attributes of an incumbent LEC's existing network, they should explain in detail how a state commission would establish the forward-looking cost of an existing network, and how such a costing approach differs from "rate-of-return or other rate-based" methodologies that are prohibited under section 252(d)(1). We note that, in the *USF Platform Order*, the Commission declined to verify the Synthesis Model's outside plant design parameters by comparing them to incumbent LEC outside plant on the ground that incumbent LEC networks "may not represent the least-cost, most-efficient design in some cases."[107] We invite parties to discuss the applicability of this conclusion, if any, in the context of UNE pricing.

66. Under our current TELRIC rules, the rates established in a state pricing proceeding depend significantly on the computer cost model adopted by the state commission. We ask parties to comment on whether, and how, our tentative conclusion to account more closely for the real-world routing and topography of an incumbent's network would affect the ability of carriers to use computer cost models. Is it more difficult to model an existing network than a hypothetical one? We invite state commissions to comment on whether they have adopted cost models that are capable of reflecting existing network routing.

b. Technology

67. Our current rules require states to assume that the "most efficient telecommunications technology currently available" is used throughout the network.[108] The Commission concluded in the *Local Competition Order* that the forward-looking pricing methodology for interconnection and UNEs should be based on a "reconstructed local network [that] will employ the most efficient technology for reasonably foreseeable capacity requirements."[109] At the same time, the Commission recognized a need for "basing prices on

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[107] *USF Platform Order*, 13 FCC Rcd at 21349-50, para. 66.

[108] 47 C.F.R. § 51.505(b)(1).

[109] *Local Competition Order*, 11 FCC Rcd at 15848-49, para. 685.

efficient, new technology that is compatible with the existing infrastructure."[110]

68. As noted above, it is unlikely that any carrier, no matter how competitive the marketplace, would deploy new technology instantaneously and ubiquitously throughout its network. Even if the objective is to replicate the results of a competitive market, an approach that reconstructs the network over time seems to be more appropriate than one that assumes the instantaneous deployment of 100 percent new technology.

69. We seek comment on how our tentative conclusion above affects the technology assumptions used to develop UNE prices. Of what relevance is the Commission's statement in the universal service context that "[e]xisting incumbent LEC plant is not likely to reflect forward-looking technology or design choices"?[111] How should a state commission determine the price for equipment in the incumbent LEC network that no longer is widely used in the industry, such as analog switches or older versions of digital loops carrier systems? How does an approach that replicates an incumbent LEC's existing technology compare to a "reproduction cost" methodology?[112]

70. We encourage parties to identify the specific factors that influence their decisions with respect to how quickly to deploy new technology. How, if at all, should we factor in the uncertainty associated with the timing and efficiency of new technology? Of what relevance, if any, is the pace at which incumbent LECs have deployed new technologies in the past (*e.g.*, digital switches)? If our goal is to replicate the results of a competitive market, is there evidence as to the diffusion rates of new technology in competitive markets as opposed to monopoly markets that might inform our analysis?[113]

c. Structure Sharing

71. "Structure sharing" refers to how much of the cost of installing poles, digging trenches, and placing conduit would be shared on a forward-looking basis by the incumbent LEC with other entities, such as power companies, cable operators, or other telecommunications carriers. The more sharing that is assumed, the lower the cost to the incumbent LEC of

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[110] *Id.*

[111] *USF Platform Order*, 13 FCC Rcd at 21336, para. 30.

[112] Under a reproduction cost methodology, the regulator takes the incumbent's existing network as given and then estimates what it would cost to replace the existing network with new facilities that are identical to the existing facilities. *See, e.g.*, KAHN at 109-116. Thus, if the existing network contained an analog switch, under the reproduction cost approach, the regulator would try to determine what it would cost today to purchase a brand new analog switch. This approach generally has been discredited. As Justice Brandeis recognized nearly eighty years ago, "[i]f the aim were to ascertain the value (in its ordinary sense) of the utility property, the enquiry would be, not what it would cost to reproduce identical property, but what it would cost to establish a plant which could render the service, or in other words, at what cost could an equally efficient substitute be then produced." *Missouri ex rel. S.W. Bell Tel.Co. v. Public Serv. Comm'n*, 262 U.S. 276, 312 (1923) (Brandeis, J. dissenting).

[113] *See, e.g.*, Shelanski, *Competition and Deployment of New Technology in U.S. Telecommunications*, 2000 U. Chi. Legal F. 85, 115 ("When deployment times and market structures are matched, faster deployment times correlate with more competitive markets. . . . [A]verage deployment times speed up as markets become more competitive.").

providing the element. The *Local Competition Order* provides no guidance on this practical issue.[114] Structure sharing has been a consistently difficult issue for state commissions to resolve, particularly with respect to buried and underground plant.[115] The difficulty arises from confusion over the appropriate assumptions to make about construction by entities other than the incumbent LEC under TELRIC's "scorched node" construct.

72. We ask parties to offer suggestions on how the Commission might provide guidance to state commissions on the method for establishing structure sharing percentages, particularly in light of our tentative conclusion that the pricing methodology should account for real-world attributes of the routing and topography of an incumbent LEC's network. Is it appropriate to consider sharing opportunities that were available at the time the plant was built, as the Commission suggested in the *USF Inputs Order*?[116] How relevant are an incumbent LEC's actual sharing percentages? Are they dispositive? If the incumbent LEC's actual data are not dispositive, what other sources of data should be used in developing structure sharing inputs? Are there factors that either encourage or discourage parties from sharing construction costs today (*e.g.*, municipal ordinances requiring joint construction)? If so, how should these factors be reflected in the sharing percentages used to calculate UNE prices? Parties should provide empirical data with respect to their experiences sharing construction costs with other entities.

d. Fill Factors

73. A fill factor represents the percentage of the capacity of a particular facility or piece of equipment that is used on average over its life. Increasing fill factors has the effect of lowering costs by reducing the amount of spare capacity that must be allocated to working units. For example, if the investment in loop plant is $1 million and there are 1000 total loops, the investment per working loop would be $2000 if the fill factor were 50 percent, but only $1429 per loop with a 70 percent fill factor. The *Local Competition Order* provides no guidance to state commissions on this specific issue beyond the general requirement that the network should be sized to meet reasonably foreseeable demand.[117] In the *USF Inputs Order*, the Commission

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[114] The Commission addressed the issue of structure sharing percentages in the universal service proceeding. It adopted percentages that varied by type of structure (aerial, buried, or underground) and line density. Parties generally agreed that sharing occurs more frequently with aerial structure and in higher density zones, although they disagreed on the extent of sharing. The Commission explained that its determination of structure sharing percentages requires a degree of predictive judgment. It stated that "a forward-looking mechanism must estimate the structure sharing opportunities available to a carrier operating in the most-efficient manner," and that "the forward-looking practice of a carrier does not necessarily equate to the historical practice of the carrier." *USF Inputs Order*, 14 FCC Rcd at 20262, para. 247. Parties in that proceeding did not submit accurate and verifiable data with respect to existing sharing percentages, but even if they had the Commission said that it would have needed to decide whether or not those existing percentages were appropriate starting points for determining input values. *Id.* at 20262, para. 245. Given the divergence of opinion on the extent of structure sharing opportunities in the future, the Commission expressly anticipated revisiting this issue at a later date. *Id.*

[115] Sharing of pole space among utilities is a well-established practice that has been subject to regulation under section 224 since before the 1996 Act.

[116] *USF Inputs Order*, 14 FCC Rcd at 20261, para. 244 n.504.

[117] *Local Competition Order*, 11 FCC Rcd at 15847, para. 682. We note that competitive LECs raised issues related to fill factors in limited instances during section 271 proceedings before the Commission. In one case, the

established forward-looking fill factors based on current demand, which it defined to include excess capacity for short-term growth, rather than on ultimate demand, which it found to be too speculative.[118]

74. We seek comment on appropriate guidelines for states to follow in establishing fill factors. What factors do states currently consider in developing fill factors? How relevant are an incumbent LEC's existing fill factors in establishing forward-looking costs? Should they be dispositive given our tentative conclusion to more closely account for the real-world attributes of the routing and topography of an incumbent LEC's network? If an incumbent LEC's existing fill factors are not dispositive, what other evidence should a state commission consider? Would it be relevant if competitors routinely operated facilities at a higher or lower fill? Should state commissions consider "carrier of last resort" obligations in deciding on the appropriate fill factor? Would the fill factors of other incumbent LECs be relevant to demonstrate achievable efficiencies?

75. Would we expect carriers to operate at higher or lower fill factors as the level of facilities-based competition increases in a market? Is there empirical evidence that distinguishes between the fill factors that carriers experience in competitive markets and monopoly markets? Would carriers in competitive markets be expected to reduce prices in order to increase fill? How are fill factors likely to vary as the rate of demand growth varies? Finally, we seek comment on methods for quantifying dynamically efficient fill factors on a forward-looking basis.

e. Switch Discounts

76. An issue that has arisen in numerous section 271 proceedings is whether to base unbundled switching prices on payments that the incumbent LEC makes to the vendor for: (1) an entirely new (or replacement) switch; (2) growth equipment, such as line or trunk termination equipment, added to the existing switch to increase capacity and satisfy growing demand; (3) technology upgrades to existing equipment, such as the processor, to increase speed and capacity that make new features and services possible; or (4) some combination of these. This issue arises because switch manufacturers typically offer a relatively large price discount for an entirely new switch and a smaller discount on growth or upgrade equipment added to an existing switch.

77. The Commission has found that state commissions in setting UNE rates "may take into account that there will be growth in a network in the future and that it may not be cost-effective to acquire all of the projected switching capacity needed over the life of the switch at

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Commission concluded that a fill factor of 30 percent for distribution cable in Oklahoma was too low and violated TELRIC principles because it assumed that too much of the capacity would be idle for an indefinite time, contrary to TELRIC's presumption of an efficient network. *SWBT Kansas/Oklahoma 271 Order*, 16 FCC Rcd at 6275-76, para. 80.

[118] *USF Inputs Order*, 14 FCC Rcd at 20243-44, para. 199 ("[T]he fact that the industry may build distribution plant sufficient to meet demand for ten or twenty years does not necessarily suggest that these costs should be supported by the federal universal service support mechanism.").

the outset."[119] The Commission, therefore, has rejected an assumption that the appropriate switching discount for TELRIC pricing purposes must be based on a purchase of 100 percent new switches.[120] The Commission recognized that certain vendors provide a greater discount for new switches and a smaller discount for growth additions, and that the large initial discount is available only when an overall purchase of both new and growth equipment is planned. Cost models may in a forward-looking manner take into account specific new and growth discounts that carriers receive in contracts with vendors and, accordingly, may reflect a reasonable combination of new and growth switch deployment.[121]

78. Because switching equipment has a high degree of modularity, carriers over time grow their switches and upgrade them with new technology as it evolves on the premise that this is a better way to minimize costs than purchasing a switch large enough to satisfy anticipated demand over the entire life of the switch. We seek comment on whether unbundled switching costs should be based on the prices that an efficient incumbent LEC or other entrant would pay for switching equipment over the life of the switch and not at a particular point in the switch's life cycle, *e.g.*, not at the beginning of the life cycle when the carrier is paying vendors for a new switch, nor at the end of the switch's life when a carrier is paying vendors primarily for growth additions or technology upgrades to the switch. In addressing this question, parties also should explain what assumptions they make with respect to line demand and technology improvements. Is it reasonable to assume that switched access line demand will grow? Is it reasonable to assume continued improvement in switching technology? What assumptions have state commissions made with respect to vendor discounts? Parties also should explain their assumptions regarding vendor pricing strategies, and the basis for those assumptions.

79. The basic formula for developing a price for an element is to divide total cost by total demand. In the case of switching, does the total cost consist of a new switch reflecting a relatively large vendor discount plus growth and upgrade equipment reflecting relatively small discounts? Should this cost then be spread over total demand consisting of all the lines served by the new, growth, and upgraded equipment over the switch's life? We ask for comment on the use of this principle in developing a price that is based on costs of equipment installed in increments over the life of the switch. Parties also should explain whether, and how, these calculations should account for the time value of money. Should the future costs associated with growth and upgrade equipment be discounted to their present value? Should the same treatment apply to additional future demand associated with that equipment? Is the appropriate discount

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[119] *Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance) NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Jersey*, WC Docket No. 02-67, Memorandum Opinion and Order, 17 FCC Rcd 12275, 12293, para. 43 (2002) (*Verizon New Jersey 271 Order*).

[120] *Verizon New Jersey 271 Order*, 17 FCC Rcd at 12293, para. 43.

[121] *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Memorandum Opinion and Order, 17 FCC Rcd 9018, 9059-60, para. 82 (2002). Similarly, although we recognize that an efficient competitor might anticipate some growth additions over the long run, the Commission has found that rates based on an assumption of 100 percent growth additions and no new switches do not comply with TELRIC principles. *Verizon Rhode Island 271 Order*, 17 FCC Rcd at 3318, para. 34.

rate the cost of capital used in calculating UNE prices generally?

80. Assuming that unbundled switching prices should reflect vendor prices for switch equipment that is installed in increments over the life of the switch (not the price that the carrier pays for equipment at any one point in the life cycle of the switch), we seek comment on whether the starting point for calculating costs should be a new switch that is installed today. We also seek comment on whether unbundled switching prices should reflect, in addition to costs for the initial switch equipment, costs of growth additions and technology upgrades, growth additions alone, or upgrades alone for the years following the initial installation. Commenters that believe current prices should recover costs of future upgrades should explain why current competitive LECs should pay for benefits that they do not yet receive. In light of our conclusion that UNE pricing should continue to be based on a forward-looking methodology, we ask commenters to describe in detail any rationale for supporting or rejecting UNE prices based on vendor prices that incumbent LECs currently pay for equipment they are installing today in existing switches, *i.e.*, vendor prices for growth additions and technology upgrades made at a particular point in the life cycle of an existing switch.

81. We ask parties to explain in detail the methodology that should be used to develop total cost and total demand under this approach. We also invite parties to submit studies showing how to develop an unbundled switching price. These studies should assume that service is provided using modern digital switches that are installed today. We ask that commenters develop this price for either an incumbent LEC's study area or a UNE zone within a study area. One study should develop the costs of initial new equipment and all future growth equipment that is expected to be installed periodically over the life of the switch. A second study should develop costs for these two components plus costs of all future technology upgrade equipment that is expected to be installed periodically over the life of the switch. Parties should explain and fully document the methodology, assumptions, and data they use to estimate these costs and the demand over which these costs are spread.[122] If a commenter believes UNE prices should be based on a switch technology other than digital technology, that party may submit other studies in addition to, rather than in place of, the studies requested above.

C. Cost of Capital

82. In the *Local Competition Order*, the Commission stated that the "currently authorized rate of return at the federal or state level is a reasonable starting point" in determining the cost of capital and that incumbent LECs "bear the burden of demonstrating with specificity that the business risks that they face providing unbundled network elements and interconnection

[122] At a minimum, commenters should document the following assumptions: (1) switched access line annual rate of growth, (2) switched access minutes of use annual rate of growth, (3) annual rate of growth of busy hour minutes of use per switched access line, (4) how frequently growth equipment is added to the switch to satisfy growing demand, *e.g.*, yearly, every two years, etc., (5) how frequently technology upgrade equipment is added, (6) expected useful life of a switch installed today, (7) cost of capital used to calculate the present value of all current and future costs and all current and future demand, and (8) how frequently the central processor, switch memory and other "getting started" equipment are entirely replaced with new equipment, or augmented by adding equipment, to increase capacity for satisfying growing demand or providing advanced features and services. The getting started cost of the switch, also known as the "first cost," is for the central processor, memory, maintenance, administrative, test, sr[illegible]d other common equipment.

services would justify a different risk-adjusted cost of capital or depreciation rate."[123] The Commission noted that 11.25 percent was the currently authorized rate of return at the federal level, but it held that states may "adjust the cost of capital if a party demonstrates to a state commission that either a higher or lower level of cost of capital is warranted."[124]

83. In the *Triennial Review Order*, the Commission clarified that a TELRIC-based cost of capital should reflect the risks of a competitive market.[125] Because 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, the Commission held that TELRIC prices should reflect the risk of losing customers to other facilities-based carriers.[126] The Commission found that calculating rates based on an assumption of a forward-looking network that uses the most efficient technology (*i.e.*, the network that would be deployed in a competitive market), without also compensating for the risks associated with investment in such a network, would reduce artificially the value of the incumbent LEC network and send improper pricing signals to competitors.[127] The Commission stated that establishing UNE prices based on an unreasonably low cost of capital would discourage competitive LECs from investing in their own facilities and thus slow the development of facilities-based competition.

84. As noted above, the importance of this clarification was to confirm that state commissions must use a consistent set of assumptions when they calculate the three components of rates (operating expenses, cost of capital, and depreciation expense).[128] That is, if the network assumptions are based on projections about what a network would look like in the long-run assuming facilities-based competition, the same approach should be followed in developing the cost of capital. We invite parties to comment on whether this principle should apply even if the Commission adopts a UNE pricing methodology that is tied more closely to the existing network of an incumbent LEC. If we ultimately were to find that state commissions should consider an incumbent LEC's existing network in calculating the investment in the network, should they also calculate cost of capital based on the existing competitive risk associated with that network?

85. We ask parties to identify the specific variables that determine the cost of capital under the network assumptions that they advocate, and to offer suggestions as to how to quantify the various components of risk that should be reflected in a company's cost of capital. What are the theoretical arguments that support the use of these variables? Is there empirical evidence regarding the effect each variable has on a carrier's cost of capital? How should the cost of debt and cost of equity be weighted? How should states determine the appropriate capital structure? Is incremental investment typically funded through debt or equity? Should the cost of capital

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[123] *Local Competition Order*, 11 FCC Rcd at 15856, para. 702.

[124] *Id.*

[125] *Triennial Review Order* at paras. 680-84.

[126] *Id.* at para. 680.

[127] *Id.* at paras. 680-82.

[128] *Id.* at paras. 682, 689.

reflect this?

86. In the *Triennial Review Order*, we recognized that one important risk factor to consider is the risk of losing customers to facilities-based competitors. How should this risk be measured? What is the relationship between this risk and the network assumptions that we adopt? Is it always the case that supplying a given product or service in a fully competitive market is more risky than supplying the same product or service in a market in transition from monopoly to competition? We also ask parties to address the role of fixed and sunk costs, assumptions about the level and kind of competition, and entry strategies of competitors in affecting risk and cost of capital of incumbent carriers.

87. We ask parties to comment on the relationship, if any, between our unbundling rules and the risk of stranded investment. The *Local Competition Order* suggested that the availability of long-term contracts presented one mechanism by which incumbent LECs might reduce the risk of stranded investment.[129] We ask parties to discuss whether long-term contracts have been used in the provision of UNEs. If they have not, why not? Does the process of setting prices at forward-looking costs in an industry in which costs generally are decreasing, and revising these prices periodically, discourage entry into long-term contracts? How, if at all, should any increased risk of stranded investment due to the use of month-to-month contracts be considered in calculating the cost of capital? How can this risk be quantified? Does the use of economic depreciation eliminate the need to compensate separately an incumbent LEC for any additional risk of stranded investment?

88. We also ask parties to comment on ways in which the Commission might simplify the task of setting the cost of capital. For example, if we retain our current rules, and the cost of capital is intended to reflect the risk of participating in a market with facilities-based competition, is there any reason that the cost of capital would vary among different states, or among different companies? If not, would it be appropriate for the Commission to establish a particular cost of capital for states to employ? If we move to a pricing regime that looks more closely at the incumbent LEC's actual network, are there any presumptions we could establish to facilitate selection of a cost of capital? We ask parties to provide studies in support of their proposals. Regardless of our network assumptions, are there particular models for projecting cost of capital that clearly should or should not be used? Are there particular data sources that should or should not be given deference? We ask parties to identify proxy companies or industries for use in estimating the UNE cost of capital and to explain in detail why they believe the identified proxies are appropriate.[130]

89. In the *Triennial Review Order*, the Commission also clarified that a TELRIC-based cost of capital should reflect any unique risks (above and beyond the competitive risks discussed above) associated with new services that might be provided over certain types of

[129] *Local Competition Order*, 11 FCC Rcd at 15849, para. 687.

[130] Because no actual company is in the business solely of providing UNEs, it is necessary to determine the risk associated with the UNE business by using as a proxy existing companies or industries that are believed to have a comparable level of risk.

facilities.[131] The Commission reiterated its finding from the *Local Competition Order* that different UNEs may have different costs of capital[132] and clarified that the use of UNE-specific costs of capital is an acceptable method of reflecting in UNE prices any risk associated with new facilities that employ new technology and offer new services. We ask parties to comment on when it would be appropriate for a state commission to establish different costs of capital for different UNEs. What types of risks would distinguish one element from another with respect to cost of capital? Would such an approach accurately reflect how incumbent LECs actually raise capital (*i.e.*, on an entity-wide as opposed to a per-facility basis) and, if not, is this relevant?

90. Although states have had the option of establishing UNE-specific costs of capital since 1996, we are not aware of any states that have followed this approach. We ask parties to comment on the reasons why such an approach has not been implemented. We are particularly interested in comments from state commissions that have considered and rejected this approach. Are there steps the Commission could take to facilitate the ability of states to establish UNE-specific costs of capital? Do the benefits of using a cost of capital that more accurately reflects the risk associated with providing a particular UNE outweigh the administrative burden of such an approach?

91. We ask parties to explain whether different proxy groups should be used to estimate the cost of capital for different UNEs. If parties believe that different proxy groups should be used, they should identify these proxy groups and explain in detail why these are appropriate. An alternative approach would be to estimate the cost of capital based on a single proxy group and then adjust that cost of capital according to the relative risk of the particular UNE. Parties that favor such an approach should explain in detail how to make the relative risk adjustments. Please also identify the proxy group of companies used as the starting point to estimate the cost of capital and explain in detail why this proxy group is appropriate.

D. Depreciation Expense

92. Economic depreciation is a method of reflecting anticipated declines in the net present value of an asset over the course of its useful life. If equipment prices are expected to decline over time, the value of equipment currently in use in the network (and therefore the price under a forward-looking methodology) should decline over time at the same rate. Calculating the appropriate rate of price decline is quite complicated because it is based largely on projections about future events. In UNE pricing cases, however, the task is made even more difficult by the manner in which most computer cost models calculate prices. Specifically, most models include a levelization function that imposes a constant price schedule over the life of the asset. As we discuss in more detail below, there is an inherent tension between levelizing prices, on the one hand, and establishing UNE prices that reflect anticipated equipment price changes, on the other hand.

93. There are two components of depreciation – the useful life of the asset, and the

[131] *Triennial Review Order* at para. 683.

[132] *Local Competition Order*, 11 FCC Rcd at 15856, para. 702 ("We note that the risk-adjusted cost of capital need not be uniform for all elements.").

rate at which the asset is depreciated over that useful life. In the *Local Competition Order*, the Commission stated that properly designed depreciation schedules should take into account expected declines in the value of goods.[133] Similarly, the Commission's rules require the use of "economic depreciation" but provide no additional detail.[134] In the *Triennial Review Order*, we declined to mandate any particular set of economic lives because there was no record to support such a finding.[135] With respect to the rate of depreciation, however, we clarified that a carrier may accelerate recovery of the initial capital outlay for an asset over its life to reflect any anticipated decline in its value.[136] Recovering more of the initial capital outlay for the asset in the early years would enable a carrier to recover less in later years, thereby allowing it to compete with carriers that have purchased new, lower-priced equipment in those later years.[137]

1. Asset Lives

94. The useful life of an asset normally is determined by comparing the operating cost of the existing asset with the operating cost plus the investment cost of a new asset that performs the same functions (assuming the new equipment will generate the same revenue as the existing equipment). Estimating asset lives is difficult because the estimate depends on the physical life of the existing asset, the expected operating cost of the existing asset, and the expected investment and operating cost of new assets, some of which may not yet have been invented.

95. In 1994 and 1995, the Commission simplified its depreciation process by establishing a "safe harbor" range of asset lives for use by incumbent LECs.[138] The Commission modified the range for digital switching equipment in 1999.[139] Asset lives prescribed by the Commission were intended to be forward-looking when they were established,[140] and the Supreme Court specifically found that FCC-prescribed asset lives were a reasonable starting point for developing the depreciation expense to be used in setting UNE prices.[141]

96. In the *Biennial Review Depreciation Order*, the Commission noted that more than

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[133] *Id.* at 15849, para. 686.

[134] 47 C.F.R. § 51.505(b)(3).

[135] *Triennial Review Order* at para. 688.

[136] *Id.* at paras. 689-91.

[137] *Id.* at para. 690.

[138] *Simplification of the Depreciation Prescription Process*, CC Docket No. 92-296, Second Report and Order, 9 FCC Rcd 3206 (1994); Third Report and Order, 10 FCC Rcd 8442 (1995).

[139] *1998 Biennial Review – Review of Depreciation Requirements for Incumbent Local Exchange Carriers*, CC Docket No. 98-137, Report and Order, 15 FCC Rcd 242, 247-48, para. 13 (1999) (*Biennial Review Depreciation Order*).

[140] *See USF Inputs Order*, 14 FCC Rcd at 20344-45, para. 426 ("We believe this process of combining statistical analysis of historical information with forecasts of equipment replacement generates forward-looking projected lives that are reasonable estimates of economic lives and, therefore, are appropriate measures of depreciation.").

[141] *Verizon v. FCC*, 535 U.S. at 519-20.

20 states have used FCC regulatory lives in calculating TELRIC-based UNE prices. In the same order, the Commission rejected the use of asset lives reflected in financial reporting.[142] It did, however, permit incumbent LECs to seek waivers that would allow them to use financial book lives,[143] although no LEC has yet sought a waiver under these rules. This decision did not, however, specifically consider whether FCC lives or financial book lives are more appropriate for use in a TELRIC calculation. In the universal service proceeding, the Commission used FCC-prescribed regulatory lives in running the Synthesis Model.[144] In its section 271 decisions, the Commission has found both FCC regulatory lives and financial book lives to be consistent with TELRIC principles.[145] Similarly, in the *Triennial Review Order*, the Commission declined to mandate one set of asset lives or the other.[146]

97. The issue of asset lives is one where we believe more guidance from the Commission would be helpful to state commissions. Although the record in the *Triennial Review* proceeding did not offer a basis for providing such guidance, this NPRM provides an opportunity for parties to present evidence to support such guidance.

98. In past decisions, the Commission has been reluctant to rely solely on financial reporting lives out of concern that Generally Accepted Accounting Principles (GAAP) might permit companies to adopt depreciation methods that result in excessive depreciation expense.[147] Is this reluctance warranted in the context of UNE ratesetting? Do the financial lives used to develop earnings reported to shareholders match those that companies use to plan their future capital expenditures? If not, are the financial lives used to develop reported earnings shorter or longer than those that companies use to plan their capital expenditures? Please explain why these lives differ, assuming that they do. We request that competitive LECs and incumbent LECs submit the lives that they use to plan their capital expenditures.

99. We seek comment on how financial reporting lives are developed and whether they accurately represent the anticipated economic life of assets. For example, how do financial reporting lives reflect the potential impact of future technologies? With respect to the major categories of plant and equipment (switching, loops, interoffice transport), is there objective evidence that anticipated changes in technology will cause equipment installed today to have shorter lives than the same equipment that was installed in the past? Is there objective evidence that potential advances in technology may actually lengthen the useful life of some types of

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[142] *Biennial Review Depreciation Order*, 15 FCC Rcd at 262-63, para. 48 ("We believe that giving incumbent LECs the right to select, for regulatory purposes, any depreciation rate allowed by GAAP [Generally Accepted Accounting Principles] is inappropriate as long as incumbent LECs reserve the right to make claims for regulatory relief based on the increased depreciation that would result from granting them that flexibility.").

[143] *Id.* at 252-53, para. 25 (establishing waiver requirements).

[144] *USF Inputs Order*, 14 FCC Rcd at 20344, para. 426.

[145] *See, e.g., Verizon Rhode Island 271 Order*, 17 FCC Rcd at 3316-17, para. 30 (FCC lives); *SBC Kansas/Oklahoma 271 Order*, 16 FCC Rcd at 6274, para. 76 (financial lives).

[146] *Triennial Review Order* at para. 688.

[147] *Biennial Review Depreciation Order*, 15 FCC Rcd at 263, para. 48.

assets? What asset lives are appropriate for equipment in the existing incumbent LEC network that is, or soon will be, obsolete? How relevant, if at all, is the actual retirement experience of an incumbent LEC, its depreciation reserves, or its projected investment plans for the near future? Is there other objective evidence the Commission should consider in this regard? We encourage parties to provide studies forecasting the economic lives of the major local exchange carrier assets in support of their proposals.

100. We also seek comment on whether compliance with GAAP results in any systematic bias. For example, does the "conservatism" principle underlying GAAP lead to a downward bias in asset lives?[148] How much discretion does GAAP give incumbent LECs in setting asset lives? Will pressure from the financial markets ensure that asset lives are estimated accurately? Does the use of different asset lives for different regulatory purposes create incentives for regulatory arbitrage?

101. We also ask parties to comment on whether FCC regulatory lives reflect the competition and technology assumptions required under a forward-looking costing methodology. We note that it has been almost a decade since the Commission first established forward-looking asset lives, and the Commission last adjusted its "safe harbor" asset lives in 1999.[149] Are these lives still accurate? We ask parties to explain whether the validity of FCC asset lives depends in part on whether the Commission retains a scorched node approach to network design or instead adopts its tentative conclusion that forward-looking costs should more closely account for the real-world attributes of the routing and topography of an incumbent LEC's network.

2. Depreciation Rate

102. As noted above, economic depreciation is a method of reflecting anticipated declines in the net present value of an asset over the course of its useful life. Where equipment prices are expected to decline over time, the value of existing network assets (and therefore prices under a forward-looking methodology) should decline at the same rate. In the *Triennial Review Order*, we stated that front-loading depreciation may be appropriate in such situations, although we noted that there were a number of unanswered questions regarding precisely how carriers could reflect anticipated equipment price changes in their UNE prices.[150] This proceeding presents an opportunity to explore these questions.

103. As noted above, the rate of equipment price changes, if normalized to reflect advances in technology, should be a significant factor in calculating TELRIC prices. We ask

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[148] GAAP is "guided by the conservatism principle which holds, for example, that when alternative expense amounts are acceptable, the alternative having the least favorable effect on net income should be used." *Biennial Review Depreciation Order*, 15 FCC Rcd at 263, para. 48 (quoting *Simplification of the Depreciation Prescription Process*, CC Docket No. 92-296, Report and Order, 8 FCC Rcd 8025, 8044 (1993)).

[149] *Simplification of the Depreciation Prescription Process*, CC Docket No. 92-296, Second Report and Order, 9 FCC Rcd 3206 (1994); Third Report and Order, 10 FCC Rcd 8442 (1995); *Biennial Review Depreciation Order*, 15 FCC Rcd at 247-48, para. 13.

[150] *Triennial Review Order* at paras. 690-91. Conversely, back-loading depreciation may be appropriate when equipment prices are rising.

parties to comment on the relationship between the rate of change in equipment prices and the rate of change in final product prices. To what extent do companies in competitive markets consider changes in the economic efficiency of assets (*e.g.*, price changes, technological advances) in deciding how quickly to recover investments? How can we measure anticipated changes in the efficiency of equipment? To be useful, must any measurement of equipment price changes also reflect advances in the capabilities of the equipment? Are there publicly available price indices that adjust for changes in economic efficiency that could be used in establishing depreciation schedules? Are there other sources of information that would be more appropriate for use in establishing rates based on a forward-looking costing methodology? Parties should explain how different sources of data address changing capabilities of equipment over time. Parties also should explain whether recent declines in equipment costs, if any, are useful in establishing a general approach going forward, or are they instead extraordinary events caused by the recent sudden decline in markets for telecommunications equipment generally and therefore not reliable indicators of general trends in equipment pricing?

104. If the investment cost of equipment declines from year to year, UNE prices also should decline from year to year, all else being equal. Similarly, if investment costs are expected to increase from year to year, then UNE prices also should increase from year to year. A regime with wholesale prices that change over time may be a rational response to a market where investment costs are changing and facilities-based competition exists or is expected to exist. We ask parties to comment on the costs and benefits of such a regime. We also ask parties to address whether adjustments to depreciation expense represent the best mechanism for reflecting anticipated equipment price changes in UNE prices. If UNE prices can be adjusted directly to reflect anticipated equipment price changes, there may be no need to develop complicated mechanisms for reflecting such changes in depreciation expense.

105. One of the difficulties in reflecting changing equipment costs in UNE prices is that most cost models used in setting TELRIC prices do not reflect the actual investment patterns of carriers. Carriers continually invest in new assets and depreciate (and eventually retire) old assets. In contrast, the cost models typically assume that the entire investment in the network is made at a single point in time, and that no additional investment is made in subsequent periods. This same process is then repeated each time a state commission sets new rates. Because the return on investment will decline in each period as the base of undepreciated investment declines, even straight-line depreciation will result in rapidly declining prices over time unless recovery is levelized across time periods. Consequently, a "levelization" function is included in most cost models to replicate real-world investment and recovery patterns.

106. The levelization of rates that occurs in most cost models appears to be inconsistent with the concept of adjusting UNE prices to reflect anticipated changes in equipment prices. We ask parties to comment on this statement and to discuss the consequence of running current cost models without the levelization function. Does the use of levelization send incorrect signals to the extent that it produces UNE prices that do not vary over time even when input prices are rising or falling? Would there be dramatic variation in rates from year to year if rates were not levelized? Would this type of variation distort the economic signals regarding the efficient use of incumbent LEC facilities by competitors?

107. An alternative method of reflecting economic depreciation might be to recover

through depreciation expense the difference between the current value of the asset and the anticipated value of the asset at the next rate proceeding. As a practical matter, how would such an approach work? How would the anticipated future value of assets be determined? One issue that arises under this alternative approach is whether and how prices should be adjusted if a state commission's expectations regarding equipment prices prove to be incorrect. We ask parties to comment on this approach to economic depreciation and to identify other approaches that might be used.

108. Given the potential difficulties associated with some of the mechanisms described above, we ask parties to comment on whether a reduction in asset lives might be used as a proxy for changing investment costs. Under what circumstances would a carrier retire an asset before the end of its useful life? Once an asset is in service, is it reasonable to assume that it would be retired early only if the net present value of the expected future cash flows associated with buying and operating new technology is higher than the expected cash flows associated with operating the old asset? If the use of shorter asset lives increases the amount of cost recovery, is this an appropriate method of reflecting anticipated technological improvements that would lower costs? Is there a risk of over-recovery if asset lives are shortened? Is there evidence that this is how unregulated companies account for the uncertainties associated with equipment price changes and other consequences of advancing technology?

E. Expense Factors

109. One area of controversy in state pricing proceedings has been the calculation of monthly operating expenses. In theory, the monthly operating cost should be calculated by estimating the total forward-looking operating expense associated with a particular network element (*e.g.*, by conducting time and motion studies of likely maintenance activities) and then dividing the total operating expense by the appropriate number of units, such as lines, to obtain the expected average operating expense. Such an approach is difficult to implement in practice, however, so regulators often estimate projected operating expenses by multiplying the projected investment in the network by an annual cost factor (ACF).[151] An ACF typically is a ratio of current expenses to current investment for a particular account. The ratio is multiplied by the projected investment to obtain the projected expenses. An alternative method of calculating monthly operating costs is to look at current operating expenses and make any adjustments to reflect anticipated experience in the period for which the projection is made, such as adjustments for productivity and inflation.

110. We seek comment on these approaches to estimating expenses. Is one approach clearly superior to the others? Under the network assumptions required by our TELRIC rules, is it correct to assume that expenses will be reduced in proportion to reductions in investment? Would such an assumption be more acceptable if we changed the network assumptions to more closely track an incumbent LEC's existing network? Would it be reasonable to assume that an incumbent LEC's current expenses represent the forward-looking costs of operating a network? Why or why not? Are there approaches to projecting expenses that do not rely on an incumbent LEC's past experience, such as benchmarking to other companies? Are there other approaches

[151] *See, e.g., USF Inputs Order*, 15 FCC Rcd at 20301-02, 20304, paras. 341, 346.

that might be used to estimate expenses more accurately?

111. We invite parties to provide empirical evidence that demonstrates the factors that most influence the level of expenses. For example, are outside plant expenses more likely to be correlated to changes in labor rates, the level of outside plant investment, or some other factor or combination of factors? Do the same factors control the expenses associated with switching and transport, or are there other factors upon which those expenses should be based? Do the factors that influence expenses vary by state or by carrier? Is the level of expenses affected by the assumed life of an asset for depreciation purposes? For example, if we shorten asset lives as a proxy for accelerated depreciation, as discussed above, would it also be appropriate to reduce operating expenses under the assumption that the carrier would avoid the higher expense of operating an asset at the end of its useful life?

112. If we find that the best method of projecting expenses is to make forward-looking adjustments to actual expenses, what type of adjustments would be appropriate? If adjustments are made for inflation and productivity, how should those factors be measured? Are an incumbent LEC's past productivity gains a relevant consideration, or should we look at measures of productivity across carriers, or across the industry generally? From what sources should this information be developed?

113. We ask parties to address any specific issues that arise in connection with estimating non-plant expenses, such as customer care or common overhead. How should these costs be allocated among different elements? Is it appropriate to allocate these costs to non-recurring charges, or should they be recovered only through recurring charges?

F. Non-Recurring Charges

114. As discussed above, non-recurring costs may be thought of as the "installation" or "set-up" costs an incumbent LEC incurs processing and provisioning a competitive LEC order for a UNE. Non-recurring charges (NRCs) constitute an upfront cost to the competitive LEC that is generally not recoverable if it subsequently loses the end-user customer served with the UNE. Consequently, as the Commission recognized in the *Local Competition Order*, NRCs can be a serious barrier to entry, especially if they are unduly high.[152]

115. In the *Local Competition Order*, the Commission concluded that, as a general rule, rates for unbundled network elements should recover costs in the manner in which they are incurred.[153] The Commission required that recurring costs be recovered through recurring charges, rather than through a non-recurring charge.[154] It gave discretion to state commissions, however, to require incumbent LECs to recover non-recurring costs through recurring charges over a reasonable period of time. The Commission found that recovery of non-recurring costs through recurring charges was a "common practice" that "fully compensated" the incumbent

[152] *Local Competition Order*, 11 FCC Rcd at 15875, para. 747.

[153] *Id.* at para. 743.

[154] *Id.* at 15874-75, para. 745.

LECs for their non-recurring costs.[155] It also required that states take steps to ensure an equitable distribution of non-recurring costs among carriers that benefit from a non-recurring activity (*e.g.*, by providing the initial competitive LEC a *pro rata* refund of charges paid when a subsequent competitive LEC uses the same facility).[156]

1. Identification of Costs

116. The subject of NRCs presents two sets of issues that have been a constant source of dispute in state proceedings and in section 271 applications since 1996. The first set of issues relates to what costs an incumbent LEC should be permitted to recover for the activities needed to initiate service to a competitive LEC. In TELRIC proceedings, a significant issue has been whether the state commission should assume a state-of-the-art network in calculating non-recurring costs just as it does with recurring costs, as our rules suggest,[157] or whether it should use a different network assumption that more closely reflects the costs associated with providing services on the incumbent LEC's existing network.

117. We believe that consistency among the various components of rates is important. Using one set of network assumptions for recurring charges and a different set of network assumptions for NRCs potentially results in some over-recovery or under-recovery. Nevertheless, we are sensitive to the practical concern that network assumptions that depart significantly from an incumbent LEC's existing network might preclude recovery of the cost of non-recurring activities that would be required in establishing a competitive market. We ask parties to address whether our tentative conclusion in paragraph 52 should apply with respect to NRCs and, if it does, whether this ensures that incumbent LECs will be able to recover all of their forward-looking costs of non-recurring activities.

118. A related issue that often arises in state proceedings is the relationship between NRCs for manual activities and an incumbent LEC's operational support systems (OSS). In light of our tentative conclusion to more closely account for the real-world attributes of the routing and topography of the incumbent LEC's existing network in developing forward-looking costs, what assumptions should be made with respect to the capability of the incumbent LEC's OSS? Should the costs associated with OSS be recovered through expense factors or should separate charges be permitted? If charges to recover OSS costs are permitted, how should they be calculated? Should incumbent LECs be permitted to recover through separate OSS charges the costs associated with systems that are used for both wholesale and retail services? Given that many OSS upgrades affect both wholesale and retail functions, how should regulators allocate OSS costs between these functions? Should all costs of opening an incumbent LEC's OSS to competitors be borne by the competitors, or are there costs that are more appropriately spread among the incumbent LEC's retail customers as well?

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[155] *Id.* at 15875-76, para. 749.

[156] *Id.* at 15876, paras. 750-51.

[157] 47 C.F.R. § 51.507(e) ("Non-recurring charges . . . shall not permit an incumbent LEC to recover more than the total forward-looking cost of providing the applicable element.").

119. Even with highly automated systems, some manual activities always will be needed. We ask parties to comment on the particular activities that are not susceptible to automation. How should state commissions determine the cost of performing these activities? We note that testimony on these issues in state TELRIC proceedings typically relies primarily, if not exclusively, upon the subjective opinions of panels of subject matter experts.[158] We seek comment on how state commissions might develop more objective evidence on non-recurring costs. Would a shift to network assumptions that more closely track the incumbent LEC's existing network eliminate some of the speculation that often characterizes state proceedings? Is it appropriate to establish a presumption that an incumbent LEC's current practices with respect to non-recurring activities are efficient, or are an incumbent LEC's incentives to be efficient diminished when competitive LECs are the primary users of a particular activity?

2. Recovery of Costs

120. The second set of issues relates to whether non-recurring costs should be recovered through NRCs or through recurring charges. The costs at issue generally are labor costs, *i.e.*, the cost of sending a technician to a customer location, a remote terminal, or a central office to perform some activity that is necessary for the competitive LEC to be able to serve an end user. Beyond a general preference for recovery through recurring charges,[159] the *Local Competition Order* provided no guidance to the states as to how they should distinguish between costs recoverable through NRCs and costs to be treated as operating expenses that are recovered through recurring charges.

121. One possible guideline for making this difficult decision would be to limit recovery through NRCs to those costs that exclusively benefit the competitive LEC ordering the UNE. This approach provides a mechanism by which an incumbent LEC can recover the cost of activities related to the initiation of service by competitive LECs, while at the same time reducing the barriers to entry for competitive LECs. The cost of activities for which NRCs are not permitted generally would be recovered in recurring charges through expense factors, just as LECs recover costs associated with repair and maintenance of their networks.[160]

122. Would allowing NRCs only for activities that solely benefit a specific competitive LEC reduce the number of activities for which NRCs would be permitted? For example, should installation of a cross-connect at a feeder/distribution interface (FDI) be subject to a NRC if such a facility typically remains in place after a customer terminates service? Conversely, should placement of a cross-connect from the main distribution frame (MDF) in a central office to a competitive LEC's collocation space remain subject to a NRC because only the competitive LEC that orders the cross-connect would benefit from the work?

123. We also ask parties to comment on how an approach that limits NRCs to activities

[158] *See Qwest 9-State 271 Order*, 17 FCC Rcd at 26425, paras. 214, 216.

[159] *Local Competition Order*, 11 FCC Rcd at 15875-76, para. 749.

[160] A possible exception to this approach would be in cases where the incumbent LEC can demonstrate that the cost was not considered in calculating the expense factor, *e.g.*, where it did not need to perform the activity for its own operations and competitive LECs were not yet requesting the activity.

benefiting a particular CLEC would be implemented by the states. Although such an approach would reduce the likelihood that NRCs would impose a barrier to competitive entry, would it also provide incumbent LECs with full recovery of their forward-looking costs? Would such an approach simplify the calculation of NRCs by state commissions? Is it necessary under such an approach to back out certain costs from the calculation of expenses to avoid double recovery? Is there a simple way to make such an adjustment? How should carriers that have paid a NRC for a particular activity be credited if an incumbent LEC subsequently eliminates the NRC and recovers those same costs through recurring charges?

124. We solicit comment on whether a contrary approach, allowing NRCs for every activity related to a competitive LEC order, would provide sufficient incentive for incumbent LECs to use mechanized processes when it is efficient to do so. Would allowing NRCs for all such activities increase the potential for over-recovery of these costs? Would regulators need to develop mechanisms to back out these costs in developing expense factors? Would it be necessary to develop some type of refund mechanism if other carriers also benefit from the work? Parties that oppose limiting the activities for which NRCs are permitted should suggest practical methods for making such adjustments in order to avoid double recovery of costs.

125. We invite parties to offer other suggestions on principles that states could apply to identify when it is appropriate to recover costs through NRCs, and the consequence of those principles on competitive entry and cost recovery. For example, of what relevance are the NRCs imposed by incumbent LECs on retail customers? Could those NRCs serve as a basis for assessing the reasonableness of NRCs imposed on competitive LECs? Could we resolve concerns about the level of NRCs by eliminating or reducing the allocation of common costs and overhead to activities for which NRCs are imposed?

3. Disconnection Costs

126. Beyond these general issues related to when NRCs should be imposed and what costs they should recover, we note that there are a number of specific issues that are a continuing source of controversy in state pricing proceedings. One issue that arises in many proceedings is the question of disconnect costs. Incumbent LECs typically favor recovering the cost of disconnecting UNEs at the time of installation, while competitive LECs generally argue that such costs, if they exist at all, should be recovered at the time service actually is disconnected.[161]

127. We note that calculating the appropriate charge for disconnection may be more complex if it is imposed at the time of installation. As an initial matter, it is difficult to predict how often disconnect costs actually will be incurred. Many NRCs that incumbent LECs charge their retail customers cover both installation and disconnection of service, and therefore the cost of disconnecting a UNE may already have been recovered by the incumbent LEC.[162] In other cases, the customer may switch to another carrier and the cost of rearranging the facilities would be recovered through the installation charge on the new carrier. We ask parties to provide empirical evidence with respect to the frequency with which facilities actually are disconnected

[161] *Qwest 9-State 271 Order*, 17 FCC Rcd at 26326-27, paras. 218-20.

[162] *Id.* at 26426, para. 219.

and the costs are not recovered through other charges.

128. Another possible complication if disconnect costs are recovered at the time of installation is that the charge should be discounted to reflect the time value of money over the average period for which the competitive LEC is expected to use the UNE. In the absence of objective evidence on which to base this calculation, accelerating the recovery of disconnect costs is likely to lead to an under-recovery or over-recovery of costs. We ask parties that favor such an approach to explain whether there are other factors that outweigh the consequences of having an intentional mismatch between costs and revenues.

4. Loop Conditioning

129. A second specific issue that has created significant disputes at the state level is loop conditioning. In the *UNE Remand Order*, the Commission stated that incumbent LECs could charge for conditioning loops, notwithstanding the fact that such activity may not be necessary in a forward-looking network.[163] The Commission required the states to ensure that any line conditioning charges comply with FCC pricing rules for non-recurring costs.[164] In the *Triennial Review Order*, the Commission stated that state commissions have discretion to determine whether loop conditioning costs are forward-looking costs, and whether those costs should be recovered through recurring charges or non-recurring charges.[165]

130. We ask parties to comment on when and how the costs associated with loop conditioning should be recovered. The Commission noted in the *UNE Remand Order* that, pursuant to industry engineering standards, loops under 18,000 feet in length generally should be free of impairments such as load coils and excessive bridged taps.[166] Under a forward-looking costing methodology, should competitive LECs be required to pay the costs of conditioning such loops? Does the answer to this question depend on whether we retain the network assumptions of the current TELRIC rules? We noted in the *Triennial Review Order* that one option available to state commissions would be to permit NRCs for loop conditioning only in extraordinary circumstances, such as copper loops that are longer than 18,000 feet.[167] Is this a useful distinction? How, if at all, should such NRCs be distributed among the competitive LEC requesting the conditioning and future carriers that provide DSL service over the conditioned loop?

G. Rate Structure

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[163] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3784, para. 193 (1999) ("*UNE Remand Order*") (subsequent history omitted).

[164] *UNE Remand Order*, 15 FCC Rcd at 3784, para. 194.

[165] *Triennial Review Order* at para. 641.

[166] *UNE Remand Order*, 15 FCC Rcd at 3784, para. 193.

[167] *Triennial Review Order* at para. 641. We note that load coils are not necessary for voice service on loops less than 18,000 feet in length and generally can be removed in a batch process; on loops in excess of 18,000 feet, however, load coils are needed for voice service and typically must be removed one loop at a time.

131. The rules adopted in the *Local Competition Order* contain a variety of requirements regarding how UNE rates should be structured. Charges for dedicated facilities, including unbundled loops and dedicated transport, must be flat-rated.[168] The costs of shared facilities, on the other hand, may be recovered through flat-rated or usage-based charges, as long as the rate structure efficiently apportions costs among users.[169] The Commission also allowed, but did not require, the use of peak-period pricing for local switching and other shared facilities.[170]

132. We seek comment on whether, and under what circumstances, changes are needed to our rate structure requirements. Would it be appropriate to require that switching costs be recovered solely through flat-rated charges? What are the benefits and drawbacks of such an approach? Would flat-rated recovery of switching costs comply with the statutory pricing standard under section 252(d)(1)? Would flat-rated prices also be appropriate for shared transport? For example, should the costs of shared transport be allocated among carriers using a facility based on the proportion of lines each carrier connects to the transport facility?

H. Rate Deaveraging

133. In the *Local Competition Order*, the Commission found that geographically deaveraged rates more closely reflect the cost of providing UNEs.[171] The Commission required states to establish at least three cost-based rate zones.[172] During the course of section 271 proceedings, both incumbent LECs and competitive LECs raised concerns about the consequences of UNE rate deaveraging. In addressing these concerns, the Commission has noted that the combination of retail rates that include implicit support flows (and therefore are not entirely cost-based) and the availability of cost-based, deaveraged UNE rates could affect entry incentives with respect to different geographic areas within a state.[173]

134. The *Local Competition Order* also addressed the subject of "class-of-service" deaveraging. The Commission found that there was no evidence that the cost of providing particular UNEs varies with the type of retail service or retail customer.[174] As with geographic deaveraging, the requirement to average UNE rates across different classes of customers affects how attractive customers might be to competitive LECs in states where similar averaging is not

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[168] 47 C.F.R. § 51.509(a), (c).

[169] *Id.* § 51.509(b), (d), (e); *Local Competition Order*, 11 FCC Rcd at 15878, para. 755.

[170] *Local Competition Order*, 11 FCC Rcd at 15878, para. 756-57.

[171] *Id.* at 15882-83, para. 764.

[172] *Id.* at 15882-83, para. 765.

[173] *See, e.g., Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Vermont*, CC Docket No. 02-7, Memorandum Opinion and Order, 17 FCC Rcd 7625, 7661-64, paras. 65-69 (2002) (discussing the relationship between possible retail rate subsidies and UNE "price squeeze" allegations).

[174] *Local Competition Order*, 11 FCC Rcd at 15883, para. 766.

required for retail services. For example, if retail business rates are higher than retail residential rates for a comparable service, but prices are the same for the UNEs necessary to provide that service, we would expect competitive LECs to target high-margin business customers and to avoid low-margin residential customers.

135. Although our *Triennial Review Order* explains how the Commission's impairment standard takes into account implicit support flows among retail services, that order does not directly address issues related to differences in the averaging of incumbent LEC retail rates and UNE rates.[175] Given the Commission's limited ability to influence or control retail local exchange rates, how can the Commission achieve its goal of sending appropriate economic signals with respect to competitive entry and investment? Would changes to our deaveraging policies with respect to UNEs address these concerns or are there alternative steps that the Commission might take?

136. We seek comment on whether, and under what circumstances, we should retain the requirement of geographic deaveraging. What are the consequences of deaveraging UNE prices in states where retail rates are not similarly deaveraged? Would it be appropriate to require deaveraging only in states where retail rates are deaveraged? Is it possible to reconcile such an approach with the cost-based pricing standard contained in section 252(d)?

137. We seek comment on whether, and under what circumstances, to retain the requirement to average rates across different classes of service. Parties that favor elimination or modification of this requirement should present evidence demonstrating that the costs of serving different classes of customers are sufficiently different to warrant deaveraging of those rates. For example, is there objective evidence that the cost of serving business customers is either higher or lower than the cost of serving residential customers? If so, what is the cause of these cost differences? Is deaveraging UNE rates across classes of customers appropriate if retail rates do not reflect these same cost differences?

I. Rate Changes Over Time

138. One issue on which all parties likely agree is that UNE pricing proceedings under the Commission's current rules require a substantial commitment of resources from everyone involved. A typical UNE pricing proceeding may take two to three years to complete, which results in rates that may be outdated at the time they are adopted. Moreover, even as circumstances change, states may be reluctant to adopt new prices to reflect those changes because they are not willing to commit the resources needed for these proceedings.

139. We ask parties to comment on whether there might be mechanisms that could be used to adjust UNE prices over time, thereby reducing the need for state commissions to conduct a full UNE pricing proceeding every few years. Such an approach might, for example, be similar to many price cap regimes, which periodically adjust rates based on productivity and inflation factors. How might such an approach work for UNE prices? In particular, we ask parties how productivity factors might be calculated. Could a single productivity factor be used, or would it

[175] *Triennial Review Order* at paras. 154-69.

be necessary to develop different factors for different UNEs? Could a national factor be used or would it be necessary to develop state-specific productivity factors? What sources of data could we use to derive these factors? We invite parties to provide empirical evidence regarding productivity, such as productivity studies, that we could use to establish productivity factors if we pursue this approach.

140. If the use of productivity factors to adjust rates periodically is feasible, should it be mandatory? Or should states retain the ability to conduct a full UNE pricing proceeding at their discretion? Would a periodic adjustment to rates in lieu of a full UNE pricing proceeding be sufficient to satisfy a state's legal obligations under section 252? Are there methods other than the use of productivity factors that could be used to make periodic rate adjustments?

V. RESALE PRICING

141. Section 252(d)(3) of the Act requires that state commissions establish wholesale rates for resold services based on the incumbent LEC's retail rates, "excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."[176] In the *Local Competition Order*, the Commission adopted a "reasonably avoidable" standard governing the costs that must be considered avoided when calculating the wholesale discount.[177] That is, the Commission found that any costs that "reasonably can be avoided" by the incumbent LEC when it provides a service at resale must be considered avoided in determining the wholesale discount.[178]

142. The Commission's original resale pricing rules were vacated by the Eighth Circuit in *Iowa Utilities II* because the court found that the rules were inconsistent with the plain meaning of the statute.[179] The Eighth Circuit found that the appropriate standard for determining avoided costs is not those costs that "can be avoided," but rather "those costs that the [incumbent LEC] will actually avoid incurring in the future."[180] Further, the court explained that, when determining avoided costs, the state commission may not assume that the incumbent is acting as a wholesaler only, but rather must assume that the incumbent provider is acting as both a wholesale and a retail provider.[181] The Commission has not conducted any further rulemaking to provide additional guidance on establishing wholesale discounts.

143. In light of *Iowa Utilities II*, we ask parties to comment on the need for the Commission to adopt new rules implementing section 252(d)(3). Is the statutory language, as interpreted by the Eighth Circuit, sufficiently clear that further guidance from the Commission is unnecessary? Parties that favor the establishment of national rules should explain what those

[176] 47 U.S.C. § 252(d)(3).

[177] *Local Competition Order*, 11 FCC Rcd at 15956-15957, para. 912.

[178] 47 C.F.R. § 51.609(b).

[179] *Iowa Utilities II*, 219 F.3d at 754-756, 765.

[180] *Id.* at 755.

[181] *Id.*

rules would require. For example, does the court's decision that the discount should be calculated as if the carrier were both a wholesale and retail provider require the Commission or the state commission to make some type of assumption as to how much competition there is in the marketplace, or did the court simply intend for the state to consider the current level of competition and the current split between an incumbent LEC's retail and wholesale services?

144. Is it necessary, or helpful, for the Commission to identify categories of costs that either are presumptively avoided or presumptively not avoided? For example, is it still appropriate for the Commission to conclude, as it did in the *Local Competition Order*, that all marketing, billing, and collection costs are avoided?[182] Parties that favor the Commission establishing this type of presumption should provide objective evidence demonstrating the type of costs that incumbent LECs actually avoid when they provide services to competitors for resale. Under the interpretation of the section 252(d)(3) adopted by the Eighth Circuit, how should common costs be treated? If an incumbent LEC is assumed to be both a retail and a wholesale provider, what types of common costs, if any, actually will be avoided when the incumbent LEC resells services?

145. We ask parties to discuss whether it is necessary, or helpful, for the Commission to establish any evidentiary guidelines with respect to the resale discount. Should incumbent LECs be obligated to file cost studies in support of their proposed discounts, or are there alternative showings that might be sufficient? If studies are required, what level of detail should they contain? Must direct and indirect avoided costs be specifically identified?

146. In the *Local Competition Order*, the Commission concluded that the Subscriber Line Charge (SLC) imposed on retail customers should be paid by resellers, but that it was not subject to the resale discount.[183] Although the SLC relates to interstate access services, which are not subject to the resale discount, it is charged to end users and paid by end users to recover costs for which they are the cost causer. The SLC could, therefore, be considered a retail service for purposes of section 251(c)(4). We ask parties to address whether it would be appropriate for the Commission to revisit its prior analysis of whether the SLC should be subject to the resale discount.

VI. INTERCONNECTION PRICING AND RECIPROCAL COMPENSATION

147. Under section 252(d)(1), interconnection is subject to the same cost-based pricing standard as UNEs.[184] We ask parties to comment on whether there is any reason that changes to the current pricing rules for UNEs should not also apply to interconnection provided pursuant to section 251(c)(2). We note that the Commission is considering issues related to the costs associated with interconnecting networks in the pending *Intercarrier Compensation* proceeding.[185] Parties are invited to comment on the relationship between the section 252(d)(1)

[182] *Local Competition Order*, 11 FCC Rcd at 15958, para. 917.

[183] *Id.* at 15984, para. 984.

[184] 47 U.S.C. § 252(d)(1).

[185] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001) (*Intercarrier Compensation NPRM*).

pricing standard and proposals for recovery of interconnection costs that are now under consideration in the *Intercarrier Compensation* proceeding. We also invite parties to comment on issues related to the pricing of collocation, which also is subject to the section 252(d)(1) pricing standard. For example, we solicit comment on whether charges for direct current (DC) power should be based on the number of amps consumed or the number of amps fused.

148. In the *Local Competition Order*, the Commission also decided that TELRIC pricing was appropriate for reciprocal compensation under section 251(b)(5).[186] In the *Intercarrier Compensation* proceeding, the Commission sought comment on whether a different interpretation of the "additional cost" standard in section 252(d)(2) was warranted.[187] We ask parties to address whether the Commission should continue to apply the same pricing rules to UNEs and to reciprocal compensation. What would be the consequences of having different pricing regimes for these two different functions?

VII. IMPLEMENTATION ISSUES

149. We ask parties to comment on how any changes to the Commission's UNE pricing rules should be implemented by the states. The pricing standard imposed under section 252(d)(1) applies when states are called on to arbitrate disputes regarding the pricing of interconnection and unbundled network elements.[188] In most states, however, it appears that rates are established in generic proceedings that are not specific to the arbitration between any particular pair of carriers. We ask parties to explain how state commissions have proceeded in establishing prices under section 252(d)(1).

150. We seek comment on whether we should establish a national timetable pursuant to which states will conduct new UNE cost proceedings to reset all rates in accordance with any new rules. If we establish a timetable for initiating new UNE rate proceedings, should we require that such proceedings be resolved within a certain time period, consistent with our direction to the states to perform the granular inquiries set forth in the *Triennial Review* proceeding? If so, is a nine-month time period sufficient to establish new UNE prices? What recourse should carriers have if a state fails to act in the allotted time? Rules that address such considerations could quickly bring consistency and certainty to the UNE market, and we seek comment on our authority to adopt them.

151. We also seek comment on whether it may be appropriate to establish a true-up mechanism for the difference between what a competitor pays for network elements under rates established pursuant to the current TELRIC rules and what that competitor would pay for the same facilities or services under rates established pursuant to any new rules we may adopt in this proceeding. If a true-up mechanism is appropriate, to what period should any true-up be applicable? Should the beginning of the true-up period be the effective date of the final Commission order in this proceeding? Or is some other true up period more appropriate? We

[186] *Local Competition Order*, 11 FCC Rcd at 16023, para. 1054.

[187] *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9646, para. 101.

[188] 47 U.S.C. § 252(d)(1).

have recognized in several contexts that the use of interim rates subject to true-up is an appropriate means of protecting all parties' interest when permanent rates under the governing cost methodology have not yet been set.

VIII. PROCEDURAL MATTERS

A. Initial Paperwork Reduction Act Analysis

152. This Notice of Proposed Rulemaking (NPRM) contains either a proposed or modified information collection. As part of the continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq*. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from the date of publication of this NPRM in the Federal Register. Comments should address: 1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; 2) the accuracy of the Commission's burden estimates; 3) ways to enhance the quality, utility, and clarity of the information collected; and 4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

B. Initial Regulatory Flexibility Act Analysis

153. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[189] the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided below in Section C. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[190] In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.[191]

1. Need for, and Objectives of, the Proposed Rules

154. In this NPRM, the Commission initiates the first comprehensive review of TELRIC pricing rules since they were adopted. Section 252(d)(1) of the Act sets forth the pricing standard for UNEs. Section 252(d)(3) of the Act requires that state commissions establish wholesale rates for resold services based on the incumbent LEC's retail rates. Seven years ago, the Commission adopted its current rules that base UNE prices on the Total Element

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[189] *See* 5 U.S.C. § 603. The IRFA, see 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) Pub. L. No. 104-121, Title II, 110 Stat 857 (1996).

[190] *See* 5 U.S.C. § 603(a).

[191] *See id.*

Long Run Incremental Cost (TELRIC) of a UNE.[192] The Commission stated at that time that it would continue to review its pricing rules based on the results of state arbitration proceedings and provide additional guidance as necessary.

155. Based on the wealth of experience that has been developed over the last seven years, the Commission initiates this proceeding to consider whether the TELRIC methodology for pricing UNEs under the Act is working as intended and whether it is conducive to efficient facilities investment. The Commission also requests comment in this proceeding on its resale pricing rules. Incumbent LECs are required to resell retail services pursuant to section 251(c)(4) of the Act. This NPRM seeks to preserve the forward-looking emphasis and pro-competitive purposes of TELRIC, while simplifying this methodology. The Commission's objective is to help state commissions more easily develop UNE prices and resale discounts that meet the statutory standards established by Congress in section 252(d) and to provide more certainty and consistency in the results of these state proceedings.

156. Although the Commission has addressed some specific TELRIC cost input disputes as they have arisen in section 271 proceedings, the Commission's disposition has provided no systematic guidance on pricing issues. This proceeding will provide states and interested parties comprehensive guidance lacking in our consideration of section 271 applications. In the *Triennial Review Order*, the Commission clarified the existing rules regarding two key components of TELRIC – cost of capital and depreciation.[193]

157. Because of the general nature of the Commission's rules and the hypothetical and complex nature of the TELRIC inquiry, it is often difficult to understand how actual UNE rates are derived. Uncertainty or inconsistency in how to apply TELRIC rules may also result in rates that significantly vary from state to state without regard to genuine cost differences. This lack of predictability in UNE rates is difficult to reconcile with the Commission's desire that UNE prices send correct economic signals for competitive and investment purposes. This NPRM seeks to simplify TELRIC pricing, provide more specific guidance to make the TELRIC rate-setting process less speculative and improve the accuracy of its pricing signals.

2. Legal Basis

158. This *Notice* is adopted pursuant to sections 1, 4(i), (4j), 201-205, 251, 252, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), (j), 201-205, 251, 252, and 303.

3. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply

159. The RFA directs agencies to provide a description of and, where feasible, an

[192] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996).

[193] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338 FCC 03-36 (released August 21, 2003).

estimate of the number of small entities that will be affected by the proposed rules.[194] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[195] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[196] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[197] The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[198] As of 1997, there were about 87,453 governmental jurisdictions in the United States.[199] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer. We also note that the term "small governmental jurisdiction" includes state regulatory bodies commonly known as state public utilities commissions or public service commissions which may be directly affected by this NPRM.

160. In this section, we further describe and estimate the number of small entity licensees and regulatees that may also be indirectly affected by rules adopted pursuant to this NPRM. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report.[200] The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,[201] Paging,[202] and Cellular and Other Wireless Telecommunications.[203] Under these categories, a

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[194] 5 U.S.C. §§ 603(b)(3), 604(a)(3).

[195] *Id.* § 601(6).

[196] *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

[197] 15 U.S.C. § 632.

[198] 5 U.S.C. § 601(5).

[199] U.S. Census Bureau, *Statistical Abstract of the United States: 2000*, Section 9, pages 299-300, Tables 490 and 492.

[200] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Table 5.3 (May 2002) (*Trends in Telephone Service*).

[201] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 513310 (changed to 517110 in October 2002).

[202] *Id.* § 121.201, NAICS code 513321 (changed to 517211 in October 2002).

[203] *Id.* § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

161. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a wired telecommunications carrier having 1,500 or fewer employees), and "is not dominant in its field of operation."[204] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[205] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

162. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[206] According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.[207] Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.[208] Thus, under this size standard, the great majority of firms can be considered small.

163. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[209] According to Commission data,[210] 1,329 carriers reported that they were engaged in the provision of local exchange services. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

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[204] 5 U.S.C. § 601(3).

[205] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

[206] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

[207] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued October 2000).

[208] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[209] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

[210] *Trends in Telephone Service* at Table 5.3.

164. *Competitive Local Exchange Carriers (CLECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[211] According to Commission data,[212] 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees.[213] In addition, 55 carriers reported that they were "Other Local Exchange Carriers." Of the 55 "Other Local Exchange Carriers," an estimated 53 have 1,500 or fewer employees and two have more than 1.500 employees.[214] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

165. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[215] According to Commission data,[216] 229 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 229 companies, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees.[217] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules and policies adopted herein.

166. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[218] According to Commission data,[219] 22 companies reported that they were

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[211] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

[212] *Trends in Telephone Service* at Table 5.3.

[213] *Id.*

[214] *Id.*

[215] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

[216] *Trends in Telephone Service* at Table 5.3.

[217] *Id.*

[218] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

[219] *Trends in Telephone Service* at Table 5.3.

engaged in the provision of operator services. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees.[220] Consequently, the Commission estimates that the great majority of operator service providers are small entities that may be affected by the rules and policies adopted herein.

167. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone services providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[221] According to Commission data,[222] 936 companies reported that they were engaged in the provision of payphone services. Of these 936 companies, an estimated 933 have 1,500 or fewer employees and three have more than 1,500 employees.[223] Consequently, the Commission estimates that the great majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

168. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[224] According to Commission data,[225] 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees.[226] Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

169. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[227] According to Commission's data,[228] 42 companies reported that their primary telecommunications service activity was the provision of payphone services. Of these 42

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220 *Id.*

221 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

222 *Trends in Telephone Service* at Table 5.3.

223 *Id.*

224 13 C.F.R. § 121.201, NAICS code 513330 (changed to 517310 in October 2002).

225 *Trends in Telephone Service* at Table 5.3.

226 *Id.*

227 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

228 *Trends in Telephone Service* at Table 5.3.

companies, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees.[229] Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by the rules and policies adopted herein.

170. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of Paging[230] and Cellular and Other Wireless Telecommunications.[231] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1320 firms in this category, total, that operated for the entire year.[232] Of this total, 1303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[233] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[234] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[235] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

171. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years.[236] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years."[237] These standards defining "small entity" in the context of broadband PCS auctions have been

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[229] *Id.*

[230] 13 C.F.R § 121.201, NAICS code 513321 (changed to 517211 in October 2002).

[231] *Id.* § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[232] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513321 (issued Oct. 2000).

[233] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[234] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513322 (issued Oct. 2000).

[235] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[236] *See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, Report and Order, 61 FR 33859 (July 1, 1996); *see also* 47 C.F.R. § 24.720(b).

[237] *See id.*

approved by the SBA.[238] No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[239] On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Based on this information, the Commission concludes that the number of small broadband PCS licenses will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, the Commission estimates that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

172. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.[240] A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.[241] In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the

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[238] *See. e.g., Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 59 FR 37566 (July 22, 1994).

[239] FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (released January 14, 1997). *See also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, WT Docket No. 97-82, Second Report and Order, 62 FR 55348 (Oct. 24,1997).

[240] *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, Docket No. ET 92-100, Docket No. PP 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 65 FR 35875 (June 6, 2000).

[241] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

Commission's Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

173. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This standard provides that such a company is small if it employs no more than 1,500 persons.[242] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[243] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[244] If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

174. *220 MHz Radio Service – Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[245] This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[246] A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards.[247] Auctions of Phase II

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[242] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[243] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513322 (issued Oct. 2000).

[244] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[245] *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, at paras. 291-95 (1997) (*220 MHz Third Report and Order*).

[246] *Id.* at 11068-70, para. 291.

[247] *See* letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

licenses commenced on September 15, 1998, and closed on October 22, 1998.[248] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[249]

175. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years.[250] The SBA has approved these size standards.[251] The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz bands to firms that had revenues of no more than $40 million in each of the three previous calendar years, or that had revenues of no more than $15 million in each of the previous calendar years.[252] These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

176. *Paging.* In the Paging *Third Report and Order*, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining

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[248] *See generally* Public Notice, "220 MHz Service Auction Closes," 14 FCC Rcd 605 (1998).

[249] Public Notice, "Phase II 220 MHz Service Spectrum Auction Closes," 14 FCC Rcd 11218 (1999).

[250] 47 C.F.R. § 90.814(b)(1).

[251] *See* Letter from Aida Alvarez, Administration, Small Business Administration to Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Oct. 27, 1997). *See* Letter from Aida Alvarez, Administrator, Small Business Administration to Thomas Sugrue, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 10, 1999).

[252] 47 C.F.R. § 90.814(b)(1) A request for approval of 800 MHz standards was sent to the SBA on May 13, 1999. The matter remains pending.

their eligibility for special provisions such as bidding credits and installment payments.[253] A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these size standards.[254] An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.[255] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 471 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services.[256] Of those, the Commission estimates that 450 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.[257]

177. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[258] A "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[259] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of

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253 *220 MHz Third Report and Order*, 12 FCC Rcd at 11068-70, paras. 291-295, 62 FR 16004 at paras. 291-295 (1997).

254 *See* Letter from Aida Alvarez, Administrator, Small Business Administration to Thomas Sugrue, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission (June 4, 1999).

255 *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085, at para. 98 (1999).

256 *Trends in Telephone Service* at Table 5.3.

257 *Id.* The SBA size standard is that of Paging, 13 C.F.R. § 121.201, NAICS code 517211.

258 *See Service Rules for the 746-764 MHz Bands, and Revisions to part 27 of the Commission's Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299, 5344, at para. 108 (2000).

259 *See generally* Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecommunications Bureau, Oct. 23, 1998).

these bidders was a small business that won a total of two licenses.[260]

178. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[261] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[262] The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.[263] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

179. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.[264] We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.[265] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

180. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[266] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding

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260 Public Notice, "700 MHz Guard Band Auction Closes," DA 01-478 (released Feb. 22, 2001).

261 The service is defined in § 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

262 BETRS is defined in §§ 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757 and 22.759.

263 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

264 The service is defined in § 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

265 13 C.F.R § 121.201, NAICS codes 513322 (changed to 517212 in October 2002).

266 *Id.* § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

three years not to exceed $3 million dollars.[267] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

181. *Fixed Microwave Services.* Fixed microwave services include common carrier,[268] private operational-fixed,[269] and broadcast auxiliary radio services.[270] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[271] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

182. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[272] There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services.[273] Under that SBA small business size standard, a business is

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[267] *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[268] *See* 47 C.F.R. §§ 101 *et seq.* (formerly, Part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

[269] Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. *See* 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[270] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[271] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[272] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 C.F.R. §§ 22.1001-22.1037.

[273] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

small if it has 1,500 or fewer employees.[274]

183. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A "small business" is an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards.[275] The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity. We conclude that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

184. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of $40 million or less in the three previous calendar years.[276] An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[277] The SBA has approved these small business size standards.[278] The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices adopted herein.

185. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[279] In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years.[280] The MDS auctions resulted in 67 successful bidders obtaining

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[274] *Id.*

[275] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

[276] *See* Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, *Report and Order*, 63 FR 6079 (Feb. 6, 1998).

[277] *Id.*

[278] *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

[279] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593 at para. 7 (1995).

[280] 47 C.F.R. § 21.961(b)(1).

licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts.[281] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[282] Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[283] Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

186. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[284] The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[285] An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[286] The SBA has approved these small business size standards in the context of LMDS auctions.[287] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

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[281] 13 C.F.R. § 121.201, NAICS code 513220 (changed to 517510 in October 2002).

[282] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 513220 (issued October 2000).

[283] In addition, the term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

[284] *See Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, and to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, Second Report and Order, 12 FCC Rcd 12545 (1997).

[285] *Id.*

[286] *See id.*

[287] *See* Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

187. *218-219 MHz Service.* The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[288] In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years.[289] A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years.[290] The SBA has approved these size standards.[291] We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218-219 MHz spectrum.

188. *24 GHz – Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons.[292] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[293] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[294] Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[295] and TRW, Inc. It is our understanding that Teligent and its related companies have less than

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[288] *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 59 FR 24947 (May 13, 1994).

[289] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 64 FR 59656 (Nov. 3, 1999).

[290] *Id.*

[291] *See* Letter to Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration (Jan. 6, 1998).

[292] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[293] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513322 (issued Oct. 2000).

[294] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[295] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

189. *24 GHz – Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million.[296] "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[297] The SBA has approved these small business size standards.[298] These size standards will apply to the future auction, if held.

190. *Internet Service Providers.* While internet service providers (ISPs) are only indirectly affected by our present actions, and ISPs are therefore not formally included within this present IRFA, we have addressed them informally to create a fuller record and to recognize their participation in this proceeding. The SBA has developed a small business size standard for Online Information Services, which consists of all such companies having $21 million or less in annual receipts.[299] According to Census Bureau data for 1997, there were 2,751 firms in this category, total, that operated for the entire year.[300] Of this total, 2,659 firms had annual receipts of $9,999,999 or less, and an additional 67 had receipts of $10 million to $24,999,999.[301] Thus, under this size standard, the great majority of firms can be considered small.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

191. We do not intend that any proposal we may adopt pursuant to this *Notice* will increase existing reporting, recordkeeping or other compliance requirements. Rather, we seek to simplify TELRIC pricing and modify or clarify the Commission's rules to help state commissions more easily develop UNE prices and resale discounts that meet the statutory standards established by Congress in section 252(d) and to provide more certainty and consistency in state proceeding outcomes.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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[296] *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 (2000); *see also* 47 C.F.R. § 101.538(a)(2).

[297] *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd at 16967; *see also* 47 C.F.R. § 101.538(a)(1).

[298] *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

[299] 13 C.F.R. § 121.201, NAICS code 514191 (changed to 518111 in October 2002).

[300] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Receipts Size of Firms Subject to Federal Income Tax: 1997," Table 4, NAICS code 514191 (issued October 2000).

[301] *Id.*

192. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[302]

193. We will consider any proposals made to minimize significant economic impact on small entities. The overall objective of this proceeding is to simplify TELRIC pricing while simultaneously improving the accuracy of its pricing signals. The *Notice* seeks comment on an approach that bases UNE prices on a cost inquiry that is more firmly rooted in the real-world attributes of the existing telecommunications network, rather than the speculative attributes of a purely hypothetical network. This may change the standards applicable to cost studies on which UNE prices are based and indirectly result in changes to rates for UNEs that competitive LECs, including small carriers, order from incumbent LECs.

194. State commissions stand to benefit directly to the extent that we clarify our TELRIC rules and provide more specific guidance so that state proceedings to determine UNE pricing and the resale discount become a less complex and speculative process. Providing greater certainty and consistency in how to apply our rules could help make the regulatory process throughout states more efficient and streamlined, indirectly benefiting small entities which participate in these proceedings. Complicated and time-consuming proceedings may work to divert scarce resources from small carriers that otherwise would use those resources to compete in local markets. Moreover, to the extent that we may be able to enhance the TELRIC ratemaking process, we may better be able to achieve the Commission's goal of sending appropriate economic signals to the marketplace for efficient competition and entry among providers that include small entities.

6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

195. None.

C. Ex Parte Presentations

196. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[303] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required.[304]

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[302] 5 U.S.C. § 603(c).

[303] 47 C.F.R. § 1.1200 *et seq.*

[304] *Id.* § 1.1206(b)(2).

Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.[305]

D. Comment Filing Procedures

197. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[306] interested parties may file comments not later than 60 days after publication of this Notice in the Federal Register and may file reply comments not later than 45 days after the date for filing comments. In order to facilitate review of comments and reply comments, parties should include the name of the filing party and the date of the filing on all pleadings. Comments and reply comments must clearly identify the specific portion of the NPRM to which a particular comment or set of comments is responsive. Each new section should begin on a new page. If a portion of a party's comments does not fall under a particular topic listed in the Table of Contents, such comments be included in a clearly labeled section at the beginning or end of the filing.

198. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[307] Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to <ecfs@fcc.gov>, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply.

199. Parties who choose to file by paper must file an original and five copies of each filing. Two (2) copies of the comments should also be sent to the Chief, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554.

200. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

- The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with

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[305] *Id.* § 1.1206(b).

[306] *Id.* §§ 1.415, 1.419.

[307] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than United States Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be sent to 445 12th Street, S.W., Washington, DC 20554. The Commission advises that electronic media not be sent through USPS.
- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

201. Documents in this docket are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, DC 20554. The documents may also be purchased from Qualex International, telephone (202) 863-2893, facsimile (202) 863-2898.

202. Written comments by the public on the proposed and/or modified information collections are due on the same day as comments on the NPRM, i.e., on or before 60 days after publication of the NPRM in the Federal Register. Written comments must be submitted by OMB on the proposed and/or modified information collections on or before 60 days after publication of the NPRM in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, D.C. 20554, or via the Internet to jbherman@fcc.gov, and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 or via the Internet to JThornto@omb.eop.gov.

IX. ORDERING CLAUSES

203. IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201-205, 251, 252, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), (j), 201-205, 251, 252, and 303, NOTICE IS HEREBY GIVEN of the rulemaking described above and COMMENT IS SOUGHT on those issues.

204. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

SEPARATE STATEMENT OF CHAIRMAN MICHAEL K. POWELL

Re: Review of the Commission Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Services by Incumbent Local Exchange Carriers (WC Docket No. 03-173 (Adopted September 10, 2003)

Seven years is a long time in the telecommunications industry. At the time the Commission initially adopted its pricing rules in 1996, it promised to review them after states had implemented the first round of pricing decisions. I am pleased that today – seven years after the first pricing rules were adopted – the Commission has moved to keep the promise we made in 1996. Today's Notice represents the first-ever comprehensive and directed approach to reviewing our TELRIC pricing methodology.

Now that competition has taken root in many areas of the country, we initiate this proceeding to consider whether our pricing rules are working as intended, in particular, whether it is conducive to facilities investment. The stakes are high: without the correct pricing signals in the market, our rules can thwart a central purpose of the Act, the development of facilities-based competition.

The hypothetical nature of the TELRIC inquiry has been difficult for states to implement and has resulted in a lack of consistency that disadvantages incumbents and competitors alike. It is my hope that at the end of this proceeding the market will benefit from a methodology that is less theoretically freewheeling. The tentative conclusion stated in the item supports this policy direction. While I have heard some concern surrounding the tentative conclusion, our commitment to retaining a forward-looking approach is unwavering – what we are debating is the extent to which realistic assumptions about the incumbent's network should be included in our pricing rules. I believe that an approach grounded in the real-world attributes of the incumbent's network would address claims that our TELRIC rules currently distort a competitor's decision whether to invest in new facilities or to lease an incumbent's existing facilities.

I look forward to reviewing the submissions in the proceeding and working with state regulators to capture the experience they have gained implementing our pricing methodology. Finally, I appreciate the support of my colleagues in initiating a fair and balanced review of our pricing rules.

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers, WC Docket No. 03-173 (adopted Sept. 10, 2003).

Since joining the Commission, I have advocated taking a fresh look at the Commission's UNE pricing rules, and I am pleased that we are commencing such a proceeding today. The Notice recognizes two key problems with the TELRIC pricing standard. First, it is a black box that permits inconsistent results among the states for reasons unrelated to actual cost differentials, and it also permits internal inconsistencies within individual rate proceedings. Second, the excessively hypothetical nature of the Commission's existing standard sends inappropriate investment signals and produces irrational pricing in some instances.

The Notice we adopt today sets us down a different path — one bounded by the real-world attributes of incumbent LECs' networks and the recognition that wireline networks cannot incorporate new technologies instantaneously. I support the tentative conclusion in the Notice that reflects these concepts. In fact, despite the controversy often surrounding tentative conclusions, I believe that most carriers agree that the UNE pricing standard should be constrained by reality, as opposed to being purely hypothetical. Incumbents and competitors simply disagree about the extent to which current prices are grounded in realistic assumptions about network architecture and usage patterns. This rulemaking will put their competing claims to the test, and it will give parties the opportunity to propose a variety of methodological changes concerning how states determine input values. It will also enable the Commission to modify pricing rules in accordance with the changes to our unbundling regime that were adopted in the *Triennial Review Order*. I commend the Wireline Competition Bureau and my colleagues for drafting a comprehensive and balanced NPRM, and I look forward to reviewing the record and adopting revised rules.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
APPROVING IN PART AND DISSENTING IN PART

Re: *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers (WC Docket No. 03-173)*

Seven years ago, the Commission adopted a forward-looking economic cost policy for pricing unbundled network elements. We did the right thing. The Supreme Court blessed our action—pretty heady stuff for a Commission not always accustomed to such approbations from above. So we're building on solid ground here, with no judicial charge to start all over or to perform drastic reconstruction. It's clear to me that from time to time we should review and recalibrate our policy, known as Total Element Long Run Incremental Cost, or TELRIC. We have a duty to adjust it over time to ensure that, as Congress intended, incumbents are justly compensated for their network costs plus a reasonable profit. At the same time, we need to ensure that competitors pay prices that induce efficient market entry. There is also the need to adjust our policy to reflect the new realities of the recent *Triennial Review*.

To a significant extent we initiate a proceeding today that lays the groundwork for accomplishing these objectives. There is much in this item that I am pleased to support. I regret, however, that I cannot support today's Notice of Proposed Rulemaking *en toto*. I just don't believe the record at hand justifies the making of important, even if tentative, conclusions. Such tentative conclusions often have a curious way of becoming final. On the basis of little or no prior record, the majority today adopts a tentative conclusion concerning so-called real-world network attributes that I believe is confusing and inconsistent with basic premises of TELRIC that were upheld as a reasonable interpretation of Section 252(d)(1) by the Supreme Court. For a Commission striving to provide clarity to an industry, this is a strange way to do it.

Moreover, some of the questions that flow from this tentative conclusion come close to saying that the assumptions that undergird our TELRIC policy are misdirected and flawed. Again, these are the same assumptions that passed muster with the highest court in the land. I have no objection to asking probing questions; I just think that a tentative conclusion here is unnecessary and probably unwise.

Despite this reservation, I appreciate my colleagues' willingness to engage in a dialogue and their efforts to accommodate some of my concerns. I think this is a stronger item as a result. I look forward to our continuing work together on this.

Finally, I hope—I really hope—that we can encourage all the parties interested in TELRIC to sit together and discuss the issues attending it in something approaching candor and maybe even a little cooperation. I think all the company CEOs and others directly impacted have heard my plea on this over the past two years since I came here.

Frankly, it was easier to get the Russians and the Chinese to sit down with us during the latter days of the Cold War than it is to convene a TELRIC dialogue. It's not that I expect everyone to come to a joyous outcome on this, but rather just a hope that there might be one or two or maybe even three facts we could agree on and then see if from a small patch of common ground we can't do some building out. I'd like to see everyone a part of this—incumbents and competitors, our Commission and the State Commissions, traditional and non-traditional stakeholders. Crafting appropriate rules for our unbundled network element pricing policy will be a daunting task. We cannot get it done without less rhetoric and more dialogue among all the players. Toward that end, Mr. Chairman and my colleagues, I would very much like to see us hold some hearings or a forum to bring the players together, or perhaps even commence a Joint Conference to jumpstart discussion and engage our counterparts in the States on this important topic. I think this would be an excellent way to follow through on the work this proceeding today commences.

STATEMENT OF COMMISSIONER KEVIN J . MARTIN

Re: *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers.* **WC Docket No. 03-173**

I am pleased that we are taking action to alter our existing TELRIC pricing regime. Today, we tentatively conclude that our unbundled network element pricing methodology, while forward-looking, should be based upon the incumbent local exchange carrier's actual network rather than the totally hypothetical assumptions contained in a cost proxy model. I believe that the prices for unbundled network elements should be based on the forward-looking replacement cost of the ILEC's network.

As I have long stated, I believe that that the TELRIC rules should be reviewed and revised. I have also stated before that the existing TELRIC formula may provide incumbent service providers with an insufficient return on investment capital for new infrastructure. Today's item, in conjunction with our decision in the recent Triennial Review Order, begins the process to provide the necessary adjustments to the TELRIC formula that will more accurately reflect incumbent costs and help spur deployment in new facilities and services.

While I am pleased that we are initiating this proceeding, I am cognizant that the Wireline Competition Bureau's interpretation of the TELRIC pricing rules in the recent Virginia Arbitration Order may not reflect the direction and spirit of today's decision

STATEMENT OF
COMMISSIONER JONATHAN ADELSTEIN

Re: Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers, WC Docket No. 03-173

I lend my support to today's Notice because I believe that it is reasonable and appropriate to look once again at our pricing rules for unbundled network elements, interconnection, and resale of service under Sections 251 and 252 of the Act. These pricing rules, while certainly esoteric, have an enormous impact on the telecommunications industry and on consumers. If prices for unbundled network elements are too high, competitors may face much greater hurdles than Congress intended -- particularly given our recent decision in the Triennial Review Order, that limits unbundling to those facilities for which competitors are truly impaired -- and may be limited in the services which they can offer. On the other hand, if the prices for unbundled elements are too low, this could have serious consequences for our nation's incumbent carriers. For the American consumers who obtain more than 18 million lines from competitors by resale or unbundled elements, our decision can mean the difference between having a choice of providers or returning to a world of one option. So, the stakes are high.

While I am sympathetic to concerns that this Notice may open another source of regulatory instability, it has been seven years since the FCC adopted these rules and this is the first comprehensive review. Through the Triennial Review process, our section 271 review, and discussions with carriers, numerous concerns have been raised. We must look carefully at these concerns and it is fair to open this dialogue.

That said, I enter this proceeding with a very open mind. Our TELRIC pricing rules have been challenged in almost every forum and on just about every basis since their adoption in August of 1996. Despite those challenges, our rules have been upheld by the highest court of the land. The Supreme Court's affirmation of our rules sent a strong signal that the Commission had struck the right balance. Indeed, by making parts of the incumbents' network available to competitors at economic cost, our rules enable consumers to reap the benefits of the incumbents' economies of scope and scale, as well as the benefits of competition. Moreover, the investment that these rules have encouraged has been remarkable; as noted by the Supreme Court, competitors have invested approximately 51 billion dollars between 1996 and 2000, which is now up to 71 billion dollars according to recent estimates. I recognize, however, that there may be ways to improve these rules.

Given the Supreme Court's endorsement of our existing rules, the importance of this proceeding, and the fact that we have no direct record on these issues, I would strongly prefer to issue this Notice without any tentative conclusions, simply seeking comment on how we might improve our rules. The Notice seeks comment on several alternatives for modifying our rules, but I am pleased that the item does not specifically endorse any single alternative methodology. I nonetheless join in a limited tentative conclusion that our TELRIC rules should more closely account for certain real-world factors – namely, the routing and topography of the incumbent LEC's network. Because this issue has become a flash-point for criticism of our TELRIC rules, I

believe that it is worthwhile to signal to the outside community that the FCC has concerns about how our rules account for these factors. I should make clear, however, that I remain open to all possibilities in this proceeding and will look carefully at the evidence filed on this and other issues.

It is critical that we develop a full and comprehensive record in this proceeding and that we not rush to judgment before analyzing this record. To this end, I encourage and fully expect that we will see active participation by our colleagues from the state public utility commissions. They have front line experience implementing our rules and are perhaps best positioned to explain how the current rules have been implemented, where they are ambiguous, where they are problematic, and where they have functioned well.

I would like to thank my colleagues, particularly the Chairman, for seeking our input on this item and working to accommodate many of our concerns. I would also like to thank Bill and his team for their hard work on this item and to wish them well as we kick off what will be, I'm sure, a challenging proceeding.