

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 86/2

10804 HOUSE JUDICIARY

1 which needs to be addressed.

2 My final comment has to do with AT&T's reply comments on
3 the COLR bush subsidy issues. We continue to oppose this and
4 said it in our reply comments.

5 I need to respond to one AT&T comment on this issue. And
6 that is that they said, after GCI has cherry picked the most
7 lucrative federally-subsidized customers in these locations,
8 meaning the Bush locations, GCI and the other IXCs have no
9 incentive to construct long distance MTS facilities. That
10 statement is 100 percent contrary to the history of GCI in the
11 long distance market over the past 15 years. That history has
12 been a continuing fight by GCI to be allowed to build MTS
13 facilities in these areas. And until recently, Alascom and the
14 LECs advocated the prohibition upon our being able to build.

15 When this Commission -- the APUC initially adopted long
16 distance regulations, GCI was prohibited from building in Bush
17 locations. The FCC had a similar rule which we opposed. We
18 brought many proceedings trying to get the rule thrown out.
19 After a while, we came in and said, please, please, please,
20 won't you please let us build in at least 50 locations as an
21 experiment to show how good competition can work there for MTS,
22 and over the opposition and over opposition of several parties,
23 both this Commission and the FCC allowed us. After that, we
24 continued to try to get the rule both here and at the FCC
25 lifted, and it is only in the last month in which we've finally

1 been successful.

2 So during the past 15 years, our failure to build MTS
3 facilities has been caused entirely by a legal prohibition, not
4 by a lack of incentive. And we continue to have that
5 incentive.

6 And although you may want to consider some of AT&T's comments
7 regarding carrier of last resort and the Bush subsidy, the
8 comments that they made in that regard are an inaccurate
9 portrayal of history. Thank you.

10 HEARING EXAMINER OLSON: Thank you, Mr. Jackson.

11 Mr. Ayotte, are you still on the phone?

12 MR. AYOTTE: Yes, I am.

13 HEARING EXAMINER OLSON: Did you wish to present an oral
14 presentation this morning, or do you have issues regarding
15 doing it this afternoon as well?

16 MR. AYOTTE: I have no issues. I can be completely
17 flexible to accommodate anyone else's schedules.

18 HEARING EXAMINER OLSON: Okay. Well, if you're prepared
19 to go now on behalf of Dobson Cellular, we're ready to hear
20 you.

21 MR. AYOTTE: Very good. Thank you. For the record, my
22 name is Mark Ayotte, A-y-o-t-t-e. I'm a lawyer with the law
23 firm of Briggs and Morgan in St. Paul, Minnesota, representing
24 Dobson Cellular System in this proceeding.

25 Dobson has, by way of background, we filed our reply

1 comments, and specifically we focused in on the Rural
2 Coalition's proposed regulations.

3 Dobson is a commercial mobile radio services provider in
4 Alaska. At present Dobson is the largest wireless service
5 provider. Its licensed areas include Alaska RSAs 1, 2, and 3,
6 as well as the Anchorage MSA, or metropolitan service area, and
7 its licensed areas in Nebraska cover approximately 91 percent
8 of the population of the state.

9 Dobson's focus and interest in this proceeding is somewhat
10 limited in that we filled comments specifically addressing the
11 Rural Coalition's proposed regulations as it relates to the ETC
12 process. With respect to the Commission's review of its local
13 exchange competition rules, Dobson has not provided any comment
14 and takes no position relative to those proposals and comments
15 that have been filed. For the most part, we don't because the
16 resulting rules would appear to only be applicable to local
17 exchange carriers and Dobson is not a local exchange carrier in
18 Alaska or elsewhere.

19 However, Dobson's comments are interested -- are focused
20 on the Rural Coalition's proposed ETC regulations in that
21 Dobson has filed an application for designation as a federal
22 ETC. The application was filed with the RCA on July 11th and
23 is currently pending in docket number U-03-48.

24 Overall we believe that the Rural Coalition's proposed
25 regulations really seek to shift the focus of this proceeding

1 from local competition among wireline carriers and the current
2 status of the dominant/non-dominant carriers to the question of
3 whether the carrier operates in a competitive service area.
4 And I believe it was Mr. Dillen who emphasized that the
5 definition of a competitive service area is key to their
6 overall proposals.

7 In doing so, if you look at the proposed rules and the
8 definition of a competitive service area, the proposal of the
9 rural coalition deems it competitive if there are multiple ETCs
10 designated in the area, and as a result of that, it would then
11 relieve the incumbent carriers from any heightened regulation.
12 We think that's inappropriate. We think the Rural Coalition is
13 really using this docket, which is designed or should be
14 designed, to focus on local competition. They're really using
15 this docket as a spring board to promote some unduly burdensome
16 and anti-competitive rules as it relates to ETC proceedings.

17 First and foremost, we don't think the Commission should
18 consider those ETC rules in the context of this proceeding.
19 The Commission's order noted that a party would have an
20 increased burden of persuasion. It would need to identify
21 specific policies and corresponding regulations and explain the
22 issues if they seek to propose regulations beyond the focus of
23 this proceeding.

24 Although I agree that nothing in HB 111 would seem to
25 preclude consideration of Universal Service in ETC matters, I

1 think, however, it is clear, given the fact that the focus is
2 intended to focus on the Commission's existing local exchange
3 competition rules, and the nine legislative policies relating
4 to those, that opening up this proceeding to a consideration of
5 Universal Service and ETC requirements is far beyond the
6 intended scope, and more specifically the Rural Coalition has
7 not provided the necessary rationale and policy reasons to
8 support, which are really the largest portion of their proposed
9 rules.

10 To the extent the Commission considers it necessary or
11 appropriate to evaluate the Rural Coalition's proposed
12 Universal Service regulation, then they ought to be rejected.
13 In most instances the proposed rules are unsound, and are
14 contrary to law as it relates to a federal ETC.

15 I wanted to amplify Mr. Jackson's earlier remarks where he
16 was commenting on this, and noted that the Rural Coalition's
17 proposal seeks to implement deregulation of the incumbent LECs
18 based on noncompetitive wireless ETCs. And that may very well
19 be the case. Dobson's initial reaction, however, was that the
20 Rural Coalition's proposed regulations were designed to serve a
21 different purpose. What I mean is, the proposed regulations of
22 the Rural Coalition are illusory. On the one hand they appear
23 to seek to raise the bar for designation of a competitive ETC,
24 including a wireless carrier, under the guise of promoting
25 competition in rural areas, yet if you step back, the effect of

1 the Rural Coalition's proposals is that neither will be
2 accomplished.

3 In other words, the proposed ETC rules of the Rural
4 Coalition, are clearly designed to increase the bar and avoid
5 any designation of any competitive ETC. Through their
6 standards, through their proposed guidelines, they are seeking
7 to prevent the designation of any competitive ETC, and
8 particularly a wireless carrier who seeks to be an ETC. Yet
9 when you go back to their definition of a competitive service
10 area, and how if there is a competitive ETC designated, then the
11 rural LECs are relieved of the additional regulatory burden.
12 That's not going to happen either, because the proposed
13 regulations as they relate to Universal Service and competitive
14 ETCs, will not result in a competitive ETC. Therefore, they
15 will not be promoting landline competition in any competitive
16 service area, and the effect of which is, we're going to
17 maintain the status quo. And that will not further any of the
18 legislative policies of HB 111. Simply nothing will happen.

19 At a high level, I wanted to just sort of address some,
20 but not all of the specific proposed regulations of the Rural
21 Coalition in an attempt to illustrate where they are both
22 unsound and in some respects unlawful as it relates to a
23 federal ETC. But the background for consideration of any
24 proposed regulations dealing with ETCs is that the Commission
25 needs to understand that under section 214(e) of the Federal

1 Act, the state commission has been deputized by Congress to
2 assist in making ETC designations. But-that's the extent of
3 the state commission's role with respect to a federal ETC. The
4 state commission is to determine whether the applicant meets
5 the criteria, the federal criteria, for federal ETC
6 designation. And in the case of designating an additional ETC
7 in an area served by a rural telephone company, the state
8 commission is to make the public interest determination.

9 But in doing so, the state commission must act consistent
10 with federal law, and must act consistent with the FTC's
11 regulations and determinations with respect to designating a
12 federal ETC. The state commission does not have the authority
13 to add to, modify, or change any of the criteria that has been
14 established by the FCC with respect to federal ETC designations
15 and federal funding determinations. That is the function and
16 the prerogative of the FCC, not the state commission.

17 And similarly, the state commission in acting to designate
18 federal ETCs should not be imposing burdensome procedural or
19 substantive rules in such a fashion that they would frustrate
20 the federal goals of preserving Universal Service and promoting
21 competition.

22 In that regard, I would note that section 253(e) of the
23 Federal Act provides that nothing in the Telecommunications Act
24 of 1996 affects the application of section 332(c)(3) as it
25 relates to a commercial mobile radio services provider. Yet

1 when you look at the Rural Coalition's proposed ETC rules, what
2 they really do is they seek to subject all applicants,
3 including a wireless carrier, to some LEC-type regulatory
4 requirements, and in so doing, although they propose to support
5 those provisions from a perspective of regulatory parity, what
6 they really seek to do is to turn the FCC's policy of
7 competitive and technological neutrality on its head.

8 And this principle of competitive and technological
9 neutrality is one that the FCC has adopted and has administered
10 in the context of its federal ETC rules and decision. What
11 that means is not that the regulatory status of all carriers
12 have to be the same. That's not what the neutrality refers to,
13 but rather what they -- what the FCC has recognized is that
14 competitive neutrality will mean that some carriers will be
15 regulated differently than others. In the case of a CMRS
16 provider such as Dobson, it is subject to the FCC's
17 jurisdiction and authority, and is not within the scope of the
18 authority of -- the regulatory authority of the Commission.
19 And imposing otherwise inapplicable requirements is not only
20 unlawful, but would also serve an impossible hurdle and
21 essentially prevent an entire class of carriers from being
22 designated as ETCs.

23 In addition, when considering the context of any ETC rules
24 or Universal Service issues which again we think ought not to
25 occur in this proceeding, but rather if the Commission wants to

1 address them, should be addressed in an entirely separate
2- docket, but in doing that, one needs -- the Commission needs to
3 recognize and understand that the Universal Service provisions
4 of the Act cannot be read to give the state commission
5 authority to overcome state rate and entry prohibitions of a
6 commercial mobile radio services provider.

7 Earlier this morning, I think it was Mr. Dillen who
8 suggested that Dobson was not familiar with or did not give
9 appropriate recognition to the Fifth Circuit's decision in
10 Texas Office of Public Utilities Commission versus the FCC. In
11 fact, we did and would encourage both the hearing examiner and
12 the Commission to specifically review that decision to see what
13 it did say and what it did not say. In that case, the Fifth
14 Circuit actually held that the Universal Service provisions of
15 the Act, primarily section 214(e) relating to the designation
16 of an ETC, that those provisions cannot be read to overcome the
17 prohibitions under section 332(c) of the Federal Act.

18 At issue in that case was whether a State could require a
19 CMRS provider to contribute to state Universal Service funding,
20 and the court stressed that in its interpretation that wireless
21 carriers could be required to contribute to Universal Service
22 funding, the court emphasized that they would not and could not
23 interpret any portion of the Act to overcome the preemptive
24 effects of section 332(c)(3)(A), which generally prohibit a
25 state from regulating the rates and entry of a CMRS provider.

1 And the Fifth Circuit actually cautioned that prohibitions of
2 section 332 needed to be respected both by the FCC as well as
3 state commissions.

4 With that background, I wanted to provide just some
5 further amplification and comment concerning the Rural
6 Coalition's proposed ETC rule, and to highlight in several
7 respects where the proposed rules are either inconsistent with
8 established federal law, or otherwise are ambiguous as such,
9 that they don't provide any meaningful level of predictability
10 or certainty to either the applicant or to any potential
11 intervenor.

12 2346

13 (Tape change)

14 Tape 3

15 0015

16 First, with respect to the Rural Coalition's proposed rule
17 at 53.360(b)(2). And here, for example, the Rural Coalition is
18 proposing that an applicant be required to demonstrate a quote,
19 concrete intent, close quote, to serve an entire service area
20 within a reasonably short period of time. That is a proposed
21 standard which is inconsistent with the federal law governing
22 ETCs. The FCC has determined on numerous occasion that an
23 applicant for ETC designation need only show an intent and an
24 ability to serve once it has been designated, and to make a
25 commitment to meet reasonable requests for service over time.

1 I think a fair reading of the Rural Coalition's proposed rule
2 in this regard suggests that it's really designed to create a
3 barrier to entry and is otherwise inconsistent with the federal
4 standard.

5 Similarly, under the proposed rule, and most of these come
6 into play under the proposed regulation applicable to areas
7 served by rural telephone companies, the Rural Coalition
8 proposes that an applicant be required to demonstrate that its
9 services will be provided at affordable rates. Now,
10 affordability is a concept and a policy that certainly falls
11 within the area of universal service, but affordability is not
12 one of the criteria for federal ETC designation under Section
13 214(e), or the FCC's rules. And certainly the Rural Coalition
14 has not demonstrated or suggested how any such determination of
15 affordability would be made, either for an incumbent ETC or a
16 competitive ETC. And certainly when you're talking about
17 affordability, that seems to run dangerously close to the
18 federal prohibition against regulating the rates of a CMRS
19 provider as set forth in Section 332(c)(3)(a) of the Federal
20 Act.

21 Thirdly, the Rural Coalition is proposing that an
22 applicant demonstrate its financial wherewithal to provide the
23 proposed services. Again, I'm not sure what financial
24 wherewithal means in the context of the Rural Coalition's
25 proposal. It would seem to suggest some form of a financial

1 fitness or financial competency test that has to be met prior
2 to designation as a federal ETC. There again, assuming that
3 one could understand the meaning of such a vague and ambiguous
4 standard, financial fitness is not a criteria for federal ETC
5 designation under Section 214(e) or under any of the FCC's
6 rules and decisions.

7 Likewise their proposed rule in 53.360 seeks an
8 identification of any unacceptable dead spots by an applicant
9 for ETC designation, or any identification of inadequate
10 service quality requirement. Again, those sort of undefined
11 and vague and ambiguous standards do nothing to benefit the
12 process. And in fact, with respect to the unacceptable dead
13 spots set forth in the proposed rule, that is entirely at odds
14 with numerous FCC rulings that have rejected those arguments by
15 rural LECs. In fact, the FCC has consistently held,
16 particularly in the case of a wireless carrier, that the
17 applicant is not required to provide or to demonstrate that it
18 can provide ubiquitous service at the time of its designation.

19 With respect to dead spots in the case of a wireless
20 carrier, that is not only to be expected due to a variety of
21 technological reasons, but the ultimate standard is whether the
22 applicant will make a reasonable demonstration of its
23 capability and commitment to provide the services. That is the
24 appropriate standard, not the proposed rule by the Rural
25 Coalition.

1 Similarly, the Rural Coalition proposed regulations here
2 seek to get into the question of the annual certification
3 regarding the use of federal universal service funding. They
4 want to do that prior to the time of designation. Again, the
5 FCC -- Section 254(3) of the Federal Act and FCC rules 54.313
6 and 54.314 deal with the question of the annual certification
7 to the FCC and the universal service administrative company
8 relative to the use of the federal universal service support.

9 The Rural Coalition seeks to expand that whole
10 certification obligation to somehow include a requirement that
11 any ETC applicant disclose publicly its specific business plans
12 relating to development or expansion of its network and/or the
13 use of federal universal service support. But such a standard
14 not only seems anti-competitive in that if the applicant is
15 really going to be the competitor to the rural telephone
16 companies, I'm sure the rural telephone companies would like to
17 have as much as information as possible in advance of that
18 competition in order to respond.

19 But more importantly, it sets up almost an insurmountable
20 burden for the applicant. At the time of applying one doesn't
21 know where they will be designated. They therefore don't know
22 how much they can expect to receive in federal universal
23 service support, and to expect that they then have to somehow
24 certify and demonstrate how they're going to use such support
25 is getting far too speculative to be meaningful at the time of

1 the application.

2 Similarly, the Rural Coalition's proposed rules that seek
3 an explanation and demonstration of agreements with long
4 distance carriers, including a requirement that the competitive
5 ETC provide equal access, One-Plus dialing, is clearly
6 unnecessary in terms of the filing of the agreement with
7 interexchange carriers, but also a requirement for equal access
8 is inconsistent with, contrary to the FCC's rules and the FCC's
9 determinations. With respect to equal access, equal access to
10 interexchange services is not a supported service under the
11 FCC's rules for any ETC. The supported service is access to
12 inter-exchange service. The language of FCC rule 54.101(a) (7)
13 by its terms does not impose an equal access requirement on any
14 ETC.

15 Secondly, with respect to a CMRS provider, Section
16 332(c) (8) of the Federal Act prohibits a state commission from
17 imposing an equal access requirement on a wireless provider.
18 Thirdly, requiring equal access is simply unnecessary. If the
19 rural LECs offer equal access to their end users, and if such a
20 service is desired by a customer, then I guess the rural LECs
21 will have a competitive advantage over a wireless carrier which
22 does not offer equal access. Conversely, if the customers
23 don't desire equal access and they're otherwise content with
24 receiving a service from a carrier that does not provide equal
25 access but simply provides access to an interexchange carrier,

1 then I guess the public is better served by having available to
2 them a wider range of service offerings. We don't need to
3 restrict their choices. Competition is about expanding their
4 choices.

5 And finally, with respect to the equal access requirement,
6 the FCC has recently rejected that and has determined not to
7 add equal access to the list of supportive services required of
8 an ETC. And that was determined in their July 14th, 2003 Order
9 and Order on Reconsideration. The question of equal access as
10 a supported service is obviously still the subject of debate
11 and consideration by the FCC, but as of now it has not been
12 required. And if it ever is to be required of a competitive
13 ETC, or perhaps not required by an incumbent LEC, the FCC will
14 be the one to make that determination. But as a result the
15 Rural Coalition's proposal to require equal access of a
16 competitive ETC is neither consistent with the federal law nor
17 supported by any sound public policy consideration.

18 Similarly, the Rural Coalition's proposed rules requiring
19 a detailed analysis of unserved and under served rural areas,
20 and the submission of build out plans, is really an attempt to
21 bring in some extra regulatory requirements under the guise of
22 the public interest analysis which is otherwise required by
23 Section 214(e)(2). In short, no state commission has ever
24 required such a standard in designating a competitive ETC,
25 including wireless carriers. The FCC has not required such

1 information as part of its designation of competitive ETCs,
2 including wireless carriers. And what the Commission needs to
3 recognize as it would if it were to look at the Rural
4 Coalition's proposed rules, is that it cannot do indirectly
5 that which it is forbidden from doing directly simply because
6 it does so under the guise of the public interest.

7 Ultimately, that is a further downfall of the Rural
8 Coalition's proposed rules. They seek to, by rule, define what
9 the public interest would entail. And there I think the best
10 policy is that no state commission has ever undertaken to
11 predefine what it will consider as part of the public interest
12 when designating a competitive ETC. It's almost a term that is
13 not susceptible to a precise definition, and similarly, I'm not
14 sure that the Commission would want to foreclose itself by
15 seeking to promulgate a public interest regulation. What we
16 would direct the Commission to consider, however, is the FCC's
17 public interest analysis which it has employed when designating
18 competitive carriers under Section 214(e) of the Act. Those
19 comments are set forth in our reply comments are references to
20 the FCC's rules and I won't undertake to belabor the record by
21 reciting them now.

22 But in short, if the Commission considers what the FCC has
23 said is the appropriate public interest analysis when
24 designating a competitive ETC, and takes those standards and
25 criteria and applies them to the Rural Coalition's proposed

1 public interest standards, one can plainly see that the Rural
2 Coalition's comments are inconsistent with, and in fact
3 designed to prevent the designation of competitive carriers.

4 Finally, I would simply note that -- no, actually second
5 to finally. I would note that the specific portions of the
6 Rural Coalition's rules relating to obligations and
7 requirements applicable to a CMRS provider, or targeted
8 specifically toward a CMRS provider, are equally objectionable
9 from both a legal and a policy perspective.

10 Finally, in what is probably the most unsound aspect of
11 the Rural Coalition's proposal is their proposed Rule
12 53.360(e), which is their suggestion that before the Commission
13 can designate a competitive ETC that any such designation has
14 to be contingent upon the incumbent LEC's first opportunity to
15 eliminate implicit subsidies. Now, Ms. Grahame, I think
16 earlier this morning, was commenting on the need to re-balance
17 rural LEC rates to remove the implicit subsidies, the biz/res
18 subsidy and geographic deaveraging before there can be
19 competition. I think if the Commission wants to undertake a
20 broader look at universal service then one needn't follow the
21 other, but rather the Commission independently could go forward
22 and take steps to remove those implicit subsidies without
23 having to delay the designation of competitive ETCs.

24 The guidance from the FCC is that the implicit subsidies
25 are not sustainable in a competitive market. That was

1 recognized as part of the '96 Act. And certainly, the implicit
2 subsidy of geographic deaveraged rates, biz/res subsidies,
3 access charge reform, and other forms of implicit subsidies can
4 and should be addressed, and in its place the Commission wants
5 the explicit universal service support to be able to sustain
6 and promote universal service in high cost rural areas. But
7 you certainly cannot -- or the Commission certainly should not
8 give the incumbent LEC the power to delay the designation of a
9 competitive ETC while the incumbent undertakes to develop cost
10 studies and modify its rates and otherwise seek to remove the
11 implicit subsidies that are currently in their rates.

12 If the members of the Rural Coalition are so intent on
13 removing implicit subsidies they should be going forward now to
14 undertake those things irrespective of doing it in the context
15 of a competitive ETC docket. Such a proposed rule, it seems to
16 me, merely serves to give the incumbent LEC the ability to
17 substantially delay any competitive entry within its service
18 areas and that is not a result which should be endorsed by the
19 Commission. Thank you. And I'll be available to answer any
20 questions from the Commissioners.

21 HEARING EXAMINER OLSON: Thank you, Mr. Ayotte. I think
22 that's all of the oral presentations we can do this morning
23 until we reconvene this afternoon. So we're going to reconvene
24 at 1:30. And it's the same number to call in, that 1-866-465-
25 1045 for the telephonic bridge. And then I'm not sure whether

1 you're on the phone or not, Mr. Ayotte, but the Commission has
2 decided they're going to reserve questions for tomorrow. So
3 did you get the bridge number to call in tomorrow?

4 MR. AYOTTE: Yes, I did. Thank you.

5 HEARING EXAMINER OLSON: Okay. So we'll reconvene at 1:30
6 and we'll call back at that number we'll get the rest of the
7 oral presentations.

8 COMMISSIONER HARBOUR: Excuse me, Mr. Hearing Officer.

9 HEARING EXAMINER OLSON: Yes?

10 COMMISSIONER HARBOUR: Am I to understand that all of the
11 witnesses are available for questions tomorrow and none are
12 available only today?

13 HEARING EXAMINER OLSON: Other than -- only Mr. Honchen is
14 available so the Commission will consider whether they have any
15 questions for Mr. Honchen this afternoon. Otherwise the Chair
16 decided that they would reserve questions for tomorrow for the
17 other people that could be available.

18 COMMISSIONER HARBOUR: Thank you.

19 HEARING EXAMINER OLSON: Yeah.

20 MR. MONINSKI: Mr. Hearing Officer?

21 HEARING EXAMINER OLSON: Yeah.

22 MR. MONINSKI: Just to clarify Commissioner Harbour's
23 question, Professor Shelanski will be available tomorrow, but
24 again, within that same noon to 3:00 window.

25 HEARING EXAMINER OLSON: Okay. I mean if there's some

1 change the Commission will make that determination then. All
2 right. We'll stand in recess. Thank you.

3 (Off record - 12:00 noon)

4 (On record - 1:30 p.m.)

5 HEARING EXAMINER OLSON: Mr. Lindgren?

6 MR. LINDGREN: I am here, thank you.

7 HEARING EXAMINER OLSON: Thank you. Mr. Shelanski?

8 MR. SHELANSKI: Yes, I'm here. Thank you.

9 HEARING EXAMINER OLSON: Mr. Ayotte?

10 MR. AYOTTE: Yes.

11 HEARING EXAMINER OLSON: Okay. I guess Ms. Brinkmann and
12 -- Mr. Moninski, do you know whether Ms. Brinkmann was going to
13 be back on?

14 MR. MONINSKI: It was my understanding that she was but
15 she may have been momentarily delayed.

16 HEARING EXAMINER OLSON: Okay. You willing to go forward
17 without her?

18 MR. MONINSKI: Um-hum.

19 HEARING EXAMINER OLSON: Okay.

20 MS. BRINKMANN: Sorry. This is Karen Brinkmann.

21 HEARING EXAMINER OLSON: Oh, there you are. Thank you.

22 MR. SAUPE: Is Mr. Miller on?

23 HEARING EXAMINER OLSON: Mr. Miller?

24 MR. MILLER: Yes. I am on the line.

25 HEARING EXAMINER OLSON: All right. Thank you, Mr.

1 Miller. Okay. We need to -- are you ready to go now, Mr.
2 Moninski with Mr. Shoup? I was thinking we need to break
3 somewhere around 3:00, so I'd like to get all of your
4 presentations at one time as opposed to breaking, so if you're
5 willing to go forward now then we can deal with Mr. Saupe, Mr.
6 Miller and Mr. Rowe's comments after that if that's all right
7 with you? Is that all right with you, Mr. Saupe?

8 MR. SAUPE: Yes, it is.

9 HEARING EXAMINER OLSON: Okay. Are we on the -- we are on
10 the record, are we not?

11 COURT REPORTER: We're on record.

12 HEARING EXAMINER OLSON: Okay. Whoever is going to do
13 their presentation, Mr. Moninski?

14 MR. MONINSKI: I will lead off, Mr. Hearing Officer and
15 Commissioners, briefly, with just some introductory comments
16 and a very short predicate. And in these comments I will
17 explain to you the structure of our presentation.

18 As I've indicated earlier this morning, my name is Ted
19 Moninski. I'm here on behalf of Alaska Communications Systems.
20 I'd like to reintroduce our team, some of whom you have met
21 before, others you have met only for the first time in this
22 docket. And one other person that I don't think you're very
23 familiar with. With me again today is David Shoup to my left,
24 who is ACS's attorney in proceedings before the Commission. To
25 his left Dr. Dale Lehman from Alaska Pacific University. Dr.

1 Lehman filed an affidavit as well as a resume with the
2 Commission in this proceeding. On teleconference we have Dr.
3 Howard Shelanski, who also filed an affidavit and a resume in
4 this proceeding. Mr. Hugh McKenna was to be joining us and I
5 don't recall that I heard him signing in. He had a delay this
6 morning and couldn't join us. He may be here today.....

7 MR. MCKENNA: I am here, Ted.

8 MR. MONINSKI:and he is here today. Mr. McKenna
9 also filed an affidavit in this proceeding.

10 HEARING EXAMINER OLSON: Thank you. I wonder, before you
11 go forward, if we could get his correct spelling on the record
12 for Madam Clerk.

13 MR. MONINSKI: Sure. That's -- first name is Hugh,
14 H-u-g-h, McKenna, M-c-K-e-n-n-a.

15 HEARING EXAMINER OLSON: Thank you, Mr. Moninski.

16 MR. MONINSKI: You bet. Joining us probably tomorrow via
17 teleconference will be Mr. Jeff Tyson, who has testified before
18 the Commission on behalf of ACS. Mr. Tyson is ACS's vice
19 president of strategic planning. And again, probably will be
20 joining us tomorrow. Also on teleconference earlier today and
21 continuing this afternoon is Ms. Karen Brinkmann. Ms.
22 Brinkmann has not filed any documents and -- affidavits or
23 resumes in this proceeding but has been associated with ACS in
24 our Washington, D.C. matters for some time.

25 I'd like to tell you just a little bit about Ms.

1 Brinkmann. She has been the legal adviser to former FCC
2 Chairman Reed Hunt during the time when the 1995 legislation
3 that became the Telecom Act of 1996 was under consideration.
4 She has also served as the assistant chief of the FCC Common
5 Carrier Bureau, the associate chief of the Wireless Telecom
6 Bureau, and was with the FCC and was advising Chairman Hunt on
7 the implementation of the 1996 Act, and participated in the
8 drafting of the first and second reports in order in FCC Docket
9 96-98, which was the implementation of the local competition
10 provisions of the Telecom Act. Ms. Brinkmann is admitted to
11 practice law in the District of Columbia.

12 The structure of our comments today will be that of
13 Professor Shelanski primarily, and perhaps with some assistance
14 from Mr. Shoup, will use the bulk of our time today and will be
15 speaking to the Commission about ACS's position and advocacy
16 regarding unbundled network element pricing and the TELRIC
17 rules that you've already heard discussed earlier today and
18 have been the subject of considerable discussion in written
19 filings. To the extent that we have time available, Professor
20 Lehman and I will talk to you about ACS's position regarding
21 regulatory relief, price deregulation and detariffing. And I
22 did want to mention that -- and as Mr. Jackson I think said
23 earlier today, there were hundreds of issues that we'd like to
24 talk to you about if we had enough time to do that.

25 Given the limitation of time we're going to have to be

1 selective and we ask you only to not view that selectivity as
2 any de-emphasizing of other issues that we've presented. We
3 know that the Commission has given careful and thoughtful
4 consideration to the written comments and we're looking forward
5 to responding to the questions that the Commission may have
6 regarding those other issues in the second day of this
7 proceeding.

8 The brief predicate that I want to present to you today
9 begins with a question. And the question is why are we here?
10 In its comments GCI has indicated that ACS has consistently
11 misinterpreted the intent of the Legislature. And then GCI
12 goes on to remind us that the Legislature really hasn't made
13 any decisions. It has expressly stated that it wasn't passing
14 judgment on any of the prior decisions that this Commission has
15 issued.

16 We don't agree that we have consistently misinterpreted
17 the intent of the Legislature, but we do agree that the
18 Legislature has not yet passed judgment on the many issues that
19 were presented last year during the course of the legislature's
20 consideration of House Bill 111. The Committee Substitute for
21 House Bill 111, and I'll use the shorthand.

22 GCI went on to accuse ACS of bullying the Commission. I
23 believe that was their word. And we were accused of that
24 because we made reference to another piece of legislation that
25 is still pending at the Legislature, the Committee Substitute

1 for House Bill 106. ACS doesn't believe that it is bullying
2 the Commission, or that it has the ability to do that. ACS
3 believes that a combination of, a careful reading of House Bill
4 111 and House Bill 106 answers the question what are we doing
5 here. We're here because the Legislature confronted numerous
6 significant substantive issues during last year's consideration
7 of this Commission's reauthorization bill. And it hasn't
8 resolved them all yet. It sent us to this proceeding. And it
9 did so in a very unprecedented way.

10 I was thinking about in the 22 years that I've been
11 involved in regulatory matters, if I've ever seen the
12 Legislature send us into a rule making where the Commission was
13 given six months to produce at least a preliminary result. If
14 you'll remember the current statute on time lines would
15 normally give you 24 and perhaps as long as 27. In this case
16 we have six months. I don't think that our November 15th
17 deadline is coincidental. I think we've been given that
18 deadline because the Legislature anticipates that we will go
19 through this exercise in good faith, with all of the effort
20 that we can bring to it and then come back to the Legislature
21 and report to the Legislature as to the results of that
22 exercise in time for the Legislature to take up its further
23 consideration of House Bill 106. It is not meant to be a
24 bullying tactic. I assure you of that. It is a statement of
25 fact and it explains the reasons why we're here.

1 We basically have summarized our position in our written
2 comments. I won't repeat that now. The two main areas that
3 seem to be the areas that have prompted the most response and
4 perhaps the most questions from the Commission will be the
5 issues of TELRIC pricing and the issues of regulatory relief.
6 And as I've mentioned to you, I'm going to turn our
7 presentation over now to Dr. Shelanski, who will give his
8 initial comments on the questions of UNE pricing and TELRIC
9 rules. Dr. Shelanski, if you would, please.

10 DR. SHELANSKI: Yes. Mr. Hearing Officer and members of
11 the Commission, thank you very much. The purpose of my
12 comments is to discuss what I believe to be the correct
13 principles for applying for TELRIC and determining the forward
14 looking costs of providing unbundled network elements in
15 keeping with the FCC's TELRIC framework. And I'm going to try
16 to explain why, under the FCC's rules, I think the RCA has
17 discretion to implement TELRIC in a manner that provides
18 rational economic incentives for ILECs and for CLECs, that is
19 pro-competitive and fair, and that complies with the FCC's
20 policy objectives and rules.

21 Now, I will discuss in particular why neither the FCC's
22 rules nor economic principles require or make it sensible for
23 the RCA to adhere to a completely hypothetical network model,
24 divorced from the realities of ACS's network or the economic
25 environment of the state of Alaska. I believe that such a

1 completely hypothetical model will do more harm than good, is
2 actually contrary to the FCC's stated policy objectives, and
3 can be improved upon while remaining forward looking and
4 without relying on any of ACS's embedded costs whatsoever.

5 When the FCC enacted its TELRIC rule, it was trying to
6 answer the question left open in the 1996 Act of what cost
7 means in the context of pricing unbundled network elements. As
8 the courts have made clear, Congress did not well define the
9 term and gave the FCC broad discretion. The FCC chose TELRIC,
10 a forward looking total incremental cost method, to balance two
11 principal concerns. On the one hand the Commission did not
12 want to allow ILECs to charge UNE prices that would reflect
13 network inefficiencies and that would require CLECs to pay more
14 for a network element than the element would cost in an
15 efficient competitive market. And I think for that reason the
16 Commission rightly rejected a definition of cost based on book
17 costs, and therefore barred ILEC from expressly recovering
18 their embedded costs or from using their embedded costs as the
19 basis for UNE prices.

20 Now, on the other hand the Commission did not want to use
21 -- to base UNE prices on the cost of a hypothetical leased cost
22 most efficient carrier because in the Commission's own words in
23 paragraph 683 of the first report and order, to do so would
24 discourage facilities base competition by new entrants. The
25 Commission was, thus, aiming for prices that would balance the

1 need for incumbents to be compensated at a fair measure of
2 cost, but that would not embed inefficiencies that might exist
3 in legacy networks.

4 I think that the Commission, in enacting TELRIC, and the
5 prime paragraph in which they set forth the TELRIC principles
6 in the First Report Order is paragraph 685, gave us several
7 important principles that are instructive today. First, the
8 cost on which TELRIC prices are based should not be unrelated
9 to the efficient cost of the particular network for which UNE
10 prices are being set. The Commission states in paragraph 685
11 that cost should be based on the most efficient technology in
12 the incumbent LEC current wire center networks. That word the
13 is extremely important. The Commission rejected, in paragraph
14 683, a broader standard, one that would be based on the most
15 efficient technology available to the network or available to
16 any ILEC.

17 And the Commission further emphasized in paragraph 685
18 this connection to the actual network being priced, that,
19 quote, this bench mark of forward looking costs and existing
20 network design must closely represent the incremental costs
21 that incumbents actually expect to incur in making network
22 elements available to new entrants. And the Commission goes on
23 to say later in other documents, notably its briefs before the
24 United States Supreme Court in Verizon against FCC, that
25 despite the forward looking nature of TELRIC, quote, the costs

1 measured by TELRIC are nonetheless those of the incumbent
2 itself.

3 So I think that the FCC is very clear about its policy.
4 That was it is trying to do is not to subsidize new entrants
5 nor to create a regime in which the costs of an efficiently
6 behaving carrier are not recovered, but instead to look to an
7 incumbent itself, to look at what efficient operation of that
8 incumbent's network would be going forward, and to compensate
9 the carrier for those actual forward looking costs. It is not
10 trying to look at the incumbent's network and say well, there's
11 some carrier some place else serving a different territory or
12 with different kinds of cost inputs that is cheaper in its
13 operations than you are, so you have to have that carrier's
14 costs, or you have to model your costs based on the cheapest
15 network that could possibly be built anywhere. I think it's
16 quite clear that that's not what the Commission is doing. But
17 that rather they're looking at a network, want to know what the
18 most efficient way to serve that network and operate that
19 network would be going forward, and to use those costs.

20 Now, there's several confusions that I think have arisen
21 out of the Commission's discussion of TELRIC, and it's
22 discussion of embedded costs. And one of the questions that
23 comes up is well, how do we estimate the forward looking costs
24 that TELRIC is supposed to compensate? Clearly they are costs
25 that have not yet been incurred. And there have been a variety

1 of answers to this question. One of them has been to simply
2 look at what the cheapest possible cost is for every aspect of
3 operating a network that one can find somewhere out there in
4 the world, and to build that cost into a model so that what you
5 wind up with is a model of a hybrid efficient carrier.

6 I say a hybrid because it may borrow certain kinds of
7 inputs from one network and other inputs from another network
8 and a certain architecture from yet a different network. And
9 to look around the country and say what are the cheapest costs,
10 what are the best practices, what would be the ideal network
11 that someone could build from scratch? That's one way to
12 estimate the costs going forward. But I think it is in many
13 respects unsatisfactory. It is based on pure guess work. It
14 may deal with inputs that have nothing to do with the realities
15 of the particular carrier whose network is being costed. And
16 indeed, may have nothing to do with anything that that network
17 has control over.

18 One example would be the cost of trenching for new lines.
19 They may be very cheap in one part of the country and very
20 expensive in another part of the country. And those expenses
21 have nothing to do with how efficiently the carrier is
22 operated. Those expenses have a lot to do with patterns of
23 unionization and with the functioning of labor markets in
24 different parts of the country. And no carrier, no matter how
25 efficiently, could, say, in the high labor cost areas, achieve

1 the low labor costs of a carrier elsewhere. It wouldn't make
2 sense to build those low labor costs from a different part of
3 the country into a TELRIC network for a carrier in a different
4 place.

5 Very similarly, switching costs. Switches are bought in
6 different quantities by different carriers. To use the
7 switching discounts from a major regional ILEC, a former Bell
8 Operating Company, and to say that those are the switching
9 costs that must be built into the model for a smaller carrier
10 that buys fewer switches and gets lesser discounts, would again
11 understate the true forward looking costs of the smaller
12 carrier and to understate even those costs of that carrier
13 operating as efficiently as a carrier its size could operate in
14 the particular market.

15 So I think there are some problems with hypothetical
16 models that one needs to be very careful of. As soon as one
17 goes away from that and says let's build a model of costs for a
18 network like the one that is before us, now the question of how
19 to estimate the forward looking costs becomes a difficult one.
20 One possibility is to look to what that network has actually
21 been paying for inputs. For example, for switches, in recent
22 purchases. Now, that may sound on the surface, and I think
23 some people have characterized it as an embedded cost
24 methodology. But it is not. And indeed, the FCC has agreed
25 that it is not.

1 To look to the recent purchases of inputs as evidence of
2 what future costs will be is a very different thing from
3 looking to the recent purchases of those inputs for the purpose
4 of compensating them in and of themselves. If we simply were
5 to look at book costs and say well, the book costs or the costs
6 on which we should base TELRIC, without thinking about it more,
7 that would be clearly an embedded cost methodology that is
8 inappropriate. But if one looks to recent purchases of
9 switches and says we're not looking -- and say we're not
10 looking at those to compensate them because those are the costs
11 on the books, but we're looking at that as a piece of evidence
12 as to what switching will really cost next year and the year
13 after as this carrier goes forward replacing and expanding at
14 the plant. That is a very different use of a past purchase.
15 And it is not, I think, in any way an embedded cost
16 methodology.

17 Indeed, the FCC itself, in explaining to the Supreme Court
18 how TELRIC works, and this is just -- to give you some
19 reference. I'm citing to the reply brief of the FCC in the
20 Verizon against FCC case before the Supreme Court. What the
21 Commission cited with approval in explaining to the court how
22 TELRIC works, a case called AT&T versus FCC from the D.C.
23 Circuit in 2000, which the FCC described in a parenthetical as
24 a case in which, quote, a state commission, in setting TELRIC
25 price for switching elements, looked to the prices of switches

1 recently purchased by incumbent. The Commission was using that
2 as an example of how state commissions go about constructing
3 the forward looking cost model, approving the use and giving us
4 an example of one possible way of building this model, looking
5 to prices of equipment recently purchased by the incumbent.
6 Clearly the Commission did not consider that an embedded cost
7 method. It's not. It's looking to the best evidence of future
8 costs of the actual network.

9 All of the Commission's concern about tying TELRIC prices
10 to the costs of the actual network, and weeding out
11 inefficiencies while at the same time being realistic and
12 hopefully compensatory of efficient forward looking operation,
13 is I think entirely consistent with what economic principles
14 would suggest is the correct approach to input pricing.
15 Certainly one would not want to have forward looking UNE prices
16 that create inefficient incentives. One would not want to have
17 UNE prices that are too low for they would deter efficient
18 construction of new facilities and they would induce
19 inefficiently high usage of incumbent networks. I might add
20 the prices that are too low will also negatively distort the
21 network investment decisions of incumbent firms that are
22 constrained to charge such high prices.

23 On the other hand, of course, if UNE prices are too high
24 they may deter market entry and encourage wasteful investment
25 in new plants by sending incorrect cost signals to new

1 entrants. The FCC has described such economic signaling as one
2 of the central-purposes of the '96 Act. Quote, to bring
3 meaningful competition to local telecommunications markets to
4 ensure the efficient use of existing network facilities and to
5 encourage new entrants to make economically rational decisions
6 about whether or how to enter a given market. I think it's
7 quite clear at that point that the Commission does not want UNE
8 prices that are low just for the sake of getting CLEC into the
9 market. They want UNE prices that are compensatory and based
10 on efficient costs and that induce CLEC to enter the market in
11 the manner that they can do so most efficiently.

12 Another area of confusion that has I think come up in
13 TELRIC is whether a cost study or a model of costs for a
14 network can contain existing network elements. Can it contain
15 equipment, facilities, architectural design, that are in the
16 currently existing network? Or must the network, except for
17 the central office locations, be completely redesigned from
18 scratch for the purpose of determining what efficient forward
19 looking costs are? I think that the Commission has made clear
20 that just because a network model or a cost model contains
21 older equipment, some existing plant, that that does not
22 disqualify it as a TELRIC model and does not make it an
23 embedded cost model.

24 The Commission has fully recognized that, quote, a prudent
25 firm would not replace a facility the moment a more efficient

1 substitute appears on the market. The Commission recognizes
2 that firms replace equipment incrementally going forward. What
3 is important is not that existing equipment not be used in the
4 network, but that it not be overly valued in the cost model
5 going forward. So if I have an old switch I might economically
6 decide that it makes sense to keep using the old switch. But
7 how I value that switch going forward, how I set the amount of
8 switching costs to be depreciated going forward, that will be
9 determined by the existence of new technology. Much the way
10 the value of a used car declines when a newer model comes on
11 the market, the value of an existing switch and the network
12 will decline when better, more efficient technology becomes
13 available.

14 That doesn't mean that it won't be lower cost, at least
15 for a period of time, to keep using the switch you have rather
16 than incurring the up front cost of buying a new one. But it
17 does mean that the amount of book cost, if you will, or the
18 amount of cost to be depreciated on a forward looking basis of
19 that switch should likely decline and be disciplined by the
20 existence of the new technology. But there's certainly nothing
21 wrong and nothing embedded in the very particular meaning of
22 the FCC's rules about basing costs on a network that contains
23 some older plant.

24 The only thing that the FCC is telling us in its TELRIC
25 rules is in valuing that network going forward do not rely on

1 the book costs of that older plant because those are embedded
2 costs. But even older plants may have economic value going
3 forward that it is fully rational to make use of. And
4 importantly, that it is fully fair to recover. The forward
5 looking economic value of existing plant should be recovered.
6 And in the FCC's words, the fair market value of the existing
7 network should be recovered on a forward looking basis. That
8 is another way that they have, before the Supreme Court,
9 phrased what TELRIC should mean.

10 So at least insofar as the TELRIC pricing is concerned, I
11 think that the principles that are important to keep in mind
12 are that the -- RCA is not in any way constrained to use a
13 hypothetical cost model. It is not -- certainly not
14 constrained to use any particular cost model. Indeed, the FCC
15 itself, in a very recent decision just handed down on Friday,
16 used a modified synthesis model for one part of a network and a
17 company's own cost model for switching and transport components
18 of the network. I think that makes very, very clear that
19 different kinds of models are admissible under TELRIC and no
20 particular model need be used.

21 The important thing is that the model fairly compensate
22 the incumbent for its efficient forward looking costs, that the
23 model be based on the realistic market situation of the
24 particular incumbent being regulated, and very importantly that
25 in estimating forward looking costs, the best evidence of those

1 forward looking costs be used. And that best evidence may well
2 be recent purchases of equipment and not some hypothetically
3 modeled cost based on inputs that come from outside of that
4 incumbent's territory or that embed in assumptions that simply
5 do not apply at all to the particular incumbent being priced.

6 I would just conclude by saying that getting the prices
7 right is particularly important in Alaska. In its major
8 business markets Alaska has a level of competition that is
9 almost unheard of. There are just -- there are a few ladders
10 that have the kinds of competition ranging from 20 to 40
11 percent that one sees in Juneau, Fairbanks and Anchorage. But
12 it's extremely unusual. Also unusual about the situation in
13 Alaska is that the leading competitive entrants have an
14 enormous amount of network facilities by virtue of its
15 principal line of business, that is, of being a cable carrier.
16 So this is an area in which entry to the market has proven
17 extremely feasible and where transition to facilities based
18 competition is not only feasible, but underway.

19 Getting the TELRIC price signals correct will have two
20 major benefits for Alaska consumers. It will make sure that
21 the competitive entry that has been occurring, and that
22 continues, moves in the right direction. Moves to more
23 efficient facilities where it should, remains on the ILEC
24 networks where it should. And very importantly, it will
25 preserve the investment ability and incentives of ACS, the

1 incumbent in those markets, which now finds itself, more than
2 almost any other carrier in the country, in the position of no
3 longer being dominant and really finding itself in the true
4 position of being a competitor in key markets. That would
5 conclude my testimony today on that note.

6 HEARING EXAMINER OLSON: Thank you, Mr. Shelanski.

7 MR. SHOUP: I just have a couple things to add. The first
8 is that I think TELRIC, for purposes of seeing how the FCC
9 views it, has come out in a couple of places recently that the
10 Commission may want to know about. One is in paragraph 680 of
11 the recent finding and review order in which the Commission --
12 the FCC says the object of TELRIC is to establish a price that
13 would exist in a market in which there is facilities based
14 competition. I think that's an interesting comment in the
15 finding and review order in light of GCI's kind of restricted
16 view of TELRIC as exists in their reply brief.

17 The second and even more poignant quotation is from the
18 FCC's reply brief in Verizon versus FCC, filed in April 2001.
19 One of the quotes from that brief from the FCC was, quote, the
20 costs measured by TELRIC are nonetheless those of the incumbent
21 itself, close quote. It kind of lends weight to Professor
22 Shelanski's view that we're not really dealing with just
23 totally hypothetical costs, we're looking at costs of the
24 incumbent adjusted to make them forward looking. And I don't
25 want to say anything regarding anything really that Professor

1 Shelanski has said since he was the chief economist at the FCC
2 in 1999 and 2000, and I'm just a lawyer in Anchorage, Alaska.

3 Those are my comments. Thank you.

4 HEARING EXAMINER OLSON: Thank you.

5 MR. MONINSKI: If we could shift gears to the next area of
6 our presentation which is to talk about regulatory relief in
7 competitive markets, then I would invite Dr. Lehman to make his
8 presentation.

9 DR. LEHMAN: Okay. All of the comments that you've
10 received about regulation of retail markets agree that
11 significant changes in retail regulation are appropriate in
12 competitive service areas. The disputes are what are the
13 triggers and the extent of such deregulation of competitive
14 service areas. What is a competitive service area? I propose
15 that retail deregulation should occur any time that UNEs are
16 available or multiple ETCs are established. GCI has
17 characterized my proposal as one that goes too far, too fast,
18 and what I'd like to say in my few minutes to you today is that
19 the danger is that this Commission will do too little, too
20 late.

21 The basis of our position is that consumers are served
22 best by choice and choice is maximized when they have
23 unfettered competition between providers that are being treated
24 equally, and ideally with as little regulation on them as
25 possible. It's the availability of interconnection and cost

1 based rates, unbundled elements where they are necessary for
2 CLEC to provide service, or the designation of multiple ETCs
3 that undermine an incumbent's ability to sustain prices above
4 competitive levels. That's the basis for deregulating such
5 companies because they cannot raise prices above competitive
6 levels on a sustainable basis under those conditions.

7 Now, it may appear that the cautious tack for the
8 Commission to take would be to move slowly in this case, but
9 I'd advise you against that. I think moving slowly will ensure
10 nothing of the sort of the benefits the competition offers.
11 Moving slowly will actually undermine the ability of
12 competition to work. I'd note the following. Alaska's local
13 markets are among the most competitive in the country, yet the
14 retail deregulation lags that in many other states, in Alaska.

15 You've been offered some definitions of competitive
16 service areas that rely on market shares. Market shares are a
17 backward looking measure of competitive service areas. Choice
18 is like cost, a forward looking concept. People have choices,
19 they don't have to have exercised those choices. So asking
20 that a certain percent of them have exercised the particular
21 choice as proof of competition is a backward measure of
22 competition. Competition is enhanced when people are given a
23 choice regardless of how they exercise it, and it is the
24 interconnection, unbundling requirements of the Act that enable
25 consumers to have a choice.

1 Market dominance is an outdated relic of the past. It is
-2 a concept that served regulators well for a long time, but it
3 is no longer appropriate in a setting when you have these
4 provision of unbundled elements, interconnection at cost based
5 rates, and designation of multiple ETCs that renders the
6 concept of dominance unnecessary and actually ill advised
7 because the danger is that you will hold on to some regulation
8 of the incumbent carrier that is not applied to the entrant,
9 and the only result of that can be to limit consumers choices.
10 Make them less than they would be otherwise.

11 Not only does that call for treating the competitors
12 equally, but I would advocate that you treat the competitors
13 with a minimum amount of treatment. You can regulate them
14 equally and make them require 30 days notice of changes. You
15 could treat them equally and required seven days notice. I
16 would say the least you can live with is the best. And the
17 reason is that consumers are served best by carriers that are
18 out there trying to satisfy consumers interests unhindered by
19 Commission requirements. And that's the situation we find
20 ourselves with under these conditions where competitors can
21 offer consumers choices and the less you stand in the way of
22 that, the better.

23 What I would say is that maximizing choice means you have
24 to let go of something. I think the time has come to let go of
25 regulating retail markets where you no longer need to regulate

1 them. If you're reticent because you are concerned that
2 somebody's rates might rise and rise rapidly, the easiest tool
3 available to you is to just have a maximum limit on what an
4 annual increase in basic rates can be. That achieves the
5 purpose of protecting consumers against something that you
6 think -- you're afraid could creep through the cracks and
7 doesn't distort the competitive process, at least distorts it
8 minimally as opposed to carrying an artifact of regulation that
9 is going to require lengthy proceedings in order to determine
10 how much to allow an incumbent to compete with a entrance in
11 markets where you've established conditions for competition to
12 prosper.

13 So I would say don't do too little too late. Now is the
14 right time to utilize what you've already put in place in
15 wholesale markets and allow the retail markets to work
16 unfettered. And that concludes my comment.

17 MR. MONINSKI: I have just one or two more items and ACS
18 will have concluded all of its comments. There continues to be
19 some confusion. Mr. Jackson alluded to it earlier today, and
20 others I'm sure will, about the various proposals that have
21 been made. And I'd like to clarify ACS's proposal for
22 regulatory relief.

23 ACS proposes a continuum. We've talked about continuum in
24 a number of different places. This is a regulatory relief
25 continuum that syncs up with the competition continuum. At one

1 end of the continuum you have no competition. You have the
2 ILEC, the dominant carrier, the carrier of last resort, fully
3 regulated. Moving along that continuum you have the beginning
4 of actual competition. Not even hypothetical, although our
5 economist friends will give us a good argument for contestable
6 markets as Mr. Jackson mentioned earlier.

7 But ACS's proposal doesn't look at hypothetical
8 competition. It looks at actual competition. The beginnings
9 of actual competition. But I've heard criticisms of that
10 proposal to say ACS would ask the Commission to deregulate the
11 incumbent at the outset of competition. That is not what we
12 have proposed. ACS's has proposed, along this continuum, that
13 at the beginnings of actual competition that you treat the
14 incumbent as a non-dominant carrier. You change that
15 designation when competition begins.

16 Now, if you look into the regulations that we've proposed,
17 non-dominant carriers, under those circumstances, continue to
18 file tariffs. We refer to them as notice tariffs in our
19 regulations. They continue to come before the Commission.
20 They continue to have matters that remain jurisdictional. The
21 processes become expedited. We suggest a seven day notice as
22 opposed to a 30 day notice. But we haven't deregulated the
23 incumbent at the moment competition begins.

24 But we do suggest doing that down -- further down that
25 continuum when we have what the Legislature refers to as

1 significant competition and what we have tried to define as
2 significant competition. The definition that we offer to the
3 Commission is a situation now where instead of just any form of
4 competition, we now have facilities based competition. And
5 yes, Dr. Lehman has pointed out the importance of facilities
6 based competition in the whole dynamic that we have been
7 discussing.

8 Facilities based competition, significant competition
9 should then render price deregulation and detariffing in our
10 proposal. And the trigger that we have offered is a facilities
11 based competitor actually operating in the market with a
12 competitive network that is capable of reaching 75 percent or
13 more of the customers. Mr. Jackson points out is there
14 something magic about 75 percent? Perhaps not. We use the
15 number because it sounded like an overwhelming reach of the
16 competitor's network. That when the Commission saw a
17 facilities based competitor capable of serving 75 percent or
18 more of the customers in a market, that that was a clear
19 demonstration of significant competition.

20 The criticism of our proposal is that this is somehow
21 theoretical consumer choice. In theory, 75 percent of the
22 customers have a choice. I'm not sure I understand that when I
23 think about the following. The competitor's own switch
24 colocated in the incumbent's wire center, access under
25 interconnection agreements to unbundle network elements at

1 reasonable prices, a certificate of public and convenience and
2 necessity to allow that competitor to operate in the market.

3 When you think about all of those things, and the fact
4 that the competitor's is actually offering service, advertising
5 service, making that service available, in my mind that doesn't
6 look theoretical to me, that looks real. And I believe that
7 ACS's proposal for significant competition and the regulatory
8 relief of price deregulation and detariffing would be
9 appropriate under those circumstances.

10 That concludes our remarks. I would only mention, Mr.
11 Hearing Officer, that while we will be available for the
12 Commission's questions tomorrow and we're looking forward to
13 them, again because there's so many areas that we have not been
14 able to discuss today, Dr. Shelanski will only be available in
15 that limited window between noon and 3:00, but I believe the
16 rest of our participants, including Ms. Brinkmann, will be
17 available for the bulk of the hearing. Thank you.

18 2700

19 (Tape change)

20 Tape 4

21 0015

22 HEARING EXAMINER OLSON: Thank you, Mr. Moninski.

23 Mr. Saupe, did you wish to have Mr. Miller provide his comments
24 now so you can even up your presentation?

25 MR. SAUPE: Yes, if Mr. Miller is on line and ready to go

1 that would work fine for Alascom.

2 HEARING EXAMINER OLSON: Mr. Miller, are you still there?

3 MR. MILLER: Yes, sir, I am.

4 HEARING EXAMINER OLSON: All right. And I guess we'll
5 have you answer the question. Are you ready to go forward?

6 MR. MILLER: I'm ready to go forward, yes.

7 HEARING EXAMINER OLSON: Okay. You're on.

8 MR. MILLER: Okay. Thank you, Mr. Hearing Officer and
9 members of the Commission.

10 I'm Dave Miller with AT&T. I'm an attorney here in the
11 Pacific law region. And I've dealt with a number of TELRIC
12 cases in California and elsewhere and I wanted to address
13 legislative policies numbers 1, 5, and 7 specifically in the
14 context of setting UNE prices.

15 I'm going to go over a lot of the same issues that Dr.
16 Shelanski discussed. And we have a very different view of what
17 TELRIC requires. In short, we believe that the proposals put
18 forth by ACS are clearly inconsistent with TELRIC and should be
19 rejected by the Alaska Regulatory Commission. Instead, we
20 would suggest that the Commission focus its efforts in
21 construing TELRIC in a context of a specific cost proceeding
22 where concrete evidence can be considered specifically with
23 respect to issues like fill factors and depreciation such that
24 the ARC can make a decision in that concrete context instead of
25 in a theoretical vacuum where there's speculation as to what

1 the regulation really means and whether it's consistent with
2 TELRIC.

3 We also believe that it's basically unnecessary to pass
4 additional state -- Alaska State regulations to provide
5 guidance on interpreting the federal TELRIC standard because
6 the FCC, you know, as Dr. Shelanski's discussion indicates has
7 made a number of statements about what TELRIC means. There's
8 sufficient guidance already on the meaning of TELRIC. The
9 local competition order that established TELRIC is over 700
10 pages.

11 In addition as some of us have mentioned, in the recent
12 Triennial Review order the FCC had provided additional
13 information on the interpretation of TELRIC. And also as
14 others have mentioned in the very recent order on the
15 arbitration in Virginia which is the only arbitration that the
16 FCC has done to actually set TELRIC prices, they applied their
17 own rules to specific facts in the State of Virginia because
18 the State of Virginia recused itself from that proceeding. In
19 that decision they provided additional guidance on the
20 interpretation of TELRIC.

21 In addition to that there's been court decisions
22 interpreting TELRIC, and in particular, the United States
23 Supreme Court which has provided extensive information on the
24 proper interpretation of TELRIC. So it just is unnecessary and
25 actually is somewhat of a dangerous endeavor to try to

1 interpret TELRIC and make sure that the regulations of the
2 Alaska Commission would be consistent with the FCC's
3 regulations.

4 In a nutshell, the main problem with ACS's proposed
5 regulations is that they try in many different ways to focus on
6 ACS's actual or embedded costs instead of the hypothetical most
7 efficient forward looking costs which are required by TELRIC.
8 And I basically disagree entirely with Dr. Shelanski's
9 interpretation of TELRIC because I think it's very clear in the
10 actual regulations and in the orders that have been issued by
11 the FCC that embedded costs or actual costs are not to be
12 considered unless they're shown to be forward looking and most
13 efficient. And that's been shown in a number of different
14 orders.

15 I know Dr. Shelanski went to some effort to find a
16 paragraph or two in maybe a reply brief here and there that
17 seemed to support his position, but if you look at the
18 regulations and you look at the bulk of the guidance out there
19 it's very clear, in particular the most recent stuff from the
20 FCC, it's very clear that we're talking about most efficient
21 costs and that's what TELRIC requires.

22 The regulations themselves require that TELRIC be based on
23 forward looking costs and the FCC's regulations also require
24 that those costs be based on the most efficient
25 telecommunications technology currently available and the

1 lowest cost network configuration. Those are in regulations
2-- that we've cited in our comments and I won't provide you with
3 the cites again here. But the only constraint on the most
4 efficient telecommunications technology and the lowest cost
5 network configuration is the location of the incumbents wire
6 centers and the demand. Those are the only two constraints and
7 the FCC has made that crystal clear.

8 So to some degree Dr. Shelanski is accurate in saying it's
9 not completely hypothetical, but the constraints are only two.
10 And those are the location of the wire centers and the location
11 and the amount of the demand.

12 In other words, and this is how the FCC concludes
13 paragraph 685 of its local competition order which was the
14 paragraph that Dr. Shelanski cited to some degree. It says we,
15 therefore, conclude that the forward looking pricing
16 methodology for interconnection and unbundled network elements
17 should be based on costs that assume that wire centers will be
18 placed at the incumbent LEC current wire center locations, but
19 that the reconstructed local network will employ the most
20 efficient technology for reasonably foreseeable capacity
21 requirements. So, again, they're talking about a reconstructed
22 network that's supposed to be the most efficient forward
23 looking network.

24 In its recent Triennial Review Order the FCC provided
25 further guidance on this saying that -- here's a quote,

1 specifically TELRIC equates the current market value of the
2 existing network of an incumbent telecommunications provider
3 with the cost the incumbent LEC would incur today if it built a
4 local network that could provide all the services its current
5 network provides to meet reasonably foreseeable demand using
6 the least cost most efficient technology currently available.

7 And you just can't get any clearer than that. And the
8 reference is to what the ILEC's cost are are references to this
9 language. This is what the FCC means by what the ILEC's costs
10 are. So all the references to the cost of the ILEC, what that
11 really means is the most efficient forward looking cost of the
12 ILEC.

13 And the FCC regulations go on to specify that embedded
14 costs shall not be considered in calculating the forward
15 looking costs of an element. And it defines embedded costs as
16 well.

17 I don't disagree with Dr. Shelanski that in some
18 situations old equipment might be the most efficient equipment,
19 but that doesn't mean you use old equipment. It just means you
20 use the most efficient equipment and old equipment might be the
21 most efficient equipment. It also might be the case that
22 current contract prices are the prices that would get paid
23 going forward, but that doesn't mean you also use current
24 contract prices or prices paid in the past. Again, it's very
25 clear, it's very simple it's the most efficient least cost

1 network. And that's what the FCC has said over and over again.

2 The incumbents have not been happy with this requirement
3 and they challenged in court and that decision went all the way
4 to the United States Supreme Court. And although Dr. Shelanski
5 cites some briefs that were filed before the Supreme Court he
6 interestingly ignores the decision itself which is, again, very
7 clear that we're talking about the most efficient network. And
8 the Supreme Court specifically addressed the argument that
9 actual costs should be used instead of forward looking costs or
10 TELRIC costs and said the following; as for an embedded cost
11 methodology the problem with a method that relies in any part
12 on historical costs, the costs the incumbents say they actually
13 incur in leasing network elements is that it will pass on to
14 lessees, that's the wholesalers, wholesale purchasers, the
15 difference between most efficient costs and embedded costs.
16 Any such cost is an inefficiency whether caused by poor
17 management resulting in higher operating costs or poor
18 investment strategies that have inflated capital and
19 depreciation.

20 If these elements were priced according to embedded costs
21 the incumbents could pass these inefficiencies to competitors
22 in need of their wholesale elements. And to that extent defeat
23 of the competitive purpose of forcing efficient choices on all
24 carriers whether incumbents or entrants, the upshot would be
25 higher retail prices consumers would have to pay. And that's

1 what the Supreme Court had to say about this argument that
2 actual-costs ought to be used.

3 They recognized that the federal act is a novel approach
4 to rate setting which was intended to encourage local
5 competition, to give competitors every opportunity to break
6 into these monopoly local markets, to uproot the monopolies,
7 that's a phrase the Supreme Court used, and to reorganize
8 markets by rendering the monopolies vulnerable to interlopers.
9 So it's very clear that we're supposed to look at the most
10 efficient forward looking network, least cost network, and it
11 is supposed to encourage competition.

12 Now, I'd like to address some of the specifics in ACS's
13 regulations one of which is to begin with a rebuttable
14 presumption of ILEC efficiency. In essence, what this would do
15 would mean that you would begin by presuming that the ILEC's
16 actual costs are efficient and, therefore, the actual costs
17 equal TELRIC. Well, that's standing TELRIC on its head. It's,
18 in fact, the opposite. You have to start with the forward
19 looking costs and you don't assume that actual costs are
20 forward looking costs.

21 Again, the regulations adopted by the FCC say it must be
22 the most efficient telecommunications technology currently
23 available and the lowest network cost configuration. This was
24 confirmed in a recent Virginia order by the FCC which, again,
25 said that the Commission's TELRIC rules require use of the most

1 efficient telecommunications technology currently available and
2 the lowest cost network configurations limited only by existing
3 wire center locations. So, again, that's the only limitation
4 otherwise it's the most efficient, least cost.

5 And in that same order the FCC confirmed again that
6 embedded costs may not be considered when determining the
7 forward looking economic costs of the UNE. So this is very
8 clear over and over again the FCC has said this.

9 And in that decision as Dr. Shelanski noted, the FCC
10 rejected the loop costs model proposed by Verizon on the
11 specific ground that that cost model started with Verizon's
12 actual network and then attempted to make forward looking
13 adjustments to that network. And the FCC found that was an
14 inappropriate approach when compared to the approach used by
15 the synthesis model which was to build a reconstructed network
16 which obviously is much more consistent with all the precedence
17 and the guidance I just discussed.

18 This issue was also addressed by the Illinois District
19 Court in an Illinois ETC (ph) passed a law that required the
20 Illinois Commerce Commission to use some of ETC's actual costs
21 in setting TELRIC rates. The Illinois District Court found
22 this approach was clearly contradictory to TELRIC. It
23 eviscerated TELRIC and effectively repealed TELRIC. Oddly
24 enough it was the same -- some of the same factors that are at
25 issue here, fill factors and depreciation. And that decision

1 is discussed in our comments.

2 Dr. Shelanski, I don't think has read the more recent
3 precedent because it makes clear another point that he appears
4 to be mistaken on. And that is that the most efficient
5 technology is not limited to technology that's actually
6 deployed by the provider. And that's another provision that
7 ACS would like to include in the regulations. Instead, the FCC
8 Triennial Review Order clarifies TELRIC assumes that the value
9 of an incumbent LEC's network is constrained by the most
10 efficient technology available even if the incumbent LEC itself
11 does not deploy or plan to deploy that technology. It can't
12 get much more clearer than that.

13 So obviously that is the law of the land, the federal law
14 requiring the most efficient technology whether or not the LEC
15 deploys it or plans to deploy it. So it could be anything in
16 use, anything that's available.

17 ACS's comments addressed a little bit the selection of a
18 cost model indicating that use of the synthesis model would be
19 inappropriate because the FCC made some comments about it being
20 intended to be used for Universal Service and not UNEs. Well,
21 that argument was rejected by the FCC recently in this Virginia
22 arbitration which actually adopted the synthesis model for the
23 loop portion of its proceeding.

24 It rejected the switching portion of that not because it
25 found that the construction of the network was inappropriate,

1 but because they couldn't adjust the balance between new and
2 growth switches which is an entirely different issue and not
3 relevant at all to the claims that ACS has made regarding the
4 synthesis model.

5 Now, specifically with respect to depreciation it's,
6 again, the same theme. ACS would like to use its financial
7 depreciation, its financial lives which are akin to its actual
8 lives instead of forward looking lives. This was rejected by
9 the Illinois District Court as we mentioned in our comments,
10 and it also in the recent Virginia arbitration before the FCC
11 was rejected when Verizon proposed using their financial
12 reporting lives. Instead, the Commission decided to go with
13 regulatory lives finding they were more appropriate for
14 calculating UNE prices.

15 And the same basic -- basically can be said with respect
16 to Policy number 7 applying -- relating to fill factors.
17 Again, ACS would like to use their actual fill factors or their
18 embedded fill factors. And again, this approach is entirely
19 inconsistent with TELRIC. It's been rejected by the Illinois
20 District Court as discussed in our comments and it also has
21 been rejected by the FCC in the Virginia arbitration which
22 rejected Verizon's proposal to use actual fill factors and
23 instead it used the fill factors proposed by AT&T and WorldCom
24 in that proceeding which were forward looking fill factors.

25 So the basic principle is pretty straight forward. TELRIC

1 requires the use of the most efficient least cost network
2 technology and configuration in everything. And it does not
3 allow the consideration of embedded, historical, inefficient,
4 actual monopoly practices. ACS's proposed regulations are the
5 direct opposite of TELRIC and would require the Commission to
6 go in a direction that TELRIC does not allow. And, therefore,
7 we believe they should be rejected by the Commission. And
8 that's all I have.

9 HEARING EXAMINER OLSON: Thank you, Mr. Miller. I wonder,
10 Mr. Miller, if I could ask whether you had specific paragraph
11 references to the Triennial Report?

12 MR. MILLER: Yes, I do. The -- was there a particular
13 quote?

14 HEARING EXAMINER OLSON: Well, you quoted a couple of
15 different places. And I was just wondering whether you had
16 those two paragraphs. And primarily the ones I was -- I
17 remembered you talking about was a reaffirmation of what the
18 FCC had said in the First Report and Order about the most
19 efficient lowest cost network.....

20 MR. MILLER: Right.

21 HEARING EXAMINER OLSON:and I wonder if you have a
22 cite for that?

23 MR. MILLER: Yeah, that quote I believe is from Paragraph
24 669 of the Triennial Review Order.

25 HEARING EXAMINER OLSON: Okay.

1 MR. MILLER: And I can provide quotes to that and as well
2 as the Virginia decision if you'd like at any time.

3 HEARING EXAMINER OLSON: Okay. Actually the Commission
4 has indicated if you have those specific reference they can
5 obviously pull up the Virginia decision, but if you have
6 specific cite to that if you could give that to us now so that
7 will make an ease of reference.

8 MR. MILLER: Sure, you would like the cite for the
9 decision or the paragraphs within the decision?

10 HEARING EXAMINER OLSON: For the paragraphs which you were
11 citing.

12 MR. MILLER: Yeah, let me go back here and get those
13 paragraphs for you. With respect to confirming the use of the
14 most efficient technology and the lowest cost network
15 configuration that was Paragraph 52 confirming that embedded
16 should not be used and Paragraph 38.

17 Let's see, rejecting financial reporting life for
18 depreciation is Paragraph 112.

19 The discussion of the synthesis model is at Paragraph 171
20 and thereabouts. There are some paragraphs around that that
21 discuss it.

22 And fill factors are at Paragraph 247 to 67. And I think
23 that's all of them.

24 HEARING EXAMINER OLSON: All right. Thank you, Mr.
25 Miller.

1 MR. MILLER: If I missed any please let me know and I'd be
2 happy to provide them.

3 HEARING EXAMINER OLSON: I think you've touched on the
4 areas of which you were quoting from. Thank you, Mr. Miller.
5 Mr. Saupe, is there anything further?

6 MR. SAUPE: Nothing further from us. We'll all be
7 available tomorrow. In the morning I'll let you know Mr.
8 Miller's availability. It may again have a gap or two in it.

9 HEARING EXAMINER OLSON: Or if you find out at the end of
10 the day e-mail me or whatever and we'll make arrangements.

11 MR. SAUPE: Thank you.

12 HEARING EXAMINER OLSON: Okay. Mr. Rowe.

13 MR. ROWE: Thank you, Mr. Hearing Officer and members of
14 the Commission. I do appreciate you letting me wait till
15 afternoon for these comments and especially being the much
16 coveted last spot. I noticed the attentiveness of the whole
17 room in the afternoon after we've had our hastily eaten lunch
18 and it's sitting there digesting. And it's really wonderful
19 that we can hear a pin drop if anyone moved and dropped one.
20 One welcome opportunity of being the last presenter here is
21 you're going to be real glad to hear me 'cause you know there's
22 nothing else after that, so I appreciate that opportunity here
23 as well.

24 I'm Jim Rowe, the director of the Alaska Telephone
25 Association. And the members of the association are all rural

1 ILECs. The Commissioners are in a thankless position. First
2 of all, you get to hear the tedious testimony of all members of
3 industry who thinks the most -- the sweetest sound in the world
4 is talking for all the time they're allowed. I'll try to
5 curtail mine to 39 minutes or so. If this were math there'd be
6 an exact answer to what you're to do, but it isn't math and
7 you've heard very diverse recommendations of what is right,
8 what's wrong, how it can be done. And you're going to be able
9 to come up with decisions that will be wrong in most
10 everybody's eyes. And that's regardless of what decision you
11 make.

12 The Telecommunications Act of 1996 is very convoluted.
13 It's very hard to read. There was compromise there in Congress
14 and it was really punt (ph) there in Congress, let's give it
15 the FCC and the states to figure out, so you've got a tough job
16 there.

17 As Commissioners in the most rural state you serve the
18 most fragile consumer base and you regulate industry in which
19 failure is most likely to result in a vacuum rather than a
20 substitute provider.

21 Here today because the Alaska Legislature took an interest
22 we are bringing forth testimony telling you what you need to
23 do. You've already read most of the quotes that you've been
24 given by the presenters here today. Probably like some of them
25 you have an opinion, whether it's right or wrong. You've got

1 two and a half months left to make your report to the
2 Legislature. And though there was certainly no bullying there
3 as already is in the record today I think the Legislature got
4 some people's attention and I expect they might do that in the
5 future. And I think it's a tough thing to present to the
6 Legislature whatever report you have that's going to mollify
7 all of them and certainly all the members of the industry.

8 I'll say as representative from my part of the industry
9 we're not satisfied and we weren't satisfied with the doings of
10 the Commission prior to the legislative session and during the
11 legislative session and that's why we're down there talking
12 with members. Probably our most significant issue of bringing
13 forward during the legislative session was that of dominance,
14 dominant carrier. Now we've heard today that's not related to
15 ETC. I'll say they're not the same, but I think there is a
16 relationship. Dominant carrier in my mind deals with the
17 competitive environment. You don't have dominance if you don't
18 have subservience.

19 ETC is really a Universal Service issue. It's there for
20 money. If instead of the 1996 Act the 1995 Telecommunications
21 Act had passed we would have had multiple carriers of last
22 resort which when we discussed that with Senator Stevens' s aff
23 seemed like a pretty unreasonable thing. How many people can
24 come in first? How many can be carrier of last resort? So
25 anyway that one didn't pass, so instead we have new terminology

1 which is eligible telecommunications carrier and you're only
-2 eligible for one thing. You're not eligible to be carrier of
3 last resort, you're eligible to receive Universal Service Funds
4 for providing service.

5 The relationship between ETC and dominant carrier is in a
6 competitive environment a new entrant probably wouldn't be
7 fiscally responsible to come in and not ask for ETC funding for
8 eligible telecommunications carrier funding. That is in the
9 real world Universal Service funding which is to provide
10 whatever the concept was of the Universal Service. And I'm not
11 talking about schools and libraries. I'm not talking about
12 rural health care. I'm talking about high cost support for
13 areas where customers in the United States could not have
14 affordable voice grade telecommunication service in their homes
15 and businesses.

16 ETC and Universal Service, the issues my members bring
17 before you today. We see from the decision last Friday that
18 came out on Digital which is just an example of a decision in
19 Alaska, there are examples in other states as well, that
20 wireless carriers as they should have come in and they're
21 fiscally responsible for doing that saying we'd like to get a
22 fund. We'd like the cornucopia to dump down in our yard. That
23 cornucopia is Universal Service funding. If we just say ETC
24 sometimes we forget that that's Universal Service funding.
25 It's a limited fund, but that's not for a state commission

1 necessarily to decide or to worry about. Each of our customers
2 pay into that Universal Service Fund on a national level.

3 We discussed parity when we were down in Juneau at the end of
4 the session, but we never asked -- ATA never asked for parity.
5 We said we will retain carrier of last resort responsibility.
6 We did that because we're out there serving our rural
7 customers. We believe in the communities. We believe in
8 serving the people. We were there serving when nobody else
9 was. In many of those cases nobody else wanted to. We weren't
10 there because there was Universal Service funding. We were
11 there -- were only able to be there because there is Universal
12 Service funding.

13 We asked for parity when a new entrant wanted to come in,
14 wants to come in to the area that we serve, each individual
15 company. That parity would be flexibility in rates. That
16 parity would be flexibility in administrative reporting to this
17 Commission. Parity is the same.

18 Competition has more than one entity striving for the same
19 purpose or striving for the same market. Pardon me.
20 Competition doesn't have one entity sitting unable to react
21 while another entity reacts or acts until there's some level
22 there. Parity competition happens as soon as a new entrant
23 comes in. That's when we want parity. That's when we'll still
24 want parity. We'll still retain carrier of last resort as we
25 advocated down in Juneau and we'll still be looking for parity.

1 And I hope this Commission will look for that.

2 We estimate that the total number of customers served by
3 the Alaska Telephone Association companies about equals that of
4 GCI for local telecommunications companies which is smaller
5 than that of ACS, so we're not serving by any means the largest
6 number of customers in the state. We are serving customers who
7 individually are every bit as important as any other one
8 customer in this state. We have a very strong belief in
9 service to those customers and quality of service in continuing
10 to serve them.

11 However, the environment -- the changing environment that
12 comes because of the Act, that comes from the FCC, that comes
13 from our State Commission, that come from courts that have
14 determined outcomes in other states' decisions, there's been a
15 chilling effect on investment. And I assure you that the order
16 that came out last Friday will have a more chilling effect on
17 investment within the state. And this is investment in high
18 cost rural areas. Those are the only places we're serving.

19 The Legislature was dissatisfied with what was the past
20 Commission. Now we have a new Commission. These are not the
21 same people, some of you are same individuals, but we have more
22 individuals that have changed than were here before. And I
23 certainly told the individual legislators this is a new
24 Commission, we have to see their track record. I think now
25 we're seeing your track record.

1 A comment I heard earlier today in testimony from the
2 gentleman who represented Dobson referred to they had filed for
3 special ETC designation. And I assure you the confusion
4 already, I think, in multiple markets has talked -- as tried to
5 determine what ETC is and the order that came out here Friday
6 by the panel that sat on it talked about mobility being
7 valuable. I'm not sure that was attentive (ph) Universal
8 Service, but I'm sure it's valuable, that Lifeline supports it
9 and now we can get that to people.

10 Commissioner Bob Rowe from Montana who sits on the Joint
11 Board asked one of the panelists at the last Joint Board
12 (indiscernible) meeting whether mobility should be one of the
13 items in Universal Service. And I think it was a rhetorical
14 question and was not responded to. I had no doubt that the
15 gentleman from Dobson was correct when he said he asked for
16 special ETC designation. I thought nothing else, but I have to
17 look back and find out how special ETC designation is
18 warranted.

19 It's a wonderful opportunity to be here in Alaska. I hope
20 we keep being able to deliver quality service to our rural and
21 many of us are rural customers.

22 I thank you for the time for my opportunity here to
23 present some of the views from my association, for you putting
24 up with my rambling remarks. Typically they're rambling, today
25 they're even more so perhaps, but that's okay we'll have them

1 on the record somewhere. Thank you for putting up with all the
2 facts that, unfortunately, are not going to be able to bring
3 you to a perfect conclusion when this is over. And I thank you
4 for your efforts that go forth trying to make the best
5 decisions you can. And we recognize you're human. Thank you.

6 HEARING EXAMINER OLSON: Thank you, Mr. Rowe. We need --
7 there's a little bit of a Commission time conflict, so we're
8 going to need to recess for 30 minutes. While we're gone and
9 we're going to come back and Ms. Grahame and Mr. Honchen, some
10 Commissioners have indicated they have questions for Mr.
11 Honchen, so we'll take those up when we come back.

12 In the meantime I already know what Mr. Shelanski's
13 schedule is and I assume is that the same for your other
14 witnesses as well?

15 MR. MONINSKI: I believe most of the other witnesses will
16 be available at any other times during the day. I believe Mr.
17 Shelanski's window is the limited one.....

18 HEARING EXAMINER OLSON: The 12:00 to 3:00. And, Mr.
19 Saupe, maybe while we're at recess if the parties could stay on
20 the line you could check with Mr. Miler and find out what his
21 availability is so that we could perhaps come up with a
22 schedule to make the best use of Commissioner question time and
23 your witnesses and your participant time tomorrow as well. If
24 you would do that. So Ms. Brinkmann, Mr. Lindgren, Mr.
25 Shelanski, Ms. McKenna, Mr. Ayotte, and Mr. Miller, if you'd

1 just hold on for a second before you hang up so that respective
2 parties can visit with you we can try to get your availability
3 for tomorrow, okay?

4 UNIDENTIFIED VOICE: Sure.

5 HEARING EXAMINER OLSON: And we'll stand in recess about
6 25 minutes. You want to just make it 3:30, round numbers?
7 3:30. And we'll come back and we'll deal with Mr. Honchen's
8 questions.

9 MR. JACKSON: Do we need to vacate this room?

10 UNIDENTIFIED VOICE: No.

11 HEARING EXAMINER OLSON: No, you don't. Thank you. We'll
12 stand in recess.

13 (Off record - 2:55 p.m.)

14 (On record - 3:30 p.m.)

15 HEARING EXAMINER OLSON: Okay. We're back on record. And
16 the Commissioners have some questions for Mr. Honchen and we'll
17 take him out of order because he's going to have a joyous
18 occasion. Okay. And for lack of a better way of doing it
19 we're just going to start from Commissioner Strandberg and go
20 down the row here from left to right or your right.

21 INQUIRY OF LARRY HONCHEN

22 BY COMMISSIONER STRANDBERG:

23 Q This is a particularly pleasing microphone. Okay. I
24 guess I just wanted to ask a couple of terminology
25 questions with respect to the depreciation regulation. In

1 the new rules on depreciation item 3 triple I and 4 we
2 talk about service lives and then in the line below we
3 talk about useful life, remaining life and net salvage
4 value.' Can you explain why we have different terminology
5 between those two clauses, number one. And number two,
6 does this regulation allow the different depreciation
7 methodologies that an entity may want to suggest to us?
8 A Commissioner Strandberg, could I get a reference again to
9 your questions, please?
10 Q Page 2 of the proposed regulation.
11 A Yes, I'm there. Thanks.
12 Q Okay.
13 A And once again, the questions, I'm sorry?
14 Q Can you explain the difference -- the terminology service
15 life versus estimated useful life and remaining life
16 between those two clauses. Is that correct language? Was
17 that your intention?
18 A The language in sub 4 is correct. The -- and the reason
19 the language is as particular as it is relates to
20 essentially two methods of depreciation. One is the whole
21 life method and one is the remaining life method of
22 depreciation.
23 Q Uh-hum.
24 A Both of which are acceptable methods for depreciating the
25 remaining plant balances. At the risk of getting too

1 technical let me take it to the next level if I might.

2 Q Okay.—

3 A Physically remaining life depreciation is a method of
4 depreciation that's used to adjust either over or under
5 depreciation earlier -- in earlier years so that account
6 balances over the entire life of the asset come out to
7 effectively a net zero. If your depreciation practices
8 have been -- or your estimates have been more or less on
9 the mark over time whole life depreciation methods are
10 using, so the remaining life method is a method that's
11 used as a true-up method or a true-up mechanism, if you
12 will, in establishing depreciation rates. So the -- the
13 proposed changes include both a change of your -- of your
14 whole life as well as the remaining life of the asset.
15 And of course, the net salvage value is a residual
16 calculation that goes against your depreciable base so
17 that you don't over recover the value -- the net value of
18 the asset. I'm not sure if I've answered your question
19 with respect.....

20 Q I understand.

21 Ato that one. There was a second question as
22 well.....

23 Q Yeah, and that was.....

24 Anumber 3?

25 Qdoes the current language allow remaining life and

1 whole life and implementation of either one of those
2 methodologies?

3 A The intent is so that -- the intent is to establish
4 depreciation lives, but not -- not to get to the level of
5 detail of depreciation methods. So it would endorse both
6 the whole life and remaining life concepts of
7 depreciation.

8 Q Okay. And then the interim booking, I was quite
9 interested in that concept. It certainly seemed
10 innovative. Do you feel comfortable that that's going to
11 work under our current approach for doing rate cases for
12 companies as far as actually speeding up the
13 implementation of new depreciation rates?

14 A I hope so. The -- two parts to the answer. With respect
15 to a rate case most oftentimes during a rate case if a
16 depreciation change or a depreciation study is involved
17 it's finally adjudicated at that point, so that would be
18 trued up. The interim bookings is for those periods in
19 time that would be a non-rate case year that a company
20 files its study has a depreciation rate change and is
21 unable to implement it. The reason that I think it's so
22 important that we do that is this; oftentimes we've had
23 depreciation studies language for periods in excess of a
24 year to two years before final approval has been granted.
25 And if the depreciation rate changes were significant and

1 not made they become even more significant the next time
2 depreciation rate changes have to be made because that
3 imbalance that existed two years ago has gotten compounded
4 over the two year lag period.

5 Q Uh-hum.

6 A So the idea is to get them implemented as quickly as
7 possible so to eliminate adjustments that would be greater
8 in the future. And the best.....

9 Q Right.

10 Amethod that we could -- we could think of to do that
11 is in interim booking. Now what we found -- at least we--
12 -- we've done a lot of depreciation studies over the years
13 for many of the telephone companies in Alaska. And we
14 found that in most cases at least the studies that we've
15 done there's -- there generally is not material
16 differences between what we propose and what is ultimately
17 granted. Granted that there are differences, but I think
18 that they're generally immaterial in nature and the true-
19 up mechanism is a far better solution than a two year lag.

20 Q So depreciation has always given me a headache. Today I
21 don't have a headache. Thank you. But between rate cases
22 we need to keep the books as accurate as possible. Is
23 that one of your actions here to allow us on an interim
24 basis to correct the depreciation rates that actually
25 occur, and then at the time of the rate case we would

1 actually implement those new rates, is that what you're
2 thinking? —

3 A You could implement them if there's an imminent rate case
4 you could do it now or you could do it with respect to a
5 depreciation rate change without an adjustment in rates.
6 A depreciation rate change doesn't necessarily require a
7 concomitant adjustment in rates although it's typically
8 done that way so the companies don't over or under
9 recover, but it doesn't necessarily have to happen. The
10 -- and telephone companies in particular they -- typically
11 a rate case will ask three -- two to five years depending
12 on the company, but access charges are done annually. And
13 in that case having an accurate reflection of your
14 depreciation costs on an annual basis is quite important
15 to the companies. And interim bookings would -- would
16 help provide that.

17 Q Okay. And, you know, we had cooperatives and then we have
18 investor owned utilities. Do these regulations work
19 equally well for both of those....

20 A Yes.

21 Qapproaches?

22 A Yes, they do.

23 Q Okay. All right. Thank you very much.

24 COMMISSIONER STRANDBERG: That's all I've got.

25 BY COMMISSIONER THOMPSON:

1 Q I want to better understand your concept that the
2 Commission approve standard depreciation rates or ranges
3 similar to what the FCC did. When you were looking at
4 this, did you find in the FCC's proceedings a commitment
5 on their behalf to review these depreciation schedules on
6 a regular basis? In other words, is this something that's
7 in a triennial or biannual review process or is it
8 whenever they get around to.....

9 A Well, they --

10 Qdoing it again?

11 Athey had. And I think the last rates that I saw that
12 were promulgated were 1998, but I don't -- I don't expect
13 that that's probably going to happen in the future. And
14 that's probably something that if you were to incorporate
15 an FCC table or an FCC like table for use in Alaska you
16 would want to consider adopting a triennial review at the
17 state level to update those -- update the tables because
18 they would periodically, I think, require update. And I
19 don't think we can count on the FCC for doing that because
20 these changes came out of price cap regulation for large
21 companies and I don't know whether they're -- they will be
22 in the future kept current.

23 Q How much of a commitment of our time and industry's is
24 this triennial process going to be?

25 A I don't expect it to be a major -- a major process at all.

1 We've taken a look at the depreciation rates for most of
2 the rural companies in the state and for the most part the
3 companies currently are -- with a few account exceptions
4 fall right within the FCC ranges, number one. Number two,
5 depreciation as an expense is zero sum game. And what I
6 mean by that is you either get it now or you get it later,
7 but you can't over or under recovery so it's just a
8 generational issue or a time value of money issue. So
9 from that standpoint the risk is -- is less important. I
10 -- I'm reasonably confident that we could -- we could sit
11 down and work out acceptable ranges with -- with little
12 effort really. I just don't see it as being a major
13 controversial subject for the smaller companies.

14 Q So would it be fair in starting that to assume that the
15 FCC ranges -- or to use the FCC ranges almost as a default
16 and say or a rebuttal presumption that this is what we
17 would find reasonable and allow industry to present a case
18 if they felt like any of those were unacceptable rather
19 than starting from zero?

20 A My ideal proposal would be to take the FCC ranges as they
21 exist now and.....

22 Q Uh-hum.

23 Awithin the time period that we have between now and
24 final regulations are promulgated just determine if
25 there's any of the accounts that need some.....

1 Q Uh-hum.

2 Atweaks to it. We've -- and there are a couple. I've
3 contacted several of our clients, we've had several
4 discussions on this issue, and I think there's two or
5 three accounts that are at least worth discussing to
6 determine whether or not some of the ranges are realistic
7 or not, but I think in the absence if that's problematic,
8 I would recommend to go forward with the table because
9 even with the table by the vast majority of the accounts
10 will fall within the ranges.....

11 Q Uh-hum.

12 Ain the depreciation effort on both the part of the
13 companies and of the review of the Commission would be --
14 would be minimized.....

15 Q Right.

16 Abut it really makes sense to streamline the process
17 for sure.

18 Q Okay. Thank you.

19 COMMISSIONER THOMPSON: That's it. I'm done.

20 BY CHAIR JOHNSON:

21 Q Mr. Honchen, there was -- I think it was in Mr. Jackson's
22 statement, he made reference to the Rural Coalition's
23 depreciation proposals and noted that there was a
24 difference in terminology between service lives and rates.
25 And I believe Mr. Jackson indicated that, in fact, if the

1 proposal that you're now putting forward relates to
2 service lives it was something that GCI would support. Do
3 you agree with that correction to the terminology?
4 A I -- I'do. We -- the FCC table is a table of depreciation
5 lives and that -- that is -- that is correct. Lives lead
6 to rates and.....
7 Q Right.
8 A but lives.....
9 Q I just wanted to clarify that for the record.
10 A Lives is a more accurate representation.
11 Q Okay. Thank you. I have a couple of questions about.....
12 OPERATOR: Your conference call will end in 10 minutes.
13 CHAIR JOHNSON: Thank you for offering that.
14 Q I have some questions about the proposed special
15 amortization subsection F. Is there -- and I actually
16 have several questions. I guess philosophically what I
17 wanted to clarify is there any notion from this proposal
18 that this special amortization process would be used in
19 any way to recover stranded plant as a result of
20 competition? Is that the intent of this proposal to do
21 that?
22 A That wasn't the intent of the proposal, although I believe
23 it could be used for that purpose if the Commission were
24 to allow a recovery of stranded investment if, in fact, it
25 existed.

1 Q Or is it also fair to say that the reverse is true, that
2 if the Commission did not choose to go down that way that
3 additional language would be necessary to clarify it that
4 stranded investment could not be covered through this
5 process -- be recovered through this process?

6 A That's it's -- that would be entirely appropriate on.....

7 Q Okay.

8 Athe Commission's discussion for sure.

9 Q Does the Rural Coalition have a view on how that issue
10 ought to be handled or could be handled through this
11 section if they find out they think it should be included
12 or they think it should not be included?

13 A The whole -- the whole issue of stranded investment is a
14 topic in an of itself. We've -- you know, we've had --
15 this goes back to R-97-12 where we actually filed several
16 pages of comments on the issue of stranded investment.
17 The difficulty of dealing with it now is we don't know to
18 what extent it exists and how much of a problem it might
19 or might not be. This is a mechanism that I'm not sure
20 would -- would actually work for stranded investment if --
21 I'm just not sure how it could work because if a company
22 does fall into the competitive environment regardless of
23 what accounting procedures you set up his rates aren't
24 going to be based on the accounting procedures or costs
25 anymore, they're going to be market based. So it -- it

1 would be an accounting convention of -- without much
2 significance frankly.

3 Q Secondly as to this subsection F, there's an a rate of two
4 percent of the annual interstate revenues that establishes
5 that's a rate. How is that two percent arrived at?

6 Actually it appears in a couple of different places.

7 A That was my attempt at a materiality level. It could be
8 one, it could be three, it could be whatever the
9 Commission chooses, but we -- I wanted to get some level
10 of materiality here and it was an attempt to your bench
11 mark work (ph).

12 Q This may be a question for Ms. Grahame, and just generally
13 philosophical for the Rural Coalition under this proposal
14 is what happens if subsection D that pertained to burden
15 of proof is stricken from the proposal? Does the proposal
16 still work, does the Rural Coalition still support it if
17 that were no longer included in the rule?

18 A Yeah, it's -- Jeff, do you want to answer, Jeffrey?

19 MR. DILLEN: The burden of proof provision, I think, could
20 be stricken without violating or doing violence to the overall
21 structure of this proposal. And I think it could still be
22 supported in the absence of it.

23 CHAIR JOHNSON: Okay.

24 HEARING EXAMINER OLSON: Commissioner Harbour.

25 COMMISSIONER HARBOUR: Mr. Honchen, thank you for

1 clarifying. I have no other questions.

2 BY COMMISSIONER GIARD:

3 Q I love depreciation. They keep me off all the
4 depreciation dockets. I was interested in your opinion
5 about what the Legislature meant when they talked about
6 actual useful lives?

7 A I'm really glad you asked that.....

8 Q Because in my opinion there's no such thing as the actual
9 useful life, so I don't really know -- I mean I read what
10 ACS and what GCI said, but you seem to be an expert.....

11 A I have a different.....

12 Qon depreciation.

13 Aview as you might expect on it than GCI. My view of
14 the actual depreciation life goes more to the method of
15 depreciation than as to whether or not you look
16 historically or prospectively. In other words, the actual
17 useful life is a useful tool if you're looking at
18 remaining life depreciation. You can't do a remaining
19 life depreciation calculation without looking historically
20 rather than the actual useful life, so my reading on it
21 was just that and much different than the GCI reading.

22 Q When I read it I'll tell you that it seems to me that
23 using actual useful lives just based on my experience as a
24 CPA, use actual rather than useful life or financial life
25 or any of the other estimates, that it would really result

1 in a much longer period of depreciation. We all know that
- 2 buildings are frequently depreciated over 30 years and
3 last 50 years, school district buildings, so do you think
4 that was the intent of the legislation?

5 A I don't think it could be because in establishing
6 depreciation rates you've got to use some estimates,
7 whether they're engineering estimates or accounting
8 estimates or planning estimates in terms of when you think
9 the -- that asset will ultimately expire. And that
10 requires some forward looking mechanism. Whether you use
11 historical data or mortality data as your basis for doing
12 that or other data that's all part of the depreciation
13 analysis itself. But that's where I came down to the
14 concept well, how -- how does actual lives actually work
15 with depreciation in the context of what the Legislature
16 said. And my analysis on that came back to a remaining
17 life calculation versus a whole life calculation whereby
18 the remaining live calculation must take into account what
19 you've depreciated today. And that to me squared with
20 what the Legislature -- what the language of the
21 Legislature was in my reading.

22 Q I have a comment on the depreciation rate tables that you
23 are proposing which seemed to be reasonable and logical
24 thing to put forward for the state of Alaska which -- in
25 which probably the assets do depreciate perhaps a little

1 quicker than they do down in Vermont where I grew up. And
2 you also made a comment that you reviewed many of your
3 clients' depreciation tables that exist currently under
4 the RCA order and that they were similar in many ways,
5 dissimilar in some, and that there were a few areas that
6 you felt probably would need a revision. What were those
7 areas I'm curious to know?

8 A The -- I've got some notes on this, but just without going
9 to the specifics.....

10 Q I understand.

11 A of it, as I recall motor vehicles was one account for
12 sure that -- that required a little more difficult look.
13 Circuit equipment was an other that's -- in several
14 instances that some of the circuit equipment that's being
15 depreciated now in this state is being treat --
16 depreciation at a slightly higher rate than in other
17 instances. And the third account was one of the -- one of
18 the aerial or underground cable accounts.....

19 Q Right.

20 A which looked to be perhaps might be a little bit long
21 in the lives. What was -- what was mysteriously missing
22 was the buildings account. And that the -- the only
23 explanation that I could come up with why the FCC doesn't
24 have a buildings account per se is that these were large
25 telephone companies in the Lower 48, they were all price

1 capped companies and most of those companies generally had
2 their property in a separate subsidiary and the property
3 is leased into the telephone company, so they don't have
4 -- they don't have buildings assets. Most of their
5 buildings are leased through their private real estate
6 companies and, therefore, there's no need for one at that
7 level. In Alaska most of the smaller telephone companies
8 don't have that and they do have a buildings account.
9 We'd have to establish a range for that account.

10 Q When we look at your burden of proof initiatives, when you
11 talk about they need to show the burden of proof, is that
12 really substantially different than the burden of proof
13 that they -- that the proponent has now?

14 A No. I don't think --.....

15 Q And just -- I didn't think so.....

16 AI don't think it is.....

17 Qeither.

18 Ano.

19 Q And then my last question was depreciation for some reason
20 seems to cause heartache, I don't know why, it's a lovely
21 thing, represents, you know, the opportunity for
22 reinvestment. How do you feel -- how does the Coalition
23 feel that the Commission....

24 OPERATOR: Your conference call has ended. Thank you.

25 Qdoes on depreciation overall. What is the general

1 feeling of the Coalition as it pertains to depreciation
2 and the results of the reviews that we do on depreciation?
3 A The biggest concern that the Rural Coalition members have
4 is the cost of depreciation studies, the frequency
5 associated with the cost, and the lag time from the time
6 the studies are filed until the time they can be
7 implemented. Generally from a result standpoint aside
8 from those issues they're relatively happy with where we
9 are in depreciation. It's doing a reasonably decent job.
10 And that's the -- what we're trying to cure with the
11 streamlining regs that we have in front of you know are --
12 are those issues that are burdensome to the smaller
13 companies that -- largely the cost issue and the
14 preparation of a full blown study and a lag time in
15 getting implementation 'cause that just perpetuates
16 problems as a lag time lengthens.....

17 Q I didn't notice in any of the proposed regs really any
18 discussion of the item that you.....

19 CHAIR JOHNSON: Could we go off record for just a second?

20 COMMISSIONER GIARD: Okay. I don't think they want to
21 hear my questions anyway.

22 (Off record - 4:00 p.m.)

23 (On record - 4:20 p.m.)

24 HEARING EXAMINER OLSON: Okay. Mr. Ayotte, we are back on
25 record and when we lost the conference call actually Mr.

1 Honchen was answering a question. And then before we got
2 everything shut down there was also a follow up question by
3 Commissioner Giard. I do need to ask you though whether you
4 request that we play back for you now 'cause it's easier to
5 deal with it now than to deal with it in the future, whether
6 you want us to play back about five minutes of answer of Mr.
7 Honchen and then follow up the question of Commissioner Giard
8 or whether you just want to go forward with the discussion?

9 MR. AYOTTE: Perhaps if I could just have read back the
10 Commissioner's question? I don't need to hear the earlier
11 response.

12 HEARING EXAMINER OLSON: Okay. Well, the Commissioner has
13 already indicated to me in case that should happen she doesn't
14 remember the question, so we're going to go off record. And
15 Suzie, you can do this, right? Okay. The in-court doesn't
16 like but I'm going to do this, we're going to go off record and
17 then I'm going to have her rewind, play it back the portion
18 that we missed. I don't know how else to take care of this
19 record. You're long distance and....

20 MR. AYOTTE: Then, Mr. Olson, just please proceed.
21 That'll be fine. We don't need to go back on that.

22 HEARING EXAMINER OLSON: Are you sure?

23 MR. AYOTTE: Yes.

24 COURT REPORTER: I'll send him a page.

25 HEARING EXAMINER OLSON: Okay.

1 COURT REPORTER: I'll fax him the page.

2 MR. AYOTTE: Well, thank you very much. I appreciate the
3 opportunity to participate telephonically, but I don't want to
4 delay the hearing, so you can proceed.

5 HEARING EXAMINER OLSON: Okay.

6 COMMISSIONER GIARD: Okay. You'd like me to proceed?

7 HEARING EXAMINER OLSON: Yes.

8 BY COMMISSIONER GIARD:

9 Q Okay. The question that we've all been waiting for with
10 bated breath, I appreciate you all sitting around, is
11 about materiality. One of the surprises that I didn't see
12 in the regulations -- or proposed regulations was any
13 discussion really about materiality in depreciation. And
14 I think it brought it forward in my mind when you were
15 talking about the length of time that it takes to do
16 depreciation study versus the result of the depreciation
17 study which frequently according to you do not have
18 significant material variances. Now I understand certain
19 other depreciation studies there are results that are
20 significantly different, but in terms of item number C on
21 your regulations, other depreciation rate changes, could
22 you talk a little bit about why you left the concept of
23 materiality in those depreciation rate changes out of the
24 picture? I mean 'cause I'll tell you that I was thinking
25 that it would be interesting to look at materiality when a

1 de- -- when an entity wants to come in for a depreciation
2 change and the depreciation change isn't material on its
3 face or materially significant and we can decide how to
4 determine that, then there should be or I think there
5 could be some standards of materiality for depreciation
6 that may make the process go a little smoother such that
7 you really only focus perhaps on those areas where there
8 is what we would consider and decide is a material
9 component.

10 A Well, that's.....

11 Q But that was missing.

12 A Well, that's actually the intent of what we're trying to
13 do with the whole notion of the depreciation tables. The
14 tables themselves give a fairly decent range of lives for
15 -- for most accounts. The sub C of the depreciation
16 section deals with those areas where an account would fall
17 outside of those ranges. And we expect that to happen
18 minimally. We don't honestly expect that to be a frequent
19 occurrence or for many accounts. So to that extent we
20 were -- we were satisfied with to the extent that we're
21 outside the range then we would -- we would only provide
22 data and study information as it relates to those accounts
23 that fall outside the range and why -- and why we believe
24 it would be appropriate to adopt the rates that fall
25 outside the range. With respect to the Commission action