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MR. JACKSON: .....to all these benefits. So I think citing the full page newspaper ad isn't really very helpful to the question that's before you which is, you know, when it's things which are adverse to the customer as opposed to things which are big benefits to the customer.

COMMISSIONER THOMPSON: Well, your answer fed into my next question which is when the state of Oregon started a couple -- I think it was Oregon, a couple months ago a -- on the -- their regulatory commission's website a chart that compares offerings from different companies. It's a place, even though it is web based as well, where consumers can go and find out the basics of all these different services and make comparative choices on the theory that markets function best effectively if customers have the information to make a choice.

I'm wondering if the companies would be supportive of us developing a tool similar to that to help customers get the information they need to make effective choices, is that a more appropriate regulatory role than requiring publication of ads in newspaper that people may or may not read to provide what in my mind might be more useful information allowing a comparison?

MR. MONINSKI: Well, I certainly don't disagree with what Mr. Jackson said a moment ago that full page advertisings for new and innovative products and offers are the best way and we do other kinds of things in our rates and terms and conditions that maybe wouldn't even justify that kind of advertising approach, how do we get that information out to the public. I would still argue that web site advertising is an improvement over today's method of noticing.

I don't think ACS would be troubled by the suggestion that you mentioned or something similar to the Oregon plan, but as always the devil's in the details. We do this in our companies, we take a look at our offers and our tariffs and we put them side by side and very often we find similarities and very often we find significant differences. And it occurs to me that it may be difficult to put together a matrix that would clearly, carefully and accurately describe side by side comparisons for those various offers. Conceptually though I don't think we would have a problem with it.

COMMISSIONER THOMPSON: Okay.

MR. JACKSON: The consumer advocate in Maine gave me a copy -- and it's a separate agent, separate.....

COMMISSIONER THOMPSON: Uh-huh.

MR. JACKSON: .....agency, gave me a copy of their periodic newsletter that has such information.....

COMMISSIONER THOMPSON: Uh-hum.

MR. JACKSON: .....for long distance companies and rates. And I guess I have to agree with Mr. Moninski in theory it's a great idea, but it will be very difficult to keep current and accurate comparisons. And in certain markets, you know, what's good for one customer is not necessarily good for -- or what's best for one customer is not necessarily best for another customer because.....

COMMISSIONER THOMPSON: Uh-hum.

MR. JACKSON: .....tariffs are tailored to particular customers with particular calling patterns. And so if you could do it accurately and with enough detail I think it would be a great idea, but.....

COMMISSIONER THOMPSON: Okay.

MR. McKENNA: And you know another notion which could work, it's a -- it is that -- it is only customers that are affected by an increase in the carrier they currently have, I think that's the concerns here, it's not whether your neighbor gets a rate increase that's not known and that somehow damages you, it's consumers that actually have that service. So if an incumbent were required to alert its own customers of an upcoming increase with some time (indiscernible) advance, that would adequately cover, I think, your concern.

COMMISSIONER THOMPSON: Okay.

MR. SAUPE: I was just going to reinforce what Mr. Moninski and Mr. Jackson said, I think it's a good idea. What I have in mind is in the business section of the paper there's an interest rate table usually.....

COMMISSIONER THOMPSON: Uh-hum.

MR. SAUPE: .....that -- interest rates are a little more easy to compare on an apples to apples basis I think. Just looking at mileage plans for example, how do you compare X miles per dollar on three airlines versus six miles per minute on two different airlines, I mean, it would be a daunting challenge, to keep it on a consistent, comparative basis, but the concept is a good one.

COMMISSIONER THOMPSON: Okay. A couple times -- and I think it's Mr. Lehman that mentioned it today, the possibility of limiting our -- exercising our regulatory authority to limit increases by some standard over time. And I think you said yesterday, Dr. Lehman, that this -- we as a state are remarkably behind in terms of method of rate regulation while we may be ahead in terms of competition. In order to figure out -- to do the calculations like they do in price cap markets about where to start and where to set the standard, isn't there a presumption of some basic cost information?

DR. LEHMAN: Well, I think you -- there's two separate parts to your question, I mean, the limit on the amount of increase the states have provided information on -- which were mostly in the northeast United States, these are states that already had price caps and they have recently gone to more deregulation of retail rates,.....

COMMISSIONER THOMPSON: Uh-hum.

DR. LEHMAN: .....but said there would be maximum increases. So -- but your question seemed to apply more to the initial putting in of price caps and as far as I'm aware pretty much they were grandfathered from the current prices in those states, there was no new cost study done to determine a starting point for prices. Virtually every state I'm aware of that put in price caps said what were your current rates and the only thing is we will now abandon rate of return regulation and now adopt those prices.....

COMMISSIONER THOMPSON: Uh-hum.

DR. LEHMAN: .....for whatever service baskets like basic service we're looking at and the increase will be dictated by some inflation factor, some productivity offset.....

COMMISSIONER THOMPSON: Uh-hum.

DR. LEHMAN: .....and some mechanism like that. I don't think any state employed a new cost of service study to determine where its prices should start.

COMMISSIONER THOMPSON: Did your suggestion in your testimony that a bypass or how -- what I would characterize as bypassing price cap regulation and say instead don't bother with that, just tell the companies that can't increase more than a certain rate?

DR. LEHMAN: I think the answer's yes, I think it bypassed that, but I think some of the earlier questions, you know, if -- if you have a carrier that has some areas that are deemed to be competitive under my.....

COMMISSIONER THOMPSON: Uh-hum.

DR. LEHMAN: .....trigger and some areas that are not competitive, this is -- there is this issue about how you're going to keep these separate accounts for wire centers let's say or communities that are competitive and those that are not.

COMMISSIONER THOMPSON: Uh-hum.

DR. LEHMAN: And I guess as an economist I don't have quite the amount of confidence that those accounting records would be easy to separate,.....

COMMISSIONER THOMPSON: Uh-hum.

DR. LEHMAN: .....I mean, a natural alternative would be adopt price caps at that point for the noncompetitive markets because that insures that prices would not rise in the noncompetitive areas, but would not require detailed accounting of what is the cost of serving this particular community as opposed to the other communities that the carrier might serve.

COMMISSIONER THOMPSON: Okay. Do the -- I'm probably putting you on the spot with something you haven't discussed with your client again, but what -- Dr. Lehman's answer suggests that we may have to change the method of regulating companies in the rural markets because if they have affiliates that serve in competitive markets to price cap regulation, do you have any thoughts on that?

MS. GRAHAME: No.

COMMISSIONER THOMPSON: Okay.

MS. GRAHAME: I don't and as you know the Rural Coalition is comprised of quite a few companies and that would be something I would need to discuss with them first.

COMMISSIONER THOMPSON: Okay.

DR. LEHMAN: Actually I would add to -- I would amend my own answer. In case of rural companies I think that there's a host of additional issues you need to look at in terms of changing the form of regulation. I think that's a substantive issue and it deserves a lot more attention.

COMMISSIONER THOMPSON: Okay. I've got a real specific question for AT&T, it's -- it comes out of -- on page 8 you reference the Vasconi affidavit that was filed sometime ago originally. Do you know -- and the answer's probably obvious from what the testimony doesn't state, but do you know if that number has changed, the 7.3 million or a little bit over 18 cents a minute?

MS. CATLIN: We have not received any additional cost information to make that analysis.

COMMISSIONER THOMPSON: Okay. I want to ask all the parties again about another topic that was raised or suggested by the ATA's comment, which is service quality regulation. Do we have a different obligation -- we meaning the RCA, have a different obligation to monitor quality of service in this market if we decide that prices are something the competitive market's going to control. Are -- is quality of service something the competitive market is also going to control or should we adopt some baseline standards or some other form of regulation to insure that customers continue to receive quality service? I'll ask ACS first.

MR. MONINSKI: I think as a general proposition markets will control quality of service issues in much the same way that they will control pricing issues. Having said that there was a place in, I believe, ACS' reply comments where it was talking about the change of status of AT&T to non-dominant and the implications of that change of status. And one of the things that we said is while we fully support that change of status there may still be some concerns on the part of the Commission in terms of setting that baseline or establishing some minimum level of network performance that you still might want to impose on a going forward basis. That concept would be as valid in the local market as it is in the LD markets or at least our comments in that regard apply to both.

The only thing that I would suggest though is that to the extent that you determine to do that and that you impose some minimum level of network performance that it be imposed on all participants. That is not the case in the long distance market today and it probably should be. So if minimum standards are a good thing and in the public interest and they are a good thing for all of the participants in the market.

COMMISSIONER THOMPSON: Okay.

MS. TINDALL: I think that while it's true that if a market is close to perfectly competitive and very robust with providers fighting to serve every customer then you don't have to worry about quality of service standards. I don't think that's the situation we have yet in Alaska and so I think it is fair to worry about quality of service standards. And like -- you know, this is an area where the dominant, non-dominant distinctions were useful because the Commission could insure itself as long as there was a dominant carrier that there was some standard bench mark.

I think this issue for us becomes like the carrier of last resort obligations that as market shares move closer together and there's not a distinction between carriers in a given market then you want to move toward parity or outright parity in requiring whatever service standard you require. But I think that.....

COMMISSIONER THOMPSON: Okay.

MS. TINDALL: .....there's a definite role for the Commission in maintaining service standards at this point.

COMMISSIONER THOMPSON: Okay.

MS. GRAHAME: On behalf of the Rural Coalition we very much believe that you should have quality of service standards, we believe there should be parity. Certainly when you're comparing however wireline to CMRS, there are differences and there are some standards that CMRS providers cannot meet at this time and obviously the quality of service standards should reflect that, but we do believe that there should be quality of service standards for many reasons. Two that come to mind immediately are number one,—the importance of telecommunication service in rural Alaska.

As we all know in this room it is a critical link for people in rural Alaska and the communications system has to work and for that reason we think there's a really strong public interest reason to have quality of service standards here. Moreover, when a carrier receives Universal Service Funds we believe that what comes with that is a commitment to provide a minimum level of service in terms of service quality.

And I would note that in your Digitel order issued last Friday, you know, you reserved the right to issue quality of service regulations.

MR. SAUPE: In the long distance market I would agree with Ms. Tindall's comment that there should be parity and equality of standards, we don't oppose a baseline of standards and we're content to live with the quality of service standards that currently apply to us so long as they're applied on a competitively neutral basis.

COMMISSIONER THOMPSON: Okay.

MR. ROWE: And certainly ATA is interested in quality of service standards. We think if just a competitive environment and I suppose we could sell a lower service at a lower price or offer it as an entity out there and there would be customers that would take that. And part of that is because they don't have perhaps the finances that people who take the more robust service might be able to take and they might feel that just to have access to the system they would accept it. And yet it would probably in a public interest determination, I would hope, fall below the level that you would want the public to have. So I think it's necessary for the body representing the public interest to determine some quality of service standards and what is good for the public.

COMMISSIONER THOMPSON: Okay. Thank you.

MR. AYOTTE: Mr. Olson, this is Mark Ayotte, it's difficult for me to determine who's going next, but I would like to respond to the Commissioner's comment at this.....

HEARING EXAMINER OLSON: Go ahead, this is a good time.

MR. AYOTTE: Thank you. Mark Ayotte on behalf of Dobson. I simply wanted to relate that the question of service quality standard regulation was raised in the context of a competitive market as part of the local competition consideration. One of the earlier comments again tried to shift this question into the wireless arena and particularly into the ETC status for a wireless carrier. And I think that simply illustrates the point that questions with respect to service quality regulation of a CMRS provider are so much more difficult, broad and challenging issues, more so than the question of do we need service quality regulation in a competitive market.

There are some compelling issues of federal preemption and, you know, depending upon what one means when they talk about service quality regulation, there may very well be limitations on the state commission's ability to impose service quality regulation of a wireless carrier either directly or within the context if granting an ETC designation. The comment was made that in the recent Alaska Digitel order the Commission reserved its ability to consider wireless service quality standards in the future. Ultimately I think that was based on as stated in the Alaska Digitel order that there was no record of evidence demonstrating that the standards are needed.

So, again, I don't think that issues relative to wireless service quality or questions relative to service quality in the context of designating a competitive ETC are necessary or appropriate to consider in this docket.

COMMISSIONER THOMPSON: Thank you.

MR. AYOTTE: Thank you.

COMMISSIONER THOMPSON: I'll pass the mic to my colleague to the right.

CHAIR JOHNSON: I think I'm going to try to organize my questions on the basis of a company with some opportunity to respond. I thought I'd start with AT&T and I apologize, I'm going to sort of jump around a variety of topics.

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(Tape change)

Tape 3

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There's references in both your initial comments and your reply comments about the carrier of last resort obligation and AT&T's interest in providing for some mechanism or some preference for sharing of that responsibility. What is AT&T's notion of what mechanics of that might be? What proposal -- 'cause I note that your comments did not include anything along those lines. What specific mechanics or what specifics would you provide to flesh that out?

MS. CATLIN: Well, what we would conceive is a sharing by location within the state. There are some opportunities for -- there are hub and spoke, for instance, locations where it would be most efficient to have one carrier serve a cluster of communities and based on their DAMA technology, for instance, because there are two facilities based carriers that this would apply to. It would be GCI and Alascom. And our DAMA technologies, for instance, don't talk to each other. So there would be certain groups of communities that could be split in terms of the responsibility for serving. That does not mean that one or the other carrier would withdraw. It just means that the responsibility for carrier of last resort would go to one or the other carrier. And this would result in a roughly equal splitting of the responsibility based on communities throughout the state. That's our conception.

Now it could be -- we'd like to see this actually worked out through a workshop where all of us could have input as to how that could happen.

CHAIR JOHNSON: Okay. Mr. Jackson.....

MS. CATLIN: But it's location.....

CHAIR JOHNSON: Oh, excuse me.

MS. CATLIN: .....by location.

CHAIR JOHNSON: Okay. Mr. Jackson.

MR. JACKSON: Yes, just briefly. Carrier of last resort can arise in two different contexts. One is if someone wants to withdraw from a given location and then the other is if there's a new location that doesn't have any service and who is it that you're going to make serve there. The latter, I think, has only occurred one time in the last 20 years having to do with Chisana so I mean, you know, we could spend a lot of time talking about that issue, but it happened once in 20 years, so it may not serve a lot of time.

The other issue has to do with when you're allowed to withdraw. In the context of R-98-01 we did make some changes to -- I'm looking at Ms. Kenyon hoping that she'll shake her head and say I'm right because my memory is a little vague. We made some changes to the standards under which someone could withdraw including when a non-dominant carrier with more than a certain percentage of the market withdraw. So I think we already have addressed that at least to some extent, and to the extent it was thought appropriate when that issue was specifically considered on its own. So we don't know of any other modifications.

As you indicated there's not a specific proposal. And so we don't know of a proposal we would support at this time. And it seemed to have been addressed in R-98-01 at least to some extent.

CHAIR JOHNSON: Okay. Ms. Grahame, no comment?

MS. GRAHAME: No, no position.

CHAIR JOHNSON: Okay.

HEARING EXAMINER OLSON: Ms. Catlin was trying to say something.

CHAIR JOHNSON: Oh.....

MS. GRAHAME: As applied to the IXC market.

CHAIR JOHNSON: .....sure.

MS. CATLIN: Just to note, there are certain locations where Alascom is obviously the only carrier, so to split those locations even though they are the highest cost and lowest density locations would be difficult. We're not proposing to spin off some of our facilities at this point, but what we are looking at is where GCI has already built out in certain locations for them to take that responsibility.

CHAIR JOHNSON: At the risk of repeating it, I know we went round in response to Commissioner Thompson's question, but, Mr. Saupe, could you state AT&T's statement -- or position relative to the ACS's detariffing proposal again for my benefit? Do you have specific comments on the (indiscernible) mechanism or the duration, the time elements that are involved in that?

MR. SAUPE: I believe it's in the local competition docket where a seven day rule has been proposed. It may actually have been in ACS's rate case. I'm not remembering precisely. I believe we have said that we could live with a seven day notice period, but that a one day or anything shorter would be impossible for us in our position as a total service reseller to react and that we could get caught in a squeeze if, ACS, for example, were to announce a retail rate increase -- and let me back up and always distinguish -- and I'm sure this is in everyone's mind, retail and access markets. Access markets are -- we're not talking about there. Those should be -- those are monopoly markets that should remain regulated in our view.

In the retail market though, if, for example, ACS were to implement immediately a 20 percent rate increase to us and we didn't have ample time to adjust our systems and our billing and our notice to our customers to respond, we could find ourselves squeezed because our rate is a discount off of their retail rate. And so we need at least enough notice to react. And that's our concern.

And I believe we're on the record a saying that we could do that with difficulty in as little as seven days.

CHAIR JOHNSON: Okay. Do you believe -- is the AT&T

position the same as to local and the IXC markets? Do you foresee, you know, should there be differences between the two markets or to what degree should the notice requirements be different?

MR. SAUPE: Well, I'll try and answer and Ms. Catlin can either kick me or correct me when I finish, but I would think so long as we're -- you're in a competitive market and you have similar conditions that you could have similar relaxation of the noticing.

MS. CATLIN: I would agree with that.

CHAIR JOHNSON: Okay. Thank you. I'd like to -- I have a question and it pertains to your proposal, I think it's in your reply at page 10, where you -- and let me go to that myself. You had made some modifications, some suggested modifications to GCI's proposals regarding the determination of dominant versus non-dominant. And there's a reference in subsection D to voluntary or mandatory rate caps. What is the position of AT&T in terms of this Commission writing into regulation rate caps, or do you believe that those need to be considered and adjudicated on a case by case basis?

MR. SAUPE: Well, we're not proposing here necessarily that you develop rate cap regulations. What our thought is if you were doing a dominant non-dominance analysis of AT&T Alascom, for example, in the interexchange market, one factor you would consider in your determination of whether we have market power that could be abused would be factors like geographic rate averaging which constrain our ability to raise rates. And, further, in markets that aren't geographically averaged like the private line market our stated commitment not to raise rates and to impose a rate cap that could then be taken into consideration along with the other factors that are listed in this regulation in deciding whether we're dominant. Does that make -- does that -- I didn't.....

CHAIR JOHNSON: No, I think I understand what you're saying. I guess what I heard you saying is you'd prefer this matter be taken up on a case by case basis in the context of the factors that are listed here.

MR. SAUPE: Yes, with.....

CHAIR JOHNSON: Yeah.

MR. SAUPE: .....these guidelines or similar.....

CHAIR JOHNSON: Right.

MR. SAUPE: .....guidelines.

CHAIR JOHNSON: Right.

MR. SAUPE: And this isn't the perfect regulation, but we believe that this list of factors are relevant in determination of whether we have market power.....

CHAIR JOHNSON: Right.

MR. SAUPE: ....which is relevant to whether we're dominant.

CHAIR JOHNSON: Right.

MR. SAUPE: And one of those factors would be whether we would voluntarily agree not to raise our rates in markets that aren't otherwise constrained by geographic rate averaging.

CHAIR JOHNSON: Okay.

MS. CATLIN: However, if you were willing to write a regulation that would say we cap our rates, there is geographic rate averaging and we are non-dominant we'd be more than open to that as well.

CHAIR JOHNSON: Finally, and this may be a question for Ms. Catlin. It's more of a broader question. Section 2 House Bill 111 which is the reason why we're here today, it could be argued that the primary drivers in the formation of section 2 related to competition in the local exchange market. Do you believe that that's an appropriate reading of section 2 or do you believe that this is the responsibility of this Commission to review competition in telephony regardless of which market we're talking about, be it local or IXC? Do you believe that there's any limitation here? Do you believe that this Commission opens itself up to criticism if we venture too far into changes to IXC regulatory patterns?

MS. CATLIN: I believe that the policy 2 applies to both local and long distance. I think that we should be reviewing both markets relative to the competitive nature of the market.

CHAIR JOHNSON: Maybe I could ask the other parties if they have an opinion on that subject if there are.....

MR. SAUPE: Before you could do.....
CHAIR JOHNSON: Oh, go ahead.
MR. SAUPE: .....could I just elaborate a little bit?
CHAIR JOHNSON: Sure.
MR. SAUPE: I mean divining legislative intent is -- you know as a lawyer difficult and perhaps impossible task. I would acknowledge that the voices that were crying the loudest probably were at the Legislature were addressing local issues. But if you look at the way the statute is worded there's no distinction and, in fact, the language is very broad in terms of your direction to review all telecom rules and regulations and to apply these policies and procedures. So it's our strong position that these directives to you apply equally to the long distance market.
MS. CATLIN: And I was there and I was one of the voices.
CHAIR JOHNSON: Could I just ask for the parties.....
MR. SAUPE: She was just more polite than some of the others.
CHAIR JOHNSON: Yeah. Could I just ask the parties what their view on that subject is? And, Heather, why don't you go ahead.
MS. GRAHAME: It's the Rural Coalition's position that HB 111 was intended to address competition in all telecommunications markets. We read the language of the bill -- we read the actual words and there's no limitation. And we

read this as the Legislature saying we want less heat in all markets. -

CHAIR JOHNSON: Mr. Jackson, Ms. Tindall?

MS. TINDALL: At the time the committee that wrote HB 111 locked itself away and wrote these provisions there were proposed amendments by both ACS and AT&T Alascom and I believe the ATA, so in all fairness I would have to say that I think the intent was to cover both long distance and local.

CHAIR JOHNSON: Mister.....

MR. MONINSKI: I generally concur with everything everybody else said. Clearly the preponderance of issues that were being discussed, I think, at the Legislature were related to local markets. There were other issues related to the LD market and I think the language of the legislation is clear that we are looking at all markets and I believe it's appropriate for the Commission to do that.

MR. AYOTTE: Commissioner, this is Mark Ayotte on behalf of Dobson. When speaking in terms of all markets I'm assuming that that's limited to local and long distance and not overly broad to also include the wireless market.

Simply by looking at the language of HB 111 and the policies that are referenced each of those policies includes either references indirectly or by implication to unbundled network element, consumer rates, methods of depreciation as well as certificates of authority. I think by negative implication those are not broad enough to include consideration of wireless market insofar as the Commission is preempted by federal law from regulating the rates or entry of a CMRS provider. So I just wanted to make that point for clarification when considering all markets. I think it's limited to probably local and long distance on the landline side. Thank you.

CHAIR JOHNSON: Your Section 332 objection is noted.

MR. AYOTTE: I try to note it every time I get a chance. Thanks.

MR. ROWE: Mr. Chairman, I'll add my comments for ATA to that.

CHAIR JOHNSON: Sure.

MR. ROWE: As I was there and I remember the initial amendments that were put in in the subcommittee, one of them certainly dealt with AT&T's concern for dominant carrier status. And, yes, I would say Ms. Catlin's voice might have been the small still one in the room at some times, and I think the ILEC voices were raised significantly high. Fortunately, it won't be the members of industry that have to make a report on November 15th, so it's up to this group that we're addressing today to come up with the interpretation of the intent of the Legislature. But I would think you'd be remiss if you left out the local issues.

CHAIR JOHNSON: If people don't mind running over by five minutes I can probably be done here in 10 minutes, if that's okay. with the parties.

Mr. McKenna, are you still present?

MR. McKENNA: Yes, I am.

CHAIR JOHNSON: I had a question. I was reviewing your affidavit and there's considerable discussion in that affidavit about your analysis and experience with detariffing and the interexchange markets. And there's further discussion in the affidavit about your analysis and experience in cellular markets.

MR. McKENNA: Yes.

CHAIR JOHNSON: I guess as I read your affidavit I did not notice specific discussion of experience as it pertains to detariffing in local markets. Could you comment on that, please?

MR. McKENNA: Yeah, I'd be happy to. Certainly in local markets I think I did comment in mentioning that I consider Ted Moninski's suggestion that 75 percent of consumers can be addressed with a valid offer and a competitive one, that I think that supports competitive market entry, and I would consider that to be a competitive market.

CHAIR JOHNSON: Okay. That's certainly your view. But I was wondering in terms of if there's other experiences in terms of detariffing at local levels around the country that you're familiar with that you'd care to relate to us?

MR. McKENNA: Well, you know, I wasn't speaking specifically them, to other situations with the local market. What I was trying to do was to bring more of a marketing sense to the discussion. Discussions I have had with ACS have mentioned to me that there's the potential for some things which to a marketing kind of person, which I am, are really quite surprising and unorthodox and not competitive.

And what I'm thinking about are a couple of particular things, one is it's a rarity in the extreme in a competitive market situation to share as much data with your competitors as is shared in the cases we're talking about here. I've heard discussions of is seven days adequate, is 30 days adequate. When I look at other even telecommunications situations, and I'm thinking now with AT&T which is not local for purposes of this discussion nor is the wireless piece, but instances of sharing of competitive information that far in advance would be almost unheard of. So when I hear discussions of the amount of information sharing in what is already determined to be a competitive market by some set of metrics, and I understand we're trying to determine what those are, I'm really quite surprised with the length of time we're talking about in a competitive environment. And those are the points I was trying to make.

CHAIR JOHNSON: Okay. I guess I have a series of questions for ACS and they're in no particular order and I apologize for kind of jumping around here in a lot of different directions. Relative to your notice tariffing proposal and there was questions, my colleague had some questions about shortened time review of tariff filings. The question I had is how would special contracts be covered or would they be covered under this proposal or would they be excluded from Commission review all together?

MR. MONINSKI: Just to bring us to a good jumping off point, ACS has proposed the use of notice tariffs in those competitive markets where all of the participants are now non-dominant. Notice tariff filings continue to be jurisdictional to the Commission. They're filed as we propose on a seven day notice cycle. It was ACS's and it is ACS's intent that special contracts be treated the same as mass market generally available tariffs for purposes of notice tariffing.

CHAIR JOHNSON: I guess I'm going to hold another question. We'll see if we have a second round of questioning later. I'm just aware of the time, I don't want to hold anybody over. I may come back to that a little bit at some point.

Mr. Moninski, do you have -- does ACS have an opinion on the proposals of the Rural Coalition relative to certification of eligible telecommunications carriers in the regulations they've generated?

MR. MONINSKI: If I could just ask for clarification?

With regard to the Rural Coalition's proposed regulations.....

CHAIR JOHNSON: Correct.

MR. MONINSKI: .....for that? ACS reviewed that, reviewed those regulations. The only opinion we have is basically the same comment we put in our written comments. We fully understand the Rural Coalition's reasoning for making the proposals that it has made. We endorse that reasoning. The only issue that I was that I personally found the proposed regulations to be lengthy. I did find it a little bit difficult to see how all the pieces integrated. That may simply have been a function of not having had the opportunity to work with them yet. It may also suggest that even though the same objectives that the Rural Coalition was attempting to achieve could be achieved by virtue of a more streamlined approach to that process, but beyond that we support the substance of it.

CHAIR JOHNSON: Do you believe that we should be considering the Rural Coalition's ETC proposal in this docket? Is it appropriate for the Section 2 House Bill 111 analysis?

MR. MONINSKI: That harkens to an earlier question that you asked also. And I guess our view is that the Legislature has sent this Commission as I said yesterday on an incredibly abbreviated time line with a fairly specifically defined mission. And my guess is simply producing the results associated with that mission within the time line that you have is challenging.

I don't believe there's anything in the legislative mandate that would preclude us from considering other issues. We ourselves thought about raising the shared carrier of last resort concept that we first surfaced in R-02-06. Having looked at everything that needed to be discussed in this proceeding it just didn't seem practical to do that. But I don't believe it is precluded. I just think it's a pragmatic judgment on our part and the Commission's going to have to make similar pragmatic judgments as to the number of issues it can actually address given the scope of the proceeding and the time it has available.

And so my answer is in short, no, I don't believe it's inappropriate to consider the Rural Coalition's proposals. It may be difficult given the limitations that you have.

CHAIR JOHNSON: Okay. Do the other parties have a view on that? I think I know what Ms. Grahame feels. Mr. Jackson?

MR. JACKSON: Yes, we do have a view. I would emphasize a lot of the same points that Mr. Moninski did, and would say that the Legislature is not going to fault you for doing more than they required you to do. But at the same time in your Order No. 1 you put some pretty clear guidelines that said we don't want you to go beyond what the Legislature required and if you do you're going to have sort of a big hurdle to overcome to get us to consider that.

And I would say that's where the ETC rules fall. And it would be better done in another docket because it isn't required by the Legislature and it is going to be very difficult and time consuming to include that piece. I mean we didn't even begin to address the merits of their proposal. And if it comes out as part of the proposed regs in this we would have extremely lengthy comments on the specifics of their proposal.

CHAIR JOHNSON: Mr. Ayotte?

MR. AYOTTE: Yes, thank you, Commissioner. Not only do I agree with the remarks that the Rural Coalition's proposed Universal Service rules don't meet the guidelines and the limitations established by the Commission in Order No. 1, and for that reason should not be considered. And similarly, for the reasons that Dobson set forth in its written comments.

We think that many of the proposals are inconsistent with federal law. Now that I've had a chance to read the Alaska Digitel order it's pretty clear from that decision that the Commission has considered and rejected the merits of many of the RCA's proposals. And they are items which require a lot of thought and consideration and input both from a legal and a policy perspective, which I think is really far beyond the appropriateness of this proceeding and everything else I've heard is on the Commission's plate for consideration.

And if anything, even if necessary to consider them it should certainly be done in a separate docket with full notice and a full opportunity for parties to consider, evaluate, provide thoughtful comment in the context of a separate proceeding.

CHAIR JOHNSON: Okay. Mr. Saupe?

MR. SAUPE: We don't take a specific position on this that's any different than has already been expressed.

CHAIR JOHNSON: Mr. Rowe?

MR. ROWE: We do take a position. And my members are spending time on nothing more important than the ETC designation right now. With the filings before this Commission requesting ETC designation and those that are probably pending in light of the decision that came out last week I think these are critical issues. I don't think the order the Commission put out precluded consideration of this. And I think it's paramount that you consider it.

CHAIR JOHNSON: Okay.

MR. ROWE: Thank you.

CHAIR JOHNSON: Maybe I could get to Ms. Grahame and just pose the final question. And I know I'm right at the point where I said we're going to break. I'm going to have some more questions maybe later down the road here, but, Ms. Grahame, maybe you could finish up. Can you tell us whether you believe that the Rural Coalition has discharged their burden of convincing this Commission that it ought to somewhat expand this proceeding to encompass the proposals that you've made?

MS. GRAHAME: Yes, I--think we have. I have to say I don't think the question is whether or not we've met our burden to convince you to expand. I think that the issues relating to local competition are the issues in this docket. The heat and the chaos in the market since 1996 has been focused on Anchorage and it's been focused on the competitive battles between GCI and ACS. And, frankly, if there had been more thought given at the start of the process back then there would be much less chaos now. And given the fact that Alaska is slated to get over $88 million in Universal Service Funds this year I think we'd be deluding ourselves to think that there won't be any more ETC applications. I think this market is going to be flooded with them. And my concern is that the rural companies together with the ETC applicants are going to be tying this Commission up in knots if we don't have some regulatory structure here. So I don't think the issue is whether or not we've met our burden to expand what is in HB 111. I think we're there. And I think it would be a real mistake to not address these issues right now.

I would also note, I mean, we're at the NOI stage and, you know, go ahead and publish our regulations and we'll get the comments and we'll red line them and I think you will come out with some workable regulations at the end of the day.

I would finally note, I'd like to echo something Mr. Saupe said yesterday which is if not now when? We addressed these issues, you know, back in R-97-12 especially relating to the need -- well, I'll just say in R-97-12 some of the issues we've raised in our comments here, were raised and we've asked for some sort of -- we've asked to have these issues resolved from a regulatory perspective.

In R-02-06 which dealt with local competition you excluded issues relating to Universal Service and ETC. And my question is if not now when? I mean these issues really are pressing and we really are trying to bring some structure to the resolution and I think it would be a mistake to carve them out. Thank you.

HEARING EXAMINER OLSON: The Commission intended on breaking from noon till 1:00. When we come back at 1:00 we're going to deal with the UNE issues 'cause that's when Mr. Shelanski and Mr. Miller are available. Mr. Miller is only available till 2:30 Alaska time. Mr. Shelanski is available till 3:00. And I suspect there'll be some recess after that, but the Commission has a lot of other questions still in other areas, but we're just going to take UNE to accommodate the witnesses that are available by phone. Okay. We'll stand in recess till 1:00.

(Off record - 12:10 p.m.)

(On record - 1:00 p.m.)

HEARING EXAMINER OLSON: Telephonically, please.

MR. McKENNA: Hugh McKenna.

MS. BRINKMANN: --Karen Brinkmann. Sorry. Go ahead.

MR. McKENNA: This is Hugh McKenna.

HEARING EXAMINER OLSON: Okay.

MS. BRINKMANN: Karen Brinkmann.

MR. MILLER: Dave Miller (indiscernible).

HEARING EXAMINER OLSON: So it's Karen Brinkmann, Mr. McKenna. Mr Shelanski, are you there?

DR. SHELANSKI: Yes, I am.

HEARING EXAMINER OLSON: Is Mr. Lindgren there? No. Is Mr. Miller there?

MR. MILLER: Yes, I am.

HEARING EXAMINER OLSON: Mr. Ayotte there? No. Is there anyone else there that I haven't said?

MS. PIGEON: Tina Pigeon from GCI.

HEARING EXAMINER OLSON: Okay. Thank you, Tina.

(Off record comments)

HEARING EXAMINER OLSON: Okay. What scheduling determinations have you made so that you can -- you want to tell the parties?

(Whispered conversation)

HEARING EXAMINER OLSON: All right. Let's go on record.

COURT REPORTER: We're on record.

HEARING EXAMINER OLSON: Okay. Commissioner Johnson just indicated that there's a Commission conflict for one or two of the Commissioners, so as a result of that we have to quit at 3:00 today so we're going to go straight till 3:00, recess, start up again tomorrow morning at 9:00. And I guess that sensibly (ph) goes along as we need to go to finish all the questions and comments that may be involved. Okay. And we're venturing into the UNE area now and I don't know whether the Commission wants to start over or just want to start or stay where you are with Chair Johnson and continue on from there, I guess. If you're ready? Unless you want to start. I can go back to Commissioner Strandberg and stick him on the hot seat.

CHAIR JOHNSON: Go to Commissioner Strandberg.

COMMISSIONER STRANDBERG: I'm always at least it appears like I'm the person on the pole here. This particular part has certainly been well briefed and we have been about this for shall I say a number of years concerning the UNEs. I do not have extensive questioning on it, but I do have a number of questions mainly I'm hoping to as Commissioner Thompson does so well, to make the record as good as we possibly can to help in our decision making process.

And I do have some initial questions for Dr. Shelanski.

DR. SHELANSKI: Yes, Commissioner.

COMMISSIONER STRANDBERG: And they relate to his testimony, so -- and that's on page 10 of 17, Dr. Shelanski, is it Shelanski, sir?

DR. SHELANSKI: Yes, that's correct.

COMMISSIONER STRANDBERG: Okay. And it relates to contestable markets. --

DR. SHELANSKI: Yes.

COMMISSIONER STRANDBERG: And I guess my start up question is in a contestable market do you see the need for an active consumer protection for the retail customer?

DR. SHELANSKI: Well, if the consumer protection takes the form of retail rate protection as opposed to other kinds of protection that might put in play, as a general matter in a contestable market I think that the case for retail rate protection is greatly diminished because of the negative effects that retail regulation can have on the development of competition moving forward.

And at some point there's a trade off between getting the kind of.....

HEARING EXAMINER OLSON: Excuse me, Mr. Shelanski.....

DR. SHELANSKI: Yes, sir.

HEARING EXAMINER OLSON: I don't know if they've got you on a speaker phone or what, but could you get a little closer to the phone or speak up a little bit louder. We're having -- all of us are having a little trouble picking you up.

DR. SHELANSKI: I'm sorry. Is this better?

HEARING EXAMINER OLSON: That's much better. Thank you.

DR. SHELANSKI: Okay. I apologize. I think where there is a contestable market the case for retail rate regulation diminishes because of the trade off that can occur between regulation on one hand and getting the kind of competition developed that truly makes regulation unnecessary. And there's always a difficult point when the market is not yet perhaps vigorously competitive, but it's still competitive enough that there is entry occurring and there is -- and the market is contestable by new entrants who want to get in.

At that point the competition that is already in the market and the contestability reduces the market power that the incumbent or one of the other competitors actually in the market might have. And one has to call in -- one has to ask seriously whether the cost of regulation and the possible deterrence to new competitors the regulation might cause is in the best interest of consumers. So where markets are truly contestable I tend to think that the case for retail rate protections of consumers is weak.

COMMISSIONER STRANDBERG: You know, Dr. Shelanski, we're where the tire meets the pavement here. And we do have a consumer protection section where in years past we've had -- excuse me, sir, some fairly significant numbers of consumer complaints in this market. And you know, this is a serious question. I'm not flip at all, but where the tire meets the pavement it's -- I hear what you're saying from a theoretical standpoint, but from a practical standpoint where we are having to make decisions about this, do you have any experience with other markets where the transition -- where one was able to transition to competition and to bring the consumers through so that they're not harmed?

DR. SHELANSKI: Well, here in California we've, unfortunately, had some very hard lessons in exactly that question of how to transition and mostly in our energy markets, not in our telecom markets. And one of the things that has been emphasized here and that we have learned is that the most important thing in terms of bringing consumers through is to make sure that the competition that is the basis for deregulating is truly in existence and truly can persist.

So in terms of protecting consumers down the road or immediately I think that the emphasis should be on ensuring that the correct competitive incentives are in place. I really fear that on the retail side a transition certainly almost -- or almost always imposes some kinds of costs for a period on some consumers. The question is whether that transition is bringing the market to a better place where most consumers will be better off and the market as a whole will be better off.

And my concern about persisting with retail rate regulation of a binding kind is that short term complaints from consumers might diminish. Long term the entry into the market is not what it could have been and we're not even talking terribly long term. I mean one, two, three years. And we wind up with a market that is persistently regulated rather than one that really becomes truly competitive.

One of the markets that--some states considered regulating, although there were difficult jurisdictional issues that arose, was the cell phone market. And I certainly think it would have been a terrible idea to regulate the cell phone market when there were only two or three providers in some of those markets on the grounds that rates were not coming down as fast as people hoped. Service quality was not improving as fast as people had hoped. Because that rate regulation would have limited the speed of entry and the speed of digital conversion of the two to three additional cellular providers that came into most U.S. markets. So I think that there are examples of the trade off and sometimes regulatory forbearance particularly where competition is truly developing as it is in several of Alaska's major markets is despite the evidence of some short term pain on some consumers the better course.

COMMISSIONER STRANDBERG: On page 16 of your comments the sentence once the direct and indirect costs of rate regulation are factored in consumers will often be better off under an unregulated duopoly than under a duopoly in which one of the firms faces retail price regulation. Can you again -- can you explain to me how we can assure that -- or how we answer a disgruntled consumer in our consumer protection section giving a call to us with difficulty getting a phone?

DR. SHELANSKI: Okay. I mean certainly if the difficulty is being connected, is getting service at all, I don't really see that as a retail rate regulation issue. And there may be need for consumer protections of the kind that ensure that at very least a consumer will be served, that it's not possible for somebody to go unserved.

I don't -- I would be very surprised if the kind of -- that kind of complaint would be persistent or growing in a market.....

MR. LINDGREN: Dan Lindgren.

OPERATOR: Is joining the meeting.

DR. SHELANSKI: .....in a market where there are two competitors aggressively seeking to provide service. Certainly there will be small numbers of accidents, lost orders, those kinds of happen in a fully regulated market. But I don't see how retail price regulation would resolve that problem where you have two firms aggressively seeking to serve the customers in the market. I don't quite see how that would solve the problem.

And my concern is it actually could make the problem quite a bit worse to the extent that a third provider beginning to enter on the fringes of the markets who would eagerly jump in to serve anybody who was getting a delay in service would if retail prices were depressed be a lot less likely to be entering the market at least on a broad scale.

COMMISSIONER STRANDBERG: Thank you for your comments.

DR. SHELANSKI: Thank you, sir.

COMMISSIONER STRANDBERG: Now, I'd like to questions on the proposed regulations that ACS has. Should those be directed to Dr. Shelanski or should they be directed to you?

MR. MONINSKI: The regulations relative to UNE pricing?

COMMISSIONER STRANDBERG: Yes, sir.

MR. MONINSKI: I'd be happy to respond to specifics and mechanics of those regulations, but I think the other experts would be better to respond to the theories behind them.

COMMISSIONER STRANDBERG: All right. Well, I guess I wanted to go right to my question which is on page 7 of the regulation (b)(1). And in that regulation you proposed that we would use the FCC's hypothetical network standard and will presume the existence of the most efficient technology actually deployed by the providing company. Do you think or did you mean that to be the efficient ILEC standard that we dealt with earlier? Was that your intention to write that into that regulation, or is this something different than that?

MR. MONINSKI: I'm going to give you a very short answer, Commissioner, and then I'm going to ask Mr. Shoup to weigh in.

COMMISSIONER STRANDBERG: Okay.

MR. MONINSKI: We probably -- I would ask that we be careful about semantics. We have been using buzz words and I want to make sure I don't use the wrong buzz word relative to this regulation.

COMMISSIONER STRANDBERG: Absolutely.

MR. MONINSKI: More important is the actual standard that we're talking about as opposed to how it's being labeled. I'm not sure I could specifically answer your question about whether this is the hypothetical ILEC or the hypothetical carrier or hypothetical network. I've heard all of those used, but the essence of the standard is that it relies on the most efficient technology deployed by the providing company. And, Mr. Shoup, if you have anything else you want to add?

MR. SHOUP: Commissioner, this is not the old standard that this Commission has since rejected, the efficient ILEC standard. This is really the FCC's hypothetical network standard.

COMMISSIONER STRANDBERG: Uh-hum.

MR. SHOUP: And it's slightly different. For some clarification, in the Triennial Review order there is some discussion of this. And it's in paragraph 670 of the Triennial Review Order where the FCC says when they're talking about the most efficient equipment available they're assuming that that means somebody in the market and there was somebody in the competitive area has deployed it. And that's really what we're more getting -- we're getting closer to that with this proposed regulation.

In fact, in the Triennial Review Order itself which just came out there is an entire discussion of what TELRIC means and it begins on paragraph 668, but two paragraphs in they talk about what they meant by that.

COMMISSIONER STRANDBERG: So the legal support for that is where?

MR. SHOUP: Paragraph 670. And the FCC has also talked about what the hypothetical standard means in paragraph 683, 684 and 685 of the First Report and Order. If all those paragraphs, 683 through 685, the First Report and Order and 670 of the Triennial Review Order together with the remaining paragraphs in the Triennial Review Order beginning at 668 which discussed what they mean by the TELRIC standard, I think that's what we're trying to get to with this proposed regulation.

COMMISSIONER STRANDBERG: Okay. Need to know what you were doing there, so all right. Another question, and perhaps, Mr. Moninski, you can field this. GCI claims that we cannot legally require a CLEC to provide the equivalent of ILEC interconnection services given the provisions of 47 CFR 51.233 of the Federal Rules. Do you agree or not agree?

MR. MONINSKI: Again, you prefaced your question by declaring it to be a legal question. And I may not be the most competent person to try and answer that, and I'll defer to Mr. Shoup.....

COMMISSIONER STRANDBERG: Okay.

MR. MONINSKI: .....with this introduction. And that is I understand GCI's argument to be a Telecom Act argument. Under the Telecom Act you are not able to do that.

ACS takes the position that under state law such authority does exist. And if I can remember the citation off the top of my head I believe it is AS 42.05.311 subject to check. And, Mr. Shoup, if you have anything to add?

MR. SHOUP: We disagree with GCI, but to explain exactly I would have to go back and look at this section of the regulations again. But I understand that they're relying on 51.233. If I could take a second and look at it I could answer that question in a few minutes perhaps.

COMMISSIONER STRANDBERG: Sure. Okay.

MR. SHOUP: And, Commissioner Strandberg, if I may, Karen Brinkmann may have something to say about this 'cause I think she is on the line and I don't know....

COMMISSIONER STRANDBERG: Okay. I would.....

MR. SHOUP: .....this may be something she knows about as well.

COMMISSIONER STRANDBERG: All right. Ms. Brinkmann.

MS. BRINKMANN: Yes.

COMMISSIONER STRANDBERG: Do you have any comments on that?

MS. BRINKMANN: Thank you. It is Alaska Statute 42.05.311 I think that ACS relies on. While Section 251 of the Act and the FCC's rules do prohibit the FCC for say from imposing 251(c) obligations, unbundling obligations in particular on a

CLEC until such time as certain findings are made and (indiscernible) a CLEC should be regulated as an ILEC. There is, nevertheless, -- there are other states obligations are certainly preserved under the statute. And we have numerous examples of state, rate and entry regulation, access to facilities regulation that are certainly not preempted by the '96 Act that have nothing to do with unbundling obligations under 251(c). And I believe the type of access that you're referring to that ACS advocates in GCI's facilities is, frankly, more similar to the right of access to utility poles, ducts, conduits and rights-of-way under Section 224 of the Act which very clearly is not preempted by 251.

And so the right of access to GCI's facilities I would suggest would be -- as long as we're not seeking access to UNEs pursuant to 251(c) of the Act would not be preempted.

COMMISSIONER STRANDBERG: Does GCI have any comments on that?

MR. MODEROW: Mark Moderow for GCI. We feel that the regulation that you cited as well as the language in the First Report and Order absolutely precludes the imposition of Section 251(c) requirements on a CLEC. It can't be any clearer. The requirements of 251(a) and (b) would apply to them. And I think Ms. Brinkmann cited to the pole and right-of-way, it's a separate provision that would also apply to them. But the 251(c) obligations by federal law are impermissible to be imposed on a CLEC but for one circumstance. And that is on an order from the FCC and in our comments we say this very carefully that the Commission in this context is the FCC. If the FCC were to declare a CLEC an ILEC for these purposes and there is actually a procedure to do that in the federal regulations, then they could be applied -- or they could be imposed in a reciprocal manner, but federal absolutely precludes it. It has actually provided a mechanism for it to happen in an appropriate circumstance.

MR. JACKSON: And, Commissioner, I'll just add. We actually quote the reg on page 25 of our reply comments. And at least as to 251(c), I don't know, this seems to be so crystal clear that if we can argue about 251(c) it simply proves we can argue about anything no matter how clear the rule.

COMMISSIONER STRANDBERG: Okay. Well, let me move on. I would like to go to the comments of ACS page 18 and the hypothetical carrier versus the hypothetical network discussion. Explain to me how this is relevant to what we're doing?

MR. SHOUP: This is relevant in the sense that the Legislature asked the Commission to -- in one of -- in number 1, the first of its nine policies, to ensure that there shall be fair payment by a user carrier for the use of another's equipment and facilities including UNEs. And I think it falls within that general proposition that the Legislature wanted the Commission to look into that subject matter. And using this standard would ensure that we move more toward fairness. I suppose that's ACS's position. The -- I think if -- based upon the paragraphs from the First Report and Order and the Triennial Review that I cited earlier what we're -- what ACS is trying to do is to have us all move toward more what the FCC intended about these hypothetical versus -- all the hypothetical network standards. And that's our intent.

COMMISSIONER STRANDBERG: You know, there was discussion yesterday and I wanted to ask you folks, there's just been many different decisions on these definitions of TELRIc and here we have yet another cut at it in these proposed regulations. If we have such a strong federal definition and there's so much ground that's already been covered why are we going into this area in our state level regulations when there's every possibility we could, you know, get into lawsuits? Just tell me your rationale on why we're doing this?

MR. SHOUP: To the extent, Commissioner, that -- I don't think ACS is asking this Commission to establish regulations that would define TELRIC. It's our position that TELRICs already been defined by the FCC more than once actually.

What we are proposing though, is regulations that are within the federal definition of TELRIC to make it more clear where these parties should be heading in order to enhance competition in these markets.

COMMISSIONER-STRANDBERG: That's all I've got. Thank you.

COMMISSIONER THOMPSON: I want to start with proposed regulations. What is a reasonably anticipated forward looking cost?

MR. MONINSKI: Once again I'll take an initial cut and invite others to join me. A reasonably anticipated forward cost is the cost that you can expect the provider of facilities to actually incur on a forward looking basis. It is not a purely hypothetical cost. It does rely on a review of the most current actual costs that the provider has incurred as those most recent current actual costs can be adjusted for future identifiable changes. Things like inflation and other -- I hate to use the word known and measurable, but it's the only thing that I can come up with. Other kinds of changes that can be identified that could be applied to current costs.

The notion of forward looking costs has to be based on something. We've heard a lot of arguments that say it can't be based on actual cost. It can't be based on embedded costs. You can't derive forward looking costs by looking at those things. We continue to ask ourselves if we can't use those things to derive the actual forward looking costs or what is referred to here is the reasonably anticipated forward looking costs, then what do you use to base that on. Because the TELRIC standard requires that you use forward looking costs, nobody argues that, it's how to get there.

And this proposal -- this language suggests that it is appropriate and TELRIC compliant to begin with the most recent costs and adjust them for future events. Mr. Shoup.

MR. SHOUP: Commissioner, I would defer to Professor Shelanski and Karen Brinkmann who I think are experts in this area.

DR. SHELANSKI: Commissioner, this is Howard Shelanski. I'll make a couple of comments on this. In paragraph 685 of the First Report and Order where the FCC really for the first time fleshed out its TELRIC idea. The Commissioner said that the -- the Commission said that the bench mark of forward looking costs should most closely represent the incremental costs that incumbents actually expect to incur in making network elements available to new entrants.

And it sounds to me tnat the proposed regulatory standard in Alaska is very, very close to what the FCC was saying in its First Report and Order. That the idea is not to come up with a cost that is so divorced from where the incumbent will be as to not serve the purposes of TELRIC in signalling what the correct mode of competition and competitive entry should be, but rather, the cost model should try as much as possible to mirror and to anticipate what the incumbent as the Commission says actually expect to incur. And this is something that the Commission has more recently in its briefs to the Supreme Court reiterated that the cost measured by TELRIC should be those of the incumbent itself.

So I think that the reasonable -- reasonably anticipated language really does go to the kind of evidentiary question that Mr. Moninski alluded to. What kinds of model inputs, what kinds of evidence and data are most likely to be the best predictors of what a particular ILEC acting efficiently into the future will incur as costs.

COMMISSIONER THOMPSON: Now I understood your testimony yesterday, Dr. Shelanski, to suggest that we should be looking at the actual expenditures of the incumbent to -- as a predictor of future costs, doesn't that presume that the incumbent is going to share that information with other parties -- to this Commission and other parties to the proceeding?

DR. SHELANSKI: Well, look, I think there's no question that any cost data that is relied upon as evidence needs to be as the FCC has recently said verifiable. And I would presume that to the extent possible. And there, unfortunately, are a lot of confidentiality agreements with benders on them, but those -- I imagine there are ways to get around them.

Certainly the information has to be accurate and fairly verifiable. I would never question that. Assuming that to be the case then, you know, I think that -- and as the FCC has found, recent cost evidence, that is costs that have already been incurred can, nonetheless, be assuming that they can be proven and verified to some degree, extremely good evidence. Not necessarily conclusive evidence, not to say that the inquiry should stop with book costs, but they can be good evidence of what forward looking cost inputs should be.

In fact, it's interesting that the FCC in its recent Virginia arbitration order expressly approved a switching and transport model that Verizon used that used past cost data the company incurred from 1996 to 2000, but prior to the period for which the UNEs were going to be priced. That's one piece of evidence that is ILEC specific based on real costs. In that case it was verifiable. That was the Commission found to be very useful, in fact, better than the MSM model for those inputs in proving what the forward looking costs were most likely to be for efficiently operating Verizon's network.

COMMISSIONER THOMPSON: A representative from ACS a minute ago argued that the regulations they have proposed we adopt for UNE pricing are consistent with TELRIC or consistent with the FCC's directives. I wanted to give GCI and AT&T the opportunity to tell me if they agree with that statement or not. And that let you know that I'm thinking of not only the recent order but of the Verizon order from -- or decision from the Supreme Court and others. Are these regulations consistent with the applicable law on this issue?

MR. SAUPE: I would ask David Miller who I believe is on the line to respond for AT&T on that question.

2700

(Tape change)

Tape 4

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MR. MILLER: Thank you. This is Dave Miller. We believe, as I stated yesterday, that the regulations proposed by ACS are not consistent with the TELRIC standard, and are not consistent with the more recent pronouncement of what the TELRIC standards means by the FCC. In particular, one example is subsection B1 which was discussed a little bit earlier which says that the Alaska Commission must presume to use the technology actually deployed by the providing company. And as I indicated yesterday, in the Triennial Review Order by the FCC, it expressly says that the most efficient technology available is the most efficient technology available, even if the incumbent LEC does not deploy or plan to deploy that technology. So I think that's a clear and direct contradiction.

I think throughout these rules, there is the implication that actual costs should be looked to, if not exclusively, at least as a starting point or as some type of significant evidence in the case. And I agree that at some time -- as some -- in some cases, in some situations, the costs that may be in a particular incumbent's contracts could be relevant, but I think the FCC has made clear over and over again that actual costs are not the right place to start. In fact, the FCC and the United States Supreme Court have shown that they're very skeptical that the claimed actual costs of incumbent telephone companies actually are their actual costs, and there have been a number of proceedings on that issue as well.

And in the FCC's Virginia arbitration order, which was touched on by Dr. Shelanski, they rejected Verizon's loop model for the express reason that it started with Verizon's actual embedded network.....

COMMISSIONER THOMPSON: Um-hum.

MR. MILLER: .....and then tried to make forward adjustments from that starting point. It found that the preferable approach was the use of the modified synthesis model which started with the forward looking network. And forward looking network is supposed to be the most efficient, least cost network with a few constraints, such as the location and the quantity of the demand, and the location of the demand, and the location of the wire centers.

Now, the reason that they didn't adopt the switching model, or the switching portion of the synthesis model was because they didn't have a mechanism to adjust the balance between new and growth switch prices. It wasn't because it's -- it wasn't because Verizon's switching model started with their embedded costs. They didn't decide that issue on that point. So I think the FCC guidance is still clear that it's preferable to start with the most efficient network and to use most efficient, least cost considerations throughout.

And if I could just take a moment to clarify one thing I said yesterday, I provided a cite for the quotation that I had from the Virginia arbitration order that embedded costs may not be considered, which is the -- you know, that is the direct language from the FCC regulation, and the language the FCC has used over and over again. I said that was from paragraph 38, and I doublechecked that. It's actually from paragraph 37, so I wanted to correct that. Thank you.

MS. TINDALL: I'll make a brief statement, and then Mark's going to answer the legal issue.

It's interesting to me that Mr. Moninski talked about trying to be careful of semantics, because it seems that what is going on here is that ACS is cobbling together a series of buzz words in the hope of backing into the result it wants. You can call it a hypothetical network standard, you can call it a hypothetical carrier standard, forward looking costs are talking about the long run. And in the long run, it's a very specific and concrete economic principle. In the long run there is no set technology. It is presumed that the carrier is free to chose the most efficient technology. It is presumed that the carrier is free to have the most efficient operations.

If you will, if you want to think about the long run, view a company with a huge drawing board in front of them, and their job is to put together the network or the company that is the lowest cost possible with existing technology that's out there today. Not technology that that carrier has deployed. We're talking about a whole new world. It's the long run. Everything is variable in the long run, and that's what we're talking.

Now, the FCC has laid two caveats on that. There are only two fixed inputs to this long run that they're talking about, and those are that wire centers of the existing carrier are still placed in the same place, and demand is the same. Other than that, it's assumed you can change anything you want to put together the lowest cost, most efficient network, company situation possibly.

Go ahead.

MR. MODEROW: I guess to build on that from a practical standpoint, the arguments we've -- that I've dealt with since 1996 have always been based on one sentence in paragraph 685 of the first Report and Order where I'm sure there's a lot of people at the FCC would like to take back two words, actually -- or one word, actually, because none of the other language fits with that literal use of that sentence. And they've al -- and the ILECs have consistently tried to distinguish the decisions made about forward looking costing in the Universal Service proceeding from any proceedings that that involved UNEs.

That is over. That little crack was plugged last Friday in the Virginia arbitration order where they expressly said, we know that we made these statements about an efficient carrier in the Universal Service proceeding, but they very specifically -- and it's at paragraph 39 where they first mention it, they very specifically said, the forward looking concepts that we express in the Model Platform Order, where they adopted the -- now we're calling it the MSM, and the Inputs Order where they discussed how a company should be -- how the costing should be viewed, that they made in the Universal Service docket are directly applicable to UNEs.

Now, take that in looking and going back to the question, hopefully, for instance, in the previous question about this presumption that ACS wanted in section 1. Well, there are very specific presumption regulations in the federal regulations now. They don't say anything about what an actual -- this actual carrier has. They say that if some other carrier has used this technology somewhere in their network, it will presumed (sic) to be technologically feasible. So if you past this one, you're directly contradicting presumptions that are already contained in the federal regulations.

To go to the current one that we were speaking of, this company's actual cost, that implies two things: the price they pay for something. Now, that's varied, because of the long-run analysis that Ms. Tindall gave. But a very important component of the rates is their operations cost. And if you only consider their current operations costs those only appertain to the current network. They're generally expressed as expenses per amount of investment in given equipment. Well, the equipment that's being operated to develop in their words, current actual costs, isn't necessarily the equipment that will be utilized in the forward looking long run network.

So I agree that some current costs and some current operating expenses are directly relevant to what's possible. But to pass a standard here that says you're always going to start there in some cases is almost impossible to disentangle the operations of an efficient carrier with an efficient network, and to somehow forward look them from what we could sometimes characterize as an inefficient monopoly-driven carrier operating yesterday's network.

So there are huge practical problems, and we feel that these regulations and those types of things actually step on the forward looking concepts that the FCC requires.

COMMISSIONER THOMPSON: I've got a couple of follow-up questions for ACS, and I'll ask the shorter one first. If we're to look at the most efficient technology deployed, does that include technologies deployed by other carriers for determining ricing, in ACS's opinion?

MR. SHOUP: Commissioner, it does include technology deployed within the carrier's market. As paragraph 670 of the Triennial Review makes clear, that is the assumption underlying

TELRIC. Paragraph 670, which I noted Mr. Miller yesterday cited 669, but he neglected to cite 670; 670 says, quote, in the competitive assumed under TELRIC, we assume, and it's the competitive market, not a competitive market, in the competitive market assumed by TELRIC, we, I guess meaning the FCC, assume that the most efficient technology currently available will be deployed by at least one carrier, and that the value of all competing networks, and the prices for elements of those networks, will be constrained by the value of the most efficient network.

So, yes, I think the answer is we're looking at one market, and we're looking at what's deployed in that one market. And I think that's what paragraph 670 says.

COMMISSIONER THOMPSON: When you say -- use market in your discussion of paragraph 670, do you mean the ACS Anchorage local market? What market are you talking about?

MR. SHOUP: I guess I'm talking about the same one that the FCC is talking about. They're talking about the competitive market. In 670 of the Triennial Review, the FCC said, the objective of TELRIC is to establish a price that replicates the price that would exist in a market in which there is facilities-based competition. In other words, they're looking forward to assuming there is competition in this market, what would the price be then. Obviously the idea is you can't use embedded costs from the old regulated utility days.

COMMISSIONER THOMPSON: And if.....

MR. SHOUP: But the market is where there is actual competition.

COMMISSIONER THOMPSON: I understand. I want to know what your interpretation of what the FCC means of the market, the competitive market in paragraph 670 is?

MR. SHOUP: Our interpretation is that means, for example, in the Anchorage proceeding, the Anchorage market.

COMMISSIONER THOMPSON: Okay. Okay. And the other follow-up question is probably for Dr. Shelanski, which is, although it may be for other ACS witnesses, I don't want to preclude anyone. If we are to accept ACS's proposal for -- or why should we accept ACS's proposal on what I say is basically a rebuttable presumption of ILEC efficiency? What -- why should we believe that the network that the ILEC has deployed now is the most efficient?

DR. SHELANSKI: Well, I think that the question is, you know, going forward, and in light of -- since we're going to price the network going forward, are they making investment decisions that are the right ones? Are there recent switch and other investment decisions, ones that we would presume to have been the best possible at the time?

When you have a carrier that's been operating under the competitive pressure in its core markets that ACS has been operating under, with no ability to successfully pass through any costing efficiencies that it would incur, at least not to a degree that could ever offset the extra costs that they'd incurred, I think there's good reason to think that this is a company that has been trying hard to get its costs down, to get its service quality up, and to make sure that it does not lose yet more customers to GCI. So the competitive pressures that ACS has been under have been ones that would make me think that it would be certainly irrational on their part to have incurred any costs they didn't need to incur in recent investments, and certainly going forward, that they would have no incentive to operate their network and to make deployment decisions that aren't the least cost ones in a long-run way.

COMMISSIONER THOMPSON: How does you answer factor in other elements that might influence an incumbent's investment? For example, the availability of capital?

DR. SHELANSKI: Well, I mean, my -- I think that that's wrapped up in my answer. Certainly an incumbent has to do the -- do its best, and make its best investment decisions given how available capital is. But if anything, the availability of capital would reinforce my answer. Capital becomes scarcer and more expensive in a competitive market. Anybody looking to provide capital to ACS can't ignore the success that GCI has had in the markets where ACS makes its money. And that makes capital harder to attract, and puts ever more pressure on ACS to make absolutely the best investment it can.

Every dollar becomes a dollar that has a lot of opportunity costs. If it's invested in the wrong place, there may not be another dollar to invest in the better place, so investment decisions in a competitive situation, because of the increase in cost of capital, become all the more critical to the incumbent carrier. And so the capital market situation is one that would make me even more strongly believe that ACS has incentive to be efficient going forward.

And it's interesting that while one certainly has to be very careful about simply presuming that an incumbent has always made the most efficient decisions, when all that we're looking at for setting forward looking costs are recent purchases, or purchases of equipment that is the same as the most efficient that is available going forward, we're looking at a time window during which the carrier has had quite a bit of incentive to act efficiently. This I would note was -- has been an element of a number of proposed cost orders, not all of which have been assumed in their entir -- excuse me, approved in their entirety in various states or by the FCC.

But I would note that to the extent that those kinds of assumptions were built into Verizon's cost model in the Virginia arbitration, and to the extent that Verizon was trying to use its recent behavior and recent investments as evidence of forward looking costs, the Commission said something very,

very interesting. In paragraph 49 of the Virginia arbitration order, the Commission states flatly that absolutely none of the models suggest -- submitted in the proceeding, and none of the models under consideration were inconsistent with TELRIC. Paragraph 49 is very clear. None of the models that we're reviewing here today, whether we accept them or not, are inconsistent with TELRIC.

And so it is not inconsistent with TELRIC where the -- either because of price caps or because of competition, a carrier has -- had incentive to invest efficiently, to look at that investment behavior and the costs that results from it as good evidence of what forward looking costs will be.

COMMISSIONER THOMPSON: I'm interested in comments from the other parties involved in this UNE debate about whether they believe that it is safe for us to presume that the ILEC is making efficient cost decisions because they operate in a competitive market.

MR. MILLER: This is Dave Miller with AT&T. I think this issue is a little confused in the sense of I'm not sure exactly what decisions are being referenced. If this is supposed to refer collectively to the decisions made in the past five years or so, I think the answer is no. If it's meant to refer to just the decisions that were made yesterday, then it's really -- it's not the complete picture of a network.

You couldn't build a network from just a few decisions that were made to augment a loop here or a loop there. But the main point is, if it's collec -- if it's a collective assumption and you're supposed to build your TELRIC prices out of those collective assumptions, I think the answer clearly is no, because the value of their network is not what they paid for it in the past. It's not what they've spent on it in the past regardless of whether they were trying to be efficient at the time or not. It's the same as a computer or any piece of technology on the market. What you paid for it doesn't mean that's what it's worth.

It's -- essentially, what TELRIC tells you is we're going to look at the replacement value of that network, and the replacement value is going to be least cost, most efficient replacement, because that's what somebody would pay for it. They wouldn't pay for decisions that turned out to not be, five years later, the most efficient decisions. There's no way to know that in advance at all times, but I think the answer's clearly no, if you're meaning to look collectively at the decisions made in the past. And I don't think you can build a TELRIC price by looking at only an instant of time, a decision made in one instant of time.

And if I could, I'd like to address the issue that the replace -- that the equipment, the available equipment is only the equipment that's available in that market. I -- or in use in that market. And I do not think that that is what the FCC was saying in the Triennial Review Order, because if you go back to the regulatory language, it talks about available -- equipment. And an ILEC, any incumbent is not just limited to, in terms of availability, to equipment that is used by some other carrier in their territory. Obviously they can buy equipment from all over the world, and they often do.

And in addition to that, in the Virginia arbitration order, the FCC found that integrated digital loop carrier was forward looking technology, because it was being used by Verizon in California, not in Virginia. So they weren't constraining themselves to a particular market in that arbitration, so I think that demonstrates their intent with respect to the Triennial Review Order.

COMMISSIONER THOMPSON: Um-hum. Okay.

MR. MILLER: And actually one other point while I have the floor here. I agree with Dr. Shelanski that the FCC did not go out of its way to make a finding that the model it was disapproving was fundamentally inconsistent with TELRIC, but they also did not find it was consistent with TELRIC, and they also found that the modified synthesis model was more consistent with TELRIC, and I think that's an important point, because.....

DR. SHELANSKI: Actually, if I could just respond to that, the FCC did expressly say they were not inconsistent. I mean, they -- that was a finding. It's in paragraph 49.

COMMISSIONER THOMPSON: Pardon me, I couldn't hear the paragraph you referenced.

DR. SHELANSKI: 49 of the Virginia arbitration. I mean, I think they did -- I mean, I don't want -- I just want to refer you to the paragraph to draw your own conclusions from the language, of course.

MR. MILLER: Well, they say -- actually the language is, we do not find any of the cost models before us fundamentally inconsistent with forward looking pricing principles. So they found they weren't fundamentally inconsistent. But they also found that the modified synthesis model was more consistent because it used a hypothetical network and did not use as a starting point the embedded network characteristics that Verizon had proposed.

MS. BRINKMANN: I think that was only for the loop pricing side. This is Karen Brinkmann.

MR. MILLER: That's correct, it was for the loop portion of the model. The switching portion of the model, they chose Verizon's, because they could adjust between new and growth (ph) switches, not because they found it was more appropriate to start with an embedded network.

COMMISSIONER THOMPSON: Okay. Thank you.

MS. TINDALL: Okay. I think the question was, should we presume that an ILEC's costs -- make a rebuttal presumption that they are the most efficient. And I think that Dr.

Shelanski's position as I understood is that ACS has been operating in a robustly competitive market for a number of years, and so at this point, because they have no hope of passing those costs on, then one must assume that their costs are efficient.

The fallacy of that argument is that trying to pass those costs on is exactly what ACS is trying to do here today. And as long as there's hope, there's costs. So, you know, I think by trying to limit the market to Anchorage by trying to say the most efficient technology deployed by that providing carrier, which is what their regs say, and I think they're backing away from those a little now, is exactly an effort to pass along inefficient costs. If the ILEC's costs are truly efficient, and the most efficient costs, as a rebuttal presumption, then there should be no problem with using a forward looking model that doesn't start with their costs. They should be indifferent.

COMMISSIONER THOMPSON: I thought I heard Mr. Shoup say something a little bit different, but maybe I didn't. When I was asking you about -- we were talking about 670 I thought I heard you acknowledge that the CLEC's cost should be used if those were more efficient?

MR. SHOUP: I think that's what paragraph 670 says in this sense. 670.....

COMMISSIONER THOMPSON: Well, just a minute.

MR. SHOUP: Okay.

COMMISSIONER-THOMPSON: You don't need to go back there again, but did you -- were you intending to limit that by saying in that jurisdiction? In other words, just by your discussion of the Anchorage market?

MR. SHOUP: Yes.

COMMISSIONER THOMPSON: So you think it's just the most efficient technology employed in that specific market, or.....

MR. SHOUP: Yes, because the language in 670 talks about prices being constrained by competition in the market.

COMMISSIONER THOMPSON: Okay. This is really putting you on the spot, because.....

MR. SHOUP: That's all right.

COMMISSIONER THOMPSON: .....it's only been out since Friday, but I don't know if you had a change to look at the language in the Virginia arbitration order that seems to suggest a different analysis.....

MR. SHOUP: There are two.....

COMMISSIONER THOMPSON: .....of this.....

MR. SHOUP .....things about the Virginia arbitration order, Commissioner. First is I haven't had a chance to look at it, so I.....

COMMISSIONER THOMPSON: Okay.

MR. SHOUP: .....would defer to others on that point. But the second thing is I am told I think by Karen Brinkmann, that the Virginia arbitration order specifically says it is not to be used as precedent anywhere else. The FCC I think said that. And that's what I've been told. I have not seen it myself. But I think that's -- I've been told at least that's in there.

So if we assume that the FCC meant what it said when it said that, and then we look at the First Report and Order of the Triennial Review, and the Verizon case, I think they all point us to the same place.

COMMISSIONER THOMPSON: All right. I understand your position.

DR. SHELANSKI: Commissioner, this is Howard Shelanski. I have a couple of cites that I'd be happy to provide you in the Virginia order that bear on this point, and I would just say paragraph 32, which talks a little bit about the lack of a need to have a perfectly efficient network model, and paragraph 51 in which the Commission at least reiterates and makes reference to its comment -- its caution about using nationwide inputs in a cost model. And the arbitration order also refers to paragraph 685 of the First Report and Order.....

COMMISSIONER THOMPSON: Um-hum.

DR. SHELANSKI: .....which I think has the most direct bearing on Mr. Shoup's point, because that paragraph, paragraph 685 of the First Report and Order says that costs should be based on, quote, the most efficient technology in the incumbent LEC's current wire center location. So they seem very clearly in paragraph 685 to be referring to the particular incumbent LEC and the most efficient technology in that LEC's incumbent wire center locations, and especially when taken together with paragraph 683 and 684, I think that that's a very strong statement about what the relevant universe is for looking at the most efficient technology.

MS. BRINKMANN: And this is Karen Brinkmann. I would just direct your attention to one other cite in the Verizon order, although again it is limited to the facts of that particular case, the Commission does say that it's appropriate -- this is paragraph 136 of the Verizon arbitration decision. It is appropriate in the Universal Service context to use nationwide figures, but it's preferable to use Verizon-specific inputs when calculating UNE rates for Verizon, because it's reasonable to expect the relationship between the Veriz -- investment and expenses, it be different for Verizon than it is for other incumbent LECs.

I think that's consistent throughout the FCC's orders that while they do want to look at a hypothetically efficient network design, they are focused on the market of the particular carrier in which it operates.

COMMISSIONER THOMPSON: Okay. Thank you. I've got one more question to follow up on something responsively that Dr. Shelanski gave to Commissioner Strandberg, where I thought I heard him acknowledging that there might be a role for the regulatory agency in a competitive market to assure that customers had service. My question is, does that role include customers having a choice of providers? Do we get service by -- does the customer get service by whoever they want, or just any service?

DR. SHELANSKI: Commissioner, that's an extremely hard question. I think it would depend on the structure of the market. In my view, if there is a robustly competitive market, something like what you happen to have in Anchorage, it would be certainly unfair and a disadvantage to put a service requirement, something like a carrier of last resort requirement on only one of the two carriers, because then the one that did not have that obligation would have every incentive to shy away from less profitable customers.

And so some mechanism that would ensure that customers that nobody wants to serve are serve may under some circumstances be necessary. Competitive markets don't always serve every customer, and given the public and social value of telephone service, we may want to make sure that there's no such market failure.

But whether that customer needs to be able to chose between two different carriers is something that I'm a lot less certain of, and so one possibility would be to say that all carriers in the market must offer service to all customers. That would be one answer to it.

Another possibility would be randomly to assign customers to carriers that are operating in the market as customers that they must carry in a carrier last resort kind of way. There are a couple of different solutions to the problem. The one solution that I think is the least good is one that says that the incumbent, just because they're the incumbent, should have all such obligations, because it would put them in a competitive disadvantage.

COMMISSIONER THOMPSON: Thank you. Mr. Johnson?

HEARING EXAMINER OLSON: I thought we better put on record at least, we keep referring to the Virginia Order, and no one has ever cited what the number of the order is, and it's FCC -- it's Federal Communications Commission DA03-2738. It was released on August 29, 2003, and it has to do with CC dockets number 00-218 and 00-251. We're just calling it the Virginia Order, but we better have something on the record so we know what we're talking about.

CHAIR JOHNSON: I just have two, and hopefully I can get them posed properly. I guess, first of all, I wanted to follow up on an analogy or explanation offered by Ms. Tindall. And I guess I would start by putting it to GCI, and I'm not sure how -- if you may want to respond to this, but since it does build on her analogy, if we're going to talk about a hypothetical network, you know, one in this giant -- and I'll ask the parties to give me a little latitude here, where we have a huge board that we're going to draw up a network, and I'd ask the parties to make just one additional assumption, that we've eliminated all the difficulties in transforming what we imagine the design ought to be to reality, if we eliminated all of those, that is, you draw a line on the board, and it's actually created in the market place, in the real world.

It seems to me that under that scenario, if we draw a hypothetical network utilizing the ILEC's existing wire centers, that there is a moment in time after we've drawn the lines, after we've drawn the circuitry, that that information, if it's built the moment the lines are drawn that when -- there's a moment in time when that becomes historical, when that represents some cost. And I guess my question, starting to GCI, is there not a moment in time when we have to look at actual historical costs in a network, or do we always -- is it always hypothetical? How do we get from the hypothetical network to that moment in time when we measure costs for inputting into a model to compute UNE prices? That's -- I guess that's my question.

MS. TINDALL: Do you want me to start with that?

CHAIR JOHNSON: Sure.

MS. TINDALL: I think the moment in time that it becomes historical costs is, you know, the moment in time when you have -- when the next technology or the next operating system, or the next way of doing something has come along and is cheaper.

The long run -- when you're talking about the long run, it is always hypothetical, you know. It is always the most efficient way of doing things.

CHAIR JOHNSON: But backing up, isn't there a moment in time though where you have to -- there's a snapshot, a still photograph of costs?

MS. TINDALL: If you go ahead and you build that network.

CHAIR JOHNSON: Under my analogy, that's the way it works, yeah.

MS. TINDALL Okay. If you go ahead and build that network, you're no longer operating in the long run. You've built your network, it's now -- that is -- it may be the most efficient network possible, but you're no longer talking about the long run. You can use those costs if they also match a new hypothetical long run where all variables are -- all inputs are variable. But it is a -- it's an economic concept that is hypothetical.

MR. JACKSON: If I could say that, I think a dif -- the same -- if I can say same thing a slightly different way, I think your construct is accurate so long as the new and more efficient alternative hasn't been developed yet.

MS. TINDALL: Right.

MR. JACKSON: But un -- but as soon as the new, more efficient alternative develops, then it is no longer the long run. So if your moment in time comes so quickly that the new and more efficient thing hasn't been developed, yes, it is -- then there's no difference between the embedded and the long run at that point. But as soon as the more efficient thing comes along, there is a difference, and the long run is what applies.

CHAIR JOHNSON: So just so I'm clear though, is it GCI's position then that there is a role for historical actual costs in the computation of UNE rates?

MS. TINDALL If there is proof that a historical cost is the most efficient cost possible, then I would say yes. Do you disagree with that, Mark?

MR. MODEROW: Well, I guess I'm the guy that dealt with this on a practical basis, trying to come up with the evidence. And it's wrong to say what has been spent in the past is irrelevant. It would be wrong to say that what has been spent in the past is subject to complete exclusion. The question is, is it a valid data point for predicting the future. There's been some talk about switching rates. Almost all of these numbers that were developed as inputs by the FCC in their inputs order, which gives a long history of how they came up with it, usually started with some sort of current pricing, some sort of an analysis of past pricing, if for no other reason than to discern trends. So, I mean, it kind of gets to the snapshot idea.

Yes, at the end of your proceeding, you have to set a cost based on the lines you draw on the map, so for that moment in time, and for the demand that's reflected on that map, and for the prices that would appertain at that time, it's a snapshot, and that's how you set your rates.

Now, the next time you as a Commission -- I'm being practical here. I'm not an economist saying tomorrow it changes. I'm saying, you see it again in five years, and in five years there's going to be a new map, there's going to be new technology, there's going to be new assumptions. And some of the operating efficiencies will have been captured. Some of them will still be there.

You've got to remember we're building a hypothetical model. Perhaps the best statement of what the Supreme Court thinks we're doing at least, is in the dissent in the Verizon case at the Supreme Court, and the dissenter, who always has the freedom to say anything he wants, because it's not precedent, merely said, it's a completely hypothetical network. It's operated by a completely efficient carrier, and it's the price until you get to it again.

CHAIR JOHNSON: Does -- maybe I'll go this way. Mr. Miller?

MR. MILLER: Yes.

CHAIR JOHNSON: Would you like to respond to that?

MR. MILLER: Well, I basically agree with what was just said, which is that you do -- because of the nature of cost proceedings, you do have to set your prices based on cost at a particular point in time. And once you do that, and time progresses, then I guess in some sense those costs are out of date. But I guess I don't see that that principle gets you to the point of assuming that historical costs are relevant.

But if I may, I'd like to put -- maybe just give an example of what I think the issue of forward looking costs is in this context, and that would be an example where you in the past built a particular route using copper feeder, and it cost you $10,000. If today you could build that route using fiber feeder, and it would only cost you $5,000, then the forward looking most efficient cost is $5,000, not $10,000 because you spent that in the past. And that's how this principle comes into play. And I think looking at some concrete examples helps eliminate some of the confusion.

CHAIR JOHNSON: Mr. Moninski.

MR. SHOUP: Commissioner, I think that all of this answered by the FCC. We would agree that you have to look -- let's assume -- assuming your hypothetical, you draw the network tomorrow, or you draw the network today, you put the lines down and look at it. Those are costs you have to look at. Otherwise, how do we know that anything relates to reality.

We all would agree that a hypothetical network will never be built, but if -- knowing that, if you look at what the FCC has said about this, that this bench mark of -- this is paragraph 685. — This bench mark of forward looking cost and existing network design most closely represent the incremental costs that incumbents actually expect to incur in making network elements available to new entrants suggests, and together with paragraph 680 of the Triennial Review Order that says the objective of TELRIC is to establish a price that replicates the price that would exist in a market in which there's facilities-based competition.

When you put those two things together, it doesn't sound like what we're talking about is we're off into space somewhere so that if some gizmo is put into place in Singapore, but would not for economic reasons be put into place in Anchorage, Alaska, that that's what we should assume. And the reason for that is because the FCC has consistently said, all we're really doing is creating a hypothetical network that looks at what the prices would be if there was competition, not at a mis-market (ph). You know, where -- what would it be -- we're not going to let you charge whatever you want.

In the case of Mr. Miller's hypothetical, if you could do it cheaper today, we would be doing it cheaper today. We've been faced with competition now since 1996, or in early 1997. So what we're talking about in the case of your hypothetical draw the lines on the map makes perfect sense.

You know, we're talking about -- we've existed in a very fiercely competitive market, the most competitive market in Anchorage, in the United States by a factor of two for -- now for several years. Knowing that, of course we would look at what we would do to build it in the most efficient way today.

CHAIR JOHNSON: I guess this leads to -- and I appreciate that. I think this is an interesting discussion. I thank the parties.

I guess my only remaining question is, I guess I'll put it -- start with Mr. Shoup, and to the extent you want to have Professor Shelanski respond, you've suggested in your submissions, ACS's submissions that we adopt a way of looking at the world, if you will, as it relates to UNE pricing, and you've made citations to the Triennial Review Order and also to the First Report and Order. Are you aware of, and are you prepared to cite to the Commission today orders and decisions of other jurisdictions that have adopted the proposal that you're advancing to us here today?

MR. SHOUP: Commissioner, I'm not prepared to do that today, but I certainly would be prepared to do that.....

CHAIR JOHNSON: Do you.....

MR. SHOUP: .....in the near term.

CHAIR JOHNSON: Do you believe that those decisions exist?

MR. SHOUP: Yes, I think that my review is that commissions around the United States have taken various views of this. And the reason for that is because the term cost in

47 USC 252 is just not defined. The Commission appears to have left it open to wide interpretation by state commissions, and that's what's happened.

CHAIR JOHNSON: I guess as a lawyer, I guess my response to that is it seems to me if you wanted me to be persuaded, that you would have cited the cases and decisions in the course of your brief. Is there.....

MR. SHOUP: I think the.....

CHAIR JOHNSON: Is there a reason why you didn't, or.....

MR. SHOUP: The reason that we didn't is just because I think the FCC language is pretty clear on its face. If -- I understand people can argue about it from all different sorts of directions, but as I was told in law school, if you've got a statute over here, and a statute over there, and a statute some place else, the first thing you try to do is read them all together and have them all make sense. And I think this body of law does that.

CHAIR JOHNSON: Okay.

MR. SHOUP: But I'd certainly be prepared to supplement the record.

CHAIR JOHNSON: I think it would be appropriate if you have some cases that are specifically on point that adopt the proposal or close analogs of it that you're proposing -- you're suggesting to the Commission here, that you submit those to us. And obviously serve the other parties, and I don't think we need to have a war of briefs as to the applicability of decisions, but I'm just saying that if there are other jurisdictions that have adopted the ACS approach, I'd like to know about them.

MR. SHOUP: We'd be happy to do that.

CHAIR JOHNSON: That's all I have.

HEARING EXAMINER OLSON: Commissioner Harbour.

COMMISSIONER HARBOUR: I like this system starting from the left, but I do have a few questions. I want to first thank the commenters as well as previous speakers have. I want to also thank Representative McGuire who I think we heard a little earlier labored one weekend night along with many of you in this room, or some of you in this room, to construct a model whereby the Commission could come to some decision on these issues, and I think that the next day, if I recall, to my colleagues, I did have a chance to comment to the committee. And my comment was as Mr. Moninski's was today, it's a pretty rapid time frame, but to the extent that a time frame is imposed that's different than statutory time frames, that does put some limits on what can be covered.

And I noticed today some discussion has been -- has come up about what can be embraced, what can be covered in the time available, and with the resources available. So I give that background to show my appreciation for all the effort that's going into this.

During the session, I might also recall that legislators who had other important matters before them, including the State budget and other objectives, were encouraged to respond to many, many parties in a very brief period over many, many complex issues, and I think all of them that I became acquainted with wished to improve the competitive environment for all of the players. They heard a number of good ideas and bad ideas from many advocates, and they struggled to put the complex issues into their proper places.

I think the result of that exercise was that the Legislature became more acquainted with some of the detailed work that this Commission has to do, which is another good outcome. So I look at this as a wonderful opportunity for addressing the issues.

I want to move now to -- there's so much to do, so little time, but let me go to Mr. Jackson, and I'm going to be referring to the opening briefs as opposed to the replies to begin with. And I'm trying to limit myself to a few matters with the time available.

You mentioned distorted investment decisions on -- investment decisions could be distorted if an ILEC made a -- let me rephrase that. You mentioned distorted investment decisions based on embedded costs on page six. You know, part of this -- part of the struggle that I'm experiencing is the struggle between chains of logic on the one side, and also putting that into the perspective of federal mandates, law, and rules on the other. ~~So~~ something that a party might believe to be perfectly logical, that also has to be put into the broader puzzle, the mosaic that is within the jurisdiction of the Federal Government as well. So that's part of the tension I think I'm experiencing as a relatively new member of the Commission.

But I want Mr. Jackson and his team, why wouldn't investment decisions be distorted, this switches the subject on you a little bit, if an ILEC made a capital investment, and on day one the CLEC got it for a cost at which it could be efficiently purchased in the future, if the incumbent had to reclaim capital investment via a normal depreciation rate over a number of years, and what if then on day five the CLEC announced it was abandoning that provision capital investment and moving its customers to another technology.

In such a circumstance, should the CLEC have a responsibility for the remaining term of the depreciated cost caused by provisioning that CLEC? If the CLEC continued under current law to be economically unregulated, should its new technology that allowed for that ILEC stranded investment be made available to the ILEC through economic regulation? So there are two questions there.

First, should the CLEC have a responsibility for the remaining term of depreciated assets that were stranded, and, secondly, if there were a new technological platform that enabled the stranding, should the ILEC then have access to that and under what conditions?

MR. JACKSON: I'll make a stab and perhaps Ms. Tindall or someone else may want to follow up. I think there are a lot of things implicit in your question.

Although the allegations regarding constructing something for the CLEC and it then becoming stranded have been floated about, that's actually somewhat of a difficult situation to imagine. ACS, even if they did, for instance, build lines to a customer that initially chose GCI, there may be every chance in the future that that customer may switch back to ACS. So unless ACS is going to abandon the possibility that they're ever going to serve that customer, I would not even look at that as stranded investment. In this.....

COMMISSIONER HARBOUR: I don't mean to interrupt, but I'm aware of that argument. And what I was referring to was the situation not where the customer remained available to a competitor, but where the customer actually switched to a new technology, thus stranding the copper.

MR. JACKSON: Well, even if the customer switches to a new technology, ACS always has the opportunity to win that customer back and put them back on their system. In the same sense that I may shop at Safeway today, and I may shop at Eagle tomorrow, or I may shop at Fred Meyers the next day, I can always go back to the other one and decide to use the investment that they have made, whether it be between Home Depot and Lowes or -- whatever.

So I do not think that that plant is stranded in the classic econ -- in the classic regulatory construct. Beyond -- so what you would then be moving to I think is a situation where you have two parallel systems that the customers have an alternative of jumping back and forth between the two system.

One of the very purposes though of the TELRIC pricing is so that an appropriate decision can be made as to whether or not to construct that alternative network. And if it is priced too high, that gives an added incentive, and an inappropriate incentive to construct the alternative system where it might in fact benefit both carriers to have sharing.

COMMISSIONER HARBOUR: I do want to give opportunity.....

MR. JACKSON: Do you want to add something?

COMMISSIONER HARBOUR: .....for a little discussion but.....

MR. MODEROW: I would note just one thing. In the Triennial Report Order, there is the -- and I believe it's finally published in the Federal Register. I'm not sure it's effective yet. There is a new rule that an ILEC does not have to construct new facilities solely for the CLEC that are likely to be stranded. In other words, they still have to put in the drops to get to customers in the circumstance that Mr. Jackson has talked about, so that there would be two parallel systems.

But they don't have -- they now no longer have to build, for instance, a major transmission facility to our switch that only we would use, and that we would say in a year, I'm sorry. So that -- you know, this truly sunk loss never recovered and never have the possibility of recovering, has been taken out in most circumstances by the Triennial review order.

COMMISSIONER HARBOUR: I appreciate that supplement. Tomorrow when there's more time, one of my questions for all of the commenters has to do with effect of Triennial review on any of the aspects -- or any of the issues brought up that we haven't addressed so far. Mr. Moninski, Shoup, or.....

MR. SHOUP: Commissioner, I think you raise an interesting point. And the point to me really goes to the question of risk. The way we are situated today in this market, and in all of the markets in Alaska, is the ILEC bears the risk of construction. The CLEC doesn't have any of that risk, because it can come in and rent a loop today and get off of it tomorrow, exactly the hypothetical that you pose. It's interesting that cost of capital, as you heard Dr. Shelanski talk about it, is affected by that. It costs us more to go out and borrow the money to make those construction decisions and to do that construction than it did in a noncompetitive environment. And yet the risk that is born by the CLEC is zero. They can come in, rent the loops, decide the next day not to rent the loops.

And in this market it's particularly -- your question I think is particularly on point, because GCI has publicly announced that it's going to move everyone onto its cable network. It's going to take all of its telephone customers onto its cable network, and off ACS's system in the very short near term. It was five years, it -- now it appears it's closer to three years that they're plans are to do that.

So that will create a lot of stranded investment, and regardless of Mr. Jackson's hypothetical that, well, he could shop here today and there tomorrow, it is inconceivable that with the market share that they have now in this -- in Anchorage, in excess of 40 percent of this market, that when they move everybody onto their cable system within three years, we're not going to have huge stranded investment. And given that, it's inconceivable that we're going to have 60 or 40 or whatever the number ends up being, percent of the market, come back to us so we can pay off those assets. It's just not going to happen.

COMMISSIONER HARBOUR: Okay. And I appreciate that argument. It was articulated in your filings. I want to just ask once again, the answer to my two questions was no on both counts, is that true, Ms. Tindall?

MS. TINDALL: I'm not sure we got to your second question. What was the.....

COMMISSIONER HARBOUR: It had to do with the supply and access to an ILEC of the new technology if, and under a regulated format, if equipment were to stranded to get there.

MS. TINDALL: To follow up on your first one, and then to answer your second one specifically, let me just point out that GCI is building a cable telephony network. We are incurring a lot of risk in doing that. I think we face the same risk that ACS faces in building today. Those customers will go back and forth. I'm glad that ACS is conceding their customer base to us, but I have a feeling they won't do that for long.

In answer to your second question, GCI in another docket before this Commission has proposed that we would open up our network to ACS on the same terms and conditions, or to any other carrier, that we experience in our unbundled network element contract with ACS. As a legal matter, we don't feel that the Commission can require us to do that, but we are willing to step up to the plate and volunteer to do that. And we have done so. So the answer to your second question would not be no, it would be yes, I think, if we've got it phrased right.

COMMISSIONER HARBOUR: I think -- I thought it would be good to introduce that subject in this proceeding since telecommunications generically was named in the legislation.

Let me go back and talk to you about -- not talk to you, but ask you to talk to me about the word reasonable. I love