

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

10807 HOUSE JUDICIARY

1 the word reasonable. We've addressed reasonably anticipated  
2 forward looking costs a little earlier, and on Mr. Moninski's  
3 filing on page seven, later defined it as -- really as embedded  
4 costs, current costs adjusted for the future. I know that  
5 we've approached this from many different directions.

6 Let me just -- let me read from you -- for you the  
7 District Court decision that's been referred to by several of  
8 the commenters enjoining the Illinois telecom legislation.  
9 There are a number of paragraphs I could have chosen, but let  
10 me at random go to the point that we're dealing with primarily  
11 today. In part the decision quotes the Commission.

12 It says, the TELRIC of an element should be measured based  
13 on the use of the most efficient telecommunications technology  
14 currently available, and the lowest cost network configuration  
15 given the existing location of the incumbent LEC's wire  
16 centers. In calculating the TELRIC, the incumbent LEC's  
17 embedded costs may not be considered. Is that trumped by the  
18 Triennial Review in your opinion?

19 MR. SHOUP: It is absolutely.

20 COMMISSIONER HARBOUR: What's your opinion on that?

21 2696

22 (Tape change)

23 Tape 5

24 0015

25 COMMISSIONER HARBOUR: Does the Triennial Review

1 trump.....

2 MR. MODEROW: No, I think that.....

3 COMMISSIONER HARBOUR: .....that precedent is -- really is  
4 only the latest in a series of similar statements, and rulings.

5 MR. MODEROW: We feel that the Triennial Review affirms  
6 that statement. I mean, a plain reading of the Triennial  
7 Review.

8 COMMISSIONER HARBOUR: Okay.

9 MR. MODEROW: There are little pieces.....

10 COMMISSIONER HARBOUR: Here we are. Okay. So why does it  
11 affirm the statement briefly, and then why does it -- is it  
12 contradicted by the Triennial Review? Go ahead.

13 MR. MODEROW: The Triennial Review basically only touched  
14 on TELRIC in two brief statements, and it's about 15 paragraphs  
15 long. The FCC, number 1, said that we've opened a TELRIC  
16 proceeding, and therefore we aren't going to undergo any  
17 sweeping changes, we aren't going to undergo any -- we aren't  
18 going to take any major detours in TELRIC. So the TELRIC that  
19 was in force and was enforced by that court is the same TELRIC.  
20 They did comments on two issues, cost of capital and  
21 depreciation. But they did not in any way reverse course on  
22 what TELRIC means.

23 And then the Verizon order, of course, actually takes it  
24 farther. The recent -- or Virginia Order, I'm sorry, actually  
25 takes TELRIC further. It couldn't be further from the.....

1 MR. MILLER: If I could just address that?

2 COMMISSIONER HARBOUR: Who's speaking, please?

3 MR. MILLER: I'm sorry, this is Dave Miller with AT&T.

4 COMMISSIONER HARBOUR: Thank you.

5 MR. MILLER: Yes, paragraph 669 of the Triennial Review  
6 Order says, and I quote, TELRIC equates the current market  
7 value of the existing network of an incumbent  
8 telecommunications provider with the cost that the incumbent  
9 would incur today if it built a local network that could  
10 provide all the services its current network provides to meet  
11 reasonably foreseeable demand, using the least cost, most  
12 efficient technology currently available. It repeated the fact  
13 this is supposed to be the least cost, most efficient network.

14 And it has a footnote after that which indicates that  
15 there's only one additional constraint on that requirement,  
16 which is that the network must take as a given the existing  
17 wire center location.

18 So I think in the Triennial Review, the FCC clearly  
19 reaffirmed that least cost, most efficient requirement. That's  
20 the requirement that was taken up through the Eighth Circuit  
21 all the way to the United States Supreme Court, and the FCC  
22 fought to preserve that requirement before the Supreme Court.  
23 They succeeded, and the Supreme Court affirmed that  
24 requirement.

25 It has been reaffirmed by the FCC in the Triennial Review

1 Order, and there is an equivalent quote in the Virginia  
2 Arbitration Order, so there is absolutely no question from a  
3 legal perspective that the requirement is least cost, most  
4 efficient.

5 MS. BRINKMANN: And this is Karen Brinkmann. I was.....

6 COMMISSIONER HARBOUR: Excuse me, let me just ask Mr.  
7 Miller, your opinion is that the Illinois decision stands  
8 unchanged from the Triennial Review? Indeed, the Triennial  
9 review supports the Illinois decision?

10 MR. MILLER: Yes, that is my position.

11 COMMISSIONER HARBOUR: Okay. Before we go on to the next,  
12 I just -- I heard someone else trying to come in, but I had  
13 promised Mr. Shoup.

14 MR. SHOUP: Commissioner, I would refer to Karen -- defer  
15 to Karen Brinkmann, if I may?

16 COMMISSIONER HARBOUR: Karen.

17 MS. BRINKMANN: It's just a minor point, but I think it's  
18 important. I don't think Mr. Miller is suggesting that the  
19 Triennial Review did anything to change the TELRIC standard  
20 that the Commission had previously adopted, and I hope that's  
21 clear. The paragraph he read from is followed by a paragraph  
22 in which the FCC as Dr. Shelanski quoted, stated we assume the  
23 most efficient technology currently available and deployed by  
24 at least one carrier.

25 And again we're just -- the FCC summarizes its TELRIC

1 standard in the Triennial Review Order, but did not change any  
2 of the pricing sections of its TELRIC standard, except with  
3 respect to cost of capital and depreciation, which I understand  
4 have been discussed elsewhere. So I just wanted to clarify  
5 that Mr. Miller is not suggesting that the Triennial Review  
6 Order what changed -- the TELRIC standard was changed in the  
7 Triennial Review Order. I don't believe it was.

8 MR. SHOUP: And if I may amplify on that, Commissioner?  
9 Ms. Brinkmann is pointing paragraph 670 which talks about what  
10 currently available means. And what they talk about there, as  
11 I've said before, is currently available, somebody's deployed  
12 it in the competitive market. And I think that together with  
13 paragraph 669 helped to clarify it perhaps what the Virginia  
14 court -- or what the Illinois court was saying.

15 But in addition to that, the Verizon decision, the U.S.  
16 Supreme Court looked at this issue and affirmed the FCC's view  
17 of what TELRIC means, and said, you know, it deferred to the  
18 FCC and said, TELRIC means, you know, what the FCC is saying  
19 that it means. And that being the case, I think that the  
20 District Court of Illinois, you know, while I -- while the  
21 decision may or may not contradict the Triennial Review, I  
22 think the U.S. Supreme Court is taking the view that the  
23 Supreme -- that the FCC is entitled to the first cut at what  
24 does all of this mean, and has affirmed that cut.

25 And in addition to that, there are several places in the

1 Verizon opinion itself that I think serve to contradict GCI's  
2 position on this. For example, at pages 32 to 33 of the  
3 Verizon opinion, the Supreme Court said, but TELRIC does not  
4 assume a perfectly efficient wholesale market, or one that is  
5 likely to resemble perfection in any foreseeable time. You  
6 know, I think all of these authorities are pointing us to the  
7 same place, which is you're looking at the market that you're  
8 in, and that the FCC's version of TELRIC, what it thinks TELRIC  
9 means is correct.

10 DR. SHELANSKI: This is Howard Shelanski. If I can just  
11 follow up very briefly, if you look at the Verizon against FCC  
12 decision by the U.S. Supreme Court, and the pin (ph) site I'm  
13 thinking of is 535 U.S. at 504, the Supreme Court makes clear  
14 that it does not -- that TELRIC does not require an assumption  
15 of a perfectly competitive -- or perfectly efficient market.  
16 And the FCC builds on that at paragraph 32 of the Virginia  
17 Arbitration Order where the FCC says in applying the UNE  
18 pricing rules, we are mindful of the Supreme Court's finding  
19 that TELRIC does not require an assumption of a perfectly  
20 competitive -- or perfectly efficient market.

21 And I think the FCC has really been quite consistent on  
22 this. And I'm a little concerned that what I heard about  
23 imagining an ILEC sitting at a blank slate updating its  
24 networks to be perfectly efficient every time there's new  
25 technology. The FCC has never accepted that vision of TELRIC.

1 I don't think anyone can point to a cite where the FCC has  
2 accepted that version of TELRIC. I do know what the FCC has  
3 said about that idea, and I'm quoting from their reply brief to  
4 the Supreme Court at pages seven to eight. They say the  
5 incumbents assert that TELRIC assumes that a carrier would  
6 scrap its existing network and rebuild a new, more efficient  
7 one every time an advancing technology occurs. That's what we  
8 heard earlier presented as a picture of what TELRIC required.

9 Well, here's what the FCC says, quote, TELRIC assumes no  
10 such thing. TELRIC instead rests on the more rational economic  
11 assumption that as new, more efficient equipment becomes  
12 available, the value of older, less efficient equipment will be  
13 effected. And I think to the extent that the Illinois decision  
14 is adhering to a very rigid idea of a blank slate, new  
15 technology network that's constantly updated, it is that  
16 decision that is at odds with the FCC, not ACS's proposal.

17 COMMISSIONER HARBOUR: Yeah, I -- it's seeming to answer  
18 the point you just made on page 21 of Illinois, the court said,  
19 when a federal statute is enacted to expressly preempt a field  
20 and procedural mechanisms are elaborately set forth, state acts  
21 inconsistent with either the standard or procedural federal law  
22 cannot stand. Dr. Shelanski?

23 DR. SHELANSKI: Yes. I mean, you know, I am not familiar  
24 enough with what happened in Illinois to understand what the  
25 procedural concerns would have been, and, you know, it may well

1 be that there was a procedural objection.

2 COMMISSIONER HARBOUR: Okay. Yeah. If I may, and I'm  
3 mindful of Commissioner Giard here, Dr. Shelanski, on --  
4 yesterday you helped us understand your view that the  
5 hypothetical model was inappropriate. The hybrid TELRIC  
6 forward looking prices have nothing to do with what a LEC has  
7 control over, nothing to do with how effectively a particular  
8 carrier is operating. You used a good example of switches  
9 bought in different quantities by different carriers.  
10 Wholesale prices paid by big carriers should not become the  
11 base cost for smaller carriers. All of these exercises in  
12 logic to support a view that hypothetical models are  
13 inappropriate.

14 How does the Commission square that with ACS's proposal  
15 under (b)(1) that in selecting a pricing model for unbundled  
16 network elements, the Commission will use the FCC's  
17 hypothetical network standard?

18 DR. SHELANSKI: Yeah.....

19 COMMISSIONER HARBOUR: Do we square that by the modifiers  
20 that follow.....

21 DR. SHELANSKI: Yeah, I mean, I.....

22 COMMISSIONER HARBOUR: .....that make it less than a  
23 hypothetical network by being technology that's actually  
24 deployed by the ILEC?

25 DR. SHELANSKI: Yeah, I mean I think that what I meant,

1 and I hope I didn't misspeak yesterday, I think there's  
2 substantial agreement amongst all the parties that any model of  
3 forward looking costs will be to some degree hypothetical.  
4 It's predictive. It's modeling things that have not yet  
5 occurred. So I guess my objection is to a model that is purely  
6 hypothetically least cost. In other words, let's put together  
7 what in an ideal situation, looking at everything that's  
8 available nationwide, would be the most ideal network. My  
9 objection was to that kind of very purely hypothetical model.

10 I think that to the extent what we're modeling are forward  
11 looking costs, and not merely dressing up book costs, which is,  
12 of course, prohibited by the commission, the question is how  
13 realistic and how accurate can we make that predictive model.  
14 It will still be hypothetical, but the kinds of qualifiers that  
15 ACS puts in place strike me as being -- of aiming towards the  
16 Commission's goal of trying to model, in the Commission's own  
17 words, the actual costs that the incumbent will in fact incur  
18 operating efficiently in the future.

19 COMMISSIONER HARBOUR: I guess what.....

20 DR. SHELANSKI: So there's qualifying.....

21 COMMISSIONER HARBOUR: .....will be -- excuse me, Dr.  
22 Shelanski. I guess what we're going to be wrestling with is  
23 the hypothetical, most efficient network model that -- you  
24 know, that is imposed, and within which ACS says we have  
25 flexibility. One struggles with how to put modifiers on

1 federal mandate, and that's exactly where we are is struggling  
2 with that. So-I appreciate your elaboration.

3 I know that GCI and others had more to comment. The  
4 reason I'm sort of moving ahead and not trying to be impolite  
5 is because I know that there was a 3:00 p.m. deadline for some  
6 of the witnesses, and they're going to be turning into  
7 pumpkins. So I would invite anybody else subject to the view  
8 of the colleagues who wish to further comment and who are here  
9 tomorrow that -- to go ahead and take the time when my turn  
10 arises again, and I'll return to this. Thank you for your  
11 forbearance. Commissioner Giard.

12 HEARING EXAMINER OLSON: Commissioner, before you go  
13 forward, Mr. Moderow, I guess just so I understand the record,  
14 you said there was a new rule that came out as a result of the  
15 Triennial Review indicating that ILEC has no obligation to  
16 construct new facilities purely to serve the CLEC. Is that  
17 contained in the Triennial Review or is that a rule that's  
18 coming out later, or.....

19 MR. MODEROW: No, it's within the order, and I believe  
20 there was actually a rule promulgated. And I will provide the  
21 cites tomorrow.

22 HEARING EXAMINER OLSON: Great. Thank you. That's.....

23 MR. MODEROW: I'll look it up tonight.

24 HEARING EXAMINER OLSON: .....what I was asking about.

25 Thank you. Excuse me, Commissioner.

1 COMMISSIONER GIARD: Okay. Who's available tomorrow,  
2 because I'm not going to be done in six months I can assure  
3 you.

4 MS. TINDALL: We are. We are.

5 MR. SHOUP: Commissioner, I believe we are. Karen, are --  
6 I think Karen Brinkmann may be available tomorrow, but I'd have  
7 to check. I know Professor Shelanski, I don't -- I do not  
8 believe is, but I would have to check with him.

9 DR. SHELANSKI: I'm available on the same schedule that I  
10 was available today.

11 MR. SHOUP: Oh, he would be available at noon to 3:00.

12 COMMISSIONER GIARD: Okay.

13 MR. SHOUP: And, Ms. Brinkmann, are you available  
14 tomorrow?

15 MS. BRINKMANN: Within the same time, I sure am.

16 MR. SHOUP: All right.

17 COMMISSIONER GIARD: Okay. Then my questions are  
18 primarily for ACS, so I want to respond to -- or ask you a  
19 statement that Ms. Tindall made, which was that you are backing  
20 away from your prepared regs. Are you backing away?

21 MR. SHOUP: No, we aren't.

22 COMMISSIONER GIARD: Okay. Then I'm going to spend five  
23 minutes talking to you about actual costs. Do you believe that  
24 efficiency is a key criteria in the establishment of UNE  
25 pricing?

1 MR. SHOUP: Yes, in the economic sense of the word  
2 efficiency.

3 COMMISSIONER GIARD: Okay. Is ACS an efficient carrier?

4 MR. SHOUP: Yes, it is. We've been operating in a highly  
5 competitive market for many years. We have no choice but to be  
6 efficient.

7 COMMISSIONER GIARD: So what proof can you give that  
8 you're efficient?

9 MR. SHOUP: In an economic sense?

10 COMMISSIONER GIARD: In a financial and economic sense.

11 MR. SHOUP: I suppose it would require an economist to  
12 give you all of that sort of proof, or maybe a CPA, but an  
13 examination of ACS's purchases since the advent of competition,  
14 and a comparison of those prices, in other words construction  
15 and purchases of equipment type prices, and comparison of those  
16 prices with what GCI has spent for similar construction in the  
17 same time period, since the advent of competition, I think  
18 would give you a very clear view of that.

19 GCI has done a couple of construction projects in same  
20 time period using the same sort of technology deployed by ACS.  
21 And those costs and our costs together would give -- I think  
22 give you a very clear picture of that.

23 COMMISSIONER GIARD: Okay. When we talk about  
24 efficient.....

25 MR. MONINSKI: Commissioner?

1 COMMISSIONER GIARD: Sorry.

2 MR. MONINSKI: I'm sorry. I just -- in direct response to  
3 your question, ACS has prepared, but I do not have it with me  
4 today, a chart that we developed a short while ago that  
5 compares the cost of provisioning that ACS incurs with other  
6 companies around the country similarly situated. And I'd be  
7 happy to provide that to you. And a chart that demonstrates  
8 the high level of efficiency that ACS has achieved relative to  
9 those other companies.

10 COMMISSIONER GIARD: Okay. Then that would beg the  
11 question, pulling it out a bit further to look at what the  
12 market is saying about ACS's efficiency. So if you're going to  
13 provide documentation, Mr. Moninski, regarding ACS's efficiency  
14 in relation to other ILECs, then I would want to step back and  
15 also take a look at what the market is saying about your -- the  
16 results of your company operations as opposed to those other  
17 company operations.

18 Because really the true test, or maybe one of the true  
19 tests of efficiency, or of an efficient performer in any given  
20 market, my limited opinion, is what your stock performance is,  
21 what your cost of capital is, what your union agreements are,  
22 and what efficiencies you've made in those areas that point to  
23 significant improvement. And would you say that ATU was  
24 efficient?

25 MR. SHOUP: Commissioner, I'd have to defer to Mr.

1 Moninski, because I don't have any experience with ATU.

2 MR. MONINSKI: And although I am a former ATU employee, I  
3 don't recall having seen the kinds of data that I referenced to  
4 you a moment ago relative to ATU, so it would be hard for me to  
5 answer that question.

6 COMMISSIONER GIARD: But I would assume again based on  
7 anecdotal information, having just been employed by the  
8 Municipality of Anchorage, that there is a preponderance of  
9 belief that government-owned utilities and government-owned  
10 enterprises do not operate as efficiently as privately-held  
11 ones. And I believe back when ACS was acquiring ATU, there was  
12 some discussion in the initial stock portfol -- or offerings,  
13 that ACS was going to bring ATU from an inefficient carrier to  
14 an efficient carrier position, and that that was the value that  
15 ACS was bringing to its stockholders.

16 MR. MONINSKI: And I'd be happy to see whether or not  
17 those kinds of comparisons exist, and if they do, I'd be happy  
18 to share them with you.

19 COMMISSIONER GIARD: Because the challenge that we have,  
20 and I'm not opposed intellectually to using actual cost as a  
21 foundation, but it creates for you a very high standard to say  
22 that you are an efficient carrier today, because the concept is  
23 based on forward looking. So if you say you're forward looking  
24 today, how are you going to be -- or efficient today, how are  
25 you going to be more efficient tomorrow, and prove it? Because

1 your costs are then going to be based on how much more  
2 efficient you are tomorrow.

3 Mr. Moninski, you said that it's actual costs adjusted for  
4 known and measurable changes. So I would think -- how -- my  
5 question would be, how far ahead forward looking is ACS in its  
6 strategic.....

7 (Phone beeps)

8 COMMISSIONER HARBOUR: Are we dead?

9 MS. BRINKMANN: Is that it?

10 COMMISSIONER GIARD: How many years out does ACS go in  
11 strategic planning?

12 MR. MONINSKI: And as I indicated early on, I had hoped  
13 that Mr. Tyson might be available. He would be the person who  
14 could answer that question. And I'll get the answered for you.

15 Obviously we -- when we are doing UNE rate making  
16 exercises, we're doing it in anticipation of a particular life  
17 of an agreement, and I would assume that the horizon that we're  
18 working with is the expected life of that particular agreement.  
19 I don't know how that matches up with ACS's strategic planning  
20 horizon. They may be the same, but they may be different. And  
21 so there's some reconciliation that might have to be done in  
22 that regard.

23 COMMISSIONER GIARD: Well, your regs are based on, to the  
24 best of my reading, and from what I hear today, they're based  
25 on, you know, actually deployed by the providing company in

1 item number 4, anticipated forward looking costs included, cost  
2 of labor and materials using the providing company's current  
3 actual costs adjusted for future changes. So when you  
4 establish those kind of standards for yourself, you know, the  
5 proof needs to be presented to us that you can then -- that we  
6 can rely on those. And as an experienced auditor, you know,  
7 that bar is pretty high from my perspective.

8 You have established a very high bar for yourself in  
9 saying that you're efficient, and having to prove that you're  
10 efficient today, and that your business plans and strategic  
11 planning indicates that you are even more efficient tomorrow,  
12 and that we should use those tomorrow costs adjusted for your  
13 plans. So I hope Mr. Tyson will be available tomorrow when we  
14 need to really talk about this, because this is what you  
15 desire. Okay. I'm done.

16 (Whispered conversation)

17 HEARING EXAMINER OLSON: If we operated like we did today,  
18 we'll start again at 9:00 because the Commissioners stopped  
19 their questioning on other areas in order to pick up the UNEs.  
20 And if we operated again like we did tomorrow instead of  
21 mistakingly giving you the impression that we were going to  
22 work through lunch, from 12:00, which I apologize if I did  
23 that, but actually I thought we were, we'll do the UNE's  
24 beginning at one, which would be consistent with what we did  
25 today, so we'll just have two hours for your people that are

1 going to be available.

2 Mr. Miller? Is Mr. Miller going to be available tomorrow?

3 MR. MILLER: Yes. Yes, I'm still here.

4 HEARING EXAMINER OLSON: Mr. Miller, will you be available  
5 during that time frame as well tomorrow, that -- at Alaska  
6 time, one to three, something like that?

7 MR. MILLER: Yes, I will.

8 HEARING EXAMINER OLSON: Okay. Good. Then we'll expect  
9 the parties to have you all call in. My understanding is that  
10 tomorrow the number changes again, and it's 1-8 -- Suzie, the  
11 in-court, will correct me if I'm wrong, but I think it's 1-  
12 8.....

13 (Whispered conversation)

14 HEARING EXAMINER OLSON: Okay. We're going back to the  
15 old way.

16 (Whispered conversation)

17 HEARING EXAMINER OLSON: Okay. Well, I should finish my  
18 thought. The number that I was provided, we were provided when  
19 we started yesterday, that the call-in number for the bridge  
20 tomorrow was 1-866-465-1045. Is that correct?

21 MR. MILLER: Yes.

22 COURT REPORTER: (Indiscernible).

23 HEARING EXAMINER OLSON: All right. The in-court has a  
24 different number, so I'm going to have the in-court give you  
25 the other number, and I have no idea whether you have to have a

1 password tomorrow or not. So let me find out what the other  
2 number is, so if one doesn't work, you'll get it on the other.  
3 And if you don't get on either one of them, call ACS. No, I'm  
4 sorry, just joking.

5 COURT REPORTER: The other number I have is 1-907-465-  
6 1100.

7 HEARING EXAMINER OLSON: Did you get that?

8 UNIDENTIFIED VOICE: 1100? That's not a toll-free number.

9 HEARING EXAMINER OLSON: Okay.

10 COURT REPORTER: And I have a password.

11 HEARING EXAMINER OLSON: And if for some reason you --  
12 nothing works, call us at the Commission, 907-276-6222, tell  
13 the receptionist you're not getting through. We'll call you.  
14 Yes, Mr. Saupe?

15 MR. SHOUP: Just to clarify, we're going from 9:00 to noon  
16 tomorrow, and then.....

17 HEARING EXAMINER OLSON: No, actually I was going to tell  
18 you we're going back to the old way. We're going to start at  
19 nine. We may break early for lunch, like 11:15, 11:30, but  
20 we're going to start the UNE at noon, because the Commission  
21 has to break shortly for a tariff meeting at 1:30. It won't  
22 take very long, but, you know, because tomorrow was the last  
23 day it was scheduled, we'd certainly like to get the UNE  
24 discussion done, so let's make sure we start that at 12. If we  
25 finish early, fine. We can take up other things, but let's

1 start at noon with UNE, so come at nine, figure on we're going  
2 to -- unless -- I-hope nothing changes. Come at nine, figure  
3 on we're going to take an early lunch, 11:15 or something,  
4 11:30. We'll come back at noon and start UNEs. If we don't --  
5 if we finish all the UNEs and there's still other questions on  
6 the other areas, the Commission will continue to go on with the  
7 other questions. Is that confusing enough for you?

8 MR. SHOUP: We're starting UNE as noon.

9 MR. MONINSKI: Precisely.

10 COMMISSIONER HARBOUR: Are we off the record?

11 UNIDENTIFIED VOICE: Yes.

12 HEARING EXAMINER OLSON: No, we're not. Okay. We're  
13 going to go off record. Thank you very much. Appreciate your  
14 patience today. We'll see you tomorrow.

15 (Recessed - 3:08 p.m.)

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STATE OF ALASKA  
REGULATORY COMMISSION OF ALASKA

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

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

REGULATORY COMMISSION OF ALASKA  
Anchorage, Alaska

VOLUME III  
PUBLIC HEARING

September 4, 2003  
9:00 o'clock a.m.

BEFORE: PAUL OLSON, HEARING EXAMINER

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

APPEARANCES:

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

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

FOR ACS: MR. TED MONINSKI  
MR. DAVID SHOUP  
MS. KAREN BRINKMANN

FOR ALASKA TELEPHONE ASSN: MR. JIM ROWE

FOR GCI: MR. JIMMY JACKSON  
MR. MARK MODEROW

FOR DOBSON CELLULAR: MR. MARK AYOTTE

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PROCEEDINGS

Tape 1

Log 0015

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

HEARING EXAMINER OLSON: We're on record in R-03-03. Mr. Ayotte, Mr. McKenna, can you hear us okay.

MR. AYOTTE: Yes, I can.

MR. MCKENNA: (Simultaneous speech).

HEARING EXAMINER OLSON: Okay. The Commission is going to continue on with its questioning from yesterday. It's, sort of, the non-UNE questions. We'll start taking that up at noon.

UNIDENTIFIED VOICE: Sounds good.

HEARING EXAMINER OLSON: And the Commission has already arranged who is going so they're going to take off here.

MR. AYOTTE: Mr. Olson, could you, please ask the Commissioners -- or identify the Commissioners since I'm not able to see them when they speak.

HEARING EXAMINER OLSON: I'm sorry, it's Commissioner Strandberg, Commissioner Thompson, the Chair of the Commission is Commissioner Johnson. It's Commissioner Giard and Commissioner Harbour. I had to skip one because I was having a blank. I'll hear about it later, but that's who's present. The Chair is Commissioner Mark Johnson and then the rest of the Commissioners are all here as well. I apologize, I should have introduced them to you before.

1 MR. AYOTTE: Well, Mr. Olson, I'm aware of who they are,  
2 it's just I'm never able to tell who is speaking when they  
3 start asking their questions.

4 HEARING EXAMINER OLSON: Oh, okay. Well,.....

5 MR. AYOTTE: But that's all I wanted.

6 HEARING EXAMINER OLSON: .....then we'll make them do  
7 today what we make everybody in the audience do, tell you who  
8 they are and who's talking when they start talking.

9 MR. AYOTTE: Thank you.

10 HEARING EXAMINER OLSON: That's a fair request, but seeing  
11 as how I don't know who is going first this morning they're  
12 going to have to do that any way.

13 CHAIR JOHNSON: Are we all ready?

14 HEARING EXAMINER OLSON: We're on the record.

15 CHAIR JOHNSON: We're on the record?

16 HEARING EXAMINER OLSON: Yeah, we've been joking on the  
17 record.

18 CHAIR JOHNSON: Oh, that's not a good idea. Three  
19 questions, Mr. Moninski,.....

20 HEARING EXAMINER OLSON: This is Commissioner Johnson, by  
21 the way.

22 CHAIR JOHNSON: Thank you, Mr. Olson. Yesterday during  
23 the question and answer period Mr. Jackson from GCI made  
24 reference to a proposal that ACS has made in another docket, a  
25 currently opened docket. I would ask us to think

1 prospectively, we're not dealing with that docket here in front  
2 of us today, but we're thinking solely prospectively, and the  
3 reference was to the CMEC charge.

4       And the question that I have for you is under your  
5 proposed detariffing rules would the CMEC charge fall  
6 underneath those rules and are there aspects of that, that --  
7 how would you foresee that happening or not happening under  
8 your proposed detariffing rules, is that a possibility?

9       MR. MONINSKI: In addition to Mr. Jackson's comments  
10 yesterday, I believe, GCI made a similar reference to CMEC in  
11 it's written comments. Basically the nature of the comment was  
12 if you let ACS and others do what ACS is proposing, here's what  
13 they're going to do. They're going to go out and put a CMEC  
14 into the marketplace.

15       ACS's response to that is very clear. CMEC as it's been  
16 proposed in another proceeding, and I certainly don't intend to  
17 advocate the merits of CMEC, CMEC as it was proposed in another  
18 proceeding can only be implemented if ACS is a fully regulated  
19 entity.

20       Think about the practicalities. Suppose the price  
21 deregulation detariffing proposal that ACS has put forward were  
22 to be adopted by the Commission, so now no LECs in competitive  
23 service areas are filing tariffs and ACS wants to implement a  
24 CMEC.

25       Theoretically, I guess, ACS could implement a CMEC on its

1 own customers in that circumstance. Once again, I would  
2 suggest to you that if its own customers believe that they were  
3 being required to pay a surcharge that other customers were not  
4 being required to pay, they would likely, quickly gravitate to  
5 the provider that was not charging a CMEC.

6 It would be impossible, as a practical matter, for CMEC to  
7 be imposed on non-ACS customers. We would go to GCI or to AT&T  
8 and say we've got this great idea we want to put a CMEC on your  
9 customers and we want you to bill and collect and remit those  
10 dollars to us. I don't think it would take much imagination to  
11 figure out the answers that we would get from GCI and AT&T in  
12 that regard.

13 The only basis for the implementation of a CMEC is the  
14 fact that ACS is currently regulated. It is only this  
15 Commission that would have the authority to allow the CMEC to  
16 be implemented in the manner that it has been proposed.

17 If CMEC is a bad idea, if CMEC is something that as a  
18 matter of public policy or fairness or somebody's notion of  
19 what a competitive market ought to look like, if it's  
20 inconsistent with those things, the resolution to that problem  
21 is the adoption of ACS's proposal in this docket and that is to  
22 price deregulate and detariff ACS and all of the other LECs  
23 that are operating in this market.

24 CHAIR JOHNSON: Do other parties have comments on this?  
25 Mr. Saupe. Or not, I.....

1 MR. SAUPE: If ACS came to us and proposed a CMEC we would  
2 consider it in good faith, but I think his prediction of our  
3 answer is probably accurate.

4 I don't think it's a tariff issue exactly. I think that  
5 they could not impose a charge on our customers through their  
6 tariff.

7 CHAIR JOHNSON: Mr. Jackson, anything further on this  
8 subject?

9 MR. JACKSON: I guess I would only wonder what the  
10 situation would be while we were in ACS's proposed seven day  
11 notice period tariff where, in fact, there would be a tariff  
12 that might -- just as there is now, such that they could  
13 propose on seven days notice the exact same thing that is  
14 proposed in the other docket and where there's essentially no  
15 chance for Commission review because of the time period.

16 CHAIR JOHNSON: Mr. Moninski, ACS proposes that carriers  
17 should file notice tariffs as we discussed and then ACS  
18 proposes that non-dominant carriers that make notice tariff  
19 filings would not have to comply with 3 AAC 48.270. That  
20 relates to tariff advice letter formats. Given this change  
21 what minimum information would have to be included in a non-  
22 dominant carrier notice tariff filing? And is that explained  
23 anywhere in your proposed regulations?

24 MR. MONINSKI: I'll start with your last question first.  
25 I don't think it is explained anywhere in our proposed

1 regulations or in our comments and your question certainly  
2 suggests that there may be the need for some further  
3 explanation.

4 Even to the core of the question, the reason for including  
5 the waiver from or exemption from Section 270 of the  
6 regulations is that provision of the regulations that requires  
7 that the filing party present customer impact and revenue  
8 impact, that is, those two items are required by Section 270.  
9 Those were the items that ACS was hoping to have waived as part  
10 of its notice tariffing proposal.

11 We did not and do not proposed structural changes to the  
12 actual tariff filing. The kinds of narratives that might  
13 normally be presented, the tariff sheets and the formats used  
14 for the tariff sheets that would normally be presented, we're  
15 not suggesting waiver from that. Given that it probably does  
16 require some further clarification and, perhaps, even some  
17 redrafting of the proposed regulations, but the focus of the  
18 waiver or exemption request was on those two elements of 270,  
19 customer impact and revenue impact.

20 CHAIR JOHNSON: Thank you. That's all I have.

21 COMMISSIONER HARBOUR: Thank you, Commissioner Johnson.  
22 I'd like to start out by asking all commentators and expert  
23 witnesses, and maybe an answer could follow if not available  
24 now, what research is available showing the effect of wireless  
25 use on the wire network? Is there a direct correlation between

1 the use of wireless and the disuse of the service area's wired  
2 network?

3 It would be helpful for me to incorporate into our  
4 consideration, studies or research that commentators may have for  
5 which we at the Commission could obtain from NARUC or NRRI.

6 I'm Commission Harbour, by the way, before I embarrass  
7 myself by not making an identification.

8 Does anyone want to respond to that?

9 DR. LEHMAN: Well, I recently looked at this question and  
10 the best I can tell the best and most recent work that is  
11 available comes out of Berkeley and there was a study that they  
12 published recently that focused -- it was very well done 'cause  
13 they focused on the question of access to the network as  
14 opposed to use of the network 'cause what we see is a lot of  
15 minutes certainly going from the wireline to the wireless  
16 network, but they wanted to know is it a substitute in the form  
17 of access to the network.

18 And, I believe, the summary of their findings is that  
19 there is relatively little evidence of substitution for primary  
20 lines, but secondary lines has got a lot more substitutability.  
21 This study was, sort of, nationwide. I don't think there is  
22 any geographic dimension that talks about different kinds of  
23 areas or different states, but, I think, you can get -- I can  
24 get you the address -- the web address for that. It's  
25 available on line, but.....

1 COMMISSIONER HARBOUR: I would appreciate that.

2 DR. LEHMAN: .....that's the best study that I've seen.

3 COMMISSIONER HARBOUR: If anyone else has any information  
4 along those lines?

5 MR. SAUPE: I don't have good quantitative information. I  
6 would just point out that as a factual matter the long distance  
7 calls that are carried by cell carriers are carried on  
8 landlines that are purchased wholesale from the long distance  
9 carriers, so to the extent long distance calls are made by  
10 wireless users there is a reduction in retail minutes, but  
11 there are still wholesale minutes that the landline carriers  
12 are carrying.

13 COMMISSIONER HARBOUR: Okay. To me this is a valuable  
14 area and I appreciate your going with me on this.

15 Let me ask this, would any commentor or witness disagree  
16 that if the cell, if the wireless displaced the use of the  
17 network, the cell would be a direct competitive threat, would  
18 that be arguable?

19 MS. GRAHAME: We would agree with your contention  
20 completely. And this is Heather Grahame for the Rural  
21 Coalition.

22 COMMISSIONER HARBOUR: Thank you. Would any commentor  
23 argue that if there is minimal impact of cell use in displacing  
24 the wire network that the two technologies still compete?

25 MR. DILLEN: This is Jeff Dillen for the Rural Coalition.

1 And, yes, even in the absence of complete displacement, I  
2 think, direct competition, the intermodal (ph) between wireline  
3 and wireless can clearly occur. And in particular, I would  
4 suggest in the ETC context because then there's direct  
5 competition then for those nine supported services.

6 If there isn't then, of course, there shouldn't be  
7 multiple ETCs. Even if there isn't replacement, let's say, and  
8 there's a secondary line situation there's still competition  
9 for access minutes, for example. And if we want to go  
10 back.....

11 COMMISSIONER HARBOUR: How do you respond to Mr. Saupe's  
12 suggestion that those minutes are still paid for at wholesale  
13 at least in an ID capacity?

14 MS. GRAHAME: That's the IXC and not the LEC, so  
15 they'll.....

16 COMMISSIONER HARBOUR: Right. That's what I -- in the  
17 long distance capacity, yeah.

18 MS. GRAHAME: That's correct. So that may be.....

19 COMMISSIONER HARBOUR: So to the extent that second lines  
20 are displaced by cell phone it would be a direct threat to the  
21 LEC?

22 MS. GRAHAME: That is correct.

23 COMMISSIONER HARBOUR: Okay.

24 MR. JACKSON: Commissioner, if I can make a couple of  
25 comments to your questions. And I want (ph) to agree with Mr.

1 Saupe, although, I think, in general they're not going to be  
2 buying wholesale minutes. They're going to be leasing a  
3 facility in most cases. The cellular company would lease an  
4 actual facility so they would have the facility for the long  
5 haul traffic and they wouldn't be paying on a per minute basis.  
6 It could vary in situation to situation, but at least in a lot  
7 of situations they'd be buying a facility.

8 And I don't think this is what you're talking about when  
9 you say competition or displacement, but I would emphasize as  
10 Mr. Saupe said that, I think, that the cell phone is to a large  
11 extent displacing long distance calling on the IXC network and  
12 that also has a significant impact on the access charge regime.

13 Now, I mention those 'cause I think they're important.  
14 And no, I don't know that they're really within the ambit of  
15 your question because if you're just looking at the cellular as  
16 how it competes with the LEC we would agree that there's not  
17 much competition there, but there are certainly some other  
18 impacts on your entire bailiwick which would be important to  
19 comment on.

20 COMMISSIONER HARBOUR: Okay. I really do respect  
21 specifics and that's why I'm trying to get into this. And I  
22 have a note here that Western Wireless' comments in the Joint  
23 Board proceeding on ETC designation has a study that's  
24 responsive to the question, so one area that would -- you know,  
25 it could probably be argued that statistically there may be a

1 difference in displacement, Lower 48 as opposed to Alaska or in  
2 Alaska urban as opposed to rural. --And particularly when you  
3 get to second lines is the second line displacement issue in  
4 rural Alaska as big an issue as it is in urban Alaska?

5 So, I just -- I raise these questions because they  
6 ultimately relate to the word competition that we've discussing  
7 and the definitions that are being used. So any specific,  
8 statistical information that's available that commenters would  
9 like to provide I'd really appreciate reviewing.

10 MR. AYOTTE: Commissioner Harbour, this is Mark  
11 Ayotte.....

12 COMMISSIONER HARBOUR: Oh, I was going to (ph) -- yes,  
13 please (simultaneous speech).....

14 MR. AYOTTE: .....if I could just take a moment to comment  
15 as well.

16 I think your questions are good ones and specifically I'm  
17 not aware of any good, reliable statistical information to  
18 provide and, I think, in part it's because of the difficulty of  
19 the question. When you speak in terms of competition does (ph)  
20 wireless provide a competitive alternative to landline carriers  
21 depending upon how you want to define competition will dictate  
22 the answer.

23 Certainly consumers having a choice of service providers  
24 is competitive. So if they have a choice between wireless and  
25 landline service and the consumer can decide what services or

1 what service provider best meets that consumers needs then that  
2 provides some competitive pressures in the market.

3       However, when you start trying to analyze and correlate  
4 use of the network, I think, that begs a different question and  
5 you really have to break it down into categories of how the  
6 consumer is utilizing either the wireline or the wireless type  
7 service.

8       For example, if the wireless customer is utilizing his or  
9 her wireless service to only call other wireless customers then  
10 that impacts the landline network, but I think human nature  
11 tells us that won't be the case. Wireless customers tend to  
12 make mobile to land calls and to that extent the landline  
13 network is continued to be used because it's the back end of  
14 that call just as if the customer had been making a landline to  
15 landline call.

16       So the impact on the network or displacing minutes of use  
17 on the network I think is an entirely different question from a  
18 broader, more general question of is wireless competitive or  
19 provide a competitive alternative to consumers.

20       It's really -- and similarly with respect to the secondary  
21 line question if the landline customer subscribes to wireless  
22 service as an additional line then ultimately it's going to  
23 depend upon the use made of that customer or by that customer  
24 of the landline service.

25       I don't think you can simply conclude that because the

1 customer purchased wireless service that therefore there's a  
2 diminution in use of the landline network. That may not be the  
3 case at all.

4 It's going to depend upon the individual reasons and  
5 decisions and use by the consumer and I don't think anybody can  
6 measure that or quantify that without interviewing every  
7 customer who might fall into those categories. So I'm not sure  
8 that your questions are susceptible to any form of a  
9 statistical analysis as you're requesting.

10 MR. MCKENNA: Commissioner, this is Hugh McKenna, I'd like  
11 to offer an opinion.....

12 COMMISSIONER HARBOUR: Please, Mr. McKenna.

13 MR. MCKENNA: .....and, you know, you'll recall yesterday  
14 I say that I come from the marketing side and I'm more of a  
15 market research expert.

16 I see routinely in looking at the market research studies  
17 statistical data that report reductions in LEC lines, which are  
18 landlines, as impacted by direct substitution with wireless  
19 service. And the major research houses like Yankee and groups  
20 like those down in the Lower 48 have a great deal of physical  
21 data that say that exact thing. I don't personally have it to  
22 offer, but it's available for you to review. We could arrange  
23 for some mechanism (ph) to provide it to you.

24 And there's a second perspective, too, I'd like to  
25 offer.....

1           COMMISSIONER HARBOUR: Excuse me, let me just stop there.  
2 I've invited all commentors and witnesses to provide whatever  
3 information they can to help us -- help me in this decision  
4 process, so no need to ask if I'd like it, I'd like it.

5           MR. MCKENNA: Well, where I was going with that is Yankee  
6 Group would charge for one of their research reports. And if  
7 you would like for someone -- Ted, tell me if I'm getting out  
8 of line here.....

9           COMMISSIONER HARBOUR: Okay. I guess -- I guess that --  
10 yeah, I guess, if there's information that's available in open  
11 studies, if it's available by an internet link or if any  
12 commentor or witness wishes to produce it, that decision is  
13 yours and I appreciate that.

14          MR. MCKENNA: I understand. And I'd like to.....

15          COMMISSIONER HARBOUR: And -- and by (ph).....

16          MR. MCKENNA: .....a second -- a second perspective, too,  
17 if I could to this discussion because I do forward looking work  
18 when it comes to landline, broadband services as well as  
19 wireless ones, I think the trend which I would recommend to the  
20 Commission that you should look at is -- that will develop in  
21 the future, it's not going to be so much substitution of second  
22 lines with wireless service, it's more going to be a direct  
23 bifurcation of serving mechanisms into broadband vehicles which  
24 will be landline and they'll be DSL and they'll be cable modem  
25 kind of things which will serve more data applications in a

1 home and well in all likelihood always remain landline unless  
2 WiFi develops further.

3 And there's a second use which is more voice oriented  
4 which is a consumer saying that for all of their voice service  
5 they'll retain a wireless phone and use that primarily for  
6 voice and have a wireline service for data and internet. The  
7 market research that I read says that's where the whole market  
8 will go in the next five years. That's just for your  
9 consideration.

10 COMMISSIONER HARBOUR: Thank you. And to me the  
11 importance of this relates to the definition of competitive  
12 areas as well as some other issues we've talked about. Having  
13 owned a cabin in Seldovia, I have a wireline. I also carried a  
14 cell phone. Now, it may be that some people in rural settings  
15 will think well, if I go hunting I can take my cell phone, I  
16 don't need to have wireline at home at all.

17 What I'm seeking is, is there any information available  
18 other than the generality it's a threat, see what I'm getting  
19 at? So.....

20 MR. McKENNA: I would offer -- this is Hugh McKenna again,  
21 that the response that I would offer is that they will need  
22 wireline for internet. If you find most -- if you find people  
23 that say they really don't care that much about internet then  
24 they might go with wireless.

25 MS. TINDALL: Commissioner, this is Dana Tindall. I think

1 this doesn't go directly to your question about research, but  
2 rather the presumption about the type of competition that will  
3 develop. And as a competitor the way we look at a market is we  
4 require a number of different technologies to have in our tool  
5 bag to serve a market. And in any given market there's  
6 probably going to be a variety of methods of service.

7 In some places high speed wireless might be the best way  
8 to go, but in that same market area within that same rural  
9 study area there will be wireline, there will be alternative  
10 landline services and there will still be a need for UNEs. So  
11 I have to disagree with the contingents of the Rural Coalition  
12 on what type of competition will develop and also the  
13 contingents of Mr. McKenna, because every market's different  
14 and as a competitor you try to find the most efficient method  
15 of service for a given customer. Thank you.

16 COMMISSIONER HARBOUR: I appreciate the general comments  
17 and the opinions. I -- as you can tell by the line of  
18 questioning I know it may be difficult to obtain or largely  
19 unavailable, I'm looking for any kind of facts or statistics  
20 that would help in the process if I could. Okay. And as you  
21 -- I'm not trying to be impolite, I'm trying to move as quickly  
22 as I can.

23 Yes, ma'am, Ms. Grahame.

24 MS. GRAHAME: Yeah. Commissioner Harbour, whatever we  
25 have we will get to the Commission. I would note though that

1 rural Alaska is so unlike areas where studies are being done  
2 that-I don't think it's likely that we're going to find  
3 something directly on point.

4 In addition, I think, it's the -- to the extent studies  
5 have been done, I suspect they will not take into account the  
6 effect of access to Universal Service Funds and so a study  
7 done, you know, in a Lower 48 city that shows maybe people  
8 between the ages of 18 and 26 are giving up their landline  
9 phones in lieu of their cell phones, may not be the kind of  
10 inf- -- which I certainly think is happening and I think there  
11 are people in this room today who have done just that.

12 Nevertheless, I think, the real issue -- or what you're  
13 looking for is probably not available because what you really  
14 want to know, I think, is what is likely to happen in rural  
15 Alaska so that -- to help you with the definition of a  
16 competitive service area and those studies are not going to  
17 take into account ETC, the availability of Universal Service  
18 dollars.

19 COMMISSIONER HARBOUR: Thank you. And I realize it may  
20 not be possible in all rule making to make every decision based  
21 on facts, but I hope you appreciate to the extent we can we  
22 should seek to do that.

23 I'd like to turn to Mr. Moninski, page 3 of the ACS regs  
24 under Exhibit A. You're proposing that an incumbent become  
25 non-dominant when a wireless service is designated ETC. How

1 about if a wireless carrier is -- does not seek an ETC  
2 designation? And I assume that that's covered on page 7 where  
3 a competitive service is defined as competition of any type  
4 which would incorporate wireless with or without ETC, is that  
5 correct?

6 MR. MONINSKI: The last statement that you made is  
7 correct. The definition of competitive service area subsumes  
8 competition of any type.

9 COMMISSIONER HARBOUR: Okay. So if -- and not necessarily  
10 looking at just the areas you serve, but certainly the areas  
11 that the regulation would undertake to control, a competitive  
12 service area would evolve even with entry of a non-ETC cell  
13 phone service that served only a portion of the service area,  
14 is that correct?

15 MR. MONINSKI: The definition of competitive service area  
16 that we have proposed indicates actual competition capable of  
17 serving at least 50 percent of that market. So there would be  
18 at least some factual determination as to whether or not a non-  
19 ETC wireless carrier was able to serve 50 percent or more of  
20 that market.

21 COMMISSIONER HARBOUR: Okay. So ACS believes that --  
22 getting back to the earlier discussion, that -- forget ETC,  
23 that the entry of a wireless competitor into a LEC's area if it  
24 has a signal that covers 50 percent of the area it deems that a  
25 competitive area?.

1 MR. MONINSKI: Yes.

2 COMMISSIONER HARBOUR: On day one of the certificate of  
3 the entry?

4 MR. MONINSKI: On day one of the actual provision of  
5 service.

6 COMMISSIONER HARBOUR: Okay. Which could be day one of  
7 both actual provision and certification, too, if (ph).....

8 MR. MONINSKI: If a network were deployed simultaneously  
9 with certification. Although I'm not sure we're certifying  
10 wireless carriers any more, but.....

11 COMMISSIONER HARBOUR: Right. I'm sorry, right, yeah.

12 MR. MONINSKI: If that were the case I would still answer  
13 yes to your question.

14 COMMISSIONER HARBOUR: Yup. Let's look at page 8. While  
15 I appreciate that ACS is focused probably more on -- for  
16 purposes of this discussion on its urban service area, we have  
17 to consider the impact of all areas acknowledging though that  
18 in the past we have set separate rules for Anchorage, for  
19 example. But in defining significant competition as a facility  
20 based competitor capable of serving 75 percent of community  
21 customers, would this include, say, in a community of 300  
22 people a pay phone facility at a general store that's available  
23 to everybody?

24 MR. MONINSKI: When these regs were being drafted I did  
25 not -- and I was the primary drafter, I did not include that

1 scenario as one that would trigger the significant competition  
2 definition.-- And it's one that I guess we can all including the  
3 Commission, think about, but that was not part of what I was  
4 contemplating.

5 My thought process was actual networks being deployed.  
6 They could be wireless networks, they could be wireline, they  
7 could be cable telephony networks, but these were networks that  
8 were being deployed as opposed to a single calling station  
9 constituting that kind of competition.

10 COMMISSIONER HARBOUR: Good, thank you. Ms. Grahame, on  
11 -- I'm going to ask you about page 4 of your proposed regs and  
12 if Mr. Rowe wants to comment or others, then that' fine, too.  
13 The competitive service areas occur when there are multiple  
14 carriers?

15 MS. GRAHAME: Multiple carriers that have been designated  
16 ETC, not multiple carriers. So even if a rural market has  
17 three cell phone providers that is not a competitive market  
18 under our definition unless at least one of the wireless  
19 carriers has been designated an ETC. Similarly a pay phone  
20 would not qualify under our definition.

21 Under our definition with the amendment we made yesterday  
22 or the day before, it's a competitive service area only until  
23 you have another certificated LEC actually providing service or  
24 until you have multiple ETCs designated.

25 COMMISSIONER HARBOUR: Good. Does multiple -- it's not --

1 I don't think it was in your definition section. Is that  
2 defined as two or more? Would multiple mean two?

3 MS. GRAHAME: That's correct.

4 COMMISSIONER HARBOUR: Okay.

5 MS. GRAHAME: In other words, it would be the incumbent  
6 LEC plus a wireless or another provider, a cable modem  
7 provider.

8 COMMISSIONER HARBOUR: Right. Should -- let's look at B  
9 on page 4. When making a determination under A-5 of this  
10 section the Commission should consider the following and those  
11 all look like reasonable areas for the Commission to consider.  
12 Why wouldn't you want the Commission to -- why wouldn't (ph)  
13 you want to have the Commission consider A-1 through 4 as well  
14 as 5 or put another way why wouldn't it -- why would it be  
15 wrong to include 1 through 4?

16 MS. GRAHAME: It would not. What our -- our thought on B  
17 was to simply give the Commission as much discretion as it  
18 wanted. However, in going back and looking at A-1 through 5 we  
19 thought 5 was broad enough by itself to allow the Commission to  
20 include any factor that it so desired and we were uncomfortable  
21 with our B-1 through 3 to the extent it included the words  
22 natural monopoly. So that's why in response to Commissioner  
23 Thompson's question yesterday we're happy to eliminate B-1  
24 through 3 or we could have B-1 and 1 would be any factor the  
25 Commission so desired.

1 COMMISSIONER HARBOUR: Okay. Because I read 5 as not  
2 being more inclusive, but as being limited to other service  
3 areas meaning other than 1 through 4.

4 MS. GRAHAME: Ah, I see. No, our goal was simply under B  
5 to give the Commission as much discretion as it wanted.

6 COMMISSIONER HARBOUR: Okay, thank you. If I could turn  
7 to Dr. Lehman, and since we are moving fast, if anybody needs  
8 to chime in with something that is a helpful addition, please  
9 do so. On page 17, item 14, Dr. Lehman you say that regulation  
10 of the incumbent retail services runs the risk of leading to a  
11 single provider, the entrant, as the survivor.

12 DR. LEHMAN: Could you repeat the page number? I  
13 think.....

14 COMMISSIONER HARBOUR: Yeah, 17 of your original  
15 testimony, not the reply, item 14.

16 DR. LEHMAN: Is it paragraph 17?

17 COMMISSIONER HARBOUR: Page -- page 17, I think, I can go  
18 back and check.

19 MR. MONINSKI: Our copy, Commissioner, shows page 17 being  
20 the last page of Dr. Lehman's affidavit.

21 COMMISSIONER HARBOUR: Oh, help me.....

22 MR. MONINSKI: I mean, original filing.....

23 COMMISSIONER HARBOUR: .....find the area where you talk  
24 about the financial viability of the company? I must have  
25 marked that wrong.

1 MS. GRAHAME: I think it's page -- it may be page 7 of  
2 ACS's reply comments, paragraph 12?

3 MR. JACKSON: The affidavit or comments?

4 COMMISSIONER HARBOUR: I think it was page.....

5 MS. GRAHAME: I think it's the affidavit. It may be the  
6 reply affidavit of Dr. Lehman on page 7, paragraph 12.

7 COURT REPORTER: I'm sorry, could you repeat that, Ms.  
8 Grahame?

9 MS. GRAHAME: Well, this is a mere guess on my part as I  
10 don't represent ACS, but like Commissioner Harbour I noted that  
11 in -- what I noted was in Dr. Lehman's affidavit attached to  
12 ACS's reply comments at page 7, paragraph 12, but plainly I  
13 yield this entire area to Dr. Lehman.

14 MR. MONINSKI: We have located that paragraph if that is  
15 the one that you're.....

16 COMMISSIONER HARBOUR: Okay, thank you. Was that in the  
17 original affidavit?

18 MR. MONINSKI: This is reply.

19 COMMISSIONER HARBOUR: Okay. Where is it?

20 MR. MONINSKI: Page 7 --.....

21 DR. LEHMAN: I don't think that's.....

22 MR. MONINSKI: .....you don't think that may be the one?

23 DR. LEHMAN: I don't think that's what he's referring to.

24 COMMISSIONER HARBOUR: I don't -- yeah, I'm looking at  
25 paragraph 12 on page 7 of the reply and that's not the -- where

1 I think your broad discussion on regulation of incumbent retail  
2 services runs the risk of leading to a single provider.-

3 COMMISSIONER GIARD: (Simultaneous speech).....

4 DR. LEHMAN: Yes, we've got it, page 9, paragraph 14 of  
5 the original.

6 COMMISSIONER HARBOUR: Okay. Sorry for that incorrect  
7 page number. It's page.....

8 DR. LEHMAN: Nine, paragraph 14.

9 COMMISSIONER HARBOUR: Page 9, item 14. Okay. It says  
10 that -- generally that the regulation of the incumbent retail  
11 services runs the risk of leading to a single provider, the  
12 entrant, as a survivor. I gather that you believe your  
13 client's financial viability is threaten absent -- correct me  
14 if I'm wrong, absent a paradigm change as Mr. Moninski stated  
15 in his testimony in the telecommunications regulatory regime.  
16 Would that be a fair statement?

17 DR. LEHMAN: No, I don't think I'm making any factual  
18 statement about any particular company's. It's a general  
19 statement about what the effects of regulating the incumbent  
20 and not the entrant under a paradigm that involves the  
21 Telecommunications Act of 1996, what those results can be. I'm  
22 not ruling out that that might apply to my client's particular  
23 situation, but I haven't done any investigation of whether it  
24 would or would not apply to them.

25 I think as a general matter when you apply asymmetric

1 regulation under the conditions of the Act you increasingly run  
2 the risk that you will end up with the incumbent not being able  
3 to survive.

4 COMMISSIONER HARBOUR: Okay. Here, again, I'm looking for  
5 more specifics than generality. I mean, you know, I don't know  
6 that anyone would argue that over or improper regulation would  
7 be good when it puts people out of business, but on the other  
8 hand if it doesn't relate to support the -- you know, the  
9 client that you're representing, I don't know how it's relevant  
10 without the specifics, can you help me with that?

11 And you made some general comments to that extent, Mr.  
12 Moninski yesterday, but I -- but not as specific as I read  
13 these. I read these as applying to your client since they were  
14 in your affidavit.

15 DR. LEHMAN: I stand behind them as general comments and I  
16 do think that it's my understanding of this docket is that the  
17 Commission is doing a thorough review of all its regulations  
18 and I think that retail deregulation is an appropriate thing to  
19 consider given the changes that have happened since 1996. I --  
20 there's been -- I've not provided any specific evidence the  
21 financial position of ACS, nor have I reviewed any so I  
22 certainly am not going to offer a specific opinion on that --  
23 on that -- on this company's position, but.....

24 COMMISSIONER HARBOUR: Let me turn to Mr. Moninski. Do  
25 you believe that absent a paradigm change in the regulatory

1 regime your company's financial viability is threatened?

2 MR. MONINSKI: Commissioner, you have focused on hard  
3 facts and hard evidence in your questioning this morning and I  
4 don't have hard facts and hard evidence to present to you.

5 The theory behind the comments that were included were  
6 driven more by the cost advantage that ACS believes its  
7 competitors have and the results of that cost advantage and the  
8 anticipated results of that cost advantage.

9 We heard Mr. Jackson, I believe or Ms. Tindall one,  
10 yesterday say ACS is telling you they're in deep financial  
11 trouble, that's not true. I don't know that I've ever heard  
12 ACS tell anybody that it was in deep financial trouble. There  
13 are certainly financial issues that ACS is coping with.

14 Like most other companies in the marketplace today ACS is  
15 diversified. Its local exchange business is not its only  
16 business and at a holding company level I'm unaware of anybody  
17 who is suggesting to anyone anywhere that ACS is in deep  
18 financial trouble.

19 We consistently both in front of the regulators and to  
20 investors remind people who are listening that our place in the  
21 regulatory process has created specific challenges to those  
22 entities that are regulated.

23 If you take a look at a trend line and Dr. Lehman has one.  
24 There are probably others that we can present to you, but he  
25 has one on page 8 of Exhibit B. If you take a look at the

1 trend line as to how competition has progressed in Anchorage  
2 and in Fairbanks and in Juneau and simply extend that trend  
3 time to its logical conclusion on the basis that nothing  
4 changes. There is no conceptual reason that I can see that  
5 would prevent a CLEC from being able to captures 100 percent of  
6 the market in those markets.

7       So the costed -- our position is the cost advantage that  
8 exists today and the other competitive disadvantages to ACS  
9 that exist today combined have produced these results that you  
10 see in chart 8 and will continue to produce similar results,  
11 perhaps, even at an accelerated level as we go forward. So the  
12 answer is we're not necessarily saying we're going to go  
13 bankrupt. We are saying that in our local exchange business if  
14 there isn't a paradigm shift then there's no reason to believe  
15 that the results that we've seen so far are going to change and  
16 when you trend them they tend to 100 percent market share  
17 shift.

18       COMMISSIONER HARBOUR: Okay, that's fair enough. And I  
19 hope you understand, again, trying to peel the layers of the  
20 onion in putting your comments about the paradigm change that's  
21 required with Dr. Lehman's assertion that in situations a  
22 threat for survival -- financial survival could exist. I think  
23 that that applies to ACS.

24       Now, you talk about the trends I'm wondering if -- again,  
25 I love detail, if it's not available that's fine. If it is

1 available, maybe it would help and I'll tell you why. I  
2 believe that the role of a regulator is to place as much  
3 interest on the financial health of the utilities as on  
4 consumer protection and I believe the two work together. And  
5 to the extent that the utilities are healthy and fairly  
6 treated, to that extent will consumer protection exist.

7 . And at the same time there's another role specifically  
8 targeting consumer protection, but I'm interested in the  
9 implication, if not the overt statement, that absent a paradigm  
10 change a threat exists. And I think that at least deductively  
11 we've concluded that's where it could be going based on your  
12 testimony today.

13 So the question I asked in order to clarify, again, if  
14 it's available publicly, doesn't provide, you know, competitors  
15 with information that shouldn't exist or it's not available  
16 publicly, I don't look for it, but if it's available it would  
17 be helpful.

18 Since you talked about trends, since 1999 or 2000 I'll  
19 just list some things that would be helpful to me to understand  
20 the need from an ACS viewpoint to a paradigm change in  
21 regulatory regime.

22 First, what is the greatest produce of net income by  
23 business segment for ACS companies? What amount -- in my  
24 former companies these are the kind of questions I ask myself  
25 in order to determine trends.

1           What amount and percent of income is produced by local  
2 service? What amount and percent of total income is produced  
3 by interexchange service? What amount and percent of income is  
4 produced by wireless service? By internet service and by the  
5 former directory service during this period? What is the  
6 single, largest category of expense or loss and what is that  
7 amount? Has there been a review of the impact of ACS debt on  
8 total corporate performance?

9           And finally to better understand the need for paradigm  
10 change by ACS of a proponent of regulatory regime change, now,  
11 perhaps, a graph out ACS operating company operating revenue --  
12 again, publicly available information for the last several  
13 years from about 1999 or 2000 on with the total -- we talked  
14 about lines, with the total UNE loops owned broken down by  
15 those leased out and non-UNE loops served by ACS and if  
16 possible the revenue applying to each of those segments non-UNE  
17 and UNE.

18          Dr. Lehman, one last question along with line, do you  
19 agree that unregulated services like wireless and internet and  
20 debt burden are factors that relate more to corporate decisions  
21 than regulatory requirements and decisions?

22          DR. LEHMAN: I'm reluctant to say what -- what.....

23          COMMISSIONER HARBOUR: I'm talking in -- in --.....

24          DR. LEHMAN: .....what matters more.

25          COMMISSIONER HARBOUR: .....generically among --.....

1 DR. LEHMAN: Yeah.

2 COMMISSIONER HARBOUR: .....in regulated environment.

3 DR. LEHMAN: I'd be reluctant to say what weighs more. I  
4 think that telecommunication companies must look at the changes  
5 in technology in the marketplace. They obviously can't survive  
6 without looking at that, but regulation plays such a large part  
7 in this industry that they can't afford to ignore that either.  
8 I mean,.....

9 COMMISSIONER HARBOUR: I think I was unclear in my  
10 question. Let me put it in this way, does the regulatory  
11 requirements and decisions have a -- I'm sorry, do corporate  
12 decisions have a greater effect on unregulated serviced than  
13 regulatory decisions?

14 DR. LEHMAN: Could you repeat that once more, I'm not.....

15 COMMISSIONER HARBOUR: Do corporate decisions have a  
16 greater effect on unregulated activities, public company, than  
17 regulatory decisions?

18 DR. LEHMAN: I think -- in the general I don't think I can  
19 answer that. I mean, I can think of specific examples where  
20 corporate decisions have overridden any regulatory.....

21 COMMISSIONER HARBOUR: In an non-regulated area of  
22 activity?

23 DR. LEHMAN: Oh, in a -- in an unregulated.....

24 COMMISSIONER HARBOUR: Okay. Let me repeat the question.  
25 In your opinion do corporate decisions have greater impact on

1 unregulated activities than regulatory decisions?

2 DR. LEHMAN: In the unregulated area yes, I think that's  
3 true.

4 COMMISSIONER HARBOUR: I appreciate this. I know these  
5 are detailed questions, but by providing the information I hope  
6 to more responsibly understand the financial issues that have  
7 been raised here and their impact on trends and on the  
8 importance of considering a change in the regulatory regime.

9 On price caps, you discussed price caps with reference to,  
10 I think, safety net and carrier of last resort issues. You  
11 weren't in general -- I don't consider you to be in general an  
12 advocate of price cap methodology before this hearing, am I  
13 correct, but you do suggest those as alternatives for carrier  
14 of last resort and safety net issues that you raised, is that  
15 right?

16 DR. LEHMAN: Yeah, I mean, in re- -- particularly in  
17 response to Commissioner Thompson's questions yesterday, you  
18 know, this situation where a carrier may have some regulated  
19 markets and some unregulated markets under the ACS proposal it  
20 raises a question about how to determine the rates for the  
21 markets that are not deemed to be competitive service areas and  
22 certainly price caps is one alternative way of dealing with  
23 what is a thorny question about allocating the costs between  
24 different communities, but you're quite right, I'm not  
25 advocating as a general solution price caps particularly as a

1 one size fits all solution to all.....

2 COMMISSIONER HARBOUR: Right.

3 DR. LEHMAN: .....types of carriers. It's not an  
4 appropriate regulatory regime for certain kinds of carriers and  
5 certain situations.

6 COMMISSIONER HARBOUR: Right. And, I think, would you  
7 acknowledge that there are a number of -- while there are some  
8 experts that support price cap methodology, there are a number  
9 of others that have deemed that it is price -- or an  
10 inefficient, that.....

11 DR. LEHMAN: Well, I mean, I support the theoretical  
12 advantages of it, but in the spirit of your questions about  
13 evidence, the evidence on price caps is decidedly mixed at  
14 best. It.....

15 COMMISSIONER HARBOUR: Okay, good. Now, with respect to  
16 the safety net and carrier of last resort, have you considered  
17 other alternatives for consumer protection other than price  
18 caps either on the annual increase methodology or the flat  
19 price cap methodology? Have you considered any other  
20 protection or -- for those two areas other than price caps?

21 In other words, if we do as you propose and move to safety  
22 net and carrier of last resort protections, the only  
23 alternative you're actually proposing now is price caps. I  
24 think I got that right. The second -- the question was, have  
25 you considered other alternatives besides price cap?

1 MR. MONINSKI: If I may Commissioner, we -- conceptually I  
- 2 think we're in the same place, but we may be using two distinct  
3 elements somewhat interchangeably. When we were talking about  
4 price caps I believe we were talking about that in terms of a  
5 situation where you have a study area that was not fully  
6 competitive so you had some exchanges or some locations that  
7 were or some that were not and price caps may be an option to  
8 confront the situation where you had to find a good way to  
9 regulate those locations that had not yet been competitive.

10 When we talked about safety nets we were typically talking  
11 about that more in the context of an added layer of public  
12 protection in a competitive market. Now, we're focused on a  
13 competitive market, but we're still concerned, perhaps, about  
14 the residential ratepayer in the area of basic residential  
15 services and we did offered a couple of alternatives. There  
16 may be others.

17 The alternatives that we offered on the safety net  
18 question dealt with some limitation in the amount of price  
19 increase on a annual basis over a transition period, that was  
20 one. Something to the effect of not more than a dollar a year  
21 over a three to five year period.

22 The other thing that we offered was, perhaps, a modified  
23 Wisconsin plan which was an indexing plan where the rates for  
24 basic residential services was indexed to some median income or  
25 some percentage of median income so that was the distinction

1 between those two.

2 COMMISSIONER HARBOUR: Understood. Any -- okay. Let me  
3 move on. I'm going to eliminate a couple just in the interest  
4 of time.

5 Mr. Jackson, yesterday we ran short and I think I cut you  
6 off, offering a more time today, do you and Ms. Tindall have  
7 more on the choices, via the Illinois Bell case? I cut you off  
8 at that point. It's an important case for a number of reasons  
9 including the fact that the Illinois statute received  
10 significant attention in Juneau last spring and I think we were  
11 discussing what precedences are set which we should observe and  
12 evaluate in the merits of the proposals before us today versus  
13 what portions of a decision may have been trumped or pre-empted  
14 by the Triennial Review or Virginia arbitration and those  
15 issues. What -- maybe I didn't cut you off. I thought I did.

16 MR. JACKSON: Mr. Moderow will be with us again this  
17 afternoon on UNEs so the -- to the extent that that is a UNE  
18 directed question I'd possibly like to give him a chance to  
19 respond, but I will tell you what I think he will say, not  
20 because I know it on my own, but because he said it, which is  
21 that the Triennial Review would not in any way trump the  
22 decisions from Illinois and the Illinois decision stands as  
23 very good law.

24 COMMISSIONER HARBOUR: Right. I'll look forward this  
25 afternoon maybe to a little exchange 'cause I know we have a

1 difference of opinion.

2 MR. JACKSON: Can I make-one other brief comment.....

3 COMMISSIONER HARBOUR: Please.

4 MR. JACKSON: .....regarding -- I just wanted to indicate,  
5 I'm sure you know about Mr. Chapados' affidavit. At.....

6 COMMISSIONER HARBOUR: Yes.

7 MR. JACKSON: .....paragraph 3 he has some specific  
8 information responsive to the questions that you asked,  
9 probably not as specific.....

10 (Hugh McKenna leaving the meeting)

11 MR. JACKSON: .....as you're looking for, but he does  
12 indicate that ACS's EBITDA growth (ph), now that's different  
13 from net income, but it's what financial analysts are using to  
14 a very large extent now, that EBITDA for ACS as a whole has  
15 grown from 111 to 129 million between 2000 and 2002. That that  
16 growth was in the local phone and the wireless businesses while  
17 the internet and the long distance businesses were having  
18 negative EBITDA, so it's -- perhaps, it could be more specific,  
19 but it is partially specific answer to some of your questions.

20 COMMISSIONER HARBOUR: At least indicators.

21 MR. JACKSON: Yes.

22 COMMISSIONER HARBOUR: Thank you for that. I know some of  
23 the other Commissioners would like to take a break now. I only  
24 have a couple more questions that I can handle quickly after  
25 the break. Would you like to adjourn for a few minutes -- or

1 recess for a few minutes?

2 HEARING EXAMINER OLSON: Let's take a 10 minute break.

3 Breaks that we need 'cause of all the coffee everybody pumped  
4 earlier this morning, so we'll stand in recess for 10 minutes.

5 (Off Record - 10:03 a.m.)

6 (On Record - 10:15 a.m.)

7 COMMISSIONER HARBOUR: Thank you. And I should remind Mr.  
8 Agotte and anybody else that's still on, please, just chime in  
9 because you're going to see targets of opportunity.

10 I'm going to go to the last question. I may have a couple  
11 others for the experts this afternoon. Let me go back to Ms.  
12 Grahame and Mr. Rowe if he wants to comment or others.

13 Help me understand rural carrier concern for competition,  
14 okay? Is this a concern that cell use is an actual threat to  
15 the investment of the network or is it more a concern about  
16 further dividing the Universal Service pie which some have  
17 argued in that -- that big a deal and others argued has -- is  
18 or is the concern more with long distance? Is it more with  
19 local service competition, where -- or is it all of the above?  
20 Where is the concern?

21 MS. GRAHAME: This is Heather Grahame. Jim, do you mind  
22 if I jump in?

23 MR. ROWE: Please, splash away.

24 MS. GRAHAME: Let me give a -- let me answer your question  
25 generally and then I'd like Mr. Rhyner who has practical

1 experience and who might be able to provide the kind of detail  
2 I know that you like to hear.

3 COMMISSIONER HARBOUR: Good.

4 MS. GRAHAME: As a general matter as counsel the concern,  
5 number one, is actual threat to the network. Number two, we  
6 are concerned about Universal Service Funds. We know the  
7 Universal Service Fund structure is going to change and we know  
8 what it is today and we think the pie is going to diminish in  
9 short order. Our concern is less associated with long  
10 distance.

11 Our concern is the viability of the local exchange  
12 companies and the ability to charge reasonable rates to  
13 consumers once competition comes to a rural market because,  
14 remember, they are uneconomical to serve by one carrier without  
15 a subsidy. And it's the subsidies, both the Universal Service  
16 Funds as well as the implicit subsidies that allow rates to  
17 remain affordable in rural Alaska. And with that I'd like to  
18 turnover to Mr. Rhyner.

19 COMMISSIONER HARBOUR: Good, like to hear from Mr. Rhyner.

20 MR. RHYNER: Thank you, Commissioner Harbour. I guess I  
21 would disagree just a little bit with what Ms. Grahame said in  
22 that the long distance part isn't a threat 'cause the loss of  
23 access minutes is a threat and it is a considerable source of  
24 revenue. Many of the small rural companies derive as much as  
25 75 percent of their total company revenue from Universal

1 Service and access. And as we've seen over the last two years  
2 with the implementation of the MAG (ph) Plan, a shift of access  
3 going to Universal Service which makes us more reliant on  
4 Universal Service.

5 I think to answer your question directly it's all of the  
6 above except for the threat to -- from wireless companies to a  
7 loss of local service revenues. Our experience, at least to  
8 this point, has been no real reduction in access lines counts  
9 from the entry or competition amongst wireless carriers.

10 for -- in Dutch Harbor we're seeing -- we have two  
11 wireless carriers there and we haven't seen any loss of access  
12 lines to the wireless carriers. We have seen -- going to your  
13 earlier question about second line, we have seen a reduction in  
14 second lines, but that's due to the -- getting high speed  
15 service availability in that market.

16 MS. GRAHAME: Let me qualify my response on long distance.  
17 Many of the rural LECs have long distance affiliates through  
18 and so I -- when I responded to your question on long distance  
19 like your questions to AT&T as a long distance carrier I was  
20 thinking in terms of a long distance entity rather than the  
21 access minutes which are of a concern.

22 And, of course, once a wireless carrier becomes an ETC  
23 which we have not seen yet in Dutch Harbor or in rural Alaska  
24 up until Friday, that -- that is the point at which we see the  
25 competitive threat.

1           COMMISSIONER HARBOUR: Is there any reason to suggest  
2- though that there would be a loss of lines whether there's an  
3 ETC or not, is -- does -- or would that be transparent to the  
4 person making the decision as to whether or not to drop a  
5 wireline?

6           MR. RHYNER: Well, it would depend on the entity that  
7 entered. With a wireless carrier, at least with our experience  
8 so far, we haven't see a loss of primary lines to wireless  
9 carriers. If, however, in some of the larger communities in  
10 rural Alaska like Nome, Bethel, those areas where you have  
11 cable carriers and you start to see cabl- -- the proliferation  
12 of cable telephony we may well see a loss of primary lines to a  
13 second carrier.

14          COMMISSIONER HARBOUR: Okay, but -- okay, help me, I'm  
15 stru- -- cable telephony is not subject to ETC, is it?

16          MR. RHYNER: We haven't seen one of those yet, but if the  
17 cable company starts to provide cable telephony in a rural  
18 community where there is Universal Service available I see no  
19 reason to think that they won't apply to be an ETC.

20          COMMISSIONER HARBOUR: Oh, well, here I -- we're always in  
21 danger of tangents, but if that were the case under the current  
22 regime we wouldn't be seeing -- or we would we -- I guess  
23 because it were -- if it were seeking ETC it would have to come  
24 before us. Yeah, okay.

25          MR. RHYNER: Absolutely.

1 COMMISSIONER HARBOUR: Okay.

2 2700

3 (Tape Change)

4 Tape 2

5 0015

6 MR. AYOTTE: Commissioner, if I could weigh in at the  
7 appropriate time to provide comment on your question?

8 COMMISSIONER HARBOUR: Please, go ahead.

9 MR. AYOTTE: I think that the Rural Coalition did  
10 everything that they could to avoid answering your question.  
11 Your question was what are the rural carriers' concerns for  
12 competition and in their response it sounded much more like an  
13 anti-competitive ETC, don't allow wireless carriers to be ETCs.  
14 They're not expressing concerns relative to competition.  
15 Their concerns are all grounded in terms of their objections to  
16 designating a competitive ETC and specifically a wireless  
17 carrier.

18 If wireless service is competitive to the rural LEC, then  
19 they're subject to competition today irrespective of whether  
20 the wireless carrier has been designated as an ETC, yet there's  
21 been no threat to their networks as a result of wireless  
22 competition and similarly if a wireless carrier is designated  
23 as a competitive ETC there is no effect on the level of Federal  
24 Universal Service support that the rural carriers will continue  
25 to receive.

1           Even the Commission itself noted in the Alaska Digital  
2 order that concerns about any financial impact of designating  
3 competitive ETC concerns relative to the size of the Federal  
4 Universal Service Fund are simply not relevant to the question  
5 of whether you should designate a competitive ETC.

6           And without launching into a whole discussion of the FCC's  
7 portability rules and their Federal Universal Service Funding  
8 mechanism, the fact of the matter is when you have a  
9 competitive ETC, whether that be a wireless carrier or a  
10 landline carrier and there is competition for the incumbent LEC  
11 and more people subscribe to the network and the Universal  
12 Service support is distributed as the FCC has determined to the  
13 carrier that's providing the service, this is all a good thing.

14          More people connected to the network, more people having  
15 access to additional choice of services and Universal Service  
16 support being available to the carriers to enable those  
17 services to be affordable, these are all good things for the  
18 consumers and they're good for competition. But as it relates  
19 to the impact of the level of Federal Universal Service support  
20 to the incumbent LECs resulting from a competitive ETC, there  
21 is none.

22          Now, if there are changes and most likely there will be  
23 changes at the FCC level in terms of the manner in which they  
24 administer their Universal Service support, all designated ETCs  
25 are going to be subject to those changes, but those are really

1 funding questions and Universal Service policy questions which  
2 are far removed from the question of how do you get local  
3 competition at the state level within the confines of this  
4 proceeding.

5 Wireless carriers have been designated as competitive ETCs  
6 in a multiple of states and to date there has been no lost or  
7 disruption or threats to the network by the rural LECs. So I  
8 don't think the subject of Universal Service support and  
9 competitive ETCs is really the focus of this inquiry or should  
10 be the focus of your question. It's really the broader  
11 question of local competition and how the Commission can  
12 develop a regulatory climate which will foster that local  
13 competition not only in the urban areas, but also in the rural  
14 areas.

15 COMMISSIONER HARBOUR: Thank you for your comment.  
16 Mr. Rowe.

17 MR. ROWE: Commissioner, thank you. I'm Jim Rowe,  
18 director of the Alaska Telephone Association. I certainly  
19 respect those people who can always identify a good thing and  
20 there are many good things happening in Alaska, but I think we  
21 have to be careful and realize, as the prior speaker said, that  
22 there is competition there in rural Alaska. Even where there's  
23 not ETC designation, we recognize that competition, and the  
24 competition is for the disposal income that customers have that  
25 they can spend on modes of telecommunications.

1           However, the designation ETC is something that concerns us  
2 very much and its almost a mask for what it really is, it's  
3 USF. And it probably would be -- we'd probably be more careful  
4 in designating it if we always identified it with Universal  
5 Service Funding.

6           As the speaker said, there are good things happening out  
7 there. People can have access to wireless. They can call on  
8 the road when they have a flat tire. They might be on a snow  
9 machine and have the snow machine break down and you, kind of,  
10 alluded to that in some rural areas earlier in your comments,  
11 Mr. Commissioner, but you know what, I'm not sure those things  
12 are what was anticipated for being covered by Universal Service  
13 support, high cost support.

14           There are many good things out there, but all of that  
15 doesn't fit under the basic idea, the original idea of what  
16 Universal Service support is for. It is for people in rural,  
17 high cost areas that had no way to afford the basic cost of  
18 voice grade telecommunications. It wasn't mobile voice grade  
19 telecommunications.

20           And I think we have to be careful that all good things  
21 should not be paid for by Universal Service support even though  
22 the prior speaker is comfortable in knowing all the recipients  
23 even where wireless has come in, and I'm talking about wireless  
24 competitors who are getting ETC designation, are getting it.

25           At the federal level and quite honestly at my level we

1 certainly have many people who are concerned with the size of  
2 the fund. The political target it is as it's growing  
3 significantly larger. And it's what we're going to see in this  
4 state as is happening elsewhere particularly wireless service  
5 providers coming in and getting ETC designation and that fund  
6 going up dramatically.

7       These are good things for people when they can get  
8 wireless telephony and have more access to all our neighbors,  
9 all our friends and all our family, all our businesses and all  
10 our health care, but they're not necessarily things that should  
11 be supported by a Universal Service Fund unless it's  
12 redesignated what that use is, so I think we have to be  
13 careful. Thank you.

14       MR. AGOTTE: Commissioner Harbour, if I could just comment  
15 with respect to Mr. Rowe. I think this illustrates all of  
16 these concerns -- and I'm not trying to minimize or diminish  
17 these concerns. My point is quite simple, the objections that  
18 are being stated by the Rural Coalition as well as Mr. Rowe are  
19 really questions that are best directed to the FCC and to the  
20 Joint Board. They relate to the concerns and policy issues  
21 relative to the administration of Federal Universal Service  
22 support. They do not relate to matters of local competition in  
23 Alaska and they don't belong in this proceeding.

24       I respect the comments and the concerns. I just don't  
25 think they're going to further the Commission's task of

1 developing the local competition rules in responding to the  
2 Legislature. They are separate and distinct. They all relate  
3 to question relative to eligibility for and use of Federal  
4 Universal Service support. Those issues which are legitimate,  
5 important issues, but they do not relate to the questions of  
6 local competition.

7 COMMISSIONER HARBOUR: Well, that may be more than I  
8 bargained for, but I appreciate it.

9 DR. LEHMAN: Well, if I could add one thing.....

10 COMMISSIONER HARBOUR: Dr. Lehman.

11 DR. LEHMAN: .....then without taking any stance on  
12 whether it does or doesn't belong in this particular  
13 proceeding, it does underscore what I think is part of ACS's  
14 deregulation proposal that, in fact, designation of multiple  
15 ETCs is an appropriate trigger for deregulation of the  
16 incumbent carrier.

17 The fact is that their ability to sustain prices above  
18 competitive levels is undermined by designation of multiple  
19 ETCs. That's what we're talking about is, does the incumbent  
20 still need to be regulated for the retail price they charge in  
21 that environment and I think the discussion you've just heard  
22 illustrates that they have power to take more from consumers  
23 than they should get is really mitigated by the fact that there  
24 are multiple ETCs and that is an issue in this proceeding.

25 COMMISSIONER HARBOUR: Thank you for adding that. I'm

1 just going to add some with this question the icing on the cake  
2 for my selfish purposes and it might be relevant as we reach  
3 final considerations on it.

4 Probably a number of the members of the Rural Coalition  
5 and the ATA have subsidiary sisters, others who are -- who have  
6 PCS licenses who are -- who also operate wireless licenses, is  
7 that true?

8 UNIDENTIFIED VOICE: Some.

9 COMMISSIONER HARBOUR: Some, but not all?

10 MS. GRAHAME: Mr. Rhyner's companies do not, for example.

11 COMMISSIONER HARBOUR: Okay. My question is, if -- to the  
12 extent that a rural LEC believes that the rising wireless  
13 technology movement to that technology is threatening, why --  
14 is there some reason why, maybe it has to do with license  
15 applications or allocations, but would not every rural LEC wish  
16 to acquire such a license and preempt competition by fully  
17 covering the area by both wired and wireless service?

18 MR. ROWE: May I, Commissioner?

19 COMMISSIONER HARBOUR: Please, I'm just -- I hope it's a  
20 logical question.

21 MR. ROWE: I think your patience will probably bring an  
22 answer to you in the new future. I don't think that preempts  
23 competition. I think there's some logic that has stopped our  
24 companies up here from doing that in the past. We realized two  
25 years ago that this was a ploy that companies that did have

1 cellular affiliates could certainly go in and apply for ETC  
2 status and get Universal Service Funding. And, in fact, we've  
3 had individuals that have told us that would be the thing to do  
4 because it's the way the trend is going and, indeed, they were  
5 correct.

6 We still see in real logic this isn't reasonable. That's  
7 not what Universal Service funding was for. And for people who  
8 have been providing what they see as quality service to rural  
9 Alaska realizing the costs and realizing the finite amount of  
10 support from the national forum for this, it didn't seem like a  
11 logical thing.

12 I think you will probably see it coming before this  
13 Commission and in all honesty, I think the fiduciary  
14 responsibility of the directors and management demand that they  
15 will come before this Commission and ask for ETC status for  
16 their cellular affiliates.

17 COMMISSIONER HARBOUR: Okay. I'm dangerously close to  
18 leading into a wide tangent, but since I did open it I have to  
19 ask -- let Mr. Rhyner and Mr. Jackson conclude here.

20 MR. RHYNER: I think part of the problem with the wireless  
21 service in rural Alaska is the -- the answer to your question  
22 is going to be very much the reason why many of the small LECs  
23 have gone away from their long distance affiliates.

24 The cost of transport into the Bush in Alaska is so cost  
25 prohibited that it's difficult to interconnect a cellular

1 service or a wireless service to the network to do roaming and  
2 many of the small carriers are finding nationwide are out of  
3 business because they can't be connected and if you can't  
4 provide roaming services to your wireless customers, then  
5 they're very often not interested in paying a premium price for  
6 a wireless service in the Bush that can only be used in that  
7 village.

8 But when you have some other connection into the villages  
9 that may provide the possibility to aggregate those services  
10 and get that transport at a more affordable level, so there are  
11 entities out there that could eventually afford to be able to  
12 do that.

13 COMMISSIONER HARBOUR: Thank you. Mr. Jackson.

14 MR. JACKSON: I was just briefly going to mention, based  
15 on my recollection, this may be information you already have  
16 and I would invite someone like Dr. Lehman to correct me if I  
17 get it a little wrong, but initially there were two cellular  
18 licenses in each market and one of those licenses was  
19 essentially reserved for local exchange carrier.

20 Now, in some instances that got complicated because the  
21 size of the area they may have been more than one local  
22 exchange carrier, but the local exchange carriers did have,  
23 sort of, a leg up the first time around in getting the licenses  
24 for cellular.

25 And then when PCS came along there are essentially, I

1 think, five different licenses in each area of different sizes  
2 and there was no leg up particularly for the LEC at that point,  
3 but there were -- those were sold at auction.

4 There's a pretty good bit of wireless spectrum out there  
5 for people who want to get into the business if they want to.

6 COMMISSIONER HARBOUR: Thank you. Mr. Hearing Examiner,  
7 I'm through for the time being.

8 HEARING EXAMINER OLSON: Ask Commissioner Giard.....

9 CHAIR JOHNSON: I think Ms. Grahame.....

10 MS. GRAHAME: Commissioner Harbour, if I might.

11 COMMISSIONER HARBOUR: Please.

12 MS. GRAHAME: I think I can provide -- I think I can  
13 conclude this discussion in a way that would be beneficial to  
14 you. We are not here to discuss Federal Universal Service  
15 policies and I don't think we have. We didn't in our comments.  
16 To the extent we've mentioned them it's been in response to  
17 your questions.

18 The whole issue evolves around HB -- from our perspective  
19 HB 111 required you to define a competitive service area and we  
20 have provided a definition that has two brightlines and so in  
21 the context of the designation of multiple ETCs that is  
22 something that we have presented to you as a brightline  
23 definition for the definition of a competitive service area.  
24 Thank you.

25 COMMISSIONER HARBOUR: Thank you.

1 MR. AYOTTE: And, Commissioner, if I could comment on Mr.  
2 Grahame's remark, if the Commission determined that the  
3 designation of multiple carriers as ETCs within a given area  
4 constitutes an appropriate competitive service area for  
5 purposes of the local competition, I think the Commission can  
6 make that determination. And on behalf of Dobson, we don't  
7 express any view one way or the other as to whether that's an  
8 appropriate standard, I -- but I will say it is certainly a  
9 brightline standard.

10 I think, however, that is a fundamentally different  
11 question and one that can be answered without the necessity of  
12 having to undertake consideration of the Rural Coalition's  
13 proposed Universal Service Fund regulations. If we're not here  
14 to discuss Universal Service policies, and we're not here to  
15 analyze those policies, then the Rural Coalition's proposed  
16 regulations which go directly to the questions of Federal  
17 Universal Service Funding designation of multiple ETCs, what  
18 sort of application processes are necessary, et cetera, et  
19 cetera, then those matters really don't belong in this  
20 proceeding. Thank you.

21 HEARING EXAMINER OLSON: Commissioner Giard.

22 COMMISSIONER GIARD: I'm going to ask questions today  
23 about competition, market power, tariff filings and then  
24 possibly the dominance issue which I am still having some  
25 confusion on, not in terms of the IXC, but in terms of the LEC.

1 So, I think, I was going to talk about ETC, but I'm not going  
2 to now. Not yet, I think we did enough on that for the record.

3 So I think I'm going to start with competition and I'm  
4 going to address my questions, because ACS was the first to  
5 file its regulations and its regulations are the ones that I  
6 used and I think other people have used as a basis.

7 When we're talking about competition, Mr. Moninski, would  
8 you please, again, define for me your two stage process and how  
9 you would identify and determine competition? And then, at the  
10 same time as you do that, tell me how rate regulation changes  
11 in each step so that I can write it down and have it clear in  
12 my head for all of my follow on questions for GCI, okay?

13 MR. MONINSKI: Okay. The two stage process is as follows;  
14 when a competitor enters a local exchange market and provides  
15 service via any platform -- and I will list a few, but there  
16 may be others, okay. It could be via total service resale, it  
17 could be by a totally separate overlay network, it could be  
18 wireless, it could be cable telephony, it could be the use of  
19 unbundled network elements, it could be any form of competition  
20 whatsoever based on any platform. When that event occurs and a  
21 competitor is actually in the market offering services such  
22 that at least 50 percent of the customers in that market have  
23 a choice of provider, at that point the incumbent carrier would  
24 be declared non-dominant.

25 COMMISSIONER GIARD: Okay. I'm going to stop you there if

1 I may, please, and I'm going to ask you some questions about  
2 that definition that you just gave me. As we heard testimony  
3 today that talked about wireless not really supplanting the  
4 first telephone line, you guys call it an access line, but for  
5 me it's my home line, so how does the consumer benefit from  
6 your definition of competition of the mere existence of a  
7 wireless? How does the person who owns an access line, a 274  
8 telephone number, benefit from if the -- if that line is  
9 historically across the country not being supplanted by  
10 wireless, how does the consumer benefit from your definition of  
11 competition?

12 MR. MONINSKI: What we've seen so far harkening back a  
13 little bit to Commissioner Harbour's questions is a fair amount  
14 of anecdotal information about that, perhaps, not a lot of hard  
15 evidence about that, but -- but without trying to debate that  
16 we -- even if that -- even if it's true that customers don't  
17 today perceive a wireless alternative as being a clear  
18 substitute for their wireline, their primary wireline service,  
19 there's nothing to prevent that evolution. There's nothing  
20 that says that in a particular market -- in a particular Alaska  
21 market that consumers may very well begin to move in that  
22 direction.

23 The availability of a wireless alternative provides not  
24 just a voice alternative to a wireline voice service. As we  
25 know wireless services are expanding in their sophistication

1 and in their scope. They're expanding in their availability of  
2 providing data services. We are going to see that happening  
3 more and more often. The wireless service also provides an  
4 alternative to traditional long distance service so it competes  
5 in that market as well.

6 I believe, and ACS believes, that the availability of a  
7 wireless alternative presents competition in a variety of ways  
8 not simply primary line -- primary wireline substitution test.

9 COMMISSIONER GIARD: Okay. I don't think that you've  
10 satisfied my question because what I asked you is how does the  
11 consumer who has a line going to their home and you have told  
12 me in your response that there is, you know, right now people  
13 -- and I think that there's several people, Mr. McKenna he flew  
14 off, but that wireline is not really being replaced by  
15 wireless.

16 So your definition of a competitor entering a market  
17 includes wireless, cable telephony, you know, any form and so  
18 it's your definition and I'm asking you to defend it. And  
19 explain to the Commission how we could accept and adopt your  
20 definition and also meet our obligation to the consumer? And  
21 you didn't explain to me how the existence of a wireless  
22 competitor justifies the label of a competition in the market,  
23 the one line that's going to their home. Do you want to try  
24 again or do you want to change your definition?

25 MR. MONINSKI: Well, I don't want to change my definition.

1 COMMISSIONER GIARD: Okay.

2 MR. MONINSKI: Okay.

3 COMMISSIONER GIARD: Then maybe you want to try again.

4 MR. MONINSKI: I don't know that I'm going to be able to  
5 give you more examples of how the consumer benefits by the  
6 availability of wireline competition.

7 COMMISSIONER GIARD: Okay.

8 MR. MONINSKI: Other than the fact that, again, wireline  
9 -- wireless competition rather, provides competition beyond  
10 simply that primary voice grade, wireline service that, sort  
11 of, created the context of your question. I think we need to  
12 look at wireless and wireline competition in a broader context  
13 and I also think we need to evaluate ACS's proposal in terms of  
14 the degree of regulatory relief that's being proposed.

15 We're not simply saying the minute you have a wireless  
16 carrier in a market you deregulate, you detariff, you turn  
17 everybody loose, that's not the proposal.

18 COMMISSIONER GIARD: Okay. Dr. Lehman, do you have any  
19 comments on the existence because you also in your testimony  
20 spoke of the definition of competition, but I understood your  
21 definition to be more in line of facilities based? Are you  
22 guys in conflict on that or do you support.....

23 DR. LEHMAN: I think my comments more specifically address  
24 the second stage of this process, but I do think there's some  
25 commonality between my answer there and the answer to the

1 question you just asked which is the -- to see how consumers  
2 gain by removing the dominance label you have to say well, what  
3 is the dominance designation achieving for consumers and what  
4 is it giving up.

5 And it's my position that labeling a carrier dominant  
6 restricts their ability to offer the consumer new, innovative  
7 packages including different pricing schemes and to the extent  
8 that it's unnecessary it should be removed. To the extent that  
9 it's unnecessary. Is it an appropriate amount of regulation  
10 that remains in particular markets depending on whether this is  
11 the first stage or the second stage that's been reached, but  
12 handcuffing the incumbent does not help consumers any because  
13 it just says that one of their principal carriers is not able  
14 to be as flexible as they might otherwise.

15 COMMISSIONER GIARD: Dr. Lehman, if wireless doesn't  
16 replace the access line then how are we handcuffing the  
17 incumbent? I mean, the regulation has historically been on the  
18 benefits to the consumer from having the low cost, most  
19 efficient wireline going to their home, so when you build your  
20 definition for competition, which is important and I'm  
21 considering it, you seem to have, you know, put everything in  
22 the soup and I wonder if you want to reconsider based on asking  
23 us to declare an area competitive when wireless.

24 The Rural Coalition has come in and said we've got  
25 wireless people operating already against our LECs. We don't

1 -- that doesn't bother us. We're concerned about ETC and  
2 Universal Service Funds. We've already got wireless people  
3 operating. So they're not asking us to define something as  
4 competition just based on the mere -- unless I'm wrong, Ms.  
5 Grahame,.....

6 MS. GRAHAME: No, no.

7 COMMISSIONER GIARD: .....and you can correct me, so.....

8 MS. GRAHAME: That's correct.

9 COMMISSIONER GIARD: So your definition is even broader  
10 than the Rural Coalition's definition which is troubling  
11 because I -- it asks us to define competition based on a very  
12 big difference between like type (ph) services. There is no  
13 real like type service that I can find between a wireless  
14 service offering today -- I mean, I don't really think the RCA  
15 should be on the bleeding edge. I don't mind if it's on the  
16 leading edge, but between a wireless service and that line  
17 going to my house 'cause I don't have a cell phone.

18 DR. LEHMAN: This would be a easier question for me to  
19 handle if we could talk about the stage two designation....

20 COMMISSIONER GIARD: Well, all right.

21 MR. MONINSKI: But I'd like to take a cut (ph).

22 COMMISSIONER GIARD: Okay.

23 MR. MONINSKI: We have all grown up in this process  
24 operating under the theory that regulation is a substitution  
25 for competition, that regulation is probably a suboptimal

1 substitution for competition.

2 In ACS markets -- one of the reasons why this is going to  
3 be a tough question for ACS, in ACS's markets while I  
4 personally do believe that competition on any platform should  
5 be considered in terms of the degree of regulatory relief that  
6 might be granted to the incumbent, as a matter-of-fact, the  
7 situations that we have in all of our primary markets relative  
8 to competition is that our primary competitor is a wireline  
9 competitor.

10 We have wireless competitors out there as well. I'm not  
11 sure that I'm aware of any market right now where we face  
12 competition only from a wireless carrier. So from that  
13 standpoint our significant concern and significant issue is on  
14 the wireline side.

15 In this proposal like all of the proposals that we've made  
16 we've advanced them because we think they're appropriate. We  
17 think they're in the public interest. We think it's time to  
18 consider them. Any and all of them may not be perfect. There  
19 may be other approaches that could be taken that would be  
20 reasonable and produce an equally good result.

21 Right now if the Commission were to decide well, that's  
22 not go -- let's not include wireless in that scheme of things,  
23 but we will consider other forms of competition as potential  
24 trigger mechanisms for regulatory relief, at the end of the day  
25 that probably still produces a good result for ACS.

1 COMMISSIONER GIARD: So are you offering that?

2 MR. MONINSKI: Well, I hate to tell you that I -- that I  
3 don't think that wireless offers important levels of  
4 competition. I think what I am saying is that is -- that's not  
5 the primary form of competition we are facing today. If it  
6 wound up not being in the reg, but other things stayed in the  
7 reg, I think we would still realize a good result.

8 COMMISSIONER GIARD: 'Cause when I recall way back when I  
9 worked a little bit with ATU was that MTA also had a wireless  
10 and then MTA and MacTel, kind of, merged or something, but I  
11 was thinking that under your definition as you've prepared it  
12 way back in '97 or '98 or whenever the heck people started  
13 getting cell phones around town, we should have, based on your  
14 definition, we should (ph) have backed off and not regulated  
15 ATU because there would have been wireless providers in this  
16 city. Would that have been appropriate for us to do?

17 MR. MONINSKI: I'd have to go back and check the  
18 chronology because I think it may have predated the Telecom  
19 Act.

20 COMMISSIONER GIARD: Okay. So the day after the Telecom  
21 Act?

22 MR. MONINSKI: Ah, the day after the Telecom Act if you  
23 took a literal reading of what we have proposed then, yeah.  
24 Yes, that would have occurred.

25 COMMISSIONER GIARD: Would that have been the right thing

1 to do for the consumers at the time?

2 MR. MONINSKI: That's extremely difficult question to  
3 answer. It would depend upon the nature of the deployment of  
4 the cellular services, the kinds of services that were being  
5 offered, whether or not substitutable services were part of the  
6 package. It might have been, but my guess is the Commission  
7 probably would have thought not because we were at day one of  
8 competition, whereas we are now at day seven year of  
9 competition as we.....

10 COMMISSIONER GIARD: Mr. Moninski, you.....

11 MR. MONINSKI: .....consider these regs.

12 COMMISSIONER GIARD: .....don't like to gracefully give  
13 in, do you?

14 MR. MONINSKI: I -- would say -- I would say this, I try  
15 to be graceful. I would say this, again, if that element came  
16 out of ACS's proposal I don't think you'd see ACS jump up and  
17 down and object and ask for reconsideration if you even can in  
18 a rule making.

19 The one thing though that I would say just so that I don't  
20 fail to say it and that is we do believe that the reference to  
21 competitive ETC is an important reference and needs to stay in  
22 the definition.

23 So if we're talking about a situation where you have a  
24 wireless carrier who had not been designated a competitive ETC  
25 coming out of the definition again that is probably something

1 we can probably live with.

2 COMMISSIONER GIARD: Okay. I'm not going to go into the  
3 competitive ETC area right now. So go ahead on stage -- I'm  
4 done with stage one. Let's move on. Stage two.

5 DR. LEHMAN: Could I answer that same question you just  
6 asked then as far as.....

7 COMMISSIONER GIARD: Yes, that would be good of you, thank  
8 you, Dr. Lehman.

9 DR. LEHMAN: I think we focus too much on whether wireless  
10 is or is not a substitute today. The point of designation of a  
11 second ETC, and let's just deal with the wireless issue for  
12 now, because of the importance of high cost funds you have to  
13 say what can a wireless carrier offer people once they are  
14 receiving high cost funds. That is a very different level of  
15 competitive pressure than what exists today and people may not  
16 be substituting now, but if you get an allowance that says  
17 would you like to take a wireless phone at half the price of  
18 what it was before, that may be a very real competitive threat  
19 to the primary line.

20 And the point of deregulation is not to determine is it or  
21 is it not a substitute. It's to allow the market to chose the  
22 best substitute that's available to them. And what I would  
23 maintain is in stage two the trigger for deregulation is  
24 sufficient competitive pressure that once you have those  
25 multiple ETCs there is no need to regulate retail rates any

1 further.

2 COMMISSIONER GIARD: Okay. So why don't we start again  
3 with a definition of what stage two is?

4 MR. MONINSKI: By stage two are you referring to ACS's  
5 definition of significant competition?

6 COMMISSIONER GIARD: Um-hum.

7 MR. MONINSKI: Okay. That definition requires the  
8 presence of a facilities based competitor in the market either  
9 via a completely separate network or some hybrid network that,  
10 perhaps, relies on unbundled network elements or the UNEP  
11 platform that is capable of offering service to at least 75  
12 percent of the customers in the market.

13 COMMISSIONER GIARD: And what is the effect of that on  
14 regulation?

15 MR. MONINSKI: The effect of that on regulation would be  
16 when that trigger had been reached that all LECs providing  
17 service in that market would then be price deregulated and  
18 would no longer be required to file tariffs.

19 COMMISSIONER GIARD: But we talked about a noticed  
20 tariff.....

21 MR. MONINSKI: The notice tariff was a filing that would  
22 occur at stage one of competition.

23 COMMISSIONER GIARD: Okay, thank you for clarifying that.  
24 Okay. You may take a deep breath.

25 There is a great difference between ACS's definition of

1 competitive service area and that's when it gets into the 75  
2 percent which GCI has said is not real reasonable. And really  
3 it's just -- the mere existence -- and I'm interpreting what I  
4 read, mere existence isn't enough.

5 And so I was, kind of, thinking about the overall  
6 existence of competition in all telecommunication in Anchorage  
7 and I was thinking about how does GCI define cable competition?  
8 How is -- is GCI cable in Anchorage a competitive service  
9 offering? Has it got competitors?

10 MR. JACKSON: Does GCI's cable service have competitors?  
11 It's probably going to -- it has some level of competition. It  
12 has the -- it's growing. It has the dish competition which is  
13 evidently going to a become stronger competitive force with  
14 some of the local channels being on the disk and with ACS  
15 having a marketing agreement with the dish, so that's going to  
16 be more competitive.

17 I guess I'll -- it's hard for me to talk about cable  
18 without saying this and actually it came up yesterday, when we  
19 talk about market power we always tend to focus on whether or  
20 not there are competitors, but you also have to look at the  
21 other side of the equation which is to what extent is the  
22 service a necessity.

23 I mean, if I've got a monopoly over buggy whips in  
24 Anchorage, I mean, that doesn't really give me a whole lot of  
25 market power over anybody because, you know, they can do

1 without buggy whips, but.....

2 COMMISSIONER GIARD: Well, you're deviating so come back.

3 MR. JACKSON: Okay. Well, the point -- you asked about  
4 cable, cable competes in a broad entertainment market, in my  
5 opinion. They compete against going down to Blockbusters.  
6 They compete against other things. Those may not be  
7 competitors, but there are substitute services so I'm trying to  
8 answer whether or not cable is in a competitive market.

9 COMMISSIONER GIARD: So was your answer yes?

10 MR. JACKSON: There is limited competition for cable  
11 against.....

12 COMMISSIONER GIARD: Okay.

13 MR. JACKSON: .....our cable television services.

14 COMMISSIONER GIARD: Okay. So how do you determine that  
15 cable competition? By which manner and method do you use to  
16 determine that there is cable com- -- like, take dish. I mean,  
17 you know, that I'm familiar with disk network, so how do you  
18 determine that there is cable competition?

19 MR. JACKSON: Market share would be one factor. Ability  
20 to sustain higher prices than appropriate, then competitive.

21 COMMISSIONER GIARD: So dish -- is dish a competitor of  
22 GCI cable in Anchorage?

23 MR. JACKSON: Certainly.

24 COMMISSIONER GIARD: Okay. So how have you determine that  
25 dish is a competitor?