

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

10808 HOUSE JUDICIARY

1 MR. JACKSON: I don't know.....

2 COMMISSIONER GIARD: Okay.

3 MR. JACKSON:other than just the obvious observation
4 that they're on people's houses and that they're advertising
5 and it's an alternative choice.

6 COMMISSIONER GIARD: Okay. How does it.....

7 MS. TINDALL: Unlike.....

8 COMMISSIONER GIARD: One second, Dana,.....

9 MS. TINDALL: Okay.

10 COMMISSIONER GIARD:if you don't mind. How is it an
11 alternative choice?

12 MS. TINDALL: Did you want him to specifically answer?

13 COMMISSIONER GIARD: Well, he's the one that said it was
14 an alternative choice. I don't care who answers it, but -- I
15 mean, there is a reason that I'm asking.

16 MR. JACKSON: I guess.....

17 COMMISSIONER GIARD: How is it that it's a competitive
18 choice? How do you know that?

19 MR. JACKSON: I know that because I see advertisements for
20 it, I see people in malls selling the service and I see people
21 taking advantage of the service by installing the dishes on
22 their houses and I talk to people who use that as their way of
23 getting video.

24 COMMISSIONER GIARD: Okay. What I would grind this down
25 to say is that dish is a competitor because it passes or it

1 covers your service area pretty much.

2 MR. JACKSON: I would agree with that.

3 COMMISSIONER GIARD: Okay. So even if dish had two
4 customers, in Anchorage, would you consider a customer because
5 it -- or a competitor because it passes or it covers your
6 service area in cable?

7 MR. JACKSON: I'll say -- I'll defer to Dana. I'd like to
8 -- I'd just like to say something about that.

9 MS. TINDALL: We would call that limited competition even
10 if it covers the service area. And it's distinguishable also
11 from local telephone competition because of the ease in which
12 customers are able to switch between companies which is
13 distinguishable between the local -- from the local telephone
14 market which is an aspect of how competitive the market is.

15 COMMISSIONER GIARD: So, Ms. Tindall, would you say that
16 it's harder to switch telephone services than it is to switch
17 cable?

18 MS. TINDALL: Very much so. There's a very clear barrier
19 to customers exercising the availability of choices which
20 causes us not to want to rely on simply the offering of a
21 choice, but rather whether or not customers have actually
22 exercised that choice and that's because when a customer goes
23 to exercise its choice in the local telephone market it is --
24 then requires the incumbent carrier to do a lot of work to
25 actually switch that customer from themselves to the

1 competitive carrier and it turns out that that doesn't go very
2 smoothly for a variety of reasons. And that is distinguishable
3 from other markets where you can just simply drive up and buy
4 the service.

5 COMMISSIONER GIARD: You wanted to add to that?

6 MR. JACKSON: It's just a small point, you do have a
7 coverage. One of the reasons the dish is not as competitive
8 against cable as it might be is that because the satellites
9 have a relatively low look angle. Some people can't see over
10 their neighbor or over their trees or over the ridge, so
11 coverage even though -- I mean, yes, it covers the area, but
12 there's a lot of spots it doesn't cover so that reduces it.
13 That's a function of not being able to take advantage of it and
14 if people aren't actually being able to take advantage of it
15 then it reduces the amount of competition that it presents.

16 COMMISSIONER GIARD: Right. But you have said that you
17 believe that dish is a competitor because it covers your
18 service area.

19 MR. JACKSON: Well, I think I've said limited every time
20 I've said that, but, yes.

21 COMMISSIONER GIARD: Okay. But limited would be what, 80
22 percent, 40 percent, 60 percent, maybe 75 percent?

23 MR. JACKSON: Within Anchorage, I would -- I -- you're
24 asking me to speculate. I would guess 80 percent. I don't
25 know, but most.

1 COMMISSIONER GIARD: Okay. It's close.

2 MR. JACKSON: Most.

3 COMMISSIONER GIARD: So I don't really understand when
4 we're talking about competition why there would be (telephone
5 interruption) wondered when you wrote your objections and you
6 re- -- you preferred instead that a percentage of the market
7 had actually been attained for their to be competition.....

8 MR. JACKSON: Well, that's only if it's (ph) a significant
9 competition level.

10 COMMISSIONER GIARD: At the signif- -- I understand that's
11 phase two or stage two or whatever you want to call it. That's
12 where we are. So it was your preference that they would -- the
13 competitor would have a certain percentage of the market
14 gained?

15 MR. JACKSON: Twenty percent for the.....

16 COMMISSIONER GIARD: Twenty percent.

17 MR. JACKSON:significant competition level.

18 COMMISSIONER GIARD: As opposed to having simply the
19 ability to have competition out there. And so.....

20 MR. JACKSON: I think to continue your analogy I think
21 that the -- I guess, to some extent forgetting about the fact
22 that some people are blocked by the skyline or whatever, that a
23 situation that was comparable to the dish versus cable would
24 meet our definition of competitive service area for the first
25 step. And at that step the incumbent does gain a large degree

1 of rate flexibility and as a matter-of-fact, Dr. Lehman
2 mentioned, you know, new packages. They are not restricted
3 from offering new packages at that point.

4 The only thing -- they get freedom at that point to offer
5 anything they want to without Commission approval except for
6 increases. And according to Mr. Lehman, they wouldn't be able
7 to do a -- Dr. Lehman, they wouldn't be able to have an
8 increase anyway because they don't have market power.

9 COMMISSIONER GIARD: I think that they could do -- I
10 thought -- well, Dr. Lehman, do you want to respond to that,
11 about the increase (ph)?

12 DR. LEHMAN: Yeah, I -- well, they might have power to
13 increase rates if they're below what a competitive level would
14 be, but I would maintain they don't have the power to increase
15 it above competitive levels and sustain it.

16 COMMISSIONER GIARD: Okay. So the -- I believe that I
17 read, Mr. Jackson, that GCI is not really a proponent of the
18 step two process, the two stage?

19 MR. JACKSON: We are a proponent of.....

20 COMMISSIONER GIARD: You are, okay.

21 MR. JACKSON:two stage and our -- our first stage
22 comes.....

23 COMMISSIONER GIARD: I'm sorry I misunderstand.....

24 MR. JACKSON:when there's essentially, you know, a
25 competitor offering service in the market regardless of market

1 share, just that there's a competitive choice available. And
2 then stage two comes in when the competitor has 20 percent
3 market share or a group.....

4 COMMISSIONER GIARD: Okay.

5 MR. JACKSON:of competitors have 20 percent market
6 share and at that point the dominant carrier or the incumbent
7 carrier, whatever you want to call 'em also has the ability to
8 raise rates without getting Commission approval.

9 COMMISSIONER GIARD: Okay, thank you for that
10 clarification.

11 MR. JACKSON: But -- and we have the 30 day notice period
12 in both instances.

13 COMMISSIONER GIARD: We're going to get to that notice
14 period in a few minutes. So, Mr. Moninski, when you
15 established your 75 percent simply needs to serve -- to be
16 available -- cover 75 percent of the area, were you advised --
17 did Dr. Lehman advise you of that? Who are your advisors on
18 establishing that for a competitive service area?

19 MR. MONINSKI: Well, that trigger was basically developed
20 internally at ACS without Dr. Lehman's advice or without the
21 advice of anybody external to the company.

22 COMMISSIONER GIARD: What research did you do to
23 substantiate that it would be good public policy to do it based
24 on a cable like method of coverage, if you will, than something
25 more concrete which is actual market share?

1 MR. MONINSKI: We did not perform research.

2 COMMISSIONER GIARD: Okay.

3 MR. MONINSKI: We have historically and consistently
4 opposed a market share trigger as being irrelevant.

5 In Docket R-02-06 we also proposed a two step approach
6 and, I believe, our step two in that proceeding was based on a
7 50 percent reach of a facilities based competitor. We took a
8 look at that and we spoke about that internally and said maybe
9 we might want to come back to the Commission and pick a number
10 that showed a more overwhelming access of facilities based
11 consumer choice and as a result we bumped our number from 50
12 percent to 75 percent.

13 COMMISSIONER GIARD: Dr. Lehman, in here you talk about --
14 in your first response, if you wouldn't mind, if I can find it,
15 you talk about a guarantee of market share and I was curious
16 about that guarantee of market share. If you could explain
17 more fully how you believe that using GCI's market share
18 definition will essentially guarantee market share and -- could
19 you talk a little bit about.....

20 DR. LEHMAN: Well, I mean,.....

21 COMMISSIONER GIARD:how you think that will happen?
22 How does that guarantee.....

23 DR. LEHMAN: I'll qualify the word a little bit in that I
24 don't mean that it guarantees that, for instance, GCI would, in
25 fact, get 20 percent of the market. What it does guarantee is

1 that deregulation and allowing fair and unfettered competition
2 between the market participants won't take place until the 20
3 percent share is reached.

4 I guess I would go a little bit further to say that since
5 you wouldn't have fair and unfettered competition until that
6 point, it suggests that it will be easier for a competitor to
7 reach the 20 percent level and certainly the evidence in the
8 Alaska thus far indicates no difficulty in the markets that
9 have been entered of the competitor reaching the 20 percent
10 level and going beyond.

11 COMMISSIONER GIARD: Okay, okay. I think I'm ready to
12 move on. I want to talk a little bit about and follow up on
13 Commission Harbour's question which addressed and which you
14 referred to the chart saying that if GCI continues to attain
15 market share, you know, soon there's going to be 100 percent
16 market share and that's going to be that based on your chart
17 which I am looking for. Is that an economic theory?

18 DR. LEHMAN: I did not make any statement like that. My
19 chart shows the actual history and I contain no projections? I
20 don't --.....

21 COMMISSIONER GIARD: So whose economic theory is it
22 that.....

23 DR. LEHMAN: I don't do projections.

24 COMMISSIONER GIARD: I know I heard 100 percent. I know I
25 heard it.

1 MR. MONINSKI: Yeah, you did and I said it.

2 COMMISSIONER GIARD: Oh, okay. Is that your economic
3 theory?

4 MR. MONINSKI: I don't know that I am suggesting an
5 economic theory or somebody's economic theory to support that.
6 We, again, as this chart was being developed and others that
7 aren't in front of the Commission right now, simply tried to do
8 trend projections based on today's set of circumstances, based
9 on the cost advantage that we believe that GCI has under.....

10 COMMISSIONER GIARD: Um-hum.

11 MR. MONINSKI:UNE rates, based on some other
12 disadvantages, competitive disadvantages that we believe we
13 labor under as a result of the current regulatory regime.

14 And we said assuming none of that changed is there any
15 reason to believe that this trend that we've seen where GCI has
16 captured more than 40 percent of the market in Anchorage making
17 it the highest level of penetration of any market in the
18 country and something in the twenties or close to them in both
19 Juneau and Fairbanks in a very short period of time, was there
20 any reason to believe that those trends would be altered.

21 And we came to the conclusion that, again, given the
22 realities of today's circumstances we couldn't see how that
23 trend would be altered and that the logical projection of that
24 trend would be that GCI would continue to capture market share,
25 perhaps, to the point of 100 percent.

1 COMMISSIONER GIARD: Is your marketing fellow on?

2 MR. MONINSKI: He is not and I -- and it is for no lack of
3 due diligence. We have been trying to reach him ever since we
4 left the hearing yesterday and those efforts continue today.
5 He was out of cell phone reach and as far as I know he has not
6 made contact. Tyson.

7 COMMISSIONER GIARD: Okay.

8 MR. MONINSKI: And if we find him, we will make him
9 available.

10 COMMISSIONER GIARD: Okay. Is that GCI's -- or ACS's
11 published belief that things if they continue on as they are
12 right now they will lose 100 percent of market share?

13 MR. MONINSKI: When you say published, I'm not exactly
14 sure I understand the term?

15 COMMISSIONER GIARD: I'm curious for -- and it's probably
16 more appropriate the question for the vice president of
17 marketing, but to have a marketing strategy or a belief that if
18 things continue today as they are they result in 100 percent of
19 the market going to your competitor whether that is something
20 you proclaim at your Board meetings or is it something that is
21 just simply an anecdotal belief or an attempt to persuade the
22 Commission of the direness of the situation and the need for
23 change?

24 MR. MONINSKI: I would -- I'd be careful to refer to it as
25 anecdotal because I think there's more substance to it than

1 just anecdote. I don't know the degree to which those trends
2 have been discussed at the Board level or in the financial
3 communities.

4 I do know that the specific chart that I was referring to
5 has been presented in presentations to the FCC. And I want to
6 be careful, too, not to just say that or suggest that we're
7 planning on sitting back and just letting that happen.

8 That there are marketing plans, that there are initiatives
9 being developed that we hope will alter that trend, but, again,
10 the assumption behind the chart that I was discussing was that,
11 that because of competitive disadvantages, tariffing
12 requirements, the results of having certain filings getting
13 suspended, the inability to re-balance rates over long periods
14 of time which has been the case since competition entered the
15 Anchorage market, to the extent that we're unable to alter
16 those kinds of impacts on our ability to go out and market head
17 to head are not changed then it's hard to imagine how the trend
18 projection would change.

19 COMMISSIONER GIARD: Is there an ILEC that you're aware of
20 in reference again to your paragraph 14, Dr. Lehman, that's
21 gone out of business since the 1996 Telecom Act?

22 DR. LEHMAN: I'm not aware of, no.

23 COMMISSIONER GIARD: Do you believe that in reference to
24 the testimony that was given by -- or that was read by Mr.
25 Jackson which says that ACS's EBITDA, which I'm not -- earnings

1 before income taxes and whatever, is increasing that that
2 substantiates the claims of Mr. Moninski? And we received
3 conflicting information.....

4 DR. LEHMAN: Yeah, I've not looked at all at the evidence
5 regarding ACS's financial position. What I would say though is
6 to go -- is to emphasize that the substance of my testimony is
7 very much at odds with the idea that the financial well being
8 of any company or the market share of any company should be a
9 criterion to look at in terms of deciding when deregulation is
10 appropriate. I think it would be unfortunate.

11 It's not to say that you shouldn't be concerned about
12 financial position of companies, but in cert- to -- as a
13 trigger for deregulation it should be a forward looking trigger
14 not something depending on what actually happened in the
15 marketplace yesterday, but what could happen.

16 And I don't think wheth- -- I think it would be
17 unfortunate to go back in and say well, because this company is
18 financially in a bad position we must do the following, that is
19 the worst of managed competition. That is not.....

20 COMMISSIONER GIARD: Well, act- -- yeah.

21 DR. LEHMAN:real competition.

22 COMMISSIONER GIARD: Actually what we're trying to gather
23 is evidence supporting your claims and so you talk specifically
24 about handicapping the incumbent can threaten their viability
25 and so while Commissioner Harbour was also trying to.....

1 DR. LEHMAN: Yeah.

2 -- COMMISSIONER GIARD:ask you for substantiation of
3 this claim, in actual fact in the Lower 48 or wherever, because
4 our balance, as you're well aware, is the consumer need versus
5 the industry need. (Telephone interruption).....

6 Okay. Let's move on. Okay. I'd like to address the
7 question and issues of tariff filings because we're now in --
8 I'm going to go back to stage one where the tariff filing
9 becomes a notice tariff. So in a notice tariff situation I
10 have a couple of questions for ACS.

11 Actually I have a question for GCI. How has -- how is GCI
12 harmed operating under its 30 day notice requirement as opposed
13 to a shorter notice requirement. If GCI had an option of a
14 shorter notice requirement, would it welcome it gleefully or
15 would it prefer to maintain the 30 day as a CLEC in a non-
16 dominant world? So pretend this is past, ACS was no longer
17 dominant, so you're both equal, you get to go to 15 days, too.

18 MR. JACKSON: The amount -- the notice period we do not
19 believe has a great effect on us or on any other competitor
20 who's against -- whose -- we're in competition with. We think
21 that there will continue to be the need for fairly light review
22 by the Commission of.....

23 COMMISSIONER GIARD: I didn't get into the review.....

24 MR. JACKSON:tariff filings the way we talked about
25 yesterday, so the notice period is primarily a function of how

1 much time you need.

2 COMMISSIONER GIARD: - Okay. Do you agree with that, Mr.
3 Moninski, that the notice period is basically the time that we
4 need?

5 MR. MONINSKI: I have to relay to you the inputs that I
6 have received from ACS marketing people and I can tell you.....

7 COMMISSIONER GIARD: Which people aren't around.....

8 MR. MONINSKI: Who aren't here right now, but I am certain
9 that they would say this to you.....

10 COMMISSIONER GIARD: Okay.

11 MR. MONINSKI:if they were here. I cannot tell you
12 the numbers of times that I have been approached by marketing
13 people with the complaint that they are required to tip their
14 hand to the competitor by virtue of making 30 day filings. So
15 given that and given the very strong feelings that they have
16 expressed to me about that, our position is different from GCI.

17 We agree that notice tariff filings need only be given a
18 very limited or light review, that that is why we think a seven
19 day notice period was adequate for that purpose, but more
20 importantly because of a marketing perspective reflected in
21 that proposal we believe that getting to market faster is an
22 important strategic consideration.

23 COMMISSIONER GIARD: Okay.

24 MR. JACKSON: Commissioner, could I amend my previous
25 answer a little bit after talking to Dana?

1 COMMISSIONER GIARD: Yeah.

2 MR. JACKSON: The period -- in some instances it will be
3 the competitor that will bring anti-competitive concerns to you
4 during.....

5 COMMISSIONER GIARD: I would think.

6 MR. JACKSON:your notice period. So I said it was
7 entirely how much time you need.

8 COMMISSIONER GIARD: Right.

9 MR. JACKSON: I should have said it always includes how
10 much time the competitor needs to look at it to see if their --
11 those kind of concerns that we would like to bring to your
12 attention.

13 And if I can just briefly respond to Mr. Moninski. I
14 guess the way we see it is when you see something and whether
15 you see it because it's already in effect or because it's been
16 filed with the Commission, it takes -- I'm saying, they --
17 let's say they do something, it takes us a certain amount of
18 time to react, figure out what we're going to do in response
19 in, you know, whatever, let's say it's 15 days it takes us to
20 figure out what it's going to take us to respond.

21 Well, whether or not there's the notice period that's 15
22 days that gets -- he gets 15 days tacked onto the 30 so they
23 still have the 15 day advantage or it's 15 days without the 30
24 days then there's still 15. It really just, sort of, changes
25 when the 15 day advantage starts from. It doesn't change the

1 fact that there's a 15 day advantage is the way we look at it.

2 2700

3 (Tape Change)

4 Tape 3

5 Log 0015

6 MS. TINDALL: And that's marketing advantage.

7 MR. JACKSON: Yeah, marketing.

8 MS. TINDALL: You know, coming up with a marketing plan.

9 COMMISSIONER GIARD: I understand.

10 DR. LEHMAN: I do have one thing to add to that if I
11 could. And, unfortunately, I don't have any evidence on this,
12 I don't think there is any, but one thing missing from this
13 discussion is how the period of notice affects consumers, not
14 the competitors.....

15 COMMISSIONER GIARD: I was just going to ask that
16 question.

17 DR. LEHMAN:and I -- after years of studying
18 competition I do have a gut feel that the shorter notice period
19 the more intense the rivalry will be. I cannot support that
20 with any evidence, but I do think it would be appropriate for
21 the Commission to ask the question about how it affects the
22 nature of competition the length of the notice period because
23 that is a missing element in terms of what the effects would be
24 of any particular notice period.

25 COMMISSIONER GIARD: That's a very good point to raise.

1 One of the things that I looked at, Dr. Lehman, in your
2 testimony was the chart where you show state deregulatory
3 developments. And one of the things that I would like ACS to
4 provide is the support for -- I'd like to know what the tariff
5 standards are in the Lower 48. You quoted New Jersey,
6 Massachusetts and Rhode Island. I assume that you already know
7 what those tariffing standards are. Would you.....

8 DR. LEHMAN: Let me check it then, I don't know that.....

9 COMMISSIONER GIARD: Okay. Okay. Well, that would be
10 helpful to provide kind of a listing for me of what the
11 tariffing standards are in the Lower 48. If there are two
12 stages -- sorry.

13 HEARING EXAMINER OLSON: Commissioner Giard?

14 COMMISSIONER GIARD: Yes.

15 HEARING EXAMINER OLSON: I apologize for interrupting, but
16 if we live up to our UNE starting at noon and have the lawyers
17 show up at noon we're going to need to take a lunch break
18 pretty soon.

19 COMMISSIONER GIARD: Okay.

20 HEARING EXAMINER OLSON: If.....

21 COMMISSIONER GIARD: I wasn't aware of time, you know, I'm
22 just going, so....

23 (Whispered conversation)

24 HEARING EXAMINER OLSON: Did I tell you 12:30 or did I say
25 noon?

1 UNIDENTIFIED VOICE: I don't remember.

2 COMMISSIONER GIARD: Okay.

3 HEARING EXAMINER OLSON: Okay. We'll go forward then.

4 COMMISSIONER GIARD: Okay. Well, I'm happy to take a
5 break, but Mr. Saupe is looking to relax so we're going to hit
6 him pretty soon.

7 HEARING EXAMINER OLSON: Okay.

8 (Off record comments)

9 COMMISSIONER GIARD: Okay. My question actually was
10 already written down so it wasn't one that I just came up with.
11 But you had conflicting testimony yesterday that I heard. One
12 of them was that you said 30 days -- you need 30 days. And
13 then I don't know whether I heard you say that 15 days was
14 fine. I think you said that you need 30 days and Mr. Saupe
15 came in and said 15 days is cool with us. So I need to know
16 from both of you talking together what is your preference with
17 relation to tariff filing deadlines?

18 MR. SAUPE: Well, first of all, let me interject and note
19 from the long distance market where shorter tariffing deadline
20 is important to us.

21 COMMISSIONER GIARD: Right. I'm -- sorry.

22 MR. SAUPE: But you don't want to hear that.

23 COMMISSIONER GIARD: My question is -- and I should have
24 read my writing, but it was how does it impact the wholesale
25 customers that ACS has? And with the R-T-A or whatever it's

1 called.....

2 MR. SAUPE: What I believe I said yesterday is that if the
3 notice period is too short a total service reseller.....

4 COMMISSIONER GIARD: Right.

5 MR. SAUPE:gets caught in a bind because our price is
6 directly tied to their price based on the wholesale discount.

7 COMMISSIONER GIARD: Okay.

8 MR. SAUPE: And if they raise or lower their price.....

9 COMMISSIONER GIARD: Right.

10 MR. SAUPE: more quickly than we can put systems in
11 effect to raise or lower our price there can be a period where
12 we're squeezed.....

13 COMMISSIONER GIARD: Right.

14 MR. SAUPE: And so I believe our position has been and
15 we're on the record as saying we would need a minimum of seven
16 days in order to make a response.....

17 COMMISSIONER GIARD: Okay.

18 MR. SAUPE: in a local market. We would prefer a
19 slightly longer period for that very reason that it makes it
20 possible for us to make a response, to notify our customers, do
21 whatever advertising we need.....

22 COMMISSIONER GIARD: Right.

23 MR. SAUPE:those things. So our preference
24 would.....

25 COMMISSIONER GIARD: That's fine. So.....

1 MR. SAUPE:be a minimum.....

2 COMMISSIONER GIARD:seven days would be the minimum,
3 but you could live with it, is that what you're telling me?

4 MS. CATLIN: Yes, that is correct.

5 COMMISSIONER GIARD: Okay. So, Mr. Moninski, how are you
6 planning to better treat your wholesale customers than just
7 giving them the minimum seven days? Did it occur to you that
8 you'd be willing to make some distinction in the regulations or
9 otherwise for how you could provide them with earlier
10 information or is that illegal 'cause I don't know?

11 MR. MONINSKI: It is interesting that you ask that
12 question 'cause Ms. Catlin and I had this discussion yesterday
13 afternoon. ACS is already under contractual obligation to
14 provide AT&T with earlier notice than the tariff filing. I'll
15 try and be gracious. We have not done as good a job of that as
16 we should be doing and I have promised Ms. Catlin that we are
17 going to go back and redouble our efforts in that regard to
18 make sure that AT&T gets the contractual notice that we have
19 committed, so it's already built into the interconnection
20 agreement.

21 COMMISSIONER GIARD: So how many days?

22 MR. MONINSKI: Five days.

23 COMMISSIONER GIARD: So five plus seven would be 12. Is
24 that why it's satisfactory to you?

25 MS. CATLIN: Yes, that would be satisfactory if that is

1 what occurs.....

2 COMMISSIONER GIARD: If it happens, right.....

3 MS. CATLIN:yes.

4 COMMISSIONER GIARD:got it. Okay. Do you want me
5 to take a break, Mr. Hearing Officer?

6 (Whispered conversation)

7 HEARING EXAMINER OLSON: Go ahead.

8 COMMISSIONER GIARD: Okay.

9 MR. JACKSON: If I could just interject. I am somewhat
10 scratching my head wondering if it is legal for ACS to give one
11 competitor more notice of a tariff filing than they give
12 another competitor.

13 COMMISSIONER GIARD: Well, they're a customer.

14 MR. JACKSON: And so are we. We also do some amount of
15 total service resale, not -- certainly not exclusively like
16 AT&T does, but we have a certain number of customers that are
17 on total service resale.

18 COMMISSIONER GIARD: Yeah. That.....

19 MR. SAUPE: You can pick and choose from our contract.

20 MR. JACKSON: That thought has already occurred to me,
21 thank you.

22 COMMISSIONER GIARD: See, he is awake back there. Okay.
23 Okay. I would like to talk -- or ask some questions for a few
24 minutes about market power. And I'm going to spend a minute
25 telling you what I dont know which is I'm sure going to be very

1 interesting to you because I'm sure you all think I know
2 everything, but what I don't clearly understand in the regs
3 that were written and proposed, the ones that exist now and the
4 ones that are proposed, is the implication of dominance and the
5 -- how it fits with the carrier of last resort. 'Cause the way
6 that I read it, understand it is the carrier of last resort for
7 the LEC is a burden, you know, it's a burden to bear. And what
8 are the burdens other than regulation? Okay. And let me do
9 this better. Are there additional burdens other than
10 regulation? If we remove ACS's dominance tomorrow just 'cause
11 Nan's in a good mood and we remove dominance, you no longer
12 were dominant and you were equal, what's the impact on that
13 other than rate regulation?

14 MR. MONINSKI: I'll take the first cut. The way that the
15 regs are structured today there is a linkage between being the
16 incumbent, being a dominant carrier, and being a carrier of
17 last resort. Those are all connected in the regulations that
18 exist today.

19 Part of what's been proposed, I think, by most of us is
20 based on House Bill 111, we need to delink the incumbency from
21 the dominant carrier determination. The Legislature has also
22 said regardless of what you do at least for now the incumbent
23 local exchange company will continue to be the carrier of last
24 resort. So now we've seen those three things being completely
25 delinked such that you are able to consider the dominant

1 carriers issues on a stand alone basis. We've pushed away
2 incumbency. We've guaranteed at least for now that the
3 incumbent carrier remains the carrier of last resort so
4 that.....

5 COMMISSIONER GIARD: Right.

6 MR. MONINSKI:we isolate on dominant carrier issues.

7 COMMISSIONER GIARD: Okay. So how does market power then
8 feed into the definition of dominant or not dominant? Is there
9 -- have I missed it? I don't mind if I have, just tell me.....

10 MR. MONINSKI: I believe -- I won't try and speak for
11 everybody. I believe that everybody accepts the notion that a
12 dominant carrier is a carrier that has market power. Where we
13 get into the debate is trying to define market power.

14 COMMISSIONER GIARD: So market power equals dominant?

15 MR. MONINSKI: Yes.

16 COMMISSIONER GIARD: Okay. Good. I'm there. Now I can
17 ask my questions. Am I there? Is there anybody -- okay, good.
18 All right. When we talk about market power I felt that it was
19 very interesting the distinction between ACS and GCI and even
20 the Rural Coalition between the dominant and non-dominant
21 distinctions as pertains to market power. So I'm going to
22 start with the Rural Coalition because you talk about market
23 power and the wireless moving in. If we put aside the USF
24 funds which now I understand ETC equals USF so we made some big
25 progress there, Mr. Rowe. But how does the impact of market

1 power change with a wireless carrier?

2 MS. GRAHAME: In our view it becomes irrelevant. In our
3 view market power is in Anchorage intertwined with the reliance
4 by a CLEC on an ILECS' network for access to the customer.

5 COMMISSIONER GIARD: Let's talk about is market power not
6 an issue in rural Alaska? Is dominance not an issue in rural
7 Alaska?

8 MS. GRAHAME: I do not believe it is relevant when you
9 have a wireless carrier -- where you have a stand alone network
10 competing with a stand alone network. And the stand alone
11 network can either be a cable network or a wireless network.
12 When you have a competitor entering a market on its own through
13 its own facilities in our view notions of dominance are
14 irrelevant.

15 COMMISSIONER GIARD: Okay. So you oppose GCI's position
16 that dominant carrier regulation is needed?

17 MS. GRAHAME: We oppose it.

18 COMMISSIONER GIARD: Okay.

19 MS. GRAHAME: And we oppose it because, number one, we
20 think it is irrelevant as applied to how competition is
21 evolving in rural markets. And in addition, it would keep the
22 ILEC rate regulated. And a potential change in the definition
23 of dominant to non-dominant under GCI's regulation would take
24 up to 180 days, six months.....

25 COMMISSIONER GIARD: Right.

1 MS. GRAHAME:and in a rural LECs market that's a
2 lifetime and the same would be done.

3 COMMISSIONER GIARD: Okay. So dominance also in addition
4 to equaling carrier of last resort also equals rate regulation
5 which pulls us back into it.

6 MS. GRAHAME: We distinguish between carrier of last
7 resort. We -- and under our regs you'll see we retain carrier
8 of last resort.....

9 COMMISSIONER GIARD: Right, I saw that.

10 MS. GRAHAME:obligation.

11 COMMISSIONER GIARD: I mean everybody's....

12 MS. GRAHAME: Somebody has to serve the customer.

13 COMMISSIONER GIARD: Okay.

14 MS. GRAHAME: And we will take that on. We get Universal
15 Service Funds to do so. We think it's the right thing to do.

16 COMMISSIONER GIARD: So in your mind the Rural Coalition
17 is asking the RCA or proposing to the RCA that once a
18 competitor enters your market and immediately affects market
19 power or market power is no longer relevant or you don't have
20 market power anymore? Explain again to me.....

21 MS. GRAHAME: Okay. The competitive -- the question --
22 the analysis is as follows; the question is not market power.
23 The question is when is an area competitive. When is a
24 competitive -- when is a rural area a competitively -- a
25 competitive service area. And under our definition it is when

1 there is either a second local exchange carrier certificated or
2 when there are multiple ETCs. It's a bright line trigger.

3 At that point in time the market is a competitive market
4 area, the ILEC retains carrier of last resort responsibility,
5 notions of dominance and non-dominance go away.

6 COMMISSIONER GIARD: Okay. So it seems to me if we're
7 looking at competitive service areas again then is it the Rural
8 Coalition's perspective that the coverage area which is what
9 ACS proposed is an adequate trigger?

10 MS. GRAHAME: No.

11 COMMISSIONER GIARD: No?

12 MS. GRAHAME: No. We don't know how you measure that,
13 number one. And number two, in a rural market a competitor
14 could come in, put up a tower, capture the two canneries in
15 town and take the vast majority of our income stream.

16 COMMISSIONER GIARD: Right.

17 MS. GRAHAME: And that's -- that would have a devastating
18 consequence not only for that area, but for the other areas in
19 the LEC's.....

20 COMMISSIONER GIARD: Right. So you want a revenue based,
21 that's what you were talking -- that's in the testimony, okay.
22 I remember now.

23 Okay. So I'm going to go back for a moment to GCI and ACS
24 if I may and I'm going to finish up. The 180 days, what type
25 of items would you anticipate, if you wouldn't mind going

1 through your market power definition again, because you had
2 several criteria. And I would like to talk with you about
3 those criteria for market power. And I have a few of them, but
4 I know you know them better than I do.

5 MR. JACKSON: Only if I can find them.

6 COMMISSIONER GIARD: I have them right here. Market
7 share, number and size.

8 MS. TINDALL: Could you repeat your question?

9 MR. JACKSON: Yeah, we're ready. I'm sorry, I didn't
10 realize it was a question.

11 COMMISSIONER GIARD: Okay. I just was waiting for you to
12 find them.....

13 MR. JACKSON: Oh, yes, I have them.

14 COMMISSIONER GIARD:and then I went off on my own
15 and was looking for things myself.

16 MR. JACKSON: I have them.

17 COMMISSIONER GIARD: Okay. You have them.

18 MR. JACKSON: We have them.

19 COMMISSIONER GIARD: Okay. Based on market share is that
20 your 80 -- your 20 percent, is that your trigger? When you
21 talk about based on you want to evaluate over 180 -- or take
22 180 days to evaluate dominance. You don't want it to happen
23 right when ACS says it does. You want us to take time to pause
24 and think about it and consider these items before we go ahead.
25 So.....

1 MR. JACKSON: Let me just talk about the legal structure
2 'cause....

3 COMMISSIONER GIARD: Okay.

4 MR. JACKSON:this is a little bit strange. The 80
5 percent/20 percent is a bright line that would essentially
6 allow someone who's still a dominant carrier to obtain the
7 complete rate flexibility even for increases. So there're
8 essentially two different ways for a dominant to get the second
9 level of flexibility. One is there's a bright line, it sort of
10 automatically happens in terms of rate flexibility of they go
11 below the 80 percent market share level. The second track is
12 to go through this more complicated process to actually be
13 declared non-dominant. And within this context I don't think
14 the 20 percent....

15 COMMISSIONER GIARD: Okay.

16 MR. JACKSON:within this context would be a bright
17 line.

18 COMMISSIONER GIARD: Okay. So you actually have your own
19 little two tier system that you're proposing.

20 MR. JACKSON: There are two different ways to get....

21 COMMISSIONER GIARD: You know, you just have to be simple.

22 MR. JACKSON:to the second tier, I guess. Yeah.

23 COMMISSIONER GIARD: Yeah, I got it.

24 MR. JACKSON: It is complicated.

25 COURT REPORTER: What sorry? (Ind' rnible) because I

1 didn't get either one of you.

2 COMMISSIONER GIARD: You can say -- you can go first.

3 MR. JACKSON: It is complicated. There's two different
4 ways once you get to the second level of flexibility.

5 COMMISSIONER GIARD: All right. I don't have any more
6 questions based on that.

7 MR. JACKSON: Can I make one comment 'cause this was
8 alleged -- referred to yesterday. And maybe there's just a
9 misunderstanding of my understanding of the Rural Coalition's
10 proposal because this is a question of whether or not they have
11 severed this competitive service area and non-dominant from
12 carrier of last resort. Although there is a provision that
13 changes the definition of carrier of last resort the Rural
14 Coalition also changed the regulation which is entitled
15 Discontinuance, suspension or abandonment of service. And in
16 that context they allow any local exchange carrier even though
17 dominant when in a competitive service area to discontinue
18 service which to me is a carrier of last resort kind of
19 obligation. And that's why I made the statement that although
20 there is the other provision that they referred to, that's why
21 I made the provision -- the statement in our comments that they
22 would get out of carrier of last resort upon something being
23 defined a competitive service area, for instance, with an ETC
24 is because of this discontinuance section.

25 COMMISSIONER GIARD: I understand.

1 MR. JACKSON: So to me there's sort of a conflict there.

2 COMMISSIONER GIARD: Go ahead.

3 MR. DILLEN: Commissioner, may we respond? Just with
4 respect to that one section Mr. Jackson's referring to with
5 regard to discontinuance of service, in addition to the parity
6 we've created now in a competitive service area between all
7 competitors and discontinuance of service we also added the
8 phrase at the end unless otherwise required by law which we
9 think makes that consistent since we've explicitly left the
10 incumbent carrier as the carrier of last resort in other areas
11 of competition (ph). We weren't -- we didn't mean to try to
12 be, you know, sneak out the back door or something here. We
13 were trying to be consistent by adding that last phrase as
14 well. So I don't really see a sort of irreconcilable different
15 here.

16 COMMISSIONER GIARD: Okay. Mr. Moninski, how are you
17 competitively harmed by a 30 day notice filing for tariff? How
18 are you competitively harmed if it's equal in its parity (ph)?

19 MR. MONINSKI: It is clearly equal where all LECs
20 operating in that market would have to file on the same notice
21 schedule.

22 ACS believes as I've indicated in my earlier comments
23 based on inputs from its marketing team that 30 days is
24 inherently harmful as a result of having to telegraph one's
25 marketing initiatives that far in advance. We have certainly

1 see on the interstate side where the FCC even prior to going to
2 complete detariffing which it has done now for non-dominant
3 interexchange carriers even prior to that point in time only
4 required LD tariffs to be filed on 24 hour notice basis. That
5 process seemed to work just fine. We're trying to move in that
6 direction.

7 COMMISSIONER GIARD: So are you more harmed than GCI under
8 the 30 days notice? I mean do they -- are you more harmed than
9 GCI or AT&T?

10 MR. MONINSKI: That may be a very -- let me -- it may be
11 more complicated a question than it sounds, you know. It
12 simply goes to the kinds of marketing initiatives you have on
13 the drawing boards, separate companies' abilities to execute
14 quickly. On the face of it it would not appear that we are
15 more harmed.

16 COMMISSIONER GIARD: Right, because ACS is an efficient
17 carrier. And so, you know, it's an efficient operation so I
18 wouldn't think that GCI's marketing personnel are any more or
19 less capable of getting a marketing plan out on the street. So
20 I can't -- what I didn't really understand in your argument was
21 how you were harmed by 30 days 'cause GCI has attained 40
22 percent market share in Anchorage with a 30 days notice. So if
23 you were both -- and I know that there was -- that ACS has
24 perceived great harm from that, that your notice period has
25 been longer. But if you were on the same drawing board with 30

1 days and you equally had GCI's 30 day period I couldn't see
2 where there was harm other than Dr. Lehman's comments which are
3 more generic and for the industry as a whole, seven days or 15
4 days or 20 days, if we're redoing the damn thing let's just
5 look at everything. And that's fine.

6 MR. MONINSKI: In the interest of fairness and if I don't
7 say this Mr. Jackson will or Ms. Tindall will, in the interest
8 of fairness the regulations that exist today have -- allow the
9 dominant carrier, ACS in this case, to file tariffs for new,
10 repackaged and discounted.....

11 COMMISSIONER GIARD: Yeah, yeah.

12 MR. MONINSKI:services on a 30 day.....

13 COMMISSIONER GIARD: I know.

14 MR. MONINSKI:schedule. So we are on that same
15 schedule. The only change would be if we came in with a rate
16 increase, so that schedule exists right now.

17 And the only other thing I think I can do is refer you to
18 Mr. McKenna's affidavit where he does develop the first market
19 issue and the importance of it. I was going to show you and I
20 don't have them with me right now something that probably
21 demonstrated that a little more effectively than Tickle-Me-
22 Elmo. If you took a look, if you've seen the Anchorage Daily
23 News over the past couple of weeks you will have noticed that
24 GCI just recently started putting in full page ads for its new
25 relationship with Alaska Airlines. Good marketing, good

1 advertising.

2 -- The important point is that AT&T one week prior to that
3 began using double full page ads in order to present their new
4 marketing initiative. It seems to me that AT&T must have
5 believed that it was important to get that out a week before
6 GCI did. And there's a close to home example of what first
7 market probably really means.

8 COMMISSIONER GIARD: Yeah.

9 MR. JACKSON: Can we -- can we address that.....

10 MS. TINDALL: A little clarification. That has.....

11 MR. JACKSON:that's a little distorted (ph).....

12 MS. TINDALL:nothing to do with the tariffing time
13 schedule. That had to do with individual contracts with Alaska
14 Airlines.

15 MR. JACKSON: Yeah. We got -- Alascom has done a
16 wonderful job of making lemonades out of lemons here. But they
17 knew that we were coming because Alaska Airlines was severing
18 their relationship. It had nothing to do with your
19 requirements. It had to do with things which would exist
20 regardless of your requirements.

21 COMMISSIONER GIARD: I'm done. Thank you.

22 HEARING EXAMINER OLSON: Okay. Lunch, 12:30. If -- or as
23 close to 12:30 as you possibly can make it, huh? You'll recall
24 that we can only do UNEs now from 12:30 to 1:30 because there's
25 a tariff meeting and then when we come back after the tariff

1 meeting, let's assume it's a half hour, so the Commission will
2 do tariff meeting from 1:30 to 2:00 and then we'll get back on
3 the record and finish up the UNEs to the extent we can finish
4 them up and go forward with the rest of the Commissioner
5 questions if there are any. Okay.

6 MR. AYOTTE: Mr. Olson?

7 HEARING EXAMINER OLSON: Yes, sir.

8 MR. AYOTTE: Mark Ayotte here. I'm trying to do time
9 conversions as well. We don't really have an interest in the
10 UNE issues. But if I understand you there's likely some
11 further Commissioner questions after the UNE witnesses?

12 HEARING EXAMINER OLSON: The Commissioners indicate that
13 there may be some further questions that have arisen, you know,
14 as a result of discussion from other Commissioner questions.

15 MR. AYOTTE: Yes.

16 HEARING EXAMINER OLSON: So they want to reserve that
17 opportunity, so I just don't know how long the UNE is going to
18 last. We should certainly know whether they're going to
19 complete it by -- they'll have that hour and then if they're
20 not done between 12:30 and 1:30 we'll have to pick them up at
21 2:00 because Mr. Shelanski and Mr. Miller are only available
22 till 3:00 local time. To accommodate you, Mr. Ayotte, I'd be
23 happy to call you or we can call you directly if you don't want
24 to participate in the UNE proceedings, and then call you if
25 they're going to be future questions unrelated to UNEs so you

1 can be involved. Would you like us to do that?

2 MR. AYOTTE: Well, that would be great. The alternative
3 suggestion was I would just sort of dial in toward the tail end
4 of the UNE discussions and try not to disrupt the flow of
5 things.

6 HEARING EXAMINER OLSON: Okay. Sure.

7 MR. AYOTTE: So that would likely be around 1:30 Alaska
8 time?

9 HEARING EXAMINER OLSON: Yes. About 4:30 Minneapolis time
10 or St. Paul time. And if you dial in you'll certainly know
11 whether we've finished them up by now if you inquire I'll
12 surely be able to tell you where we think we are, so if we come
13 back at 2:00 p.m. and do some more UNES we'll have a better
14 idea how much more time it'll take.

15 MR. AYOTTE: That's great. I'll just dial in at that
16 time.

17 HEARING EXAMINER OLSON: All right. Thank you.

18 MR. AYOTTE: Thank you very much.

19 HEARING EXAMINER OLSON: Thank you. Let's go off record
20 if we're not off record.

21 (Off record - 11:57 a.m.)

22 (On record - 12:40 p.m.)

23 HEARING EXAMINER OLSON: So let's get back on the record
24 and we'll continue with the UNE questions. I'm not quite sure
25 where we left off.

1 CHAIR JOHNSON: Commissioner Harbour was (inaudible) UNE
2 questions. —

3 COMMISSIONER HARBOUR: Okay. I've got a couple of quick
4 ones that are related. This is for ACS. On the opening brief
5 you suggested on page 12 that the Commission has amortized
6 infrastructure investment, I think the term was 20 years or
7 more. Are you aware of any cases where the Commission has set
8 depreciation rates for ACS investment at less than 20 years?
9 I'll give you time to get there, Mr. Moninski. I think I have
10 it marked on here page 12.

11 MR. MONINSKI: Commissioner, I'm trying to recall when I
12 was writing this piece where my information came from. I'm
13 sure that it came from our revenue requirements department. I
14 didn't ask that question and I don't have that answer with me
15 today, but I'd be happy to produce it to you in a post-hearing
16 filing.

17 COMMISSIONER HARBOUR: Okay. It's not necessary, but if
18 it does come about the answer's different and it changes the
19 testimony that would be probably useful.

20 To GCI, Mr. Jackson, page 19 line 10. Depreciation
21 proposals.

22 MR. JACKSON: Yes, sir.

23 COMMISSIONER HARBOUR: I wonder if you as others have
24 suggested think there would be value in including in that
25 proposal consideration for technological change?

1 MR. JACKSON: We do think that....

2 COURT REPORTER: You need to talk into the mic.

3 MR. JACKSON: We think technological change is also a
4 consideration. And throughout our.....

5 COMMISSIONER HARBOUR: Implicit rather than meaning them
6 to be explicitly named in the.....

7 MR. JACKSON: The reason it's not -- let me tell you why
8 it's not specifically named in the way I drafted it, which is
9 -- and I think that is really consistent throughout. I really
10 tried to draft regulations as short as possible to address the
11 specific legislative policy. And I think this does a complete
12 job of addressing the legislative policy, but then if the
13 question is, you know, in a broader context how should the
14 Commission set depreciation rates it would certainly consider
15 technological change also.

16 COMMISSIONER HARBOUR: Thank you.

17 MR. JACKSON: So if you're trying to have comprehensive
18 regulation about how to deal with depreciation that should
19 certainly be added, but I think this in itself addresses the
20 policy -- the legislative policy.

21 COMMISSIONER HARBOUR: That's all I have.

22 HEARING EXAMINER OLSON: For those on the phone
23 Commissioner Giard will be up next.

24 MR. MODEROW: Hearing Officer Olson, in response to
25 Commissioner Harbour's question yesterday regarding some

1 citations I've written them down and I have copies for the
2 Commission and everybody.

3 HEARING EXAMINER OLSON: Okay.

4 MR. MODEROW: It's a specific citation to paragraph 630
5 through 648 of the Triennial Review Order. And the two
6 regulation subsections that were adopted thereunder. I've just
7 put a specific reference to each of those. And I mean no
8 argument by this writing. The order and the regulations speak
9 for themselves.

10 HEARING EXAMINER OLSON: Thank you. I asked for it
11 yesterday thank you.

12 COMMISSIONER HARBOUR: Mr. Hearing Officer, I might also
13 say that if any commentor wants to try to add to our
14 understanding based on events that occurred since Illinois
15 please feel free. This was not meant to be restrictive because
16 a party volunteered the information and it's not required but
17 is invited. Thank you.

18 COMMISSIONER GIARD: Okay. We're going to talk about
19 UNEs. Dr. Shelanski, are you on board?

20 DR. SHELANSKI: Yes, I am.

21 COMMISSIONER GIARD: Okay. I wonder if you could tell me
22 whether the method proposed by GCI to calculate the methodology
23 proposed is wrong?

24 DR. SHELANSKI: Okay. Sorry. You came in a little bit
25 faint there. Whether the method proposed by GCI for the

1 calculation of UNE rates is wrong?

2 COMMISSIONER GIARD: Uh-hum.-

3 DR. SHELANSKI: Well, my concern about the way that that
4 -- that they have described the method, essentially a blank
5 slate method, I believe that that method is potentially quite
6 hazardous. And.....

7 HEARING EXAMINER OLSON: Mr. Shelanski, can you get a
8 little bit closer to the phone or.....

9 DR. SHELANSKI: Okay. I'm right up against it, is that
10 okay?

11 HEARING EXAMINER OLSON: There, that's perfect, thank you.

12 DR. SHELANSKI: Okay. Thank you. I think that there's
13 some problems with a model that relies on drawing a new network
14 or redesigning a network on a blank slate. I think that there
15 are two sets of problems. The first reason that I think the
16 method is -- and let me start by answering your question
17 directly. It doesn't have to be wrong. Everything will depend
18 on the input and how the inputs are arrived at. But I think
19 it's likely to be wrong for two sets of reasons. First,
20 sitting down and drawing out a new network with no constraints
21 of what architecture or what kind of technologies used in that
22 network could lead to a network that has nothing to do with the
23 realities of the particular market, geography, service pattern,
24 demand that exists in a particular marketplace. The way that
25 inputs are valued, switch costs, labor rates, cost of capital,

1 need to be somewhat realistically tied to the market in which
2 the particular network subject to the proceeding exists.

3 And I would -- I have one set of concerns with a blank
4 slate model that is unconstrained that simply looks anywhere in
5 the country to find optimal technology and optimal inputs is
6 that one builds a network that never could even be built in the
7 territory and in the particular service market being regulated.
8 And such a model would be tremendously hypothetical and would
9 dis-serve the purposes of sending accurate competitive price
10 signals.

11 COMMISSIONER GIARD: Okay. Dr. Shelanski, I would like to
12 follow up on a few things that you just said.

13 DR. SHELANSKI: Sure.

14 COMMISSIONER GIARD: Talking about the realities of the
15 market and tied to the particular market, so is the formula --
16 the methodology which I can't remember what it's called, but it
17 changed recently, would the -- what is it called?

18 DR. SHELANSKI: The modified synthesis.....

19 COMMISSIONER GIARD: Right. And.....

20 DR. SHELANSKI: model.

21 COMMISSIONER GIARD: Right. Modified synthesis model. So
22 would it be -- what I wan to know is if that method is used and
23 the word wrong as I used that word meant would it not be upheld
24 on appeal. So if that model was used would that model --
25 because that type of model was used would that likely to be not

1 held up on appeal?

2 DR. SHELANSKI: I would-defer, if you would, to Ms.
3 Brinkmann on that legal question about how it would fair on
4 appeal.

5 COMMISSIONER GIARD: Okay.

6 DR. SHELANSKI: If that's okay.

7 COMMISSIONER GIARD: Okay. That's fine, sorry.

8 DR. SHELANSKI: Yeah. And I'd be happy to -- my own sense
9 is that the use of a model like the MSM model has been endorsed
10 in certain occasions by the FCC and has been approved by the
11 Supreme Court. I don't think I could tell you -- you, I'm an
12 attorney as well as an economist, I can't tell you with a
13 straight face that it wouldn't be held up on appeal.

14 COMMISSIONER GIARD: Okay. And I think I need to hear
15 from Ms. Brinkmann on that particular issue.

16 DR. SHELANSKI: Yes.

17 COMMISSIONER GIARD: I would like to switch then to the
18 model that you are endorsing.....

19 DR. SHELANSKI: Yes.

20 COMMISSIONER GIARD:and have recommended to your
21 client ACS that they use. Is that a correct characterization
22 that you have recommended that model to them?

23 DR. SHELANSKI: No, I was not involved in the model
24 development with ACS, so you know, I was not involved at the
25 early stage of -- with ACS in any model that they recommended.

1 COMMISSIONER GIARD: Who is your expert?

2 MR. SHOUP: On the modeling?

3 COMMISSIONER GIARD: Who do you want me to ask the
4 question of regarding whether it would be wrong to use your
5 model?

6 MR. SHOUP: You could me, you could ask Karen Brinkmann.

7 COMMISSIONER GIARD: Okay.

8 MR. SHOUP: You could ask any of the attorneys
9 representing ACS.

10 DR. SHELANSKI: Oh, I could also -- I mean even though I
11 was not involved, Commissioner, with -- at the stage of their
12 developing their model, I believe I can address that question.

13 COMMISSIONER GIARD: Okay.

14 DR. SHELANSKI: Adopting your same definition of wrong
15 about upheld on appeal.

16 COMMISSIONER GIARD: Yep.

17 DR. SHELANSKI: I believe to a certainty that -- or I
18 believe very strongly that the model that Alaska has been --
19 has endorsed could and probably would be upheld on appeal.

20 COMMISSIONER GIARD: Okay. Ms. Brinkmann, is that also
21 your belief?

22 MS. BRINKMANN: Yes, it is.

23 COMMISSIONER GIARD: So it appears to me from your
24 testimony that the TELRIC interpretation is really rather broad
25 and that it can accept both the MSM Model and the model that

1 ACS is proposing within the depth and breadth of the word
2 TELRIC, is that a correct under- -- am I understanding that
3 correctly from both you?

4 DR. SHELANSKI: Yes, ma'am, that is my testimony that the
5 -- that TELRIC is not so narrow as to dictate a particular
6 model. That a variety of models as the Commission said
7 recently in the Virginia arbitration order can be consistent
8 with TELRIC. And that it is within the state's discretion to
9 then adopt the model that is most in keeping with the policy of
10 sending accurate and efficient price signals to entrants,
11 preserving accurate and efficient investment incentives for the
12 incumbents.

13 COMMISSIONER GIARD: Do you have a comment, Ms. Brinkmann?

14 MS. BRINKMANN: Yes, I agree with everything Professor
15 Shelanski just said. And I would just add that the Commission
16 also made clear that in addition to the selection of an
17 appropriate model the Commission also focused on the use of the
18 appropriate cost inputs which should be specific to the market
19 and to the carrier in question.

20 COMMISSIONER GIARD: Okay. We're going to get to cost
21 inputs in a few minutes. Dr. Shelanski, when you spoke a few
22 minutes ago you talked about, and I wrote these words down,
23 tied to the particular market. That you had two problems with
24 the MSM model. And one of those was you felt that using
25 something in the Lower 48 or, you know, New York City, some

1 other area, was a concern, but would you be less -- would it
2 mollify your concerns if in fact MSM were tied to this
3 particular market?

4 DR. SHELANSKI: I think that there are some flaws with the
5 MSM that are not easily corrected even with adjustment with
6 state specific inputs. I think that certainly helps. And i
7 think that if the input values that are used for various costs
8 and the kinds of technology that assumptions -- assumptions
9 that are used are realistic to the market, I think that
10 certainly helps the case enormously. But there are a couple of
11 other problems with the MSM and with a blank slate approach
12 even if there are some constraints put on it.

13 The first set of problems is that these models don't tend
14 to account for growth and change very well. The synthesis
15 model when it was developed by the Federal Communications
16 Commission was meant really to take a snapshot of market
17 conditions as they stand at a particular point in time.
18 TELRIC, of course, is forward looking. And one of the things
19 that is a challenge for any network as it is developing is
20 efficiently to anticipate changes in demand in both growth and
21 shrinkage in demand and the evolution of technology in
22 particular kinds of services. And the synthesis model is not a
23 model that at least in the forms that I have seen it used had
24 any way of rationally taking account of this kind of dynamic
25 forward looking process of changes in demand and changes in

1 growth.

2 COMMISSIONER GIARD: Uh-hum.

3 DR. SHELANSKI: The other concern that I have with using a
4 blank slate model is if we really take seriously the idea of
5 building a new network and asking the question what would it
6 cost ACS or any other ILEC to build a new hypothetically
7 efficient network and indeed down the road to sit down with the
8 blank slate and build it again when technology changes.

9 We wind up with very serious problems of enormous fixed
10 costs being repeatedly incurred. Those costs have to be
11 depreciated on a forward looking basis anticipating having to
12 sit down and rebuild again a few years down the road. And that
13 model I think if it really takes depreciation and cost of
14 capital seriously in the way that the Commission has talked
15 about taking them seriously, the cost of capital of a
16 competitive market and depreciation that may have to be
17 accelerated to account for relatively rapid decline in the
18 network value over a short period of time even if the asset
19 lives remain reasonably long will generate, I think if done
20 rigorously, an extremely costly result, very high UNE prices.

21 So the model is not just one that has flaws from the
22 perspective of the ILEC in terms of being under compensated, if
23 one really takes the logical extreme sitting down and
24 rebuilding and costing out what that rebuilding would cost at
25 each interval that there's a significant change in technology

1 the cost to CLECs and consumers would be enormously high. It's
2 just not a model that--if you take this assumption seriously
3 tends to serve the TELRIC purposes as well as a model that is
4 more realistically tied to a network architecture that is
5 actually being put in place in a forward looking basis by the
6 ILEC being regulated.

7 COMMISSIONER GIARD: Dr. Shelanski, has the method that
8 you are proposing for or are supporting I guess ACS as its
9 expert, has that -- have you successfully -- has that been
10 successfully deployed, now successful means upheld on appeal
11 from my perspective, any other state in the Lower 48. Other --
12 we talked a bit about the Virginia decision and I would like
13 you to clarify that for me just a little bit, but where else?

14 DR. SHELANSKI: Well, I mean there has been -- there have
15 been a number of states that have based at least part of their
16 TELRIC price calculations, for example, on recent switch
17 purchases, for example, of the actual ILEC being priced or
18 being -- being.....

19 COMMISSIONER GIARD: Okay.

20 DR. SHELANSKI:regulated. So there have certainly
21 been aspects of what ACS's is advocating that have been adopted
22 by state commissions and that are in place that have not been
23 either not been challenged or not been defeated on appeal.

24 COMMISSIONER GIARD: Okay. So is ACS given your
25 experience and I'd ask Ms. Brinkmann also to respond to this,

1 making a broader interpretation because it does go far beyond
2 recent switch purchases? In its regulations it goes into, you
3 know, actual cost of labor, actual (indiscernible) costs and
4 I'm going to pull the regulations, but I'm sure you're familiar
5 with what their proposed regulations look like, so how -- what
6 are their parameters compared to the other parameters that
7 you've seen in the Lower 48 in terms of UNE pricing?

8 DR. SHELANSKI: Right. In my -- you know, in my
9 experience and I must say off of that I do not have a personal
10 experience with very many states.

11 COMMISSIONER GIARD: Okay. Well, Ms. Brinkmann can answer
12 first then.

13 DR. SHELANSKI: Okay.

14 MS. BRINKMANN: Yeah, I also have not attempted to do a
15 survey of all the other state plans to see where they would
16 have similarities with the ACS proposal.

17 COMMISSIONER GIARD: I'm not interested in survey. I was
18 interested in your experience.

19 MS. BRINKMANN: Again, I guess I would reiterate what Dr.
20 Shelanski said which is that there are -- I am aware of at
21 least some state plans that do incorporate assets, the same
22 type of factual information that ACS's plan would require, but
23 I can't give a complete answer. I don't have complete
24 experience to answer the question.

25 COMMISSIONER GIARD: So what aspects, Ms. Brinkmann, are

1 commonly used in the UNE pricing that ACS is proposing?

2 MS. BRINKMANN: Well, for example, in the Virginia
3 arbitration case that we discussed yesterday quite a bit the
4 Commission'did, in fact, rely on the most recent switching
5 costs for, I believe, 1996 to 2000 incurred by Verizon as
6 evidence of a forward looking switching cost.....

7 COMMISSIONER GIARD: Okay.

8 MS. BRINKMANN:for Verizon's -- for TELRIC price,
9 that's one example off the top of my head.

10 COMMISSIONER GIARD: Okay. But we go forward -- I mean am
11 I wrong, do we not go far beyond switching in ACS's proposed
12 regulations?

13 DR. SHELANSKI: You know, I think that labor costs have
14 been -- and subject to check, let's say in New York,
15 Massachusetts and New Jersey and Maryland have all.....

16 OPERATOR: Hugh McKenna is leaving the meeting.

17 DR. SHELANSKI:have all adopted localized labor
18 rates out of recognition that all competitive firms in the
19 market -- in the particular market being regulated or at issue
20 would be facing similar labor markets. And to impose on the
21 ILEC the obligation of being as efficient as a firm facing a
22 different external labor market in a different area didn't make
23 sense.

24 COMMISSIONER GIARD: Okay. So there's some labor and
25 switching costs and you'll be able to provide to your client

1 something that your client can provide to me that show, you
2 know, some kind of order or something that indicates --
3 substantiates your statement, right, then about the labor,
4 right?

5 DR. SHELANSKI: I will do my very best, Commissioner. One
6 of the problems is a lot of these rates are arbitrated and
7 they're not -- often we do not get, for example, in loop costs
8 in the orders that come out from the commissions breakdowns of
9 everything that has gone into a determination of what those
10 costs should be. But I believe that there should be some
11 evidence particularly on the nonrecurring comp 5 (ph).....

12 COMMISSIONER GIARD: Okay.

13 DR. SHELANSKI:of adoption of localized labor rates.

14 COMMISSIONER GIARD: Okay. I want to clarify that I'm not
15 asking you guys or ACS to review, you know, every order you
16 have -- you know, as their expert witness you are the people
17 that have much more experience in this than I am, and so what
18 I'm trying to ferret out is the reasonableness of ACS's request
19 to us that we adopt their regulations. And there is
20 substantial opposition to the adoption of their regulations.
21 And so I need to know as I make my decision how much experience
22 stands behind their proposal.

23 DR. SHELANSKI: And I will do my best to find what I can
24 to provide to ACS so they can provide it to you. But just for
25 the record most of my advocacy has been on what the FCC itself

1 has said rather than on what has happened in particular states.

2 COMMISSIONER GIARD: Okay. And I'll turn to the
3 regulations, Mr. Moninski, if I may. Yesterday we talked about
4 using the -- okay. So we've established on the record that
5 it's not wrong to use MSM. There are issues with it. And I'm
6 going to come back to you, Dr. Shelanski, in just a few
7 minutes. And it's probably not wrong to use actual costs as a
8 basis. So we have established and I think yesterday in the
9 record you folks talked about one line and some lawyer
10 generated document that said the FCC perhaps said neither is --
11 neither was not TELRIC compliant, I think was that -- those
12 were the words that we were discussing.

13 DR. SHELANSKI: Paragraph 49 of the Virginia arbitration
14 order.

15 COMMISSIONER GIARD: All right, 9. So I think that that
16 is (indiscernible - distorted) the opportunity to use the
17 methods that you are requesting. Okay. So what we talked
18 about yesterday was -- and what I want to know about today is
19 how do you go from actual cost to the efficient costs that you
20 would use in your calculation? How do you make that
21 transition? Because the costs that are -- actual costs,
22 today's costs are not what we're talking about. We're talking
23 about forward looking costs. So how do you make that
24 transition? What are the computational factors that you
25 consider?

1 MR. SHOUP: Commissioner, I think to answer the question
2 you'd have to divide this up into what you're talking about.
3 And let me give you some examples. For example, labor rates.
4 Labor.....'

5 COMMISSIONER GIARD: Okay. We can go actually by item if
6 you want.

7 MR. SHOUP: Whichever is easier, whichever is more useful
8 to you.

9 COMMISSIONER GIARD: Actually most efficient technology.
10 Let's go down to number 4, (b)(4).....

11 MR. SHOUP: Okay.

12 COMMISSIONER GIARD:which is labor and materials.

13 MR. SHOUP: All right. With labor and materials there has
14 been a divergence. Labor rates have been going up, not only in
15 Alaska but everywhere else as you might expect. You can track
16 what they'll be in the future by doing a projection of two
17 things. One is what they've been in the past and, two, looking
18 at your union contracts. ACS is a union shop. We have union
19 labor rates. We've provided those union contracts both to the
20 Commission and to GCI. And so we can look at those and do a
21 projection of what they'll be in the future year by year fairly
22 accurately.

23 With equipment some of it is going up in price and some of
24 it is going down. For example, switching or some technological
25 area like switching, some of those things are going up, but

1 some of them are going down rapidly in price with technological
2 changes.

3 With things like copper cable, those prices are going up.
4 And we can track those by looking at what we're paying for them
5 now, what GCI is paying for them now, and what we paid for them
6 in the past and we can track pretty closely where those prices
7 are going to go.

8 I mean they're obviously some things you can't tell. For
9 example, if some company goes out of business that we don't
10 anticipate and it causes copper prices to go up or if there's a
11 flood of copper on the market in some particular year. But
12 generally we can track those into the future as far as out into
13 the future as is possible to do.

14 And so, you know, we can -- those are all trackable
15 things. And I think we're prepared to present evidence on
16 those when we get there.

17 COMMISSIONER GIARD: So what you're talking about it seems
18 to me is trending.

19 MR. SHOUP: Yes.

20 COMMISSIONER GIARD: So you use actual costs as the basis
21 for trending the future.....

22 MR. SHOUP: Yes.

23 COMMISSIONER GIARD:plus adding some factual
24 statements or factual information from your union agreements?

25 MR. SHOUP: Plus what it costs our competitors to do

1 things. I mean they're in the same competitive market we're
2 in, so they're paying prices for similar kinds of things that
3 we are.

4 COMMISSIONER GIARD: One of the things that you said
5 yesterday is that ACS is efficient. And you also implied -- or
6 I can't -- well, actually tell me again whether you said that
7 they're going to be more efficient in the future?

8 MR. SHOUP: Again, I suppose it depends on what -- exactly
9 what aspects of this we're talking about. What I was talking
10 about was network deployment and that's what we're talking
11 about with UNEs. We have to be efficient in that area
12 otherwise we go out of business. I mean the reality of this is
13 when we buy copper cable, when we buy fiber, when we pay for
14 switching equipment, there is no incentive for this company to
15 pay more than it has to pay, and it doesn't do that. It --
16 therefore, it -- you know, in the broad kind of philosophical
17 sense it is self evident that it is efficient because why would
18 it? Well, what motivation would it have in a competitive
19 market when it doesn't get a guaranteed return on investment to
20 go pay more than it needs to.

21 COMMISSIONER GIARD: Right, I understand those areas, but
22 those areas are rather the simplistic and the easier items to
23 identify when you're talking about efficiency. And where
24 efficiency gets difficult or challenging in my opinion is in
25 the areas of operations and union contracts and how -- what

1 bench marks ACS can provide to substantiate that it is an
2 efficient carrier. And I can't recall and perhaps you can
3 recall the actual phrasing, but it's the least cost most
4 efficient.' And do you believe that these standards that you're
5 proposing will come from -- are based in the most efficient
6 least cost carrier? I think that's what it was.

7 MR. SHOUP: I'm not -- I'm sorry, I'm not sure I
8 understand.

9 COMMISSIONER GIARD: Okay. Give me the phrase, least
10 cost, most -- those little five words. You have it,.....

11 MR. SHOUP: From

12 COMMISSIONER GIARD:Dana, just give it to me.

13 MS. TINDALL: Least cost most efficient carrier.

14 COMMISSIONER GIARD: Least cost most efficient carrier,
15 okay. So if we have the least cost most efficient carrier as a
16 standard, okay, and then you say I am the least cost most
17 efficient carrier and my cost records, not GCI's or anybody
18 else's, should be the ones that we use as a basis for UNE
19 pricing, to -- I would like you to put on the (indiscernible -
20 phone noises). I would like you to put on the record how you
21 prove to your -- the people who are going to be buying the
22 service from you that you are the least cost most efficient and
23 that your actual costs are to be used?

24 MR. SHOUP: And, again, I think it depends on which costs
25 we're talking about.

1 COMMISSIONER GIARD: Okay.

2 MR. SHOUP: If we're talking about UNEs and deployment of
3 plant.....

4 COMMISSIONER GIARD: Uh-hum.

5 MR. SHOUP:then all of the things I've just
6 mentioned as evidence would be the way we would do that. When
7 it gets to other issues, cost of capital, for example, then it
8 becomes a much more difficult set of proof because all of the
9 things that get factored in to cost of capital come into play.
10 For example, risk, how much risk is the company facing now that
11 there's significant competition. Depreciation rates, et
12 cetera, et cetera. There's a lot that goes into all of that.
13 But those would be some of the things we would rely on.

14 COMMISSIONER GIARD: What are you prepared to offer for
15 substantiation that you are efficient, that you are an
16 efficient carrier?

17 MR. SHOUP: Within the -- I'm assuming the question is
18 within paragraph 685.....

19 COMMISSIONER GIARD: Yeah, yeah, yeah.

20 MR. SHOUP:of the First Report and Order? The
21 things I've just talked about, the deployment records, the
22 costs, the labor contracts, depreciation schedules, all of
23 those kinds of things are the things that we would offer. And
24 they're all coming up in U-96-89.

25 COMMISSIONER GIARD: Okay. So you offer all of those and

1 you say as a result of my providing these to you, Kate, we are
2 efficient, but when I stand back I say, geez, you know,
3 efficiency really is a comparable statement.

4 MR. SHOUP: Yes.

5 COMMISSIONER GIARD: It's compared. There's bench
6 markings in the industry. There are -- and I'm sure in your
7 industry you have those particular bench marks. One of the
8 statements that was written in here is that you are the most
9 efficient ILEC in the country. It was written in here. I
10 don't know whether -- has become -- has turned ACS into the
11 most efficient carrier in the country.

12 MR. SHOUP: I'm sorry, I didn't see that reference.
13 The most efficient ILEC in the country?

14 COMMISSIONER GIARD: Uh-hum.

15 MR. SHOUP: For its size, perhaps.

16 COMMISSIONER GIARD: I think that was a qualification, I
17 can find it in here.....

18 MR. SHOUP: All right. Yeah, I don't remember seeing
19 that, but I think for its size and in similarly situated
20 markets we have documentation that shows efficiency with
21 respect to other comparable ILECs which we're happy to provide.
22 I think Mr. Moninski offered to provide that yesterday.

23 COMMISSIONER GIARD: Okay.

24 MR. SHOUP: And certainly with comparison to GCI we can
25 offer that evidence as well.

1 COMMISSIONER GIARD: Okay. In page 11 of 34 of your
2 initial brief, even after positioning itself as one of the most
3 cost efficient ILECs in the nation.

4 MR. SHOUP: Oh, one of the most cost efficient in the
5 nation. Right. I.....

6 COMMISSIONER GIARD: So there's.....

7 MR. SHOUP: I think that what -- correct me if I'm wrong,
8 but I think that's a comparison that we made to other similarly
9 situated ILECs in the United States. I don't think we're
10 talking about, you know, New York City. I think we're talking
11 about other comparably sized ILECs.

12 COMMISSIONER GIARD: Okay. And that information, Mr.
13 Moninski, forgive me if I've forgotten it, that's the
14 information substantiating that statement that you're going to
15 provide to this agency?

16 MR. MONINSKI: Yes.

17 COMMISSIONER GIARD: Okay. And was that an independent
18 evaluation that you were -- has there been some third party
19 that said that?

20 MR. MONINSKI: I believe that ACS derived that information
21 itself by contacting those companies. I don't know that it was
22 done by an independent third party.....

23 COMMISSIONER GIARD: So it wasn't an industry manual or
24 journal or something that made that claim?

25 MR. MONINSKI: Again, I don't believe so, but I'll confirm

1 that for you when I make the subsequent filing.

2 2700

3 (Tape change)

4 Tape 4

5 0015

6 COMMISSIONER GIARD: Do you think that your actual costs
7 would be adjusted as -- what I'm having a challenge with is how
8 do you get actual cost to reflect -- to not reflect the
9 inefficiencies inherent in purchasing, you know, a monopoly
10 telephone system only four or five years ago because I think
11 that -- were there built-in efficiencies in ATU?

12 MR. SHOUP: I assume so, it was a regulated monopoly, but
13 I wasn't in this business in terms of representing or dealing
14 with telephone companies in those days so I can't tell you
15 that. But just -- it seems self-evident that a regulated
16 utility in those days had a guaranteed return on investment and
17 therefore there was no incentive for it to be efficient and I
18 think that's what the FCC's talking about.

19 COMMISSIONER GIARD: Can ACS prove that it has made
20 changes since taking over ATU that have resulted in its
21 efficiency?

22 MR. SHOUP: Yes, I think we can.

23 COMMISSIONER GIARD: Okay. You can prove that?

24 MR. SHOUP: I think so, yes.

25 COMMISSIONER GIARD: Okay. I'm going to direct some

1 questions to GCI. Is it wrong to use ACS's proposed model
2 under TELRIC?

3 MR. JACKSON: Let Mr. Moderow and I --.....

4 COMMISSICNER GIARD: Okay.

5 MR. JACKSON:it -- our -- I'm not positive whether
6 you're talking about our regulations.....

7 COMMISSIONER GIARD: Let's use.....

8 MR. JACKSON:versus their regulations or our
9 proposed model, it is not wrong to use appropriately -- Mr.
10 Moderow can address this, I think he will say that
11 appropriately adjusted it is not wrong to use the model that
12 they've proposed. Legally it would be wrong to use the
13 regulations that they've proposed. There's a very big
14 difference between the model that they've proposed in the
15 existing arbitration and the regulations that they've proposed
16 here.

17 COMMISSIONER GIARD: Are there significant differences, I
18 mean, I don't -- I'm not sure the -- my -- the Commissioners
19 will tell me if I'm treading on turf that I shouldn't, but.....

20 MR. SHOUP: Between the model and the regulations? I
21 think that the model is consistent with the regulations. I
22 think everyone -- I assume everyone here agrees though with Dr.
23 Shelanski -- Professor Shelanski's statement that a range of
24 models can be used within TELRIC.

25 COMMISSIONER GIARD: That's where we're getting.

1 MR. SHOUP: Right.

2 COMMISSIONER GIARD: Okay. All right.

3 MR. MODEROW: If I could maybe try to expand on that?

4 COMMISSIONER GIARD: Uh-hum.

5 MR. MODEROW: Number one, I think what Jimmy was trying to
6 say in a different way is that the model they have proposed in
7 the arbitration.....

8 COMMISSIONER GIARD: Let's focus on the regs then.

9 MR. MODEROW: Okay.

10 COMMISSIONER GIARD: That's what we're supposed to do.

11 MR. MODEROW: The regs -- in my estimation the regs as
12 proposed do not map to the model. Most significantly the
13 technology actually deployed is a problem, they don't -- and
14 the rest of them all go to input decisions that in any
15 arbitration and within any model including the one they've
16 proposed and including the one that we have -- an alternate
17 that we have proposed it's the input decisions that need to be
18 made but within the arbitration.

19 The problem with ACS's proposed regulations is they
20 propose to pre-make all of those decisions and base things on
21 their actual cost. And the actual costs or the actual
22 statistics are the problem. It was -- you know, this language
23 we keep going back to the actually word in paragraph 685.
24 Well, I'm going to go to the Supreme Court of the United States
25 and in their opinion they say that an embedded cost methodology

1 that relies in any part on historical cost the incumbents say
2 they actually incur in leasing that work elements, the problem
3 is that it will pass onto the lessees the difference between
4 most efficient cost and embedded cost.

5 Now the problem that we've got here and I think it's fair
6 to say that the model they've proposed properly utilized or the
7 model -- the alternate model that we have also proposed,
8 properly utilized and corrected as to structure and most
9 importantly these inputs that are decided based on the evidence
10 in that arbitration, not in your regulations here, prejudged in
11 the regulations, if those are properly done either model would
12 be able to yield a result within a TELRIC range.

13 MR. JACKSON: If I can try to say this in yet one other
14 way and it'll be very short. Taking the model that they
15 proposed, if we use efficient inputs in that model that model
16 can work, but their regulations require the use of their actual
17 cost even when they're not the efficient cost and that's the
18 problem with the regulations.

19 COMMISSIONER GIARD: Mr. Moninski are you saying that your
20 actual costs are your efficient cost?

21 MR. MONINSKI: And I'll defer to Mr. Shoup for the
22 detailed answer to this question, but we said I believe
23 yesterday that the actual cost is the appropriate point of
24 departure to derive the forward looking efficient cost. Mr.
25 Shoup, if you have.....

1 MR. SHOUP: Yeah, if I could add to that? The regulations
2 if read carefully stress forward looking throughout. They talk
3 about there being -- you know, you have to use something to
4 start with and so, you know, we're proposing that our costs are
5 the place that you start, but not the place that you end. And
6 I don't -- unlike Mr. Moderow, I do not read the Verizon
7 decision to say you can't even look at that evidence, I don't
8 think the Supreme Court has said that and I don't think the FCC
9 has said that.

10 COMMISSIONER GIARD: Okay. So.....

11 MR. MONINSKI: Commissioner Giard?

12 COMMISSIONER GIARD:I guess I need to go back to my
13 question. I know. I know. And that is how do you adjust your
14 actual cost to the efficient cost, what components like -- how
15 do you do it?

16 MR. SHOUP: For example -- let me give you a concrete
17 example. Let's assume we have a five year old switch in place,
18 let's assume there is a switch that is compatible with this
19 network that is more efficient and that the price of that
20 switch is less than the price that we paid for the five year
21 old one, you simply in the terms of a forward looking analysis
22 use the price of the cheaper switch. That's an example of what
23 you would do.

24 COMMISSIONER GIARD: Okay. Let's talk about labor costs.

25 MR. SHOUP: Okay.

1 COMMISSIONER GIARD: Give me an example in labor?

2 MR. SHOUP: If your labor cost today is \$10 an hour and
3 your union contract requires you next year to pay \$12 an hour
4 and you're doing this on a forward looking basis you would use
5 12 and not 10.

6 COMMISSIONER GIARD: Well, I have a question about that
7 then because did ACS -- has ACS renegotiated the labor
8 contracts since ATU went away?

9 MR. SHOUP: I don't know the answer, but I'm assuming that
10 we would have in that much time, but I don't know the answer.

11 MR. MONINSKI: And I am not certain of that answer either.

12 COMMISSIONER GIARD: Well, the reason I'm asking the
13 question is because when you stated earlier that it's likely
14 that ATU was inefficient in its operations, then you would then
15 assume that they had inefficient union contracts as well
16 because that would be the umbrella of overall operations?

17 MR. SHOUP: I don't know that that would be true in
18 the.....

19 COMMISSIONER GIARD: Okay.

20 MR. SHOUP:first place and in the second place -- I
21 can go back and check this for you, but I highly doubt that
22 we've negotiated -- that we haven't negotiated new labor
23 contracts since 2000.

24 MR. MONINSKI: And, Commissioner Giard, if I might add
25 without trying to give you a concrete answer to whether or not

1 Legacy union rates were efficient, clearly those union rates
2 were presented to this Commission along the way, at certain
3 points along the way during formal rate proceedings at which
4 point if the Commission had determined that those rates were
5 unreasonably high or derived in an inefficient way it would
6 have imposed some sort of offset for rate making purposes.

7 COMMISSIONER GIARD: Mr. Moninski, we weren't looking at,
8 I don't think, at a most efficient standard and forward looking
9 cost at that time so I don't know that that particular response
10 is germane to forward looking prices where I am trying to
11 establish that using actual cost is a good idea. I'm an
12 accountant, okay, so I understand the desire to use actual
13 cost, but there is a significant challenge when you're looking
14 at the most efficient standard.

15 And I'm trying to have you provide evidence of how you're
16 going to get your actual cost today which I think would be to
17 the most efficient -- I mean, how are you going to -- is it 25
18 percent, I mean, is there an embedded cost percentage that you
19 believe are in your actual costs in -- other than the place
20 where you can just simply replace the item as in your example,
21 Mr. Shoup,.....

22 MR. SHOUP: One other way you could do that would be to --
23 we -- I don't think any of us would argue that GCI which is a
24 non-union shop is paying more for labor than we are. If we
25 looked at their labor costs and compared them that would give

1 you a good bench mark I would think.

2 COMMISSIONER GIARD: Uh-hum. All right. Okay. We were
3 going to talk about the increases in efficiency that ACS would
4 bring forward as evidence using a forward looking, but I don't
5 think your marketing -- someone is here to answer the questions
6 about (indiscernible) plan, right?

7 MR. SAUPE: I -- he's not here, but I check on that this
8 morning. What I am told this morning is the same answer we
9 gave to GCI in the discovery request in U-96-89. They asked us
10 that question there and what we told them -- they were asking
11 for -- do you have long range planning for deploying and all of
12 that sort of thing and the answer is we don't.

13 What we have is -- budgeting is year to year and the long
14 range planning is also year to year. That's what I'm told this
15 morning, but -- and we tried to find the guy, you know, who is
16 the ultimate authority, but I checked on this and I'm
17 reasonably certain that's the answer.

18 COMMISSIONER GIARD: Okay. I'm reasonably certain -- I
19 don't believe that that's the correct answer. I don't think
20 that there's any SCC (ph) company in the company that does year
21 to year budget planning, it -- you -- it's not practical. That
22 there is somewhere, and there has to be, some kind of strategic
23 planning going on at ACS that is longer than one year.

24 Now I'm not -- I'm done with it in terms of that, but in
25 proposing evidence that you are an efficient and will be more

1 efficient in the future, it would be challenging to say we are
2 planning on being more-efficient in the future, but we don't
3 have a two or three year strategic plan.

4 MR. SHOUP: All I can tell you, Commissioner, is that's
5 what I was told, that they're --.....

6 COMMISSIONER GIARD: Okay.

7 MR. SHOUP:that maybe there's somebody out there
8 working on something, but I'm told we don't have that today.

9 COMMISSIONER GIARD: That completes my questioning on UNES
10 for now. I'm done.

11 COMMISSIONER HARBOUR: Yeah, maybe one. This is related,
12 Mr. Moninski, page 7 depreciation. We follow the lead of other
13 government bodies and I know the term is used, using industry
14 standards as well. I wonder if there are other states or
15 models of acceptable -- that provide acceptable depreciation
16 methodology that conforms with law that does use an industry
17 standard or other governmental body reference or are we
18 creating this here?

19 MR. MONINSKI: We perhaps are creating it, we have been
20 looking for it both in our initial comments and again in reply,
21 I had indicated that one of the reasons why we were advocating
22 at the outset the use of IRS depreciation rates was that we
23 were looking for a governmentally sanctioned surrogate that we
24 could use that would be administratively efficient and
25 reasonably effective.

1 There was considerable push back as you all may recall on
2 the use of the IRS numbers. We looked for some other
3 governmentally sanctioned numbers, the closest we were able to
4 come were the range of depreciation lives that are used by the
5 FCC, we incorporated that into our reg as being an appropriate
6 reference point.

7 We also advocated the fact that given the degree of
8 competition and the circumstances in Alaska that it would not
9 be inappropriate for our depreciation rates to be lower than
10 what the FCC had bench marked. But that was all we were able
11 to find so far, we continue to look and if we find anything at
12 the state level or the federal level that looks like it would
13 work as the kind of surrogate we had hoped to find, we will
14 certainly bring that to the Commission's attention.

15 COMMISSIONER HARBOUR: Thank you.

16 HEARING EXAMINER OLSON: Okay. Mr. Shelanski, Mr. Miller,
17 the Commission indicates they're not going to have any more
18 questions on UNEs, so there won't be any need for you to call
19 back any further unless you just -- unless your companies wish
20 to be available for some other reason.

21 MR. MILLER: We're going to -- excuse me for a second,
22 could I provide just one clarification? This is Mr. Miller.

23 HEARING EXAMINER OLSON: Sure.

24 MR. MILLER: And the only reason I do this is because I
25 think it was said that everyone agrees that it would not be

1 wrong to adopt GCI's model and I just wanted to make clear
2 because I understand there'll be a transcript made of this,
3 that I am not in that category, I do not agree that it would
4 not be wrong to adopt GCI's model for the reasons that are
5 stated in paragraph 52 of the FCC's Virginia order. And I
6 don't want to burden the Commission with stating those since I
7 wasn't asked a question, but I just wanted to clarify the
8 record.

9 HEARING EXAMINER OLSON: Is that GCI's models or ACS's
10 model?

11 MR. MILLER: I'm sorry, ACS's model, yes. Thank you for
12 correcting me on that one.

13 HEARING EXAMINER OLSON: Well, the only reason I asked
14 you, you're appearing on behalf of GCI, I was.....

15 UNIDENTIFIED VOICE: No, no, no, he's on behalf of
16 AT- --.....

17 HEARING EXAMINER OLSON:or AT&T, you surprised me.
18 I'm sorry.

19 MR. MILLER: Yeah, well, I misspoke. Thank you. I would
20 have made an even worse record if I wouldn't have corrected
21 that. Thank you very much.

22 HEARING EXAMINER OLSON: Okay. All right. Well, there
23 isn't any need for you to remain unless your respective clients
24 wish you to. We're going to recess because the Commission's
25 going to hold its tariff meeting which is -- for those of you

1 that are interested, it's in the other hearing room. And we
2 will reconvene here at 2:00 o'clock and the Commissioners have
3 other questions unrelated to this UNE inquiry. You do not have
4 to clean up, you can leave everything where you are and we'll
5 come back on at 2:00 o'clock and we'll stand in recess. And
6 for the rest of you that are on the phone that do wish to
7 participate, I guess you need to call back in.

8 (Off record - 1:30 p.m.)

9 (On record - 2:09 p.m.)

10 HEARING EXAMINER OLSON: Okay. We're back on record. The
11 Commission finished its UNE inquiry and there may be some other
12 follow up questions on other areas. I don't know whether the
13 Commission has decided whether or not, but if there is no
14 particular request then we might as well start from the left.
15 Oh, I'm sorry, I'd be remiss. Mr. Saupe has to leave at 2:30
16 and Dr. Lehman is only here -- has to leave -- you can be here
17 until 3:00, I think, can you? So they requested that if you
18 have questions that are going to be directed to Dr. Lehman or
19 Mr. Saupe or AT&T that you do those first.

20 COMMISSIONER STRANDBERG: I am going to be brief here,
21 we've been here for a -- quite awhile and we certainly.....

22 COURT REPORTER: Identify yourself for the record, please?

23 COMMISSIONER STRANDBERG: Excuse me, this is Commissioner
24 Jim Strandberg.

25 COURT REPORTER: Thank you.

1 COMMISSIONER STRANDBERG: We have certainly beat the dead
2 horse here significantly and been over and over quite a number
3 of things. I wanted to in an earnest fashion and fairly
4 quickly talk about Mr. and Mrs. McGillicutty (ph), the
5 ratepayer, and to focus on the implications of proposed
6 regulations which are proposed really by three parties here.
7 They are significantly different and I think -- I wanted to
8 focus on the tariffing issues and the carrier of last resort
9 issues.

10 I am -- I want to ask each of you what will the ratepayer
11 see after changes in these competitive regulations, are they
12 going to -- and I'm talking about the near future, I think this
13 is where the tire meets the pavement, whatever we do do here we
14 have to make sure that we don't bring in a whole bunch of
15 consumer complaints. And I wanted to start with ACS because
16 ACS's proposed changes in the tariff regulations are
17 significant and far reaching and when I contrast them between
18 those of the Rural Coalition and those of GCI I specifically
19 note that we did take -- ACS does take item C out which reads,
20 not withstanding A or B of this section, and this is on page 5
21 of 9 of the ACS proposed regulations, the Commission will
22 disapprove and require modification of rates that are not just
23 and reasonable or that grant an unreasonable preference or
24 advantage to any customer or subject the customer to an
25 unreasonable prejudice or disadvantage. That has been taken

1 out of the ACS proposed regulations.

2 -- So I would like to ask, and I'll start with Mr. Moninski,
3 how are the ratepayers going to be treated in your estimation
4 were we to implement these regulations as you propose, Mr. and
5 Mrs. McGillicutty, he has a small business and she's at home?

6 MR. MONINSKI: I think from a procedural perspective the
7 proposals that ACS has made will be almost unnoticed by Mr. and
8 Mrs. McGillicutty. I don't think those two folks and everybody
9 that they represent have a clear sense of what's happening with
10 tariff filings today. There's a -- I used a quote in my reply
11 comments that came from the FCC that I'll paraphrase that
12 basically says, tariffing is really kind of unnecessary, for
13 the most part nobody reads them, the few people who do don't
14 understand them.

15 And I think while that might sound a little harsh I think
16 that it -- you know, coming from the FCC I think it's an
17 interesting comment and I think that it is generally true. So
18 that if we moved to a scheme where we were no longer filing
19 tariffs and noticing tariffs and going through a tariff
20 approval process however we may want to characterize that
21 process from the ratepayer's perspective I think moving from
22 that process to the notice tariffing that we've been talking
23 about or to detariffing I think from the public perspective's
24 that's going to be fairly transparent.

25 Would it substantively result in significant changes to

1 ratepayers such that it might generate a huge number of
2 complaints for this Commission? I don't think so and I don't
3 think so for a number of reasons. Number one, and I say this
4 because I really believe it, I don't think the marketplace, I
5 don't think the competitors that are here in this room will
6 allow ACS to go off and do or to allow any competitor to go off
7 and do really stupid things, really harmful things, the
8 marketplace will discipline that kind of behavior.

9 I've heard people say well, you implemented that 24
10 percent rate increase and you didn't do anything about it, you
11 just left it there. The simple fact is that we have been doing
12 things about it and we continue to do things about it. For
13 starters we haven't come in and asked for any other interim
14 rate increases. Did we learn a lesson? I think so. Was it
15 necessary for us to come in and simply rescind that if we
16 ultimately determined that it was a bad idea? That would have
17 been one approach, but there were other approaches.

18 One of the approaches is to try and resolve the issues
19 that we need to resolve in terms of rate rebalancing by virtue
20 of the rate cases that are pending before the Commission right
21 now. Another approach was you make other kinds of filings as
22 we have done to try and ameliorate the negative impacts as they
23 were being experienced of that change. Those are the kinds of
24 things that I believe will continue to happen and they'll
25 happen more in real time. We won't have to go through

1 hopefully another series of huge rate cases or rate redesign
2 cases like we're involved in right now.

3 We won't have to spend significant amounts of time doing
4 tariff changes on an individualized basis because the process
5 will be much more streamline and we can respond to the
6 marketplace, the needs of consumers and what's happening on the
7 part of our competitors much more quickly and much more
8 efficiently. So my answer to your question is I --
9 procedurally I don't think that consumers will see a
10 significant change in their life and in terms of how
11 telecommunications is being delivered to them and I do believe
12 that the marketplace will discipline competitors to make sure
13 that they're not going off and doing harmful things.

14 COMMISSIONER STRANDBERG: I want to give the other parties
15 a chance to comment on this, but I also wanted to ask you, Mr.
16 Moninski, how do you see the responsibility for carrier of last
17 resort to be discharged within the marketplace under the
18 concept of your regulation?

19 MR. MONINSKI: Well, as we know the Legislature in
20 bringing us here made it pretty clear that the incumbent
21 carriers were for the time being going to continue to be the
22 carrier of last resort. I don't think there's anything that
23 we've said in our written comments or in our oral presentations
24 that would suggest that we challenge that or we don't
25 acknowledge that. Carrier of last resort issues are kind of

1 difficult to define and to pigeonhole.

2 We've all used the term for years, when we go and look for
3 definitions of it in statutes or in regulations or in cases,
4 it's not all that easy to find. And we do know it has
5 something to do with an obligation to provide reasonable
6 service to anybody who asks for it typically by virtue of the
7 offers that have been approved by the regulator. I think that
8 those obligations continue regardless of what tariffing scheme
9 you're under.

10 We've seen some disputes about how carrier of last resort
11 obligations should be discharged. We have heard some
12 discussion in these hearings about how we need as a generic
13 matter to go and revisit that issue both in terms of the local
14 exchange portion of it as well as the interexchange portion of
15 it. And I certainly agree, I mean, we've made some proposals
16 in another docket and we've heard some proposals being made in
17 this docket about shared carrier of last resort obligations and
18 I think it's important as a policy matter that we continue to
19 pursue those. In the meantime I think the concept, to the
20 extent that we understand it and to the extent that it's been
21 defined, remains unchanged.

22 COMMISSIONER STRANDBERG: Go to GCI next. You've left --
23 basically left item C in, I think, in your proposals, do you
24 feel we need that and why?

25 MR. JACKSON: I certainly don't think it can hurt. I

1 guess part of what I heard from Mr. Moninski is that things
2 won't change whether it's there or if it's not. If that's true
3 it certainly does -- also doesn't hurt to have it, but if it
4 is, in fact, necessary that Mr. and Mrs. McGillicutty from
5 certain inappropriate changes, I think it's good for you to
6 have that power to exercise when necessary.

7 Somewhat more broadly in the context of markets that
8 aren't as competitive as say Anchorage, Fairbanks and Juneau,
9 some of the other companies' proposals also declare those as
10 competitive service areas, for instance by wireless and that
11 sort of thing. In those instances I think it may even be more
12 important than say in Anchorage, Fairbanks and Juneau, I mean,
13 you could have all sorts of changes. There's certain things
14 that we don't even hardly speak about even though we disagree
15 with some of the other parties, but we've heard a lot about
16 rate rebalancing.

17 GCI personally doesn't think that rate rebalancing is
18 necessary to nearly the extent that the LECs proclaim. We
19 don't talk it very much because rate rebalancing doesn't
20 necessarily hurt us and we, as you know, have enough fights
21 about things that do hurt us, but.....

22 COMMISSIONER STRANDBERG: Yeah.

23 MR. JACKSON:in terms of the public interest we're
24 not sure rate rebalancing is a great idea or is necessary and
25 it would give you some power there. It can -- the -- on

1 carrier of last resort there's not a whole lot here, in the
2 other docket.....

3 COMMISSIONER STRANDBERG: Enough said.

4 MR. JACKSON:is -- and maybe it's.....

5 COMMISSIONER STRANDBERG: Right.

6 MR. JACKSON:R-02-06, we did make a proposal for
7 sharing carrier of last resort responsibilities in a market
8 which becomes very competitive.

9 COMMISSIONER STRANDBERG: Yes.

10 MR. JACKSON: And so there are some proposals in the other
11 docket to address that.

12 COMMISSIONER STRANDBERG: Okay.

13 MR. JACKSON: Dana may have had some thoughts she wanted
14 to add too, I'm not sure.

15 MS. TINDALL: I think from the perspective of Mr. and Mrs.
16 McGillicutty, it's important to remember that right now the
17 only difference in the competitive areas between non-dominant
18 and dominant carriers is the ability to raise rates. And so
19 the difference that they would experience would be -- if there
20 was going to be a change would be -- if there was going to be a
21 change in how rates were done would be they might experience
22 rates going up. I mean, that's the difference and the question
23 is is there enough competitive choice then for them to go
24 elsewhere if their carrier raises their rates.

25 Many of the proposals before you today would have the

1 effect of allowing carriers to raise rates where there's not
2 competition. Geographic rate deaveraging is getting the
3 ability to raise rates in rural areas. Rate rebalancing, what
4 it really means is decreasing business rates and raising, you
5 know, residential rates. So -- I mean, what we're really
6 talking about is raising rates and that is -- you know, under
7 GCI's proposal is there -- in competitive areas can people see
8 rate increases? Sure, not to the extent under some of the
9 other proposals, but there is that ability.

10 So anywhere you move under any of the proposals from where
11 you are today you have the possible effect of people seeing
12 rate increases and the question is is there enough of a choice
13 for them to go elsewhere so they're protected from those rate
14 increases.

15 COMMISSIONER STRANDBERG: Thank you. Ma'am, do you have a
16 few comments on the question?

17 MS. GRAHAME: Yes, I do, thank you. In the areas that the
18 Rural Coalition serves, the -- Mr. McGillicu'ty owning his
19 small business would be happy because depending on the
20 community at issue business rates would go down for the rural
21 ILECs because the ILEC would in most instances need to remove
22 the implicit subsidies that support residential rates.
23 Secondly, Mrs. McGillicutty.....

24 COMMISSIONER STRANDBERG: Could you hold for one second?

25 (Off record comments - distortion on phone line).....

1 MS. GRAHAME: Okay. All right. I'll start over. For --
2 the answer to your question, Commissioner Strandberg, for the
3 Rural Coalition in part depends on where this takes place. For
4 probably most of the areas where the Rural Coalition companies
5 serve, Mr. McGillicutty, owning his small business would be
6 happy because once the rural ILEC knew that a wireless ETC for
7 example was going to be certificated, the rural ILEC would
8 rebalance its rates and remove implicit subsidies. The
9 business rates would go down. Mrs. McGillicutty would be happy
10 in terms of the rural ILEC having agreed to be the carrier of
11 last resort and under the Rural Coalition's proposal as you
12 know the Commission retains jurisdiction to approve or
13 disapprove rates or conditions for a broad range of reasons.
14 In other words under our proposal you retain control and you
15 retain authority.

16 The ultimate issue for you will be what happens to the
17 rates in other communities served by that same rural ILEC if
18 the competition arrives in an area such as Dutch Harbor that
19 seriously underwrites the rates for the rest of Interior
20 Company's communities. So ultimately that's going to be the
21 question, but under our proposal you retain full authority over
22 terms and conditions.

23 DR. LEHMAN: I had.....

24 COMMISSIONER STRANDBERG: Mr. Ayotte, do you have any
25 comments?

1 MR. AYOTTE: No, thank you.

2 DR. LEHMAN: I had something to respond to here, to.....

3 COMMISSIONER STRANDBERG: Okay. Dr. Lehman, maybe we
4 can.....

5 DR. LEHMAN: You're going to go to them first? Okay.

6 COMMISSIONER STRANDBERG:let Mr. Saupe first and
7 then come back to you?

8 MR. SAUPE: Yeah, I'll be very brief. Speaking as a local
9 exchange carrier that engages in total service resale, our
10 customer, Mrs. McGillicutty, since we don't at this time serve
11 business customers could be disadvantaged if there were total
12 detariffing. The way total service resale works under the
13 Telecom Act is we purchase off of the retail tariff at a
14 negotiated or arbitrated discount. So I'm not sure how ACS
15 would propose to handle that situation, there would be a
16 possibility that total service resale is an option for entering
17 the market, it might not work any longer if there were total
18 detariffing and/or no notice periods.

19 On the question of whether subsection C should remain, I
20 think we're -- we would agree with GCI that that's a safety net
21 that could remain and probably should remain. And as for CoLR
22 in the -- either the long distance or the local market I think
23 we agree that there always should be at least one competent
24 carrier obligated to serve in any particular area. We don't
25 believe it necessarily has to be the incumbent, but both Mr.

1 and Mrs. McGillicutty are entitled to have at least one carrier
2 obligated to serve them particularly if they live in an area
3 that's perhaps not otherwise profitable to serve. That's not
4 to say that there ought not to be some kind of support given to
5 the entity that is required to shoulder that burden.

6 COMMISSIONER STRANDBERG: Dr. Lehman, you indicated.....

7 DR. LEHMAN: Yes, I'm a little concerned that we've --
8 that it's been characterized as a fairly simple matter of is
9 there a provision that allows for rate increases or not because
10 the temptation is to say well, why should anybody's rates go
11 up. And I'm not saying anybody's rates necessarily will go up,
12 but I think it's important to note a few things. I mean, rate
13 rebalancing may be more significant than it's been
14 characterized as.

15 I don't think GCI would agree that they should pay more
16 for UNE loops for businesses than for residences, the FCC has
17 fortunately saved them from having to make that argument, but
18 UNE loops are not priced according to class of service, yet we
19 have retail rates that are and that exposes a competitive
20 vulnerability that sooner or later is going to wreck -- is
21 going to call for some kind of rate rebalancing.

22 I provided information on a number of states that have
23 higher basic local rates than Alaska, less competition, and
24 they are allowing for rate increases. I'm not saying they will
25 happen, but they have built-in -- we -- if we live in a fear

1 that anybody's rates will go up that this is an intolerable
2 proposal then--I think it's unrealistic for a world of
3 competition, there has to be some provision for rates to be
4 able to rise.

5 And I do think there is recourse that people have if it is
6 unduly discriminatory the Commission can say no to a rate
7 increase and I guarantee if it is that -- that discriminatory
8 you will hear about it from the ratepayer.

9 COMMISSIONER STRANDBERG: Under the proposed ACS
10 regulation do you feel that we have the ability to stop
11 (indiscernible - distortion)?

12 MR. MONINSKI: It will take me a second to get there,
13 Commissioner Strandberg, but if you take a look at the
14 provision that it -- under 240 I believe it is, that's just
15 above the section C that was deleted, there is language in
16 there that specifically says that if a party comes forward and
17 makes at least a preliminary showing that rates are
18 unreasonably discriminatory or priced below cost that the
19 Commission would then intervene.

20 MR. JACKSON: Excuse me, I think we need to go to the
21 language.

22 MR. MONINSKI: Okay. And if it.....

23 COMMISSIONER STRANDBERG: Yeah.

24 MR. JACKSON: Because it certainly doesn't say a
25 preliminary showing. It.....

1 MR. MONINSKI: I -- I'm sorry, if you'll give me.....

2 COMMISSIONER STRANDBERG: Yeah.

3 MR. MONINSKI:just a moment.....

4 COMMISSIONER STRANDBERG: Sure, we'll wait for you.

5 MR. MONINSKI:I'll find it and I'll read it.

6 COMMISSIONER STRANDBERG: Okay. It's speech time

7 .(indiscernible - distortion).....

8 MR. MONINSKI: You're right, I was paraphrasing. The
9 exact language is in ACS's proposed 3 ACC 53.240(a).....

10 COMMISSIONER STRANDBERG: Uh-huh.

11 MR. MONINSKI:and it's -- it is the added language
12 at the end of the paragraph where it says the tariff change
13 will automatically go into effect without further affirmative
14 approval action by the Commission. The Commission will only
15 intervene to limit such notice tariff filings where a party has
16 made a clear demonstration that the proposed tariff change
17 results in below cost pricing or is unreasonably
18 discriminatory.

19 MR. JACKSON: In seven days?

20 COMMISSIONER STRANDBERG: Okay. That's -- all right. You
21 know, one concern is in getting service in fringe areas. Under
22 noncompetitive rules we have line extension policies and the
23 utility's really required to provide service on a
24 nondiscriminatory basis in all areas of its service area.
25 Under these rules are you seeing any erosion of that

1 requirement under the carrier of last resort perhaps or
2 otherwise?

3 MR. MONINSKI: I don't see any erosion of the obligation.
4 When we are in the mode of -- on that continuum where we're
5 still filing notice tariffs, the line extension tariff that you
6 refer to is still on the books, any changes to it would have to
7 be presented to the Commission.

8 When we move to a completely detariffed environment there
9 would certainly be the opportunity for ACS as an incumbent to
10 alter or restructure the cost sharing arrangement that exists
11 right now for line extensions. I don't know that line
12 extensions and I don't think line extensions go away, but there
13 are certainly the potential for that process to change. Again
14 to the extent that consumers became concerned enough about that
15 to bring that to your attention I view the Commission as having
16 ample residual authority to step back in and address that
17 issue.

18 COMMISSIONER STRANDBERG: Any comments from any of the
19 other parties on that particular aspect?

20 MS. TINDALL: I think if that's the effect of detariffing
21 there is a lot of other parties who would be interested in
22 being in this hearing, like the homebuilders for one.

23 COMMISSIONER STRANDBERG: Any comments other than that?

24 MS. TINDALL: No.

25 COMMISSIONER STRANDBERG: All right. I have one other

1 question and that is going to your reply comment, Mr. Moninski,
2 page 24 of 26, you state concerning the safety net, ACS would
3 not object -- I'll wait for you, page 24.

4 MR. MONINSKI: Thank you.

5 COMMISSIONER STRANDBERG: Are you there?

6 MR. MONINSKI: I'm there.

7 COMMISSIONER STRANDBERG: Okay. ACS would not object to a
8 rule that limited residential POTS rate increases to an amount
9 not to exceed \$1 per year for a three year transition period,
10 can you maybe explain more what you had in mind there with POT
11 service?

12 MR. MONINSKI: POTS service, the acronym that has been
13 used for many years meaning plain old telephone service, we
14 were -- when we considered this provision -- basically it's
15 ACS's position that the safety net element is not necessary,
16 that again relying on the effects of markets, the availability
17 of substituted service, the safety net is not necessary.
18 However we believe that the Commission may take a different
19 view of that, that it may have a level of concern for basic
20 residential ratepayers that would cause it to hesitate moving
21 in the direction of relaxing regulation, going to detariffing
22 and the kinds of things that we advocate as being important.

23 If that's the case then we had tried to suggest a concept
24 of safety net to get the Commission to a comfort level that
25 they would allow markets to begin to operate freely. The

1 proposal for \$1 a year for a three year transition period is
2 merely that, it's just one idea. There are probably others and
3 ACS would be more than willing to consider and work with the
4 Commission to develop others if that seems to be where you want
5 to go.

6 COMMISSIONER STRANDBERG: Thank you very much. That's all
7 I've got.

8 CHAIR JOHNSON: I just have two and I guess they both go
9 to ACS and it's kind of an area that we've been discussing the
10 detariffing proposal. First -- well, here's a question that's
11 actually been suggested to us by Staff, under the ACS proposal
12 that permits detariffing of retail and special access services
13 when 75 percent or more of customers have a choice of
14 facilities based services, actually it's a multi-part, would
15 the presence of a service provider (ph) serving 75 percent of
16 the customers lead to detariffing?

17 MR. MONINSKI: Well, I know consistency is the product of
18 small minds, but I need to be consistent in my answer to the
19 question. We have taken the position -- Commissioner Giard
20 offered us a number of questions about it earlier today, we
21 have taken the position that the competition from a cellular
22 platform constitutes competition.

23 CHAIR JOHNSON: Okay. And that would be true regardless
24 of whether or not I was an ETC or not?

25 MR. MONINSKI: Yes.