

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Hearing
8 January 29, 2004
9 Jefferson City, Missouri
Volume 4
10
11 In the Matter of the Application of)
12 Missouri RSA No. 7 Limited)
13 Partnership, d/b/a Mid-Missouri)
14 Cellular, for Designation as a) Case No. TO-2003-0531
15 Telecommunications Company Carrier)
16 Eligible for Federal Universal)
17 Service Support Pursuant to Section)
18 254 of the Telecommunications Act)
19 of 1996.)
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23 NANCY M. DIPPELL, Presiding,
24 SENIOR REGULATORY LAW JUDGE.
25
26 STEVE GAW, Chair
27 CONNIE MURRAY,
28 ROBERT M. CLAYTON, III,
29 COMMISSIONERS.
30
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32
33 REPORTED BY:
34 KELLENE K. FEDDERSEN, CSR, RPR, CCR
35 ASSOCIATED COURT REPORTERS

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1 P R O C E E D I N G S

2 JUDGE DIPPELL: We're going to go on the
3 record. Good morning. This is TO-2003-0531. It's 8:30 on
4 Thursday morning, and we are back on the record for the
5 remainder of the hearing. And we finished with Mr. Curtis
6 yesterday. Mr. DeFord, did you have any additional
7 witnesses?

8 MR. DeFORD: No, your Honor, I don't.

9 JUDGE DIPPELL: Then we will begin with
10 Staff's witnesses.

11 MR. POSTON: Staff calls Adam McKinnie.

12 JUDGE DIPPELL: Would you please raise your
13 right hand, sir.

14 (Witness sworn.)

15 JUDGE DIPPELL: Thank you. You can go ahead,
16 Mr. Poston.

17 ADAM McKINNIE testified as follows:

18 DIRECT EXAMINATION BY MR. POSTON:

19 Q. Please state your name.

20 A. Adam C. McKinnie.

21 Q. By whom are you employed and in what capacity?

22 A. I'm a regulatory economist for the Missouri
23 Public Service Commission.

24 Q. Are you the same Adam McKinnie that prepared
25 and caused to be filed in this docket the rebuttal and

1 surrebuttal testimony of Adam McKinnie that has been marked
2 for purposes of identification as Exhibit 6 and 7?

3 A. Yes, I am.

4 Q. With respect to your prefiled testimony, do
5 you have any changes or corrections that need to be made?

6 A. I would make one small change. On page 3 of
7 my rebuttal testimony, on the question starting on lines 13
8 and 14, does the Act outline what standards should be used
9 to determine, quote, public interest? And the response, I
10 would take notice of the Virginia Cellular FCC order that we
11 have discussed today.

12 Q. And do you have any other changes or
13 corrections to your testimony?

14 A. No, I do not.

15 Q. If I were to ask you the questions that appear
16 in your prefiled testimony, would your answers here today
17 under oath be the same?

18 A. Yes, they would.

19 Q. And are those answers true and correct to the
20 best of your knowledge, information and belief?

21 A. Yes, they are.

22 MR. POSTON: At this time I offer Exhibit 6
23 and 7 into evidence.

24 JUDGE DIPPELL: And that's -- there's a highly
25 confidential version of 6?

1 MR. POSTON: Correct.

2 JUDGE DIPPELL: And a nonpublic -- I mean, a
3 public version?

4 MR. POSTON: That's correct.

5 JUDGE DIPPELL: Would there be any objections
6 to Exhibit 6HC and Exhibit 6NP, and Exhibit No. 7?

7 MR. ENGLAND: No objection.

8 JUDGE DIPPELL: Then I will receive those into
9 the record.

10 (EXHIBIT NOS. 6NP, 6HC AND 7 WERE RECEIVED
11 INTO EVIDENCE.)

12 MR. POSTON: Thank you.

13 BY MR. POSTON:

14 Q. Mr. McKinnie, yesterday, while making
15 corrections to his testimony, Mr. Curtis discussed the FCC's
16 Virginia Cellular ETC order. Do you wish to reply to
17 Mr. Curtis' characterization of that order?

18 A. I wish to reply in a short and informative
19 manner, yes.

20 Q. Please do.

21 A. I would like to take note of three things
22 specifically from the order itself. Instead of trying to
23 provide a summary of the order, I wish to read directly from
24 the order and then make some comments on it.

25 The first thing I would like the Commission to

1 take notice of would be in paragraph 3 on the third page of
2 the order where it discusses what is currently being
3 discussed by the Federal/State Joint Board of Universal
4 Service. After the colon in the first sentence, it reads,
5 one, the Commission's rules relating to the calculation of
6 high cost universal service support in areas where a
7 competitive ETC is providing service; two, the Commission's
8 rules regarding support for nonprimary lines; and three, the
9 process for designating ETCs.

10 What I would like the Commission to take note
11 of is that these issues are still in play and they are not
12 dead issues, as Mr. Curtis alluded to in his testimony,
13 which admittedly I do not have written down here because it
14 was given verbally. But it was my understanding that he
15 kind of discussed those issues as dead issues, and that I
16 think the Commission could still take these considerations
17 into effect when discussing the public interest standards.

18 Secondly, I'd like the Commission to take
19 notice of portions of paragraph 4. Starting on the third
20 complete sentence, I'd like to read into the record directly
21 from the order again, we conclude that the value of
22 increased competition by itself is not sufficient to satisfy
23 the public interest test in rural areas. Instead, in
24 determining whether designation of a competitive ETC in a
25 rural company's service area is in the public interest, we

1 weigh numerous factors, including the benefits of increased
2 competitive choice, the impact of multiple designations on
3 the Universal Service Fund, the unique advantages and
4 disadvantages of the competitor's service offering, any
5 commitment made regarding quality of telephone service
6 provided by the competing -- pardon me -- provided by
7 competing providers, and the competitive ETC's ability to
8 provide the supported services throughout the designated
9 service area within a reasonable time frame.

10 Further, in this order, we impose as ongoing
11 conditions the commitments Virginia Cellular has made on the
12 record in this proceeding. These conditions will ensure
13 that Virginia Cellular satisfies its obligation under
14 Section 214 of the Act. We conclude that these steps are
15 appropriate in light of the increased frequency of petitions
16 for competitive ETC designations and the potential impact of
17 such designations on consumers in rural areas.

18 I believe that Mr. Curtis discussed several
19 but not all of these numerous factors, and he tended to
20 highlight the ones, of course, that supported his claim more
21 than others. I would like the Commission especially to take
22 notice of the impact of multiple designations on the
23 Universal Service Fund as one of the factors that it can
24 take into account when looking at the public interest
25 standards and to really to look at the whole thing as a

1 whole.

2 Third and finally, I'd like to point out
3 throughout the Order that Virginia Cellular makes
4 certain commitments in order to provide annual reports to
5 the FCC and to be a signatory to the CTA's rules. And I
6 would like the Commission to take notice of the fact that if
7 it wishes to grant the CTC status in its entirety or to --
8 in a piecemeal fashion, that it should make sure that the
9 company actually makes the commitment and not just allow
10 membership in this trade organization to be a substitute for
11 an actual commitment.

12 And that's how I would respond to Mr. Curtis'
13 verbal direct testimony that was given.

14 Q. Okay. Do you have any other response?

15 A. No, I do not.

16 MR. POSTON: Thank you. At this time I tender
17 the witness for cross-examination.

18 JUDGE DIPPELL: Thank you. Is there
19 cross-examination from Office of the Public Counsel?

20 MR. DANDINO: Yes, your Honor. Thank you.

21 CROSS-EXAMINATION BY MR. DANDINO:

22 Q. Good morning,

23 A. Good morning.

24 Q. You were here during the opening statements,
25 weren't you?

1 A. Yes, I was.

2 Q. And you recall that Office of the Public
3 Counsel raised a number of questions concerning our concerns
4 about the ability of the -- this Commission to regulate the
5 quality of service of the -- of the applicant? Do you
6 recall that?

7 A. Yes, I do.

8 Q. Is there anything in the, I'll just call it
9 the Virginia FCC case that you discussed that would give you
10 greater assurance or in any way affect your opinion on
11 whether or not this application or the ability of the
12 Commission -- strike that. Start over.

13 Using -- is there anything in the FCC Virginia
14 case that gives this Commission authority to impose
15 conditions upon the applicant?

16 A. That gives this Commission specifically
17 authority?

18 Q. Yes. Uh-huh.

19 A. I believe that it definitely gives an example
20 of what a state commission can do.

21 Q. Sure. That's what I meant is state
22 commission. And does that in any way affect your
23 recommendation on whether or not this application would be
24 in the public interest?

25 A. No, it does not, because my position

1 throughout this case and throughout my prefiled testimony
2 has not been that this case is not in the public interest.
3 My position has been and continues to be to this day and
4 throughout listening to all the testimony that was given
5 yesterday that the company has not met the burden of meeting
6 the public interest standard.

7 Q. If this record indicates that there's
8 sufficient evidence to -- that the application is in the
9 public interest, would that be sufficient for this
10 Commission to decide whether or not it's in the public
11 interest?

12 A. I'm sorry. Could you repeat your question?
13 It sounded to me like you were using something to prove
14 something, and I'm not quite sure what you were talking
15 about.

16 Q. Well, it's early and I'm having trouble
17 putting together questions. It's not your -- your
18 understanding. I think it's my questions.

19 Let me put it this way: You don't believe
20 that the applicant has come forward with sufficient
21 evidence; that's correct, right?

22 A. That's correct. I do not believe they have
23 met their burden.

24 Q. If, looking at the totality of this record,
25 there is sufficient evidence, would that change your

1 opinion?

2 A. If they met their burden? You're saying if
3 they actually met their burden, would they have met their
4 burden? I guess the answer to that question would be yes.

5 Q. All right. You don't have to look exactly at
6 what the applicant presents, but you look at the whole
7 record; is that right?

8 A. I believe it is the applicant's duty
9 definitely to meet the burden itself.

10 Q. Does the conditions that the Virginia Public
11 Service Commission placed on that carrier, do you think that
12 would be applicable here in Missouri?

13 A. Can you discuss what you mean by applicable?

14 Q. Well, would it -- would it be something that
15 would be beneficial to the consumers?

16 A. Yes. I think that if those -- if those
17 standards were not being followed today and Mid-Missouri
18 Cellular did decide to follow those standards, then yes,
19 there would be some benefit to consumers.

20 Q. Right now, Public Counsel's concern was that
21 there was no control over the applicant's quality of
22 service. If the applicant agreed to certain conditions as
23 part of its quality of service conditions, as part of its
24 application or as part of its approval for ETC, would that
25 be a benefit to the public?

1 A. As long as the conditions were followed and
2 there could be some enforcement mechanism for those
3 conditions, then I would say yes.

4 Q. Would enforcement of that place a burden on
5 the Commission Staff?

6 A. I mean, I don't know what you mean by burden.
7 I mean, would it be something that we would have to do? I
8 mean, we would first have to try to figure out whether or
9 not we had the ability to enforce -- to enforce that. I
10 have not -- I am not entirely sure of the statutory
11 authority of the Commission to enforce quality of service
12 standards that would be placed in a Stipulation & Agreement
13 perhaps.

14 Q. Well, you had said before that it might --
15 let's put it this way: If this Commission imposed
16 conditions on the ETC designation, it would be up to the
17 Staff of the Public Service Commission to at least initiate
18 enforcement of those conditions?

19 A. To at least initiate enforcement? I mean, I
20 would assume that the Staff would be -- I mean, if they
21 would be submitting an annual report, for example, on the
22 number of complaints for a thousand headsets, such as in the
23 Virginia order, then yes, the Staff would be the one
24 initially receiving the information.

25 Q. And that would require personnel and time and

1 effort by the Staff; is that correct?

2 A. It would require some efforts. I mean, I
3 don't know if it would require additional staff or not, but
4 it would definitely require additional effort.

5 Q. The CTI consumer code for wireless service,
6 you've -- you're familiar with that?

7 A. I have read the document.

8 Q. Exhibit 12? Do you see this as the -- do you
9 see this as the most reliable -- or most reliable terms and
10 conditions that you would -- that the Commission should
11 impose upon the applicant in order to assure quality of
12 service?

13 A. When you say most reliable, are you asking me
14 to compare it to other potential terms or to other actual
15 documents that set apart other terms -- or that set forth
16 other terms? Pardon me.

17 Q. Do you feel assured that by making these
18 conditions, that the consumer would be protected?

19 A. I think the consumer would receive additional
20 protection if these terms and conditions were followed.

21 Q. Would it provide -- would these -- would this
22 consumer code as conditions provide similar protection for
23 the consumer as the PSC quality of service rules does for
24 wireline?

25 A. You mean similar level of protection? I mean,

1 I guess my problem in answering that question is that
2 several of the conditions are different from the -- from the
3 Missouri -- from the Missouri rules. I mean, there's not a
4 one to one, you know, point, you know, A to A and B to B and
5 C to C.

6 I would say that it does offer additional
7 protection to the consumer from a point where none of these
8 rules were in place, for example, or there was no formal
9 commitment to these rules.

10 Q. Is there anything in the Public Service
11 Commission rules, quality -- for quality of service that
12 you'd want to specifically impose upon -- as a condition on
13 the applicant?

14 A. I can't think of anything right off.

15 MR. DANDINO: I think that's all I have, your
16 Honor. Thank you.

17 JUDGE DIPPELL: Thank you. Is there any
18 questions from Alma?

19 MR. ENGLAND: No questions, your Honor.

20 JUDGE DIPPELL: CenturyTel?

21 MR. STEWART: No questions.

22 JUDGE DIPPELL: Mid-Missouri Cellular?

23 MR. DeFORD: Just a few.

24 CROSS-EXAMINATION BY MR. DeFORD:

25 Q. Good morning, Mr. McKinnie.

1 A. Good morning, Mr. DeFord.

2 Q. It's early, isn't it?

3 A. Well, I think my throat would probably be

4 coughing either way.

5 Q. Mr. McKinnie, would it be fair to say that the

6 Staff used the public interest standard as a fairly strict

7 standard, fairly high?

8 A. As compared to -- I mean, when you say a

9 fairly strict standard, I would have to compare it to

10 another standard to say it's more strict or the most strict

11 standard.

12 Q. Well, tell me what you think the standard is,

13 then.

14 A. Well, I believe the standard has been

15 redefined. I believe the standard now is as the FCC has

16 laid out.

17 Q. Fair enough. And you still don't believe that

18 the testimony we've heard yesterday and today meets that

19 standard?

20 A. No, I do not. I do not believe Mid-Missouri

21 Cellular has met their burden of proof.

22 Q. Mr. McKinnie, I think you were in the room

23 yesterday when Mr. Poston was cross-examining Mr. Jones

24 about Mid-Missouri Telephone's request of Staff that it be

25 allowed to use a fixed wireless service to meet its carrier

1 of last resort obligation for, I believe, customers called
2 the Nebergals. Do you recall that testimony?

3 A. Yes, I do.

4 Q. Did Mid-Missouri ask Staff in discovery to
5 provide a copy of that correspondence?

6 A. Yes, you did.

7 Q. And did Staff find that correspondence?

8 A. Staff was unable to locate the correspondence
9 that you reference in the Data Request.

10 Q. Is it Staff's practice to keep correspondence
11 between regulated companies and the Staff?

12 A. Staff definitely does its best job to try to
13 keep such correspondence.

14 Q. But that one's missing?

15 A. We were unable to locate that document.

16 Q. Mr. McKinnie, I think you were also in the
17 hearing room yesterday when I believe it was Mr. Stewart
18 discussed a case in which Green Hills Area Cellular
19 Telephone was granted ETC status. Do you recall that?

20 A. Yes, I do.

21 MR. DeFORD: May I approach the witness?

22 JUDGE DIPPELL: Yes.

23 BY MR. DeFORD:

24 Q. Mr. McKinnie, would you take a look at the
25 document that I've just handed you. What does that document

1 appear to be?

2 A. It appears to be a Stipulation & Agreement in
3 Case CO-2003-0162 in the matter of the application of --
4 I'll skip a little bit here -- Green Hills, d/b/a Green
5 Hills Telecommunications Services for designation as an ETC,
6 is what it appears to be.

7 Q. And that's a file-stamped copy of a
8 Stipulation & Agreement that is executed by Staff and the
9 other parties to that proceeding?

10 A. It does have a stamp file that looks, I don't
11 know, probably similar, if not exactly, to what our data
12 center does stamp.

13 Q. Would you take a minute and review that
14 document and show me in that document where the public
15 interest standard is addressed in this case.

16 A. Certainly.

17 Q. You might want to look at paragraph 14.

18 A. Okay. I have read paragraph 14.

19 Q. And what do you draw from paragraph 14? Would
20 it be fair to characterize that as a rather conclusory
21 statement that the applicant is providing innovative,
22 high-quality, reliable telecommunications service, and
23 that's pretty much it?

24 A. It also says, and further stimulate economic
25 development within the State of Missouri, but -- yeah, I

1 mean, that is what the Stipulation & Agreement reads.

2 Q. And isn't it true that this company is

3 providing service as a CLEC in only one exchange?

4 A. I believe that is true.

5 Q. Tell me what's innovative about that service

6 or what high quality service that is or how that stimulates

7 economic development.

8 A. I can tell you that it is an overbuild

9 situation, and I can tell you that the company actually did

10 invest in the Norburn exchange. I can say that.

11 Q. How much did the company invest in the Norburn

12 exchange?

13 A. I -- I don't have a dollar amount.

14 Q. Did Staff file Suggestions in Support of this

15 recommendation, do you know?

16 A. I believe we did. I'm not familiar with that

17 document, though.

18 MR. DeFORD: May I approach?

19 JUDGE DIPPELL: Yes.

20 BY MR. DeFORD:

21 Q. Mr. McKinnie, would you take a look at the

22 document I've just handed you? I believe it purports to be

23 Staff Suggestions in Support of the Stipulation & Agreement

24 in the case we were just discussing.

25 A. I have taken a look at the document.

1 Q. Is that what that appears to be?

2 A. Yes, that's what this appears to be.

3 Q. Could you direct me to where in that document
4 the Staff addresses the public interest standard?

5 A. A cursory reading of the document does not --
6 does not show any discussion of the public interest there.

7 Q. So Staff didn't even mention public interest
8 standard in the recommendation in that case, did it?

9 A. Not in this -- well, I don't believe that's
10 in -- that's a completely accurate statement. We did not
11 make -- it appears that Staff did not write anything in the
12 suggestions in support of the stip.

13 Q. Do you have any other document from that case
14 that would have been something that Staff would have used to
15 address the public interest standard?

16 A. I don't believe there's anything else in the
17 case file, but I would have to examine the case file in
18 order to make a definitive statement about that.

19 MR. DeFORD: Your Honor, I'd like to have the
20 Stipulation & Agreement marked as an exhibit, as well as the
21 Staff suggestions, or in the alternative, the Commission can
22 take official notice. I have copies.

23 JUDGE DIPPELL: Would you tell me what that
24 case number is again?

25 MR. DeFORD: Yes. It's CO-2003-0162.

1 JUDGE DIPPELL: I'll go ahead and mark the
2 Stipulation & Agreement as Exhibit No. 15 and the
3 Suggestions in Support as Exhibit No. 16, and I believe, as
4 Commission records, it would be appropriate for the
5 Commission to take notice of those.

6 MR. DANDINO: Your Honor?

7 JUDGE DIPPELL: Mr. Dandino?

8 MR. DANDINO: As to the Stipulation &
9 Agreement, the -- I would want to impose an objection, at
10 least to taking official notice, in the fact that
11 stipulations and agreements normally -- and I was trying to
12 skim this. Normally one of the conditions of the
13 Stipulation & Agreement is that, because it is an agreement,
14 a settlement of a case, it cannot be used for any other
15 purpose. And I think to protect the integrity of
16 stipulations and agreements, I would have to object as to
17 whether this would be a proper document to recognize, as it
18 would have no probative value in this case because it is a
19 settlement of a case.

20 JUDGE DIPPELL: Your objection is noted,
21 Mr. Dandino. I believe that the Commission can still take
22 notice of documents in its records. Certainly the
23 Commission will take your comments into consideration when
24 it's determining weight of that document. I'll go ahead --
25 is there any other objection to the Commission taking notice

1 of Exhibits 15 and 16?

2 (No response.)

3 JUDGE DIPPELL: Then the Commission will take

4 official notice of those documents.

5 BY MR. DeFORD:

6 Q. One last thing, Mr. McKinnie. Isn't it also

7 true that the Staff opposed Public Counsel's request for a

8 hearing in the Green Hills case?

9 A. I would have to look at the document a little

10 bit further to -- to understand that.

11 Q. I believe it's recited in the history or the

12 statement of the background of the case there.

13 A. In which document, in the stip or the

14 suggestions?

15 Q. I believe it is in the stipulation.

16 A. Can you point me towards which paragraph, just

17 to save time?

18 Q. Actually, Mr. McKinnie, it's in the Staff

19 suggestions, I believe in paragraph 4.

20 A. It does appear that Staff recommended that the

21 Commission approve the application and denied Public

22 Counsel's motion requesting an evidentiary hearing.

23 MR. DeFORD: Thank you, Mr. McKinnie. That's

24 all I have.

25 JUDGE DIPPELL: Thank you. Are there

1 Commission questions for Mr. McKinnie, Commissioner Murray?

2 COMMISSIONER MURRAY: Yes, thank you.

3 QUESTIONS BY COMMISSIONER MURRAY:

4 Q. Good morning, Mr. McKinnie.

5 A. Good morning.

6 Q. In your opinion, should Mid-Missouri Cellular

7 be required to provide access to the customer's choice of

8 IXC provider in order to get ETC status?

9 A. My understanding of that issue is that the FCC

10 has decided that equal access isn't necessarily as important

11 of an issue for wireless carriers. I do know that -- that

12 they do have an agreement -- well, I do know that they do

13 have some sort of toll agreement because they do serve toll,

14 and I believe they do mention in their testimony that --

15 Q. When you say they, are you speaking of --

16 A. I'm sorry. Yeah. My apologies. I do know

17 that a Mid-Missouri Cellular witness does discuss the issue

18 of -- of re-- of a customer choosing a secondary toll

19 carrier, so I do know -- I think that issue has been

20 discussed.

21 Q. So do you think that's not an issue that would

22 prevent ETC status?

23 A. I don't believe it would be -- or pardon me.

24 It would not change my recommendation.

25 Q. Meaning that it is an issue that would cause

1 you to recommend against ETC status or it has no relevance
2 to your recommendation?

3 A. I don't believe it has any bearing on my
4 recommendation in this case.

5 Q. After hearing the witness yesterday, the
6 company witness, regarding the company's plans that would be
7 available to Lifeline customers, would your opinion change
8 any concerning what the company would make available to
9 those customers?

10 A. No, it would not. And, in fact, I'm a little
11 bit confused by some of his testimony, because it's my
12 understanding that Lifeline cus-- that one of the parts of
13 the Lifeline program is toll limitation or some sort of --
14 some sort of toll limitation, and it seemed to me that when
15 he was -- I believe it was Mr. Curtis, or it might have been
16 one of the other witnesses -- was discussing the fact that
17 they could apply the Lifeline discount to any service. That
18 appeared to me to be kind of a strange -- a strange
19 statement.

20 Q. So you heard -- you understood him to say that
21 the Lifeline discount could be applied to more than just
22 basic local service?

23 A. Yes. I did hear them specifically say that
24 they had the \$6 option and the \$10 option, but I believe
25 they also -- I mean, we would have to check the transcript

1 to be sure, but I do recall hearing that for a \$49.95 plan
2 or whatever, that they would apply the \$1.75 Lifeline
3 discount to that plan.

4 Q. Is that appropriate in your opinion to apply
5 the Lifeline discount to anything other than the basic local
6 service?

7 A. It is my understanding that -- I would say no,
8 because you would look at the fact that toll limitation is
9 one of the -- is one of the core components of the Lifeline
10 program.

11 Q. At page 16 of your rebuttal testimony, you
12 show certain amounts for total high-cost loop support for
13 both Citizens and Alma; is that right?

14 A. I only see 11 pages in my rebuttal testimony.
15 So it might be that --

16 Q. I'm sorry. I'm referring to Mr. Schoonmaker's
17 rebuttal testimony. And maybe you don't know the answer to
18 this question, since it's not in your testimony. Do you
19 know if those numbers there, the total numbers, are the
20 amount per line that both Citizens and Alma can get for
21 providing service in the high-cost areas?

22 A. I don't know the answer to that question.

23 Q. I apologize.

24 A. I might have.

25 Q. Do you know that -- do you know if

1 Mid-Missouri Cellular were granted ETC status, would both --
2 take the Citizens exchange, for example. Would both
3 Citizens and Mid-Missouri Cellular be able to get an amount
4 of universal service support?

5 A. I believe that issue is currently in
6 contention before the FCC, but it is my understanding that,
7 in the status quo, what is happening right now, that yes,
8 they would -- that both companies would receive universal
9 support, but as I stated in my rebuttal to Mr. Curtis'
10 testimony in paragraph 3, it definitely discusses the three
11 issues that are being discussed. And one of those issues --
12 let me -- I believe it's Issue No. 2, the Commission's rules
13 regarding support for nonprimary lines.

14 So we would have to go through a process where
15 we would have to try to figure out -- or not we, but
16 somebody would. I assume the FCC would have to decide who
17 has the primary line and which one is the nonprimary line.
18 But it is my understanding currently that, yes, both the
19 wireline line and the wireless line would receive support
20 from the high-cost -- from the high-cost portion of the
21 Universal Service Fund.

22 Q. And is it also your understanding that it's
23 not limited to one -- would not be limited to one wireline
24 line?

25 A. If a customer had two wireline lines, my

1 understanding under the current system is that they would
2 receive high-cost universal support for both lines.

3 Q. What if they had three?

4 A. I believe that is the case as well, that they
5 would receive support for all three lines.

6 Q. What if they had eight?

7 A. I have no reason not to believe that they
8 would receive support for all eight.

9 Q. What if they had two wireless lines?

10 A. If they were designated an ETC carrier, then
11 yes, I believe that they would receive two wireless -- I
12 mean, Mid-Missouri Cellular would receive high-cost
13 universal support for both lines.

14 Q. What if they had multiple wireless lines?

15 A. I believe that each line would receive
16 universal support under the status quo.

17 Q. And would that support be based on the cost of
18 provision of service to the ILEC?

19 A. A competitive ETC's level of high-cost service
20 is currently being determined by the underlying ILEC.

21 Q. And is that any relation -- is that cost basis
22 in reality any -- does it have any relationship to the cost
23 for the wireless carrier to provide service?

24 A. I mean, it seems approxi-- it's an
25 approximation. I mean, I can't -- I don't have any

1 expertise in wireless cost. I mean, I -- I mean, I think --
2 I think most people in this room have just some sort of
3 understanding on the wireline side, but we are all basically
4 newbies to this wireless issue.

5 Q. All right. Wireless carriers are not subject
6 to our Chapter 32 rules, are they?

7 A. It is my understanding that they are not.

8 Q. And those rules concern provision service --
9 provision of service to customers, correct?

10 A. That's my understanding of Chapter 32.

11 Q. Is that a problem in Staff's opinion if
12 wireless carriers are granted ETC status?

13 A. I believe that if the Commission is concerned
14 about those issues and they decide to go ahead and grant ETC
15 status in whole or in portions, that they should go ahead --
16 or that the Commission should go ahead and make Mid-Missouri
17 Cellular make the commitment similar to the ones in the
18 Virginia FCC -- in the Virginia Cellular FCC order.

19 Q. And what about the fact that MMC terms of
20 service require a two-year contract, is that a problem with
21 ETC status, in your opinion, or is it your understanding
22 that in order to provide service, there is a two-year
23 contract requirement?

24 A. I believe that one of the Mid-Missouri
25 Cellular witnesses does say that some of their customers

1 were able to go month to month.

2 Q. Okay. So that's not a requirement. If it
3 were -- let me ask you this: If it's a high-cost area,
4 though, and in order to get service Mid-Missouri Cellular
5 does require a two-year contract, does that have any bearing
6 on whether they could receive the full amount of Universal
7 Service funding for providing that customer with the
8 wireless line?

9 A. I'm not sure that we here have the authority
10 to say, you're entitled to 75 percent of the high-cost fund
11 or you're entitled to 50 percent of the high-cost fund. I'm
12 not sure that we would be able to only give a portion of the
13 high-cost fund. So I don't -- I don't believe that is an
14 option.

15 Q. Okay. So would it have any bearing on whether
16 they could get the universal service support if they were
17 granted ETC status?

18 A. I guess -- if you don't mind, I'd like to just
19 ask a quick qualifying question about that. Are you asking
20 me whether or not it's in the public interest for a wireless
21 carrier to have a two-year service commitment or --

22 A. Well, that's the issue that I'm trying to get
23 to, but in order to get there I'm just -- I'm first trying
24 to clarify whether granting ETC status to Mid-Missouri
25 Cellular would allow Mid-Missouri Cellular to receive

1 universal service funding for providing service to customers
2 under a two-year contractual basis or any length term
3 contractual basis?

4 A. I would say as long as they had that customer
5 under some sort of commitment or they could prove that they
6 had the lines, so to speak, I would say that they would
7 receive high-cost service as long as the customer didn't
8 terminate the commitment or whatnot.

9 Q. And if the customer did terminate the
10 commitment prior to the term of the contract, generally a
11 penalty is imposed, is there not?

12 A. I believe that that's fairly typical of the
13 wireless industry and several other term contract
14 agreements. I mean, it's not just the wireless industry
15 who -- I mean, the banking term, of course, is substantial
16 penalty for early withdrawal. It exists in several
17 industries.

18 Q. And if a CLEC has ETC status, can a CLEC
19 provide service to a customer in a high-cost area on a
20 contractual basis similar to what I'm talking about here and
21 receive universal service support for that customer?

22 A. I believe that if a CLEC ETC such as Green
23 Hills offered a, I guess a two-year term commitment, I would
24 assume that, yes, that they would receive high-cost
25 universal support funding if they were in an eligible high

1 cost exchange, which I believe that Green Hills is. Green
2 Hills the CLEC. I'm sorry. I should be very careful about
3 that.

4 COMMISSIONER MURRAY: I think that's all right
5 now. Thank you.

6 JUDGE DIPPELL: Commissioner Clayton, do you
7 have questions?

8 QUESTIONS BY COMMISSIONER CLAYTON:

9 Q. Mr. McKinnie, I came in just as you were, I
10 think, getting started, and you were making some references
11 to the FCC order that came out on Friday?

12 A. Yes, I was.

13 Q. And I wasn't sure if you had stated whether or
14 not your reasoning for being in opposition to this request
15 for ETC designation had changed in any way.

16 A. No. We still feel that they do not meet the
17 public interest standard. What is in this order that I
18 wanted to point out to you was that, first of all, there
19 were the several issues that were still in play in
20 paragraph 3 that I believe Mr. Curtis characterized as dead
21 issues, and I believe those are things you could still take
22 notice of when making your public interest finding.

23 The second thing I wanted to bring up --

24 Q. Before we leave paragraph 3, did you
25 consider -- did you consider the items in paragraph 3 in

1 your original assessment in this case?

2 A. I would say that we definitely were aware of
3 two, because we do discuss that. We -- we discussed the
4 issue that it is difficult to determine when a line is
5 transferred, for example, and when a line is a primary line
6 and when a line -- I mean, those are things, yes, that we
7 did take into consideration.

8 Q. So did you take them into consideration prior
9 to this order coming down?

10 A. We definitely took the second one into
11 consideration.

12 Q. How about some of the comments in paragraph 4,
13 did you-all consider those prior to this order coming down,
14 some of the concerns that are mentioned in paragraph 4?

15 A. We definitely -- I would say yes, we did.
16 Would you like me to go item by item and discuss them?

17 Q. Well, only if you feel it would be
18 particularly helpful. I'm speaking in general terms right
19 now. If you disagree with some of the concerns that are
20 listed in paragraph 4, then certainly point those out. I
21 guess point out exceptions rather than --

22 A. Sure. I believe that the FCC has done a good
23 job here of stating what a good public in-- you know, they
24 have stated the good public interest standard on a
25 going-forward basis.

1 One of the comments in my testimony -- I did
2 reference a portion of my testimony. It may have also been
3 before you got here, when we were making corrections. I did
4 state in my testimony that we were not aware of any
5 standards for the public interest finding, and I wanted to,
6 I guess, amend that today by taking notice of this order, by
7 saying here is a case where the FCC has done a very good job
8 on a going-forward basis of saying, here's what the public
9 interest standards are.

10 Q. How closely do you follow the Federal/State
11 Joint Board on Universal Service? Do you follow that at all
12 in you day-to-day work?

13 A. I don't follow it extremely closely. People
14 in my department --

15 Q. There is something, somebody does follow that?

16 A. I know that we are definitely aware of FCC
17 iss-- FCC issues. I don't know if I can say exactly that we
18 have our finger on the pulse of the FCC Joint Board,
19 Federal/State Joint Board more than -- more than other
20 things.

21 Q. The third issue that you mentioned were the
22 commitments made on the record by Virginia Cellular with
23 regard to filing reports and complying with the CTIA codes
24 of conduct; is that correct?

25 A. That is correct.

1 Q. And did you contemplate commitments such as
2 that or concerns such as those prior to this FCC order
3 coming out in your original direct and surrebuttal
4 testimony?

5 A. No, because it was not something that
6 we envisioned as being possible. I mean, we do make
7 reference -- I believe it's either in my rebuttal or my
8 surrebuttal testimony; I could check if you would like --
9 that once we granted ETC status, that we would have -- that
10 the Missouri Public Service Commission would not have any
11 say over any sort of quality of service standards or
12 dispute.

13 And so this Virginia order is very useful in
14 that it gives us an idea of what we could have the company
15 agree to, but the main purpose -- cut me off if you wish, of
16 course. The main purpose of my -- of my taking notice of
17 that was that we shouldn't just allow them to be members of
18 CTIA and think that's going to solve all the problems.

19 Q. Okay. Well, let's talk about this, because
20 this Item No. 3 that you mention, this third point as my
21 notes reflect -- and I want to make sure my notes are
22 accurate -- the items that you reference with regard to
23 these commitments on the record are items that are not a
24 part of your direct or surrebuttal testimony, correct?

25 A. No, we do not -- we do not discuss any of

1 these specifics in rebuttal or surrebuttal.

2 Q. Okay. Are there certain commitments that
3 Mid-Missouri Cellular could make that would cause Staff to
4 change its mind with regard to the ETC status?

5 A. I would say no, because our position has been
6 and continues to be, even throughout listening to testimony,
7 they have not met their burden. I mean, just mentioning the
8 word "competition" doesn't necessarily mean that you have
9 proven specifically that the grant itself -- that grant of
10 ETC status is going to lead to increased competition.

11 Q. In your mind, what would they have to prove,
12 what would they have to show us to meet that burden?

13 A. They would have to prove a direct link between
14 the grant of the ETC status itself and all of the things
15 that they expect will occur after the grant. That is one of
16 the things that I believe is missing from their case.

17 Q. What things that you make reference there
18 would have to occur, do you think, regardless of what they
19 say? In your mind, with regard to your universal service,
20 if we were to make this grant, what picture of utopia do you
21 see afterwards?

22 A. In regards to the MMC utopia, I would see that
23 that they would have to be providing services that are
24 clearly in the public interest.

25 Q. Such as? What would be a service in the

1 public interest?

2 A. Well, it --

3 Q. Instant messaging? I mean, what are you
4 making reference to here? What's in the public interest?

5 A. Well, I think that is you who ultimately has
6 to decide what's in the public interest. I think even with
7 these numerous factors that is still kind of a nebulous
8 term. I mean, just for example, let's look at the -- the
9 picture phones that have come out now, and there's been a
10 series of commercials about them on TV.

11 Let's say that that is something that could be
12 delivered through the broadband services that they discuss
13 when they discuss updating from TDMA to CDMA, they discuss
14 the two different price levels.

15 (REPORTER'S NOTE: At this point, an in-camera
16 session was held, which is contained in Volume 5, pages 321
17 through 323 of the transcript.)

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1 Are these highly confidential numbers, before
2 I go any further?

3 Q. Probably too late anyway.

4 A. Well, shoot. Let's say that there was
5 X amount of money that had to be spent in order to update
6 the system and that there was X plus Y in order to have the
7 broadband portion of the system. And let's say that, for
8 example, if you were going to have a high-speed data
9 transfer possible in the wireless system, that you would be
10 possible to send the picture phone.

11 Now, I would -- in my opinion, there would be
12 two different ways to look at that issue. We would say,
13 No. 1, is it possible to use the high-cost funds in that
14 manner? And I would say the answer is yes, because the
15 company would be allowed to use it not just on the POTS-type
16 issues that I believe Commissioner Murray has discussed in
17 this proceeding, but also in terms of high-speed data
18 transfer.

19 So we ask the first question, is it legal to
20 use the funds in that way? And I would say the answer to
21 that is yes. But then I believe you would have a secondary
22 concern, especially in these rural exchanges, of would that
23 outlay be in the public interest?

24 And I believe that the answer to those two
25 questions could be different. What is legal and allowable

1 and passable and what is in the public interest could be two
2 separate concerns.

3 Q. I'm digesting this picture of utopia that you
4 just described.

5 A. I guess I kind of maybe didn't state the
6 utopia.

7 Q. So from that statement, can I assume that what
8 you're referring to are new services and more than just
9 basic cellphone service would be necessary before Staff
10 would consider an ETC designation?

11 A. First of all, I would state that they would
12 have to put forth the information themselves. The FCC makes
13 very clear that there is a burden on the company --

14 Q. I recognize the burden, but I want to know
15 from Staff's perspective where a cellphone, if at all -- and
16 your answer may be never, never would a cellphone service
17 ever be part of this mix in Missouri. But what I'm trying
18 to get a handle on is what is Staff's position, what type or
19 level of service would you see as being something that is
20 ETC worthy or universal service worthy?

21 A. Well, it has definitely been Staff's position
22 in the past, such as in the Sprint effective competition
23 case, that wireless phones are mainly complimentary to
24 wireline phones, not substitutable.

25 Now, I do understand that there is a segment

1 of the population that disagrees with that. I believe
2 there's a 2002 FCC estimate that puts that at about 5 to 10
3 percent, and I know that that might be growing now with the
4 local number portability, but I don't have any hard and fast
5 numbers on that.

6 Q. Okay. Would it make any difference whether
7 there was a problem with the local ILEC in Staff's review of
8 this ETC application?

9 A. I don't believe there's a problem with the
10 local ILEC in this application.

11 Q. I understand that.

12 A. Because of a Data Request that we sent.

13 Q. Would that play a role in considering? I'm
14 speaking hypothetically, but if there was a problem with the
15 local ILEC, which I'm not saying here by any stretch of the
16 imagination, but if there was a problem and you had serious
17 service quality problems with a local ILEC, would that
18 possibly give rise to Staff changing its position?

19 A. Assuming that the wireless carrier was willing
20 to pick up carrier of last resort obligations?

21 Q. Well, that's what I'm asking. Does that make
22 a difference?

23 A. I would say -- I would say yes, that could, if
24 the carrier was willing to pick up carrier of last resort
25 obligations. I know there's been some discussion about that

1 on the FCC level as well.

2 Q. Would there be other obligations that the
3 company would have to commit to in that scenario?

4 A. After this Virginia FCC order, I definitely
5 believe that we have some examples of -- of commitments that
6 we could ask the company to make.

7 Q. Which ones? Give me a handful of just the
8 most important.

9 A. I would say the reporting, for example, of
10 consumer complaints per thousand handsets. I thought that
11 was something that would be nice to know.

12 Q. What else?

13 A. Well, I'm looking through the attachment that
14 Mr. Poston submitted into evidence. I wouldn't be as
15 concerned about the advertising commitment, for example. I
16 believe that they do currently advertise. It's in the
17 business' best interests to advertise.

18 There is a discussion of construction plans,
19 which could be important for carrier of last resort
20 obligations in the situation -- in the hypothetical
21 situation that you described. If somebody's going to be the
22 only carrier, I would definitely like to know how they're
23 going to meet those carrier of last resort obligations.

24 Q. How would you measure the adequacy of
25 construction plans? Would you measure it by -- I know the

1 FCC does not like the measurement of dead zones, but is
2 that -- or dead spots. Is that one criteria? Is it
3 strength of signal throughout the service territory, or are
4 you without the knowledge to --

5 A. I would say that the FCC in the past,
6 considering dead spots, has said that there are going to be
7 some dead spots in the coverage area. I mean, if you are
8 asking me the question, would that change if they were going
9 to be the only carrier, I don't know. I would have to think
10 more about that situation and talk to people in the wireless
11 industry and have further analysis on the topic.

12 Q. How about resolution of consumer complaints?

13 A. I think it would be nice if they -- if they
14 would commit to sending us that information. I believe that
15 that would be -- I mean, in that hypothetical situation, it
16 would be -- it would be beneficial to see resolution of
17 these complaints and not just the number of complaints.

18 Q. Do you have any experience in working with the
19 FCC in resolution of cellular phone complaints as the law
20 currently is?

21 A. No, I do not.

22 Q. Does anyone on the Staff have that working
23 knowledge?

24 A. I don't -- I don't believe anyone on Staff has
25 worked for the FCC, for example.

1 Q. That's not what I mean. What I'm referring to
2 are the phone calls that come into the consumer hotline
3 here, I've got a problem with my cellphone. They say, we
4 can't help you, we don't have jurisdiction there. They give
5 the hotline to the FCC.

6 But are you aware of anyone who has seen one
7 of those problems through to a resolution or through to an
8 end or how efficient or effective the FCC is in resolving
9 these issues? Are they completely overwhelmed?
10 Do they sit on hold for three hours?

11 A. I don't have any information about that.

12 Q. Do you know if anyone on Staff has that
13 information?

14 A. I can't say for sure. Especially teleco
15 staff. Now, the people who handle the complaints upstairs,
16 that might be a different issue, but teleco, I don't know of
17 anybody on teleco staff that has that information.

18 Q. Well, originally Staff was opposed to the
19 State of Missouri exercising jurisdiction in this case; is
20 that correct?

21 A. That is correct.

22 Q. Was that -- was that a call by legal counsel
23 or by the telecommunications department?

24 A. That was discussed by both parties and we came
25 to that discussion -- we came to that conclusion in a

1 meeting.

2 Q. Okay. And was that position, in part, based
3 on problems with dealing with consumer complaints like we've
4 just discussed?

5 A. I don't believe that was an issue in that
6 discussion.

7 Q. Okay. So that wouldn't make any difference?

8 A. No. It was not an issue that we contemplated
9 when we --

10 Q. That the Missouri Public Service Commission
11 doesn't have jurisdiction over cellphones wasn't
12 contemplated?

13 A. Well, that was contemplated.

14 Q. Well, that's what I'm referring to, consumer
15 complaints relating to cellular phones. Would that play a
16 part?

17 A. It would play a part only to the extent that
18 we don't have any -- or that the Missouri Public Service
19 Commission has little, if any, jurisdiction over wireless
20 companies in the whole.

21 Q. How long have you been with the Commission?

22 A. Approximately coming up on two years.

23 Q. Coming up on two years. And have you had any
24 other dealings with Universal Service Fund issues?

25 A. I worked with the certification of the ILECs

1 and the ETC CLECs this past year.

2 Q. What standard do you use when reviewing CLEC
3 applications, public interest standard?

4 A. No. We -- well, we -- I would say no. What
5 we do is we look and make sure they are using the money,
6 that they certify -- that they have a signed affidavit that
7 they certify that they are using the money in accordance to
8 the high-cost rules.

9 Q. Okay. Would you have that ability here if we
10 were to grant ETC status to MMC?

11 A. Yes, we would, because I believe that they
12 would -- that they would have to certify.

13 Q. If a CLEC comes in and says, we want ETC
14 status in a particular area, what are you going to look at?

15 A. I'm sorry. Could you repeat the question?

16 Q. If you have a CLEC that wants to be designated
17 as ETC status or designation, what are you going to look at
18 in regard to that CLEC's service?

19 A. I guess we would look at, first of all, if the
20 CLEC is certificated. We would look at things of that
21 nature; are they legally allowed to provide service, are
22 they going to have any sort of facilities in that exchanges
23 are there plans for any sort of facilities in that exchange?
24 We would look at issues such as those.

25 Q. Would you look at the same issues as you are

1 in this case?

2 A. I don't believe that we would look at the
3 exact same issues.

4 Q. Why is that?

5 A. Because we have different jurisdiction over
6 the wireline CLEC than we do over a wireless carrier.

7 Q. This is the first cellphone application for
8 ETC status in Missouri history, I suppose?

9 A. In the state of Missouri, yes.

10 Q. To give it a little drama, the first in the
11 history of our great state?

12 A. It's the first --

13 Q. Stay calm. Let's not get out of hand here.
14 But this is the first, and this would be your first?

15 A. Yes.

16 Q. Are there any circumstances where a cellphone
17 service could be designated, in your opinion?

18 A. If they met the burden itself, yes, and they
19 provided evidence to support the public interest standards,
20 then yes. Yes, they would, but we do not believe this
21 company has done so.

22 Q. Are you aware of how many cellphones,
23 cellphone companies are operating in rural Missouri such as
24 MMC, more than simply just interstate coverage?

25 A. I can reference what one of the MMC witnesses

1 said. I am not personally knowledgeable of that fact.

2 COMMISSIONER CLAYTON: Okay. Well, thank you

3 very much. Thank you, Judge.

4 JUDGE DIPPELL: Commissioner Murray, you had a

5 couple more follow-ups?

6 COMMISSIONER MURRAY: Yes.

7 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

8 Q. When Staff does an analysis of ETC status on a

9 CLEC, wouldn't Staff be looking at the public interest

10 standard before recommending ETC status in rural high-cost

11 areas?

12 A. I mean, we are required to state that it is in

13 the public interest.

14 Q. So you would be looking at the public interest

15 standard for a CLEC as well in a high-cost area?

16 A. Yes.

17 Q. A rural high-cost area?

18 A. Yes.

19 Q. Okay. And then in making your public interest

20 determination, is a part of that -- what you're basing

21 public interest analysis on what the likely result is to the

22 size of the high-cost Universal Service Fund?

23 A. Yes, that was one of the -- that was one of

24 the concerns we had, that we stated, that we were unsure and

25 there were potential problems about the stability of said

1 fund. We stated that in our testimony.

2 Q. And in this particular instance with

3 Mid-Missouri Cellular's application, is there more reason to

4 believe that the cost of the fund -- or the size of the fund

5 will increase based upon a grant of their ETC status than if

6 a wireline CLEC were applying for ETC status in the same

7 area?

8 A. I would say the answer to that is yes.

9 Q. And since we are concerned about -- overall

10 about how much customers have to pay to support the

11 Universal Service Fund, that is a legitimate public interest

12 concern, is it not?

13 A. I believe so. I believe that is one of the

14 factors also that the FCC does mention.

15 COMMISSIONER MURRAY: Thank you.

16 JUDGE DIPPELL: Thank you. Mr. McKinnie, I

17 just had a couple of -- or maybe just one question for you.

18 QUESTIONS BY JUDGE DIPPELL:

19 Q. Do you have a copy of Mr. Curtis' surrebuttal

20 with you?

21 A. Yes, I do.

22 Q. Would you look at page 2 of his surrebuttal,

23 and you may have clarified this elsewhere, but I just want

24 to see. On lines 9 through 11, he makes a statement that --

25 well, actually it starts before that, where he restates some

1 of Staff's position, and then at line 9 says, this is a test
2 admission by Staff that MMC is legally entitled to ETC
3 status in areas served by non-rural ILECs.

4 And I just wanted to see, is it Staff's
5 position that Mid-Missouri Cellular has not met the public
6 interest standard only where the underlying carrier is
7 rural?

8 A. I believe there is definitely a higher level
9 of standard that the Commission should look at when it looks
10 at that. I am not aware of any situation where a regulatory
11 body has denied ETC status in a non-rural area. So I don't
12 know if I want to say they're -- I don't want to say they're
13 legally entitled. I believe Mr. Poston addressed that in
14 his opening.

15 JUDGE DIPPELL: Okay. I think that's all the
16 questions I had for you. We're going to take just a
17 ten-minute break and we'll come back with further
18 cross-examination for Mr. McKinnie from Bench questions and
19 then keep going. Thank you. Off the record.

20 (A BREAK WAS TAKEN.)

21 JUDGE DIPPELL: Let's go back on the record.
22 Mr. DeFord, was there anything you wanted to bring up?

23 MR. DeFORD: Yes, your Honor. I would move
24 that we redact from the public version of the transcript
25 Mr. McKinnie's inadvertent disclosure of a highly

1 confidential number.

2 JUDGE DIPPELL: I will do that. We will make
3 that line in the transcript -- the answer to that question
4 part of the in-camera record and strike it from the public
5 version.

6 MR. DeFORD: And we waive prosecution of the
7 misdemeanor.

8 JUDGE DIPPELL: Thank you, Mr. DeFord. State
9 of Missouri doesn't need to be spending more money on legal
10 counsel. Tight budget season. Okay.

11 Is there further cross-examination based on
12 questions from the Bench from Office of the Public Counsel,
13 who's not returned from break?

14 From Alma?

15 MR. ENGLAND: No, your Honor. Thank you.

16 JUDGE DIPPELL: From CenturyTel?

17 MR. STEWART: No, your Honor.

18 JUDGE DIPPELL: From Mid-Missouri?

19 MR. DeFORD: Only one.

20 RECROSS-EXAMINATION BY MR. DeFORD:

21 Q. Mr. McKinnie, I only have one question, I
22 think. In response to some questions from Commissioners
23 Clayton and Murray, I believe you gave your opinion as to
24 whether the burden of proof had been met and your opinion as
25 to what the statutory requirements were and also what the

1 Virginia Cellular order required; is that correct?

2 A. Yes, I believe we covered all of those topics.

3 Q. Are you an attorney, Mr. McKinnie?

4 A. I am not.

5 MR. DeFORD: Thank you.

6 JUDGE DIPPELL: Mr. Dandino, did you have

7 further questions for Mr. McKinnie based on questions from

8 the Bench?

9 MR. DANDINO: No, your Honor. Thank you.

10 JUDGE DIPPELL: Then, Mr. McKinnie, I believe

11 you may step down. Since Commissioner Gaw had other

12 appointments this morning, I'm not sure that he doesn't have

13 questions for you, so I'd ask you to remain present for the

14 rest of the -- for the hearing, but you may step down now.

15 Thank you.

16 Does Staff have any additional witnesses?

17 MR. POSTON: No. And we had no redirect of

18 Mr. McKinnie.

19 JUDGE DIPPELL: I'm sorry, Mr. Poston. Thank

20 you. Then I believe we're ready to go to Alma's witness.

21 MR. ENGLAND: Thank you, your Honor. We'd

22 call Mr. Schoonmaker, please.

23 JUDGE DIPPELL: Please raise your right hand.

24 (Witness sworn.)

25 JUDGE DIPPELL: Thank you. Go ahead

1 Mr. England.

2 MR. ENGLAND: Thank you, your Honor.

3 ROBERT C. SCHOONMAKER testified as follows:

4 DIRECT EXAMINATION BY MR. ENGLAND:

5 Q. Would you state your name for the record,
6 please.

7 A. My name is Robert C. Schoonmaker.

8 Q. And by whom are you employed and in what
9 capacity?

10 A. I'm employed by GVNW Consulting, Inc., and I'm
11 the president and CEO of that company.

12 Q. And on whose behalf are you appearing today?

13 A. I'm appearing on behalf of Alma Telephone
14 Company and Citizens Telephone Company.

15 Q. Mr. Schoonmaker, have you caused to be
16 prepared and filed in this proceeding prepared rebuttal
17 testimony that I believe has been marked for purposes of
18 identification as Exhibit No. 8?

19 A. Yes, I have.

20 Q. Do you have any corrections to that testimony?

21 A. I do. Would you like me to proceed with
22 those?

23 Q. Please.

24 A. First of all, on page 4, on line 16, I would
25 insert the word to, t-o, between regard and rural in kind of

1 the center of the line, so it reads, however, in regard to
2 rural areas.

3 Second minor change is on page 14, on line 3,
4 the amount \$8.40 should be changed to \$6.65, and the amount
5 \$6.50 should be changed to \$4.75. When I prepared this
6 testimony, I neglected to recognize that the companies would
7 be giving \$1.75 Lifeline credit from their basic local
8 service rates to the Lifeline customers, and that's the
9 reason for the correction.

10 And then on page 24, on line 11, in the center
11 of the line, the word "listing" should be made plural,
12 listings. Those are all the minor corrections that I have.

13 Q. In addition to the minor corrections, do you
14 have more substantive corrections or updates in light of
15 recent developments since you filed your testimony?

16 A. I have two of those. The first one would go
17 on page 5, and I would add an additional sentence after the
18 end of the sentence on line 12, and that additional sentence
19 would read, in early December the Minnesota Commission
20 denied the application for ETC status of Nextel
21 Communications, and in mid January this year, the Louisiana
22 Commission denied the application for ETC status of a
23 wireless provider.

24 Q. And the other substantive change or update?

25 A. It would go on line -- or excuse me -- on

1 page 19, after line 13, adding three additional paragraphs.
2 While in the past the FCC has made such statements, in an
3 Order released January 22, 2004 that has been introduced as
4 Exhibit 10, the FCC clearly reflected a changed position in
5 this regard by stating specifically that, quote, we conclude
6 that the value of increased competition by itself is not
7 sufficient to satisfy the public interest test in rural
8 areas, close quote.

9 The FCC in this order outlines some of the
10 criteria that they used in determining that the public
11 interest was met in this circumstance. However, it is
12 important that the Commission recognize that these criteria
13 that the FCC used are not binding on this Commission and the
14 Commission can use its own criteria in determining whether
15 the public interest is met.

16 The recent state decision in Louisiana, for
17 example, as reported in the public minutes of its agenda
18 meeting, appears to have used a very different determination
19 of the public interest than that used by the FCC. I also
20 noted in the FCC order that Virginia Cellular had
21 specifically submitted plans to the FCC for upgrading their
22 networks, including specific cell sites and estimated costs
23 for upgrades, and this is evidenced by the letter to the FCC
24 which was introduced yesterday as Exhibit No. 11.

25 Q. Does that complete your changes --

1 A. Yes.

2 Q. -- and updates?

3 Thank you. With those in mind, if I were to

4 ask you the questions that appear in that prepared

5 testimony, would your answers here today under oath be

6 substantially the same, with the additions and corrections

7 that you've just noted?

8 A. Yes.

9 Q. And are those answers true and correct to the

10 best of your knowledge, information and belief?

11 A. Yes.

12 MR. ENGLAND: Thank you. I have no other

13 questions for the witness, and would tender him for

14 cross-examination and offer Exhibit 8 into the record.

15 JUDGE DIPPELL: Will there be any objection to

16 Exhibit 8?

17 (No response.)

18 JUDGE DIPPELL: Then I will receive it into

19 the record.

20 (EXHIBIT NO. 8 WAS RECEIVED INTO EVIDENCE.)

21 JUDGE DIPPELL: Is there any cross-examination

22 of Mr. Schoonmaker from CenturyTel?

23 MR. STEWART: No, your Honor.

24 JUDGE DIPPELL: Office of the Public Counsel?

25 MR. DANDINO: No questions, your Honor. Thank

1 you.

2 JUDGE DIPPELL: Staff?

3 MR. POSTON: No questions.

4 JUDGE DIPPELL: Mid-Missouri Cellular?

5 MR. DeFORD: Yes, thank you.

6 CROSS-EXAMINATION BY MR. DeFORD:

7 Q. Good morning, Mr. Schoonmaker.

8 A. Good morning, Mr. DeFord. We meet again.

9 Q. It's been a while, huh? Keep it very short,

10 one question. Mr. Schoonmaker, are you an attorney?

11 A. I am not.

12 MR. DeFORD: Good answer. We're done.

13 Thanks.

14 JUDGE DIPPELL: That was record speed.

15 Well, Mr. Schoonmaker, I think I have a couple

16 questions for you.

17 QUESTIONS BY JUDGE DIPPELL:

18 Q. I believe the Commissioners will have some

19 questions for you, so we'll have to meet back after they're

20 finished with their agenda.

21 A. All right.

22 Q. But let me ask you my questions. I have

23 written down that that was for Mid-Missouri's witness, so I

24 guess I missed my opportunity for that one.

25 Okay. Let's see. Page 11 of your rebuttal

1 testimony, up at the top, you discuss -- you say, it would
2 not appear to be in the public interest to provide universal
3 service support to a wireless carrier who did not provide
4 that choice. And you were talking about the choice of IXC
5 or interexchange carriers prior to that.

6 Have there been -- first of all, let me ask
7 you how familiar you are with the FCC? You testify a lot in
8 here about FCC decisions. How familiar are you with the
9 proceedings at the FCC?

10 A. I am quite familiar with them. I do not
11 necessarily read all the comments that are filed by all the
12 parties, but I generally keep track of the applicable orders
13 and am fairly familiar with them at least.

14 Q. Okay. And were you aware of any FCC cases
15 where the FCC granted ETC status to a wireless carrier?

16 A. Yes.

17 Q. And are you aware of any FCC cases where ETC
18 status was granted to a wireless carrier in a rural area?

19 A. Yes.

20 Q. And what cases, what companies were involved
21 in those?

22 A. There's a number of them. The Virginia
23 Cellular order, which has been discussed in great detail, is
24 one of those. I mean, the FCC has issued a decision in
25 South Dakota related to some tribal areas. I believe

1 they've issued a decision in Wyoming related to ETC service,
2 and there's been a number of others related to rural areas.

3 Q. And so in those cases, were there a choice --
4 or was there a choice of interexchange carriers in any of
5 those cases?

6 A. The issue was raised in some of those cases,
7 including the Virginia Cellular order. The FCC did not --
8 did not impose that requirement as part of the public
9 interest requirement, although until the Virginia order they
10 basically had based all their decisions on the fact that
11 granting ETC would provide additional competition.

12 But the FCC has not made that a requirement in
13 the Virginia order specifically. They did not find that it
14 was from their viewpoint necessary for the wireless carriers
15 to provide that to meet their view of the public interest
16 standard.

17 JUDGE DIPPELL: Okay. I think that's all the
18 questions I have for you. So I will -- I think I'll go
19 ahead and -- well, let me go ahead and ask if there is any
20 cross-examination based on my questions and we'll do that,
21 and then in case the Commissioners wouldn't have any
22 questions, we could excuse you later.

23 Would there be any questions based on
24 questions from the Bench from CenturyTel?

25 MR. STEWART: No questions.

1 JUDGE DIPPELL: Office of Public Counsel?
2 MR. DANDINO: No questions, your Honor.
3 JUDGE DIPPELL: Staff?
4 MR. POSTON: No questions.
5 JUDGE DIPPELL: Mid-Missouri?
6 MR. DeFORD: No questions.
7 JUDGE DIPPELL: Would there be any redirect at
8 this time?
9 MR. ENGLAND: Just one, your Honor.
10 REDIRECT EXAMINATION BY MR. ENGLAND:
11 Q. Mr. DeFord asked whether or not you were an
12 attorney, but did you spend the night at a Holiday Inn
13 Express last night, Mr. Schoonmaker?
14 A. No.
15 MR. ENGLAND: Rats. Thank you.
16 JUDGE DIPPELL: Okay. I've lost complete
17 control.
18 MR. ENGLAND: I hope it's the last day of the
19 hearing.
20 JUDGE DIPPELL: Okay. Mr. Schoonmaker, you
21 may step down for now, and I will ask you to remain for
22 Commission questions. Do I understand that you might have a
23 scheduling conflict and need to leave at a certain time
24 today?
25 THE WITNESS: Not today. I do need to leave

1 by 1:30 tomorrow if possible.

2 JUDGE DIPPELL: I'm pretty sure we can get you
3 out of here by then. Thank you.

4 Does Alma have any additional witnesses?

5 MR. ENGLAND: No, we do not.

6 JUDGE DIPPELL: Then we will go to
7 CenturyTel's witness.

8 MR. STEWART: We call Arthur Martinez.

9 JUDGE DIPPELL: Would you please raise your
10 right hand.

11 (Witness sworn.)

12 JUDGE DIPPELL: Thank you.

13 ARTHUR MARTINEZ testified as follows:

14 DIRECT EXAMINATION BY MR. STEWART:

15 Q. Would you please state your name for the
16 record.

17 A. Yes. My name is Arthur Martinez.

18 Q. By whom are you employed and in what capacity?

19 A. I'm employed by CenturyTel of Missouri, LLC
20 and Spectra Communications Group, LLC, d/b/a CenturyTel, as
21 the director of government relations.

22 Q. And on whose behalf are you testifying?

23 A. I am testifying on behalf of both companies,
24 and hereafter I'll refer to both combined as CenturyTel,
25 unless warranted to distinguish.

1 Q. Have you caused to be prepared rebuttal
2 testimony which has been prefiled and marked for purposes of
3 identification as Exhibit 9?

4 A. Yes, I did.

5 Q. Do you have any corrections to that prefiled
6 testimony?

7 A. I have one minor correction. On page 14,
8 line 28, actually starting on line 27, I would put a period
9 after the word "areas" on line 27. And on line 28 I would
10 delete the following words, "and multiple states," period.

11 Q. Do you have any other minor corrections to the
12 prefiled testimony?

13 A. No, I do not.

14 Q. Given that we've kind of changed the
15 procedures in this hearing, do you have more substantive
16 corrections you'd like to make or additions to your
17 testimony you'd like to make in response to the supplemental
18 testimony provided yesterday for the first time by
19 Mr. Curtis?

20 A. There are two areas that I would like to
21 address in relation to the FCC's most recent order that
22 we've been discussing here today, and I believe it's
23 referred to as the January 22nd order. The first -- the
24 first comment I'd like to make is I think the FCC has set
25 some -- certainly some minimum standards to give guidance to

1 state commissions on how to deal with the issue of ETC
2 designation and the problems that have occurred since this
3 process began.

4 It's very clear that these standards are being
5 looked at in more detail by the Federal/State Joint Board,
6 and we expect that they will be issuing a recommendation
7 here hopefully within the first quarter of this year.

8 There is one -- a couple of issues that
9 pertain to CenturyTel in particular, and the first being the
10 redefinition of study areas. If we turn to page 6 of the
11 order, they talk about the redefinition of a service area
12 and when it should be done in the case of a rural provider.

13 And in particular, it's CenturyTel's position
14 that until redefinition is completed, that Mid-Missouri
15 Cellular be obligated to provide service throughout our
16 service territory. And I believe what Mid-Missouri
17 Cellular's proposing to do is to redefine the study area,
18 and that would have to be approved.

19 However, there are partial exchanges that
20 Mid-Missouri Cellular is proposing to carve out within the
21 CenturyTel and Spectra service or study areas, and I would
22 like to note in particular on page 19 of the order that with
23 regard to Virginia Cell-- Virginia Cellular ETC, that they
24 only granted ETC status in the Williamsville wire center.
25 This is a partial wire center that was going to be served by

1 Virginia Cellular.

2 They only granted it to the extent that

3 Virginia Cellular agreed to provide service throughout the

4 exchange through a combination of its own facilities and the

5 facilities of the -- of another carrier or an alternative

6 provider.

7 Q. Would that be through resale?

8 A. Yes, that would be primarily through resale.

9 Q. Do you have any further comments on the

10 Virginia Cellular order or any of the new proposals that

11 were put forth by Mr. Curtis yesterday?

12 A. No, I do not.

13 Q. With these additions to your testimony, are

14 the answers contained in your testimony true and correct to

15 the best of your knowledge, information and belief?

16 A. Yes, they are.

17 MR. STEWART: With that, I would offer

18 Exhibit 9 and tender the witness for cross-examination.

19 JUDGE DIPPELL: Would there be any objection

20 to Exhibit No. 9?

21 (No response.)

22 JUDGE DIPPELL: Seeing none, then I will

23 receive that into evidence.

24 (EXHIBIT NO. 9 WAS RECEIVED INTO EVIDENCE.)

25 JUDGE DIPPELL: Is there any cross-examination

1 from Alma?

2 MR. ENGLAND: No, your Honor.

3 JUDGE DIPPELL: Office of the Public Counsel?

4 MR. DANDINO: No questions, your Honor.

5 JUDGE DIPPELL: Staff?

6 MR. POSTON: No questions.

7 JUDGE DIPPELL: Mid-Missouri Cellular?

8 MR. DeFORD: No, thank you.

9 JUDGE DIPPELL: I guess you're going to

10 leave it all to me. I have a few questions for you,

11 Mr. Martinez.

12 QUESTIONS BY JUDGE DIPPELL:

13 Q. Have to refresh my memory here. On page 9 of

14 your rebuttal testimony, you have a list there of six public

15 interest factors that you think the Commission should

16 consider. Are those -- can you tell me where those factors

17 came from?

18 A. It's a listing of -- it was compiled by me

19 based on positions taken in other proceedings and by other

20 parties to ETC proceedings and some of the issues that have

21 come up.

22 Q. So this is just a list based on your knowledge

23 and opinion?

24 A. Yes.

25 Q. And I apologize. I wrote some of these

1 questions before we had such lengthy discussions about the
2 most recent FCC order, so some of them may be a little
3 redundant.

4 As far as the Joint Board goes, the
5 Federal/State Joint Board, have you been involved in that
6 board at all or what is your familiarity with the
7 Federal/State Joint Board?

8 A. I understand what its purpose is. The reason
9 I am familiar with the Federal/State Joint Board is because
10 I have responsibility for reviewing their recommendations
11 and the subsequent FCC orders that may be based on their
12 recommendations and how they would apply to the various
13 states that I have authority over.

14 Q. Okay. And you stated in your testimony that
15 there were a number of critical universal service issues
16 that are under consideration right now by the board?

17 A. Yes. And I believe those are enumerated in
18 the FCC's January 22nd order.

19 Q. Here's a question for you that I can't believe
20 I've gotten this far into the case and didn't know the
21 answer to, but I'm going to ask you. Can you explain to me
22 the CenturyTel/Spectra Communications corporate
23 relationships?

24 A. I will do my best. And I can only speak to
25 Missouri. I'm not sure how the entire company is organized.

1 Q. I'm really only interested in Missouri as
2 those parties are in this case.

3 A. I understand that CenturyTel, and it's -- I
4 think I referred to my testimony, my rebuttal testimony. I
5 apologize. I can't recall the page. On page 11 of my
6 rebuttal testimony, Spectra Communications Group, LLC has --
7 is its own study area within the State of Missouri, and that
8 was, I believe, purchased from GTE in 2000.

9 CenturyTel of Missouri, LLC is a separate
10 entity, but it is comprised of four study areas within the
11 state or four properties, two of which of those properties
12 are rural as defined by the FCC.

13 Q. Okay. And what is Spectra Communications
14 Group, LLC, doing business as CenturyTel and CenturyTel of
15 Missouri, LLC, what is their corporate relationship? Are
16 they --

17 A. They are affiliates of CenturyTel, Inc.

18 Q. Okay. On page 13 of your testimony, it begins
19 with the answer to a question from the other page, and
20 you're talking about the need for redefinition of -- or that
21 MMC's application calling for designation in the study area
22 of Spectra clearly should be denied, you're saying, without
23 redefinition of the area, the service area.

24 Is it your opinion that -- or would it be
25 possible for Mid-Missouri Cellular to just provide ETC

1 service in the other study areas and not in Spectra's area?
2 Could the Commission grant part of the ETC designation?

3 A. If we can refer to the map, if what you're
4 asking is could Mid-Missouri Cellular -- if Mid-Missouri
5 Cellular were to only provide ETC service in the Concordia
6 exchange and not in the other partial exchanges, I would say
7 yes, but only to the extent that Spectra had disaggregated
8 its universal service support. Otherwise, had we not done
9 that, then they would also have engaged in cream skimming,
10 which was upheld and addressed in the January 22nd order.

11 Q. Okay. And I think that's what you go on to
12 explain later, but I needed a little bit of education before
13 I could understand all that.

14 JUDGE DIPPELL: Okay. I think that's all the
15 questions I have for you. Again, I will ask you to remain
16 for Commission questions if there should be any. I'll go
17 ahead and ask, though, if there's any further
18 cross-examination based on my questions from Alma?

19 MR. ENGLAND: No, thank you.

20 JUDGE DIPPELL: Office of Public Counsel?

21 MR. DANDINO: No questions, your Honor.

22 JUDGE DIPPELL: Staff?

23 MR. POSTON: No questions.

24 JUDGE DIPPELL: Mid-Missouri?

25 MR. DeFORD: No questions.

1 JUDGE DIPPELL: Is there any redirect?

2 REDIRECT EXAMINATION BY MR. STEWART:

3 Q. I think the first question she asked you

4 involved your list of the public interest factors that was

5 contained in your testimony. And we've had testimony from

6 the new Virginia Cellular order that seems to have a list of

7 public interest factors. What's the relationship between

8 your factors and the Virginia -- the FCC factors? I'm not

9 sure I'm asking this correctly, but how do those two sets of

10 factors come into play?

11 A. Well, I think the FCC clearly recognized that

12 there are certain public interest factors that are crucial

13 and that should be looked at, and I think my list kind of

14 gives some of those. There are certain -- this is not the

15 only list out there. The National Telecommunications --

16 it's NTCA. I'm sorry, but I'll have to think of what the

17 acronym means. But they've certainly put out a list of

18 public interest standards that must be followed.

19 And I think it gives guidance to the

20 Commission what to look to, but we really don't know, based

21 on the application that was filed by Mid-Missouri Cellular,

22 what they're committing to, so we don't know which of these

23 factors that I've listed or any of the other parties,

24 including the Virginia Cellular case, are being addressed in

25 this case.

1 Q. Is part of the problem that you don't have the
2 offer from Mid-Missouri Cellular in writing as to exactly
3 what they're -- what they're proposing?

4 A. Absolutely.

5 Q. Back to the standards again, are you saying
6 that the FCC standards as enunciated in the Virginia
7 Cellular order, are those exclusive of other public interest
8 standards or are they minimum standards?

9 A. No, they're certainly not exclusive, and I
10 would consider them minimum standards. I think it's a
11 considerable departure by the FCC to recognize that
12 competition in and of itself is -- is not a factor or a
13 public interest factor that should be looked at.

14 Q. It shouldn't be looked at or it shouldn't be
15 the exclusive factor?

16 A. It shouldn't be the exclusive factor.

17 MR. STEWART: That's all I have.

18 JUDGE DIPPELL: Thank you. Mr. Martinez, you
19 may step down for now. I'll ask you to remain for further
20 Commission questions. Is there any additional witnesses
21 from CenturyTel?

22 MR. STEWART: No further witnesses.

23 JUDGE DIPPELL: Then I believe that concludes
24 all of the witness testimony, with the exception, of course,
25 of additional Commission questions. So I think what we will

1 do is that we will break until 10:30. When we come back,
2 we'll go ahead and discuss a briefing schedule and any other
3 things that we need to wrap up before leaving, and then I
4 will let the Commissioners know where we are and see how the
5 agenda meeting is going.

6 So we'll come back here at 10:30. We're off
7 the record.

8 (A BREAK WAS TAKEN.)

9 JUDGE DIPPELL: I'd like to go ahead and
10 discuss briefing schedules and get that taken care of. I
11 want to have the parties go ahead and file Proposed Findings
12 of Fact and Conclusions of Law, so I'm going to direct that.
13 So I'd like you to consider that in your schedules.

14 Also there's been -- in the testimony
15 there's -- I mean, obviously we've talked a lot about the
16 new FCC order and we have a copy of that, but there's also
17 some discussion of some other FCC documents and so forth.

18 So I want to ask counsel, be sure when you
19 cite to some FCC document or something, if you could include
20 a copy at the end as an appendix of those, that sometimes
21 helps a lot in being able to actually locate that document
22 and evaluate it. Obviously, if it's some 300-page document,
23 you might just want to include the relevant portions.

24 MR. STEWART: With regard to the Virginia
25 Cellular order, if we're citing from that, can we just cite

1 to Exhibit 10?

2 JUDGE DIPPELL: Yeah, you can just cite to
3 Exhibit 10 on that. And -- let's see. I think that's all
4 the special things I wanted to mention. Does counsel -- I
5 didn't feel that in this case there would necessarily be a
6 need for Reply Briefs. This is a public interest standard.
7 We're not really arguing about facts necessarily, but what
8 is counsel's view on that?

9 MR. DeFORD: Your Honor, I think we would like
10 to have at least the opportunity to open and close final
11 Reply Brief. We don't know where some of the parties
12 actually are in this case. I don't know where Mr. Dandino
13 is ultimately going to come down. I don't know if Sprint is
14 actually going to file a brief. I know that they asked for
15 the opportunity to do that, and I don't know what their
16 reaction will be when they review the transcript. They may
17 well have some kind of a hybrid position.

18 JUDGE DIPPELL: Okay. I see your point on
19 that, Mr. DeFord, so I would be willing to allow Reply
20 Briefs then. I would expect that the transcript will come
21 in no later than -- and it kind of gets in the middle of
22 State President's Day holidays, so I expect that the
23 transcript will be here on February 13th, which is a Friday.
24 The following Monday is a holiday, so I'm not sure that it
25 will actually get filed and in the record and mailed out and

1 so forth. So how many days after February 17th do the
2 parties need for Reply Briefs or for Briefs?

3 MR. DeFORD: I guess what I would suggest is
4 that Mid-Missouri would be willing to file an initial brief
5 and then allow 20 days or 30 days, whatever the parties
6 would like, to file a reply to that. And then I would have
7 an opportunity, 10 days to respond to the Reply Briefs.

8 JUDGE DIPPELL: I don't really want to stretch
9 it out that far, Mr. DeFord. I'd rather just have
10 simultaneous briefing. We've already gone back and forth
11 and back and forth and back and forth. So I would rather
12 have everyone file their Briefs and then have 20 days for
13 replies.

14 MR. DeFORD: So 30 days for initials and 20
15 days for replies?

16 JUDGE DIPPELL: I'm going to shorten it just a
17 little bit and say March 15th for Initial Briefs. We're
18 just having Briefs due on a Monday, give everyone heartburn.
19 I can always shorten it to the 12th.

20 MR. ENGLAND: Due dates are always heartburn.
21 It doesn't matter.

22 MR. POSTON: That's fine.

23 JUDGE DIPPELL: Okay. March 15th for Briefs,
24 and then 20 days, which would be April 4th, April 5th, which
25 is a Monday also.

1 MR. DeFORD: And the proposed findings and
2 conclusions filed with the replies?

3 JUDGE DIPPELL: I would prefer to have those
4 with your original Briefs. I can see that gives everyone
5 heartburn. Okay. You can file those with your replies.

6 MR. DeFORD: I guess I'd like to see what's in
7 the Initial Briefs before I make my proposed findings.

8 JUDGE DIPPELL: Well, I'm assuming that
9 anything that needs to be in your proposed findings is
10 already on the record, and I will remind you-all that the
11 rules require and if you expect to give any -- get any
12 credence given to any facts that you cite or laws that you
13 cite, they really need to have citations and they need to
14 have -- again, I realize this isn't a very factual record,
15 which makes it difficult for the Commission in making a
16 public interest determination, but try to cite to the
17 transcript for your facts in your Briefs.

18 Is there anything else, any other housekeeping
19 details that need to be taken care of?

20 MR. ENGLAND: Just to clarify, then, the
21 Proposed Findings of Fact and Conclusions of Law would be
22 due with the Reply Briefs?

23 JUDGE DIPPELL: Yes.

24 MR. ENGLAND: Okay. Thanks.

25 JUDGE DIPPELL: And given the ever-changing

1 world of the FCC, I will expect the parties to let us know
2 if there's some new revelation from the FCC or some decision
3 from the Joint Board that would affect the outcome of this
4 case before it's finally decided.

5 I think that's all I have. There is one other
6 truly housekeeping issue. Please take your trash to a trash
7 receptacle. There is not housekeeping staff in here in this
8 room regularly, so I don't want to encourage any rodents or
9 pests of any kind.

10 We're going to adjourn for now until
11 two o'clock this afternoon in hopes that the Commissioners'
12 agenda will be over by then and we can come back for
13 Commission questions. So we can go off the record. Thank
14 you.

15 (A BREAK WAS TAKEN.)

16 JUDGE DIPPELL: Let's go back on the record.
17 It's after two, and we're getting ready to start in the
18 afternoon session. The Commissioners have joined us.
19 Commissioner Gaw, did you have any questions for
20 Mr. McKinnie?

21 COMMISSIONER GAW: No, I do not.

22 JUDGE DIPPELL: Okay. Mr. McKinnie, you can
23 be excused officially. And then we were to Mr. Schoonmaker.
24 Are there Commission questions for Mr. Schoonmaker, Chair
25 Gaw?

1 CHAIRMAN GAW: Yes, but I'll defer to
2 Commissioner Murray, if she's ready.

3 COMMISSIONER MURRAY: I have some questions,
4 yes.

5 JUDGE DIPPELL: Mr. Schoonmaker, could you
6 return to the witness stand? I want to thank everyone for
7 sticking around this afternoon. And, Mr. Schoonmaker, I'll
8 remind you that you're still under oath.

9 THE WITNESS: Thank you. And I remember.

10 ROBERT SCHOONMAKER testified as follows:

11 QUESTIONS BY COMMISSIONER MURRAY:

12 Q. Good afternoon, Mr. Schoonmaker.

13 A. Good afternoon.

14 Q. You have to bear with us. It's difficult to
15 change gears as quickly as we have to sometimes.

16 I just wanted to ask you a few questions. You
17 filed some rather detailed testimony about why you were
18 objecting to the ETC status being granted, and basically
19 you're saying -- are you saying it's not in the public
20 interest?

21 A. I certainly question whether it's in the
22 public interest. I don't remember saying that exactly, but
23 saying the Commission should do it, but I did respond to the
24 public interest arguments that had been made prior to the
25 filing of the testimony, which it was primarily related to

1 the benefits of competition, and suggested that those
2 weren't sufficient to prove that there's a public interest,
3 the public interest has been met.

4 Q. It's not sufficient just to show competition;
5 is that correct?

6 A. I don't believe it is. I mean, I -- and I
7 believe I said this in my testimony, but the fact that
8 somebody applies for ET status -- ETC status implies that
9 there's going to be competition. If that were the only
10 criteria, there's no need in the Act to have any kind of
11 public interest issue or for the state commission to even
12 review it for that point if competition is the only criteria
13 that you use.

14 So I think personally that the FCC's logic has
15 been flawed all along in relying primarily on the fact that
16 this would increase competition as the basis for granting
17 ETC status. And in the January 22nd Virginia Cellular
18 order, the FCC, in fact, has specifically recognized that
19 and stated, as I mentioned in my corrections this morning,
20 that we conclude that the value of increased competition by
21 itself is not sufficient to satisfy the public interest test
22 in rural areas.

23 Q. Can you tell me why you think the standards
24 are more stringent for granting ETC status in a rural area
25 than they are in a non-rural area?

1 A. I guess from my viewpoint there are probably
2 two major things that come to mind. The first is that the
3 purpose of Universal Service funding, which is the primary
4 benefit received when a person is designated an eligible
5 telecommunications carrier, they become eligible for that
6 funding. That funding is primarily focused in rural
7 telephone companies, as opposed to non-rural companies.

8 And secondly, it's intended to provide support
9 to high-cost areas where it's expensive to serve. And so I
10 think Congress recognized that the standard for granting ETC
11 status should be higher in rural areas, because there's a
12 greater chance of being harmed under the public interest in
13 those kinds of areas and -- than it would be in the
14 non-rural areas.

15 Q. And what would be some of the harm that could
16 be incurred in those areas?

17 A. Well, one of the potential harms is -- and
18 it's mentioned in Commissioner Martin's dissenting opinion
19 in the January order -- is the question if the cost of
20 providing service is already so high for a single provider
21 that we need to provide extensive support, is it really in
22 the public interest to provide support to multiple
23 competitors, particularly in my mind in a high investment
24 cost industry such as the telecommunications industry where
25 as you divide the subscribers among more than one provider

1 you almost automatically increase the cost of providing
2 service for both of those providers because there's such a
3 high fixed cost component in providing the service. And
4 that's true whether it's a wireline service or wireless
5 service.

6 Q. And the high-cost, high fixed cost for a
7 wireless service would be in what, setting up the cell sites
8 or --

9 A. Yeah. Yes.

10 Q. And is it reasonable to consider using
11 Universal Service funding to provide additional cell sites
12 that would reach more remote customers?

13 A. To me, I think it depends some on the factual
14 circumstances. As I read the Virginia Cellular order, for
15 example, it appears to me -- and it's not entirely clear,
16 but it appears to me, and there are statements in there that
17 indicate that the wireline telephone companies are not
18 providing service ubiquitously throughout those areas.

19 I presume that they're mountainous areas, and
20 consequently, there's some discussion in there that the
21 wireless provider who committed to construct 11 additional
22 cell sites to cover the area would be providing the service
23 to customers that are currently not being served by the
24 wireline customer or by the wireline carrier.

25 If that were the case, I think there certainly

1 is a -- a greater benefit to the public than there would be
2 in the case here in Missouri where I'd -- at least I can say
3 for Citizens and Alma, the wireline customers that want
4 service are getting customers that are not unserved
5 customers in the areas. There are not unserved areas. And
6 I think that would be true for the other ILECs in this area
7 as well.

8 There may be a few isolated instances,
9 although I -- I noted in the testimony of Mr. Jones
10 yesterday that he indicated that the wire -- the customer
11 that they used as an example that the wireless or --
12 Mid-Missouri Wireless provided the service to originally
13 serve at this time is being served by the wireline provider,
14 the telephone company.

15 So apparently, although they didn't have the
16 facilities at that time, since then the facilities have been
17 built to serve that customer and it's not being -- that
18 customer is no longer being served by using Mid-Missouri
19 Cellular's wireless service.

20 Q. And in the FCC order that just came out last
21 Friday, one of the commitments that Virginia Cellular made
22 was to provide service to any customer who was not able to
23 currently get landline service; is that correct? Is that
24 your recollection?

25 A. I remember they committed to serving

1 throughout the area in the exchanges that they were offered
2 in, and if it wasn't by their using their own service, they
3 would buy others. They certainly -- part of their buildout
4 commitment and the commitment they made to build these
5 11 additional tower sites discussed the fact that they would
6 be covering an area that was currently unserved by the
7 wireline telephone companies.

8 Q. And are you saying that a similar commitment
9 by MMC would be meaningless in terms of public interest
10 because there are no such areas?

11 A. To my knowledge, there are not, and if they
12 are, they're very -- I mean, perhaps there is a customer
13 somewhere in that area that's not being served. Certainly
14 in general, and I've asked the Citizens specifically, and
15 they've indicated they have no such unserved customers, and
16 I don't believe Alma does either.

17 Q. Now, when Alma receives Universal Service
18 funding support for a residence or business line, what -- on
19 page 16 of your testimony you show some numbers there for
20 Citizens and Alma and the type of support broken down, and
21 then you show totals for each one?

22 A. Yes.

23 Q. Is that a total of support per line that each
24 one of those companies can get for providing service in
25 those areas?

1 A. Yes, that's the total per line per month that
2 they receive in universal service for serving those
3 customers.

4 Q. And that's throughout their service area?

5 A. Yes.

6 Q. And does it matter how many lines each
7 customer has?

8 A. No. No. If the number of lines increase
9 significantly, the dollars per line might go down because
10 their support is based on a total cost criteria. And so for
11 Citizens and Alma, the calculation of the amount per line is
12 an end result calculation, not the way the support is
13 determined.

14 Q. Did you file any highly confidential testimony
15 regarding the total amount of support or would those numbers
16 be confidential?

17 A. I filed some public testimony regarding it.
18 It's on the very next page, on page 17.

19 Q. Okay. So they're not confidential numbers?

20 A. No. Those are numbers that are taken off the
21 website of Universal Service Administration Corporation,
22 USAC, and they are publicly available. Now, the numbers
23 for -- the way these numbers are filed, they are estimates
24 for the coming quarter. They're not necessarily the
25 identical amounts the company gets, but they are estimates.

1 For example, in this case there are estimates for
2 Mid-Missouri Cellular, even though it has not received its
3 ETC status at this point in time and would not be receiving
4 any funds.

5 Q. But if it did, it would receive funds based
6 upon the cost to the incumbents; is that correct?

7 A. That's correct at the present time.

8 Q. And do you have any expertise or any personal
9 knowledge about the cost of providing wireless service as it
10 compares to the cost of providing wireline service?

11 A. I have some general understanding of some of
12 the differences, but not -- I have not done any specific
13 studies of the specific wireless carriers to come up with
14 those numbers. I think the comparison between wireless and
15 wireline areas depends very much on a fact-specific
16 circumstance, the kind of geography that's involved, the
17 kind of customers, the density and so forth.

18 Q. Whenever a second ETC is designated in a
19 particular area to date, there has been no requirement, has
20 there, that that second ETC provide separate cost analysis?

21 A. I'm not aware of -- certainly at the FCC
22 that's not the case, but I'm not aware of any state
23 commission who's made any kind of cost showing. It is one
24 of the issues that is under discussion at the Joint Board at
25 the present time.

1 And let me just add an additional comment. I
2 mentioned this morning in my correcting comments that the
3 Louisiana Commission -- well, they haven't issued the Order
4 yet, but they adopted an Order, if you will, a couple of
5 weeks ago and -- denying a request for ETC status, and
6 according to the minutes of that meeting, one of the reasons
7 that was cited was the fact that they were concerned about
8 providing subsidies to a company when they had no
9 information in regards to their costs and whether they
10 really need that level or not.

11 Q. Have Alma or Citizens, either one, provided
12 local number portability to date?

13 A. Not at this point in time, no.

14 Q. Have there been requests?

15 A. I know Citizens last year got some letters
16 from some of the wireless providers purporting to be
17 requests. There were some disputes as to whether they were,
18 in fact, or not. They just recently, within the last two or
19 three weeks, did receive a request from Mid-Missouri
20 Cellular for local number portability effective sometime, I
21 believe, in June of this year.

22 And the companies -- I believe Alma's received
23 a similar request from Mid-Missouri Cellular that we would
24 consider a bona fide request, and the companies are both
25 currently evaluating those requests and the cost to them to

1 determine what steps they should take, and that may involve
2 simply implementing it or it may involve the possibility of
3 filing for a further suspension and modification from this
4 Commission based on the cost data that's developed.

5 Q. How do you view the argument that a Lifeline
6 customer would be deprived of local number portability to
7 MMC if MMC were not an ETC?

8 A. I really struggle with the argument and don't
9 believe it's appropriate. The customer, if LNP is provided
10 in the area, clearly has local number portability available
11 to them; they just don't have the same rate plan and the
12 same rate advantage.

13 And I think that's an inappropriate argument,
14 and I don't think there's anything that would require this
15 Commission to grant ETC status because local number
16 portability has now been implemented.

17 Q. In relation to ETC status for partial rural
18 study areas, you indicate in your testimony that Sprint and
19 Mid-Missouri Telephone Company, both owners of rural
20 telephone company study areas but also closely affiliated
21 with wireless providers, are not opposing granting ETC
22 status for parts of their study areas; is that right?

23 A. That's correct.

24 Q. But generally ETC status is not -- at least
25 until the most recent FCC order, I guess, has been granted

1 for full study areas; is that right?

2 A. Generally, that's the case. I think there may
3 have been one or two orders where -- particularly in
4 non-rural companies where it's been granted for less than a
5 full study area. There are not many rural cases nationwide,
6 although there probably have been a few where that was done
7 prior to the January 22nd Virginia Cellular order.

8 Q. And you indicate in your testimony that this
9 is a fairly unique situation that -- Mid-Missouri Cellular's
10 situation I assume is what you're speaking of, and you say
11 that MMC recognized the sensitivity of this issue by not
12 requesting ETC status for parts of the rural study areas of
13 several other rural ILECs within their license area.

14 Would you explain why you think they did not
15 request ETC status in those areas?

16 A. I think Mr. -- my mind went blank. Mr. Curtis
17 discussed that in his testimony yesterday, and they're --
18 the circumstances, looking at the map, it's Green Hills
19 that's in the brown, Cass County that's in the white down at
20 the southwest corner of their serving area, in particular
21 where their license area covers parts of exchanges for those
22 companies but doesn't a considerable other part. And
23 because the -- partly because simply this partial study area
24 issue, partly because their difficulty in providing service
25 in the nonlicensed portions of those areas, they chose not

1 to make that request at this time.

2 Q. When you talk about the offerings that MMC and
3 some of them having limited local usage within the plan --

4 A. Yes.

5 Q. -- do you think that Universal Service funds
6 are not intended to support limited local service?

7 A. I would say there's not a prohibition against
8 that, but I think that there is a public interest question
9 as to whether that's the best use of universal service
10 monies for -- for some of those kind of plans. I think the
11 specific example that I used in my testimony -- trying to
12 find the page -- related to --

13 Q. 9? 9 and 10 perhaps?

14 A. Well, there's an example later than that in
15 regards to Lifeline. It's on page 13. When you have a
16 limited amount of minutes, customers run the risk of going
17 over those allowances and the charge for doing that is
18 rather substantial. As I understood the marketing material
19 that Mr. Dawson had provided with their testimony, it
20 appeared in most of their plans as 45 cents per minute.

21 And the example I used here suggested there's
22 a customer with a low minute allowance but they have, for
23 some reason, an unusual amount of calling, and that could be
24 due to sickness in the family or a family emergency or other
25 kind of things, and all of a sudden they use 1,000 minutes

1 in the daytime over a month rather than the hundred that's
2 part of their allowance and they end up with a \$450 bill for
3 using those extra minutes, and I -- I guess I question
4 whether that kind of a plan would be appropriate in a
5 Lifeline situation. Now --

6 Q. May I ask, in a Lifeline situation, there is
7 toll blocking; is that right?

8 A. That is -- under the requirements of the FCC,
9 that is an option that must be offered to the customer.
10 There does not have to be toll blocking. But in this
11 example, if you have a local minute allowance, it, in fact,
12 could be local calling and still under that situation.

13 Q. My question is related to the -- would seem
14 that the same rationale would apply to the reason for toll
15 blocking for a Lifeline customer would be to prevent them
16 from driving up a bill that they could not pay. Whereas, if
17 you have a limited amount of usage for local calling but you
18 can drive that up, use it well beyond that and drive the
19 bill up substantially, that seems to be in opposition to
20 what you would be trying to prevent with toll blocking.

21 A. I would agree. It wouldn't accomplish that
22 purpose, and that's why I put this example in here. Now,
23 the information that we've received during this hearing on
24 Lifeline has changed over time. In the direct testimony,
25 there was no discussion of what plans, there was no

1 indication of -- I mean, the basic indication was that there
2 would be a \$1.75 credit but no indication of a special plan.

3 In the surrebuttal testimony, there was
4 testimony that Mid-Missouri was considering offering an \$8
5 Lifeline plan. I did not see in that testimony any
6 discussion of what level of minutes would go with that.
7 Yesterday, during the hearing, there was discussion of a
8 second Lifeline plan that would be a \$10 plan, and I believe
9 I heard Mr. Curtis say once, at least in regard to that
10 plan, that perhaps it had unlimited local calling.

11 Frankly, it's not clear to me exactly what
12 Mid-Missouri's Lifeline offering or offerings is going to
13 be, and I think I have and you should have the continuing
14 concerns since they're not rate regulated as to, you know,
15 if they say they're going to offer those plans to begin
16 with, whether they'll continue to offer them or not.

17 Q. That was my question. They could offer --
18 they could offer any kind of a plan to Lifeline customers,
19 could they not? They're not bound to a certain offering?

20 A. No. They are bound to give certain credits if
21 it's a Lifeline plan in order to get -- in order to get
22 funds from the Universal Service Fund to support that
23 Lifeline plan, but they're -- they're not under specific
24 requirements to offer plans, and I believe I also heard
25 yesterday in the testimony that they might consider

1 association -- associating any of their plans with a
2 Lifeline customer. So a \$65 plan might be a Lifeline plan
3 as well if the customer qualified under the income criteria.

4 Q. And I believe I heard the statement that a
5 CD -- CDMA, is that the acronym -- handset would also be
6 subsidized?

7 A. I -- I believe that Mr. Curtis said that for
8 Lifeline customers, they would sell them the CDMA handset at
9 a lower price than they normally sell them for.

10 Now, I don't know that that would specifically
11 be subsidized or supported by the Universal Service funds,
12 specifically the Lifeline funds, although there are some
13 linkup funds that relate to connection and whether that
14 would -- you know, they would use those linkup funds to help
15 support that lower charge for the handset or not is a
16 possibility, I guess. And I think that's maybe what he was
17 referring to in regards to terms of support coming for that.
18 It would come out of linkup funds.

19 Q. Okay. And what's your position on the -- on
20 the IXC being preselected?

21 A. Well, I mean, clearly Congress thought it was
22 important that customers have choices in regards to
23 interexchange carriers for wireline customers and, in fact,
24 required them to do that. There was a great deal of money
25 spent in the wireline industry in order to implement that so

1 customers had choices.

2 Congress didn't require that of wireless
3 offer -- providers, and the FCC has not done that, at least
4 at this point in time, although the issue of whether equal
5 access should be one of the supported services in
6 requirement is one where there was a very close vote in the
7 Joint Board.

8 I believe the FCC declined to adopt that when
9 it voted on that about a year ago, but indicated it would
10 revisit it after they'd visited some of these other
11 portability questions.

12 But for my mind, in your consideration of what
13 the public interest is in this case, I think it's
14 appropriate for you to consider in the -- your public
15 interest determination whether the fact that wireline
16 carriers are required to do that, wireless carriers are not
17 impacts the public interest. And particularly as it relates
18 to the competitive neutrality principle, that's one of the
19 principles that's supposed to guide the -- the use of
20 Universal Service funds.

21 Q. Is Mid-Missouri Cellular related financially
22 to any IXC that you know of?

23 A. No. I mean, I -- from what Mr. Jones or
24 Mr. Curtis said, they have contracts with IXCs to terminate
25 many of their minutes, but to my knowledge there's no

1 financial ownership by an IXC in Mid-Missouri Cellular.

2 Q. On page 20 of your testimony, you give some
3 percentages. You say MMC lines in Citizens' study area are
4 about 22 percent of the ILEC lines?

5 A. Yes. I see that.

6 Q. And nearly 76 percent of the ILEC lines are in
7 the Alma study area. Are you saying that of the total lines
8 in Citizens' study area, that MMC has an equivalent of
9 22 percent of those lines?

10 A. Right. If there were -- to get the ratio
11 correct, if there's 1,000 lines in the Citizens area, from
12 what they report to USAC as the number of lines in the
13 Citizens areas, they would have 220.

14 Q. And a much higher percentage in the Alma study
15 area?

16 A. Yes. I mean, one of the things, of course,
17 that you have to realize about wireless phones is that they
18 are portable, and I'm not sure whether these -- I assume
19 these numbers are identified based on the billing address of
20 the customer, which is the current FCC method for
21 identifying where wireless carriers are located, but that
22 doesn't necessarily mean that's where the wireless phone is
23 being used.

24 Q. So let's say you had -- just for easy number's
25 sake, say Alma had 100 customers, then MMC has 76 customers

1 in that same study area?

2 A. Yes. That's -- that's the relationship.

3 Q. And some of those may be the same customers;

4 is that right?

5 A. Yes. I mean, some of the subscribers may

6 subscribe both to an Alma wireline phone and a wireless

7 phone of MMC, and in various proportions. I mean, if

8 somebody has a large family, they may have one wireline line

9 and three wireless lines.

10 Q. And then Alma's area under that scenario,

11 there would be 100 lines receiving how much was it per line?

12 A. 25 something.

13 Q. 25.95 per line currently?

14 A. Yes.

15 Q. And if Mid-Missouri Cellular is granted ETC

16 status, at least 76 more lines would receive 25.95 per

17 month; is that right?

18 A. That's correct.

19 Q. And then any additional lines that either of

20 those companies had would receive 25.95 U.S. Fund subsidy;

21 is that correct?

22 A. True. In case of the cellular provider, the

23 method of doing it is a little bit different in regards to

24 the wireline carriers. And if Alma adds a line, it does not

25 necessarily directly increase their support to that same

1 amount.

2 Q. You did indicate that earlier, that the
3 numbers might decrease somewhat if the number of lines
4 increased. But they're not going to decrease significantly,
5 are they?

6 A. Probably not.

7 Q. And then if you were looking at Citizens,
8 you'd be talking about, say, Citizens had 100 lines right
9 now, they're getting 38.46 per each one of those lines, and
10 if MTC -- or MMC were granted ETC status, there would be an
11 additional 22 lines getting that amount?

12 A. That's correct.

13 Q. So is -- I guess the biggest question -- well,
14 not the biggest, but one of the big questions I have with
15 this is whether driving the cost of universal service
16 overall is in the public interest. And I don't see how we
17 could avoid saying that it is going to drive up the cost.
18 Is there any way that granting ETC status to Mid-Missouri
19 Cellular would not be driving up the cost of Universal
20 Service Fund?

21 A. Not at this time, no. That, again, is an
22 issue that the Joint Board has indicated it's considering
23 and put out for comment, and they're considering -- based on
24 the speech that Commissioner Abernathy gave last week at a
25 convention, they're considering three different proposals

1 which they probably will put before the FCC of what is
2 called a primary line concept, which would provide support
3 to only one line per household, per customer, something.

4 But there's some very substantial
5 administrative questions as to how you deal with that, and
6 whether the FCC will ultimately adopt that kind of a
7 proposal remains to be seen. It is -- it is an issue that
8 some people are concerned about.

9 On the other side of that discussion is the
10 question universal service is partially, at least, intended
11 to encourage the development of the infrastructure in rural
12 areas so that customers can have similar services available,
13 and concern that if there's limitation to only one line per
14 household, that you have some potentially serious
15 distortions in the market for second lines and whether you
16 will continue to get that infrastructure development where
17 the ability to support a fixed cost network, which if you
18 make the investment now and it may be used for 10, 15,
19 20 years, whether that kind of a proposal would have serious
20 negative effects in that regards.

21 So there's certainly an issue there that is
22 before the Joint Board and they're wrestling with and will
23 be before the FCC probably within the next month or so.

24 Q. And isn't it true also that it might be in the
25 public interest to drive up the cost of Universal Service

1 funding to some extent provided that, in order for customers
2 in rural areas to have access to facilities at all, it's
3 necessary to do so, such as if Mid-Missouri Cellular were
4 indeed able to go in and provide service to areas or
5 particular residences, for example, that are not currently
6 able to get any kind of service at all from a landline, that
7 that might be an instance in which it could be considered in
8 the public interest to raise the cost of universal service
9 to the extent necessary to do that?

10 A. Yes. And that applies to wireline companies
11 having to build cables down new roads or something because a
12 customer moves out to an area where previously there weren't
13 facilities there to serve.

14 Q. But if there are facilities everywhere within
15 the study areas that we're talking about already, and not
16 only are there facilities but there's competition,
17 particularly -- well, at least between wireless carriers
18 currently in those study areas, is that right, to your
19 understanding?

20 A. There's several wireless carriers offering
21 service in those study areas. As Mr. Curtis said yesterday,
22 some of them not as ubiquitously as Mid-Missouri Cellular
23 may be offering, and there's competition between the
24 wireless carriers and competition between those wireless
25 carriers and the wireline carriers as well.

1 Q. So in looking at the public interest, is it in
2 the public interest to drive up the cost of Universal
3 Service funding in order to provide more improved technology
4 available through the wireless carriers that are already
5 serving an opportunity to serve anyway? Is that the purpose
6 of universal service?

7 A. I mean, I think that's one of the issues that
8 we raised in our testimony, that is the question of whether,
9 in fact, there will be any more service, any more
10 competition, since the six carriers are already there and
11 offering service and competing currently.

12 And even on the issue of competition, if that
13 were the sole public interest criteria -- and I don't
14 believe it is and the FCC's now indicated that -- the
15 question of whether you need to provide universal service to
16 one of these wireless carriers when they're already
17 providing service and there are other wireless carriers that
18 are already providing services is certainly a public
19 interest question that we feel you ought to look at very
20 carefully.

21 COMMISSIONER MURRAY: Okay. Thank you,
22 Mr. Schoonmaker.

23 JUDGE DIPPELL: Thank you. Commissioner
24 Clayton, do you have questions?

25 Commissioner Gaw?

1 CHAIRMAN GAW: I don't think I have very many.

2 QUESTIONS BY CHAIRMAN GAW:

3 Q. I think Commissioner Murray probably asked a
4 number of questions that I wanted to ask, some that I hadn't
5 thought of, quite a few actually. But I'm interested in --
6 in understanding a little bit more about the topic of at
7 what point in time it becomes appropriate in your mind for a
8 wireless carrier to receive ETC designation. And is -- is
9 there a set of criteria you think need to be met in order
10 for that to occur? And if so, what are they?

11 A. What are the criteria? I don't have a
12 complete list yet, but let me comment a little bit on that.
13 I mean, I think there are some cases where it may be
14 appropriate to designate a wireless carrier as an ETC. I'll
15 admit I have a bias, and I may believe -- somewhere there's
16 a balancing point and I may lean towards the lower end of
17 that balancing point.

18 And frankly, I mean, if I look at Mid-Missouri
19 Wireless in comparison to some of the national wireless
20 carriers, they probably have a better case than some of the
21 national wireless carriers do. I'm not sure that they've
22 made that case completely, but they may have a better case
23 than they do.

24 I think a case like the Virginia Cellular
25 case, where there are areas that are not being served by the

1 wireline company and where the wireless company can provide
2 service is certainly another instance where there is --
3 becomes increasingly appropriate to provide them ETC status.
4 And if we were in a situation where there wasn't service
5 being provided in several of these areas for geographic or
6 whatever reasons, I would think that would increase the
7 appropriateness of granting ETC status.

8 One of the issues that's troubling to many
9 people, including Commissioner Martin, is the question of
10 the level of support that they're given and whether that
11 should be based on the ILEC's cost or on a -- on their own
12 costs. And for a number of reasons the FCC, and primarily a
13 competitive neutrality reason, the FCC competitive
14 neutrality -- has said competitive neutrality means each
15 competitor gets the same amount of support.

16 I think there are other definitions that could
17 also meet the criteria of competitive neutrality, and basing
18 it on that individual competitor's costs and needs would be
19 another one. So I think that's another criteria that ought
20 to be considered and that the Joint Board is wrestling with.

21 And Commissioner Abernathy in her speech last
22 week indicated that they were probably not going to be
23 reaching a conclusion on that in the February time frame,
24 but would be holding back on that for another several months
25 while they studied it further.

1 I think the FCC has taken an appropriate step
2 in the Virginia order to recognize that there are
3 potentially commitments that should be made by wireless
4 carriers associated with the receipt of those funds,
5 including such things as reporting on service. There are
6 some commissions that have required certain service
7 provisions as part of the designation of ETC. For example,
8 the Utah order, which I mention in my testimony, requires
9 that Western Wireless, who is the carrier at stake there,
10 provide unlimited local calling with their universal service
11 offering. So I think that is another area.

12 And again, comparing the kind of requirements
13 that are imposed on ILECs by Commission service standards
14 and so forth, and potentially requiring wireless carriers as
15 part of their eligibility to receive ETC status is another
16 area which may address both competitive neutrality concerns
17 and customer concerns that the Commission has tried to
18 address with the ILECs by imposing those service rules.

19 Q. Could you -- and I know that there's been
20 discussion on this -- differentiate for me the requirements
21 that you think that ought to be placed on a CLEC seeking
22 designation for Universal Service funds and a wireless
23 carrier?

24 A. My initial reaction is they probably ought to
25 be fairly similar, but I was trying to think. I mean, there

1 are some technology issues and limitations with wireless
2 carriers in terms of the area they can serve. The FCC's
3 solution to that, in regards to the question of whether they
4 would serve outside their licensed area or not, was in some
5 of these instances to gain a commitment from Virginia
6 Cellular that, in fact, they would, through resale of other
7 wireless service or ILEC service, be willing to serve in
8 areas even though they didn't cover their license.

9 But that's certainly an area that would have
10 to be given consideration as differences between CLECs and
11 ILECs.

12 Q. I guess my question is, if this company were a
13 CLEC applying to -- for the status, would your analysis be
14 the same on the public interest question, and you would come
15 to the -- and I know there's some apples to oranges
16 comparisons.

17 A. Again, my -- I haven't thought it through in
18 detail, but my initial reaction is that it would be
19 reasonably similar.

20 CHAIRMAN GAW: That's all I have. Thank you.

21 JUDGE DIPPELL: Commissioner Murray, did you
22 have another question?

23 COMMISSIONER MURRAY: I have follow-up, unless
24 Commissioner Clayton has some.

25 JUDGE DIPPELL: Go ahead, Commissioner Murray.

1 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

2 Q. Mr. Schoonmaker, when the Universal Service
3 funding is received per line, that is received by the
4 carrier; is that correct?

5 A. Yes.

6 Q. And that -- is that shared in any way with the
7 consumer, other than offering them service?

8 A. Well, with an ILEC, it -- in a traditional
9 rate setting sense, in a rate case or earnings
10 investigation, those revenues are included as part of the
11 revenues of the company and are used to help offset the
12 costs of providing service and are taken into account
13 specifically and directly in the setting of rates under a
14 rate of return situation. So in the case of ILECs, in a
15 rate of return and regulated environment, they very much do
16 come into play in affecting rates.

17 With a competitive ETC or wireless ETC,
18 because they're not subject to that kind of regulation,
19 there is not a direct visible impact of that. I think there
20 was some testimony yesterday by one of the Mid-Missouri
21 witnesses that it might have some impact on its rates, and I
22 suppose it might, but you really don't know and it would be
23 really hard to trace it directly.

24 You can trace commitments for investment
25 directly as the FCC has got a commitment from Virginia

1 Cellular to build a specific set of towers and to spend a
2 specific set of money, and it can be traced there. The
3 certification process that the Commission has to go through
4 each year to certify that the funds are used appropriately
5 is another tool that could be potentially used to -- used to
6 explore that issue and to have the company come in and
7 identify how the funds were spent and directly as they were
8 intended.

9 The self certification, which is used by the
10 FCC and has been used by some commissions, is a -- perhaps a
11 lower threshold than requiring reports or information and so
12 forth, and it appears the FCC may be moving more in that
13 direction. And this Commission has moved in that direction
14 to a certain extent in those certification procedures.

15 Q. I'm going to stop you because you're giving me
16 more information than I want right now.

17 A. Okay. Sorry.

18 Q. What I really want is to find out, you're
19 saying that for a rate-of-return-regulated ILEC, the revenue
20 that is received from Universal Service funding is
21 considered in the total revenues of the company for rate
22 setting services and does result in a reduction of rates to
23 the customers; is that correct?

24 A. Yes.

25 Q. But with a wireless carrier, for example, this

1 Commission doesn't regulate its rates in any way?

2 A. That's correct.

3 Q. And we have no way of tying any funding that

4 that company receives to any reduction in consumer rates, do

5 we?

6 A. Not that I'm aware of.

7 COMMISSIONER MURRAY: That's all I wanted.

8 Thank you.

9 JUDGE DIPPELL: Thank you. Commissioner

10 Clayton, you had a question?

11 COMMISSIONER CLAYTON: Just briefly. And I

12 apologize for being late getting down here. So I may have

13 missed -- this question may have been asked.

14 QUESTIONS BY COMMISSIONER CLAYTON:

15 Q. Is there ever an occasion in which a cellular

16 company should receive this designation, in your opinion?

17 A. I think there are some.

18 Q. Would you describe those occasions to me?

19 A. I mean, I described to Commissioner Gaw some

20 of those circumstances. I mean, one would be a case like

21 the Virginia Cellular case where the wireline telephone

22 company was --

23 Q. You're in agreement with that decision, that

24 designation?

25 A. Without knowing -- with having a limited

1 knowledge of the factual situation as it's displayed in the
2 Order, the fact that the telephone companies were apparently
3 not providing service to all the areas of their study area
4 and presumably to all the customers or potential customers
5 in that area, that certainly would give a greater reason for
6 granting this status than if that situation doesn't exist.

7 Q. Have you ever testified in a case in favor of
8 ETC designation for a cellular company?

9 A. No, I haven't, but this is -- well, no. It's
10 the second case, I guess, I've testified in, and both of
11 them --

12 Q. This is your second case ever that you've
13 testified in?

14 A. No. Testifying in regard to ETC status in
15 regards to wireless companies.

16 COMMISSIONER CLAYTON: Okay. Thank you.

17 JUDGE DIPPELL: Are there any additional
18 questions from the Commission?

19 (No response.)

20 JUDGE DIPPELL: All right. Any additional
21 cross-examination based on the questions from the Bench,
22 from CenturyTel?

23 MR. STEWART: No questions.

24 JUDGE DIPPELL: Office of the Public Counsel?

25 MR. DANDINO: No questions, your Honor.

1 JUDGE DIPPELL: Staff?

2 MR. POSTON: No questions.

3 JUDGE DIPPELL: Mid-Missouri Cellular?

4 MR. DeFORD: No questions.

5 JUDGE DIPPELL: Is there any redirect?

6 MR. ENGLAND: No, your Honor.

7 JUDGE DIPPELL: Mr. Schoonmaker, you may be
8 excused, then. Thank you.

9 THE WITNESS: Thank you.

10 JUDGE DIPPELL: Does the Commission have
11 questions for Mr. Martinez?

12 While we have just a minute, I'm going to
13 clarify for the record, several times witnesses have
14 referred to the map or the map over there or -- any time
15 they've talked about the map, the record should reflect that
16 that's talking about the Appendix D attached to the
17 application, which is a map of the proposed service area,
18 the ETC service area. The only exception to that, that I'm
19 aware of, was in Mr. Stewart's opening remarks he referred
20 to a map, and that was an MITA map. So I'll just note that
21 for the record.

22 Mr. Martinez, would you please return to the
23 stand? Thank you very much. And I will also remind you
24 that you're still under oath. Thank you.

25 Commissioner Murray, you had some additional

1 questions?

2 ARTHUR MARTINEZ testified as follows:

3 QUESTIONS BY COMMISSIONER MURRAY:

4 Q. Good afternoon.

5 A. Good afternoon, Commissioner.

6 Q. Mr. Martinez, in your rebuttal testimony,

7 you speak about on page 7 the amounts per quarter from the

8 USF -- federal USF fund that competitive ETCs have drawn

9 over the period of a few years. Do you see that testimony?

10 A. Yes, I do.

11 Q. And I think what you're showing there is that

12 that amount had grown in multiples even between the fourth

13 quarter of 2001 and the fourth quarter of 2002. Would that

14 be accurate?

15 A. Yes, that's correct.

16 Q. From the fourth quarter of 2001, they drew

17 approximately 2.7 million per quarter, and fourth quarter of

18 2002, over 41 million per quarter; is that right?

19 A. Yes.

20 Q. And then it went up to 62 million per quarter

21 in 2003. Then you talk about the percentages of -- the

22 percentages that are assessed to carriers, and you indicate

23 that those carriers pass those charges on to their

24 customers, and that in 1999, first quarter of '99, that

25 percentage was 3.2 percent; is that right?

1 A. That's correct.

2 Q. But by the end of 2001, it was up to

3 6.9 percent, and then by the end of 2002, 7.3 percent, and

4 currently at approximately 9.2 percent. Is that accurate?

5 A. Yes, that is correct.

6 Q. Significantly -- quickly growing fund, it

7 appears to me?

8 A. Yes, it has increased quite a bit, and there

9 are several factors for that, one of which being the -- the

10 granting of ETC status for wireless carriers.

11 Q. And at what point in time did that begin?

12 A. The ETC came -- ETC status came out with the

13 1996 Telecom Act. So at the time -- at the passing of the

14 Act, Congress allowed for not only the incumbents but

15 competitive ETCs to seek federal USF funding.

16 Q. And what did -- when was the first wireless

17 carrier -- are you talking about the percentages -- okay.

18 Scratch that. Let me start my question again.

19 When did the first wireless carrier achieve

20 ETC status?

21 A. In the nation, I'm not certain of that.

22 Q. And when was universal service assessment

23 first charged to wireless carriers, do you know?

24 A. Well, it would have -- it would have applied

25 to the -- I believe the first quarter after they would have

1 received universal service status.

2 Q. Meaning ETC status?

3 A. Meaning ETC status, yes.

4 Q. So the assessments did not begin to be applied

5 to wireless carriers until after the first wireless carrier

6 was granted ETC status; is that your testimony?

7 A. Yes.

8 Q. So it appears there's some link that if --

9 there must be some rationale that it's justifiable to charge

10 the wireless carriers the assessment because they're

11 eligible to receive the funding. Is there a logical link

12 there?

13 A. Well, that's certainly the rationale behind

14 letting them have access to the funding.

15 Q. Now, your position against Mid-Missouri

16 Cellular receiving ETC status in this case is not purely

17 based upon the fact that it's a wireless carrier, is it?

18 A. No, it's not. Our main concern has to do with

19 the public interest standard that has been set by Congress

20 for the areas served by rural telephone companies.

21 Q. And that public interest standard would apply

22 whether it were a CLEC or a wireless carrier making this

23 application; is that right?

24 A. Yes.

25 Q. Your primary reason for thinking that this is

1 not in the public interest for Mid-Missouri Cellular to
2 receive this designation, do you have one reason that's --
3 that stands out above the rest?

4 A. Well, yeah. I think above all is that
5 everyone within Spectra Communications serving territory
6 is -- through rates and surcharges is providing contribution
7 for that plant on a steady area-wide basis, but when you
8 have an ETC that is only willing to serve a certain portion
9 of that study area, then only those customers are, in fact,
10 receiving the benefit of that service. And so you have all
11 of the customers essentially subsidizing the competition
12 that's occurring in a very limited area.

13 Q. Are there any areas in Spectra or CenturyTel's
14 study areas where a customer is unable to receive service,
15 to your knowledge?

16 A. To my knowledge, I'm not aware of any.

17 COMMISSIONER MURRAY: That's all I can think
18 of at the moment, Judge. Thank you.

19 JUDGE DIPPELL: Thank you. Commissioner
20 Clayton, do you have questions?

21 Chairman Gaw, do you have questions?

22 CHAIRMAN GAW: Just real quick, I think.

23 QUESTIONS BY CHAIRMAN GAW:

24 Q. On page 9 of your rebuttal testimony,
25 Mr. Martinez, you list the issues that you think the

1 Commission should consider in regard to granting ETC status
2 there. Could you tell me, based upon the testimony that you
3 have heard from the applicant, whether or not any of
4 those -- any of those conditions or issues have have been --
5 have changed in your mind in regard to outcome based upon
6 some of the representations that were made earlier?

7 A. Well, no, they haven't, and partly because I
8 wasn't able to sit in in the in-camera portion of the
9 testimony. However, I would just like to say that there is
10 no written commitment on the record as of today as to what
11 Mid-Missouri Cellular has, in fact, committed to do, and so
12 I certainly think that these concerns expressed by
13 CenturyTel still stand, and I think we need to look at
14 what -- what Mid-Missouri Cellular is asking this Commission
15 to do.

16 The nine supported services that were
17 enumerated in the application are all components of basic
18 local exchange service. And Mid-Missouri Cellular has
19 testified here yesterday that they are willing to provide
20 essentially basic local exchange service throughout their
21 entire service area, or CGSA, and also do their best efforts
22 to reach areas where there is not adequate service.

23 And so it's CenturyTel's position that this
24 Commission should look at the regulation of the service, not
25 the provider, and in looking at the reporting requirements

1 that this Commission has today for local exchange providers,
2 a quick review would indicate that they should be able to
3 comply with those reporting requirements in some form or
4 another.

5 Q. Which means what?

6 A. Which means --

7 Q. What are you telling me?

8 A. We think that Mid-Missouri Cellular, at a
9 minimum, should be required to comply with the reporting
10 requirements and quality service requirements imposed on all
11 basic local exchange providers.

12 Q. In order to -- as a part of being eligible to
13 receive ETC status?

14 A. Absolutely.

15 Q. Do you see much difference in regard to what
16 should be required of a wireless carrier as opposed to, say,
17 a CLEC in getting ETC status as far as this Commission's
18 review is concerned? Should it be a different test,
19 different standard?

20 A. Are you talking in terms of how they would
21 report things or just in general?

22 Q. Just in what we would require in order for
23 them to receive that designation.

24 A. No. I think if a carrier for the purpose of
25 receiving Universal Service funding is holding themselves

1 out to offer basic service, they should be held to the same
2 standards.

3 Q. And that would include the reporting
4 requirements; is that what you're saying?

5 A. Yes, that's my testimony.

6 Q. Do you think that this Commission has the
7 authority to make this requirement?

8 A. Yes, CenturyTel does.

9 Q. And based upon what again?

10 A. Well, I think based upon the fact that the
11 only preemption on wireless providers, at least from a
12 federal standpoint, is with regard to rates and entry, and
13 certainly Congress gave, we believe, commissions the
14 authority and the latitude to put additional conditions on
15 carriers seeking ETC status.

16 Q. You're familiar with the fact that, as far as
17 the Missouri statutes are concerned, wireless carriers
18 aren't included in what, I suppose, the telecommunications
19 carrier, right?

20 A. No, traditional CMRS service is not. However,
21 what the -- what MMC is seeking or asking for is Universal
22 Service funding for the provision of the nine supported
23 services.

24 Q. So our authority is derived, then, from the
25 federal -- from the federal law?

1 A. Yes.

2 Q. I think that was our earlier conclusion, but
3 in doing that, in going that direction, then the ability of
4 this Commission to suggest conditions in regard to what they
5 would have to do in order to be acceptable from this
6 Commission's standpoint to gain that kind of status, do you
7 have any other places that this Commission should look in
8 addition to what you might have stated in your testimony or
9 the Virginia case that's been -- that's been thrown around
10 here in the last couple of days?

11 A. Well, it's our position -- and I certainly
12 addressed it in my testimony -- that this Commission should
13 wait and see what the Joint Board ultimately recommends to
14 the FCC before acting on this application, for two reasons.
15 One, we expect a recommendation here shortly. In fact, we
16 believe it's going to come out in mid February.

17 Secondly, this is a case of first impression,
18 and we think that waiting -- realistically an Order will not
19 come out by then, and so there's no reason to grant them
20 status, and I would certainly think, at a minimum, this
21 Commission would require that MMC maybe come back after the
22 recommendations by the Joint Board to readdress their
23 application.

24 CHAIRMAN GAW: That's all I have. Thank you,
25 Judge.

1 JUDGE DIPPELL: Thank you. Commissioner
2 Murray, you had a couple more questions?

3 COMMISSIONER MURRAY: I do, a couple of
4 follow-up questions.

5 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

6 Q. On page 9 of your testimony, Commissioner Gaw
7 was asking you about the public interest factors that you
8 listed there, and No. 5, you say whether MMC is qualified
9 to provide high quality and reasonably priced
10 telecommunications services throughout its designated ETC
11 service area if the incumbent LEC were to withdraw its ETC
12 status following MMC's ETC designation; is that right?

13 A. Yes.

14 Q. And is it true that the ILEC has provider of
15 last resort obligation?

16 A. I understand, yes. I'm not sure what the
17 specific requirements are in Missouri, but for the most
18 part, local exchange providers, especially incumbent local
19 exchange providers, have traditionally had provider of last
20 resort requirements.

21 Q. And once there is a second ETC designated in
22 an area, is it not possible for a -- an ILEC to get rid of
23 that provider of last resort designation? Is there a
24 mechanism for doing that, to your knowledge? And if you
25 don't know, you can say so.

1 A. I don't know.

2 Q. All right. Do you have any position as to
3 whether a carrier that is granted ETC status should be
4 willing to serve as provider of last resort?

5 A. Well, I think by -- I think that's, in fact,
6 what they're applying for and holding themselves out to do.

7 Q. Do you think we can require them to be?

8 A. Yes, I think we can do that. I think this
9 Commission can do that, yes.

10 Q. There was somewhere in testimony, and I
11 believe it was in MMC's testimony, that they are -- that
12 wireless carriers are currently assessed USF charges; is
13 that right?

14 A. Yes.

15 Q. All carriers, all telecommunications carriers
16 are assessed for USF, are they not?

17 A. Yes, for the most part.

18 Q. Does being assessed a USF charge automatically
19 entitle a carrier to USF funding?

20 A. No.

21 Q. In fact, aren't many carriers that are charg--
22 that are assessed for USF not entitled or at least not
23 receiving USF funding?

24 A. That's correct, yes.

25 COMMISSIONER MURRAY: Thanks. That's all I

1 have.

2 JUDGE DIPPELL: Is there anything additional
3 from the Commissioners?

4 Would there be any additional
5 cross-examination based on questions from the Bench from
6 Alma?

7 MR. ENGLAND: No, your Honor.

8 JUDGE DIPPELL: Public Counsel?

9 MR. DANDINO: No questions.

10 JUDGE DIPPELL: Staff?

11 MR. POSTON: No questions.

12 JUDGE DIPPELL: Mid-Missouri Cellular?

13 MR. DeFORD: Thank you. Just a couple, your
14 Honor.

15 RECROSS-EXAMINATION BY MR. DeFORD:

16 Q. Good afternoon, Mr. Martinez.

17 A. Good afternoon.

18 Q. Working backwards, I think you had a brief
19 discussion with Chair Gaw concerning extending service
20 within your territory, CenturyTel's territory. Does
21 CenturyTel ever construct new lines within its territory?

22 A. Yes.

23 Q. So there are some areas of CenturyTel's
24 service territory where it's currently not providing
25 service?

1 A. Yeah.

2 Q. And I believe, again, you discussed your
3 opinion as to what was required under the law in order to be
4 granted ETC status, I believe, again with Chair Gaw; is that
5 correct?

6 A. Can you repeat the question?

7 Q. Yes. I believe you gave your opinion as to
8 what the law required in order for Mid-Missouri to be
9 designated an ETC. Do you recall that?

10 A. Yes.

11 Q. Are you an attorney, sir?

12 A. No.

13 Q. Shifting gears on you a little bit, you also
14 had a conversation with Commissioner Murray. I believe she
15 referenced you to page 7 of your testimony.

16 A. Yes.

17 Q. And I believe you indicate that the draws from
18 the fund and the percentages assessed to customers and
19 passed on show a trend of increasing?

20 A. At the time that I submitted the testimony,
21 yes.

22 Q. And did you hear Mr. Curtis' testimony
23 yesterday that indicated that that trend is actually turned
24 and those are decreasing?

25 A. Yes, I did hear that.

1 Q. Do you have any reason to disagree with
2 Mr. Curtis' testimony?

3 A. Well, I think we need to look at his testimony
4 in total, and I believe he did say that the surcharge was
5 decreasing but, in fact, the draws by wireless carriers was
6 continuing to increase.

7 MR. DeFORD: That's all I have. Thank you.

8 JUDGE DIPPELL: Thank you. Is there any
9 redirect?

10 MR. STEWART: No, thank you, your Honor.

11 JUDGE DIPPELL: You're not going to follow
12 Mr. England's comedic stand from earlier?

13 MR. STEWART: I don't do standup.

14 MR. ENGLAND: Your Honor, I was being serious.

15 JUDGE DIPPELL: All right, then, Mr. Martinez,
16 you may be excused, and I believe that concludes this
17 hearing, unless there is anything further from counsel.

18 (No response.)

19 JUDGE DIPPELL: All right, then. This hearing
20 is adjourned. Thank you.

21 WHEREUPON, the hearing of this case was
22 concluded.

23

24

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