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4 STATE OF MISSOURI
5 PUBLIC SERVICE COMMISSION

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7 IN THE MATTER OF A PROPOSED RULEMAKING TO CREATE
8 CHAPTER 37 - NUMBER POOLING AND NUMBER CONSERVATION
9 EFFORTS

10
11 Case No. TX-2007-0086

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13 TRANSCRIPT OF PROCEEDINGS

14
15 PUBLIC HEARING

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17 VOLUME 1

18
19 DECEMBER 4, 2006
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STATE OF MISSOURI

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PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

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Public Hearing

6

December 4, 2006

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Jefferson City, Missouri

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Volume 1

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In the Matter of a Proposed)

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Rulemaking to Create Chapter 37 -) Case No. TX-2007-0086

Number Pooling and Number)

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Conservation Efforts)

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COLLEEN M. DALE, Presiding,

CHIEF REGULATORY LAW JUDGE

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COMMISSIONER

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

2 JUDGE DALE: We are on the record in
3 Case No. TX-2007-0086 in the matter of a proposed
4 rulemaking to create Chapter 37 - number pooling and
5 number conservation efforts.

6 Today is December 4th, 2006. We will begin
7 with entries of appearance.

8 MR. MEYER: Good morning. My name is David
9 Meyer. I'm appearing on behalf of the Staff of the
10 Missouri Public Service Commission. Our address is
11 P. O. Box 360, Jefferson City, Missouri 65102.

12 MR. DORITY: Good morning, Your Honor.
13 Larry DORITY, Fischer & DORITY, P.C. Our address is
14 101 Madison, Suite 400, Jefferson City, Missouri 65101,
15 appearing on behalf of CenturyTel of Missouri LLC and
16 Spectra Communications Group LLC, doing business as
17 CenturyTel.

18 MR. DANDINO: Michael Dandino, Office of the
19 Public Counsel, Post Office Box 2230, Jefferson City,
20 Missouri 65102, representing the Office of Public Counsel
21 and the public.

22 MR. JOHNSON: Craig Johnson, Law Office of
23 Craig Johnson, 1648A East Elm, Jefferson City, Missouri
24 65101, appearing today on behalf of the Missouri
25 Independent Telephone Company Group.

1 MR. GRYZMALA: Good morning, Your Honor.
2 Bob Gryzmala. I office at One AT&T Center, Room 3516,
3 St. Louis, Missouri 63101, appearing today on behalf of
4 Southwestern Bell Telephone L.P., doing business as AT&T
5 Missouri.

6 MR. ENGLAND: Thank you, Your Honor.
7 Let the record reflect the appearance of
8 W. R. England and Brian McCartney, appearing on behalf of
9 a number of small local exchange companies known as the
10 Small Telephone Company Group. Our address is Brydon,
11 Swearengen & England, Post Office Box 456,
12 Jefferson City, Missouri 65102.

13 JUDGE DALE: Anybody else? Okay.
14 This is a rulemaking proceeding. The
15 ex parte rule does not apply. You can either make
16 comments or you can have someone testify. Those who
17 testify will be sworn. Those who make comments will not
18 be sworn. All comments, testimony, written comments,
19 verbal comments are all given equal weight.

20 So with that, let's start with Staff.

21 MR. MEYER: Staff has previously provided
22 comments and also would like to call Natelle Dietrich.

23 JUDGE DALE: Ms. Dietrich, if you will stand
24 and raise your right hand.

25 THE WITNESS: Do you want me over there?

1 JUDGE DALE: You can stay where you are.

2 (Witness sworn.)

3 JUDGE DALE: Thank you. Please be seated.

4 You may proceed.

5 QUESTIONS BY MR. MEYER:

6 Q. Ms. Dietrich, is it correct that the Staff
7 has previously submitted comments in this matter?

8 A. Yes, it is.

9 Q. And with those comments, would you agree
10 that we neglected to file an affidavit to accompany
11 those?

12 A. That is true.

13 Q. If I show you this affidavit, would you
14 agree that this is the affidavit that was to accompany
15 those?

16 A. That is correct.

17 MR. MEYER: With that, I would like to
18 submit that affidavit to relate back to the comments that
19 Staff has filed in this matter.

20 JUDGE DALE: That will be marked as
21 Exhibit 1.

22 (EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION
23 BY THE COURT REPORTER.)

24 MR. MEYER: And I have copies for counsel if
25 anyone is interested.

1 JUDGE DALE: Does anybody want copies?

2 Okay. Is there any objection to receiving
3 Exhibit 1?

4 In that case, Exhibit 1 will be admitted
5 into the record.

6 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE
7 AND MADE A PART OF THE RECORD.)

8 JUDGE DALE: You may proceed.

9 THE WITNESS: I just have some very limited
10 comments to address a few of the issues that were raised
11 by the parties in written comments.

12 First, in its written comments, AT&T
13 suggested that two of the definitions be clarified in
14 4 CSR 240-37.020. They're suggesting that the definition
15 for a FCC Form U1 at Section 8 and also the definition
16 for North American Numbering Plan Administrator at
17 Section 14 be clarified. Staff does not object to either
18 one of those clarifications.

19 In its written comments Embarq suggested
20 that there be a reference in 4 CSR 240-37.030. The
21 reference that they're wanting to add is to the Alliance
22 for Telecommunications Industry Solutions and the
23 Industry Numbering Committee.

24 Staff does not object to the reference
25 per se, but we do suggest that the reference has to be

1 clarified so that it meets the Secretary of State
2 guidelines necessary to avoid constant rule revisions
3 every time the industry guidelines are revised.

4 We also have concerns with the language that
5 they've proposed in its compliance with the statutory
6 requirement that material incorporated by reference in a
7 rule must also be maintained at the adopting State agency
8 in its current version.

9 And since this is something that is
10 regularly updated, we would have to constantly maintain
11 an updated copy of the State -- or at the Commission.

12 Several of the carriers noted that the rule
13 imposed some reporting requirements that were beyond the
14 Commission's authority.

15 First of all, there are a few instances in
16 the rule and in the FCC requirements where the Commission
17 needs to make a determination of verifiable need based on
18 whatever the request is.

19 So we've added some reporting requirements
20 in order to provide the Commission the documentation that
21 it will need to make those determinations.

22 And then, second, I would like to note that
23 several of the reporting requirements that people have
24 raised concerns with, their concern -- it appears that
25 their concern is that it's a regular reporting

1 requirement. Many of those requirements do say in the
2 rule that it's an upon-request requirement.

3 So those were just a few of the
4 clarifications that we wanted to make.

5 JUDGE DALE: Thank you.

6 I don't have any questions. So thank you.

7 Mr. Dority, are you going to make comments
8 or call a witness?

9 MR. DORITY: Your Honor, I've been involved
10 in the hearing next door, and with your indulgence, I
11 would just simply like to go on the record on behalf
12 CenturyTel of Missouri LLC and Spectra Communications
13 Group LLC, doing business as CenturyTel, in support of
14 the written comments previously filed by AT&T Missouri in
15 this matter. And that's really all we have to offer this
16 morning.

17 Thank you.

18 May I be excused?

19 JUDGE DALE: Yes, you may.

20 MR. DORITY: Thank you.

21 JUDGE DALE: And have fun over there.

22 MR. DORITY: Thank you. We have.

23 JUDGE DALE: Mr. Dandino.

24 MR. DANDINO: Thank you, Your Honor.

25 Public Counsel just has a few comments. The

1 letter that we filed and sent to counsel on Friday
2 basically summarizes -- or states our position.

3 And I won't necessarily go into that, but
4 the changes recommended by Staff I think go a long way to
5 meeting any of the objections by the carriers, and we
6 would have no objection to the Staff's changes and we
7 support the Commission's rule, with the one caveat of I
8 believe that the Public Counsel is very leery about
9 having the rural customers saddled with the cost of local
10 number portability if there is not really a demand for
11 it, if there really is not sufficient competition in that
12 area.

13 Just because they're technically able to do
14 that doesn't mean that there is -- that they should be
15 forced to do that.

16 We've been through that a number of times
17 with the FCC waiver, and I think the Commission should
18 look at what was done in those cases.

19 That's all I have, Your Honor. Thank you.

20 JUDGE DALE: Thank you.

21 Mr. Johnson.

22 MR. JOHNSON: I stand by the comments that
23 we previously filed.

24 JUDGE DALE: Thank you.

25 Mr. Gryzmala.

1 MR. GRYZMALA: Good morning, Your Honor. I
2 have just a couple of things that I would like to discuss
3 briefly.

4 We stand by our comments as well, but there
5 were some changes that Staff recommended in its comments
6 Friday that require that we address or respond to.

7 These are limited, Your Honor, to Proposed
8 Rule 37.060, the reporting requirements rule.

9 As published, the reporting requirements
10 rule would go to Subsection 1, indirect carriers, and
11 Subsection 2, what we'll call the upon-request rule for
12 forecast and utilization data.

13 And before we get to those two pieces I
14 would address Appendix A, page 14 of Staff's comments of
15 Friday. And I'll wait until Your Honor is there.

16 JUDGE DALE: Go ahead.

17 MR. GRYZMALA: Okay. In that pleading,
18 Your Honor, at page 14 the Staff recommended that they
19 add -- that the Commission add a third leg to the
20 reporting requirement.

21 And effectively what the Staff recommends is
22 that the carrier submit a copy of its, quote, unquote,
23 Number Use Categories Report. For the record, we oppose.

24 I believe what the Staff is referring to,
25 Your Honor, is what the industry and the FCC regard as a

1 Number Resource Utilization and Forecasting Report.

2 I gather that because of the way in which
3 they write up their presentation at pages 13 and 14. And
4 if you look at page 13, the Staff is emphasizing six
5 buckets of categories -- six buckets of information that
6 they are looking for with regard to how numbers are being
7 utilized.

8 You'll see on page 13 references to
9 administrative numbers, aging numbers, assigned numbers,
10 available numbers, intermediate numbers and reserve
11 numbers.

12 Under the construct established by the FCC
13 by rule, the carriers today are required to file
14 semiannually, on February 1 and August 1 of each year,
15 what are called the NRUF, the Number Resource Utilization
16 Factor, forecasting report.

17 The reason why I'm confident the Staff is
18 looking for that report is because, as I said, they're
19 focusing on these buckets, and in particular they are
20 looking for the intermediate numbers.

21 Now, what we're seeing with regard to the
22 NRUF report in this third leg is that -- the reason why
23 we oppose the third leg of the rule, that each carrier
24 shall submit a copy of its Number Use Categories Report,
25 is because we do believe that what the Staff is looking

1 for is the NRUF.

2 The FCC has already prescribed by rule,
3 Your Honor, and I think that would be -- let me check
4 that -- 52.15(F)(7). The FCC has already prescribed that
5 State shall have access to the data reported to the
6 NANPA.

7 So there is no question but that the State
8 already has access to that and there is no need for a
9 carrier to submit it.

10 In fact, we would refer to, I believe, a
11 cite that was provided by one of the -- by the wireless
12 comments, which would be -- we regard on point. And this
13 is the Third Report and Order, paragraphs 134 and 135 of
14 the FCC.

15 And I'm sorry. I don't have the FCC record
16 cite, but it was released on December 28th, 2001, adopted
17 December 12, 2001.

18 The point of those paragraphs -- and I'll
19 read just very briefly, if you don't mind.

20 By this order we hold that the State
21 commission should have password protected access to the
22 NANPA database for data pertaining to NANPAs located
23 within their state.

24 The advantages of providing states with
25 password protected access to forecast utilization data

1 include the ability to access data on a more timely basis
2 and access to the data in a format that allows
3 manipulation of the data and the creation of customized
4 reports.

5 The bottom line, Your Honor, is that because
6 of the availability of the NRUF report to the Commission
7 Staff by FCC rule, which report is required to be filed
8 twice annually at fixed times, this rule is unnecessary
9 and should not be adopted.

10 The reason why we oppose Subsections 1 and
11 2, Your Honor, of 37.060 is related to the NANPA -- or
12 the NRUF report.

13 37.060(1) as published says, When a carrier
14 assigns or transfers a thousands-block to an indirect
15 carrier, the carrier shall submit a notice in EFIS
16 containing XYZ information.

17 So whenever a carrier assigns telephone
18 numbers to an indirect carrier, we have to report it
19 under the proposed rule.

20 An indirect carrier, Your Honor, is defined
21 in 37.020 (11), is any entity providing two-way voice
22 service to the public.

23 And there is additional language behind
24 that, but that's effectively what an indirect carrier is
25 for my purpose.

1 And its clear in the Staff's comments that
2 what they're after, Your Honor, are wireless carriers,
3 voice providers and others who utilize number resources.
4 That is the purpose of 37.060 (1).

5 Now, we would submit that that subsection is
6 unnecessary and should not be adopted.

7 Firstly, as we talked about with NRUF, we
8 submit twice annually to the FCC forecasting utilization
9 data.

10 With regard to the objective in Staff's
11 recommendation for the indirect carrier rule, it says in
12 its comments at page 13 of Appendix A, within this
13 report, quote, intermediate numbers, end quote, in other
14 words, the NRUF, the utilization side of the NRUF, the
15 intermediate numbers category, quote, most closely
16 matched the intent of the reporting requirements of
17 Section 1 of the proposed rule.

18 And if you look at the definition which is
19 accurately captured by Staff's comments at page 13 of
20 intermediate numbers, these are numbers that are made
21 available for use by another telecom carrier or
22 noncarrier entity, whether that's wireless, voice,
23 whatever the case may be.

24 The bottom line, Your Honor, is that my
25 company reports NRUF twice a year to the FCC. We break

1 out utilization data by these categories. I think five.
2 One is not included. I think available numbers the FCC
3 does not require. And that utilization data reporting is
4 required by 52-- FCC Rule 52.15(F)(5).

5 To the extent that this is what Staff is
6 going after, there is no requirement -- there should be
7 no requirement that we separately report when numbers are
8 made available or utilized by an indirect carrier. That
9 information can be obtained we believe by the access
10 provided to the Commission to the FCC-filed NRUF reports.

11 Now, I will tell you that Staff also
12 indicated at page 13 of its comments that apparently they
13 have a problem with the report. It doesn't get them
14 where they need to be.

15 And the reason why is because as is said in
16 the last line of the comments, the report, quote, does
17 not include the entity receiving the numbers from the
18 reporting LEC.

19 In the case of AT&T, Your Honor, we provide
20 that. When numbers are made available to entities, and
21 we report them twice annually, we report that
22 intermediate number bucket in our utilization reports
23 filed with the FCC. We identify the entity to whom the
24 members were released or assigned.

25 So to that extent Staff will have what it

1 needs by its own stated purpose in the comments.

2 I will also point out -- and I don't want to
3 beat this up, but I think it's worthy of some discussion.

4 The wireless carriers in our view do a very
5 good job of painting, you know, the picture of the
6 partnership and the jurisdictional relationship between
7 the Federal government and the states having to do with
8 reporting and number administration in the large sense.

9 We would only emphasize this, that the FCC
10 has plenary authority over numbering. The state
11 authority generally is limited to only that which is
12 delegated by the FCC.

13 The comments speak very clearly -- and we
14 agree -- that with regard to the area of reporting, the
15 FCC has made clear that NANPA will be the sole point of
16 contact for information gathering and that the states
17 should not require additional reporting.

18 Cited in those comments, ours and wireless,
19 were the first report and Order 15 FCC Records 7574, at
20 paragraph 51, where the FCC emphasizes that NANPA shall
21 serve as a single point of contact of collection of
22 forecast and utilization data.

23 In paragraph 76 it took the opportunity to
24 reject the North Carolina Commission's assertion on
25 reporting that would be imposed by that state.

1 Quote, we reject North Carolina's assertion,
2 however, that the states should continue to have the
3 authority to collect additional utilization and forecast
4 data independently of what we are ordering the carriers
5 to report to the NANPA.

6 We will not delegate authority to the states
7 to impose additionally -- additional rarely scheduled
8 reporting requirements on any such carriers.

9 The problem with 37.060(1) and (2) is
10 effectively that they purport -- they would, in fact,
11 impose additional reporting requirements on the carriers
12 beyond that required by the FCC.

13 As a practical matter, as we pointed out, we
14 do believe that what the Commission would be served well
15 by would be the data, the password protected access to
16 the NRUF, that we spoke of a little bit ago. That would
17 meet its needs.

18 JUDGE DALE: Can you give me that site again
19 from the FCC records?

20 MR. GRYZMALA: 15 FCC Record 7574.

21 JUDGE DALE: Paragraph 76?

22 MR. GRYZMALA: Paragraph 51, NANPA shall
23 continue to serve as the single point of contact for
24 collection of forecast and utilization data, and
25 paragraph 76 referring to the North Carolina.

1 JUDGE DALE: Thank you.

2 Let me ask Staff, if I may.

3 Are you talking about the NRUF?

4 MS. DIETRICH: The information -- we already
5 have access to the NRUF, and the information in the NRUF
6 is not sufficient for providing us enough information to
7 get a handle on the numbering resources in Missouri.
8 It's also extremely outdated.

9 I believe it's -- by the time we have access
10 to it it's eight months, the way their timing is.

11 In addition to that, the wording that we put
12 in the rule was wording that was in the FCC rule. So, I
13 mean, if the carriers think that that meets the NRUF, I'm
14 not sure, but we used language from the Federal
15 regulations.

16 JUDGE DALE: Okay. I'm sorry.

17 Mr. Gryzmala.

18 MR. GRYZMALA: No. Thank you.

19 Obviously to the extent that the Staff would
20 have a question of our company, and I suspect perhaps
21 with regard to other companies, those questions could
22 perhaps come time to time via data requests or a specific
23 question about it and NRUF.

24 The problem we have effectively is that with
25 regard to indirect carriers, it's beyond what the FCC has

1 ordered. It is beyond the State's authority to impose,
2 Your Honor.

3 And, candidly, we're in a difficult position
4 of having to administer a rule for which we have already
5 provided a report to the FCC and the information could be
6 obtained.

7 If the Commission Staff would like the FCC
8 to require more reporting obligations or to impose more
9 reporting obligations, then that's something that frankly
10 the FCC should be petitioned for.

11 Ms. Dietrich in all respect -- with all due
12 respect, made a comment at the opening that sounded to me
13 that 37.060(2), which is the upon-request proposed rule
14 for forecasting and utilization data, could somehow be
15 salvaged because it's an upon-request rule and not a
16 regular reporting rule.

17 The point being that it's an implicit
18 concession that the State Commission has no authority to
19 impose regular reporting, but since this rule isn't an
20 upon-request rule, ergo, it's acceptable, and we would
21 not agree with that.

22 We would humbly not agree with that because
23 that is no different and, in fact, can be more onerous
24 than would be a regularly scheduled report.

25 I have only very limited comments, Your

1 Honor, on one other aspect of the rule, and I'm leaving
2 37.060 and moving to 37.030(4). That is what can be
3 loosely called the uncontaminated block rule.

4 There is two pieces to it as proposed in the
5 rule, 37.030(4) and 37.030(4)(A). I believe it was
6 published as 133.

7 The first part, the principal part of
8 37.034, says as it was published in the rule -- let me
9 get that momentarily.

10 Okay. As it was published, Your Honor, that
11 rule effectively said, in the substantive obligation
12 portion -- that is the first part -- all carriers shall
13 assign all available telephone numbers within an open
14 thousands-block or assigning telephone numbers from an
15 uncontaminated thousands-block unless the available
16 numbers in the open thousands-block are not sufficient to
17 meet a specific customer request.

18 When Staff filed its comments on Friday, it
19 did two things. After the very first two words, it said
20 all carriers, it proposed to add the words to the extent
21 possible.

22 The second thing it did is the clause --
23 what I'll call, Your Honor, the sufficiency clause at the
24 end, that would have said, unless the available numbers
25 aren't sufficient to meet the customers' needs, they

1 propose to cut that out.

2 And I think that what AT&T would like is
3 really quite in line with what the Staff would like to
4 see.

5 Staff makes very clear that with regard to
6 assigning numbers in an uncontaminated block, before you
7 bled out the contaminated block, that the exemption is
8 meant for situations in which the uncontaminated
9 thousands-block was open to accommodate the needs of a
10 customer.

11 And we agree. We think that is a fine
12 approach. We simply want it built in the rule. They say
13 that at page -- the Staff says that at page 7.

14 Our fix, Your Honor, would be a simple one,
15 and that is, after the phrase to the extent possible,
16 we'd simply like to say, consistent with customer needs.

17 So that when it comes to the assignment of
18 uncontaminated blocks, before you bled out all of the
19 available numbers in a contaminated block, that first
20 line would read, all carriers to the extent possible
21 consistent with customer needs, comma.

22 And that, we believe, would meet Staff's
23 intention and the realities of the marketplace.

24 There is a second aspect of 37.030(4) that I
25 have a moment on -- or a moment to discuss, and then I

1 will be done, Your Honor. That is the reporting side of
2 that rule.

3 The reporting side of the uncontaminated
4 block rule effectively says as published, is that when a
5 carrier opens an uncontaminated block prior to assigning
6 all its available numbers in a contaminated block, you
7 shall provide a report that says three things, that shall
8 talk about three things: the genuine request from the
9 customer detailing the specific need for the telephone
10 numbers. And that's fine. We agree.

11 As far as the -- let me back up.

12 The second says that you shall provide a
13 report indicating the detailed explanation as to the
14 carrier's inability to meet the specific customer
15 request.

16 There is a third piece in proposed
17 Rule 37.030(4)(A)(3). You have to demonstrate as well
18 that the carrier has a verifiable need for the assignment
19 and has exhausted all other available remedies to avoid
20 wasting a number of resources.

21 We would merely point out, Your Honor, that
22 our belief is that Staff is looking to replicate the
23 FCC's rule, FCC Rule 52.15(J)(2). (J)(2) says the
24 service provider that opens an uncontaminated
25 thousands-block prior to assigning all available

1 telephone numbers in an open block should be prepared to
2 demonstrate to the State Commission 1 and 2, just like
3 Staff has it in the proposed rule.

4 There is no Element 3 in the FCC's rule.
5 There is no element that the carrier must likewise
6 demonstrate a verifiable need and has exhausted all other
7 available remedies.

8 We're simply advocating that to make this --
9 we're simply advocating that the third item should be
10 eliminated from the rule.

11 Quite candidly, this runs a bit headlong
12 into the reporting requirement's obligation that I just
13 talked about, but we are mindful that the FCC has told
14 the industry that it should be prepared to demonstrate to
15 the State commission when it opens an uncontaminated
16 block before a contaminated block is bled out two things.

17 And so to that extent we would be satisfied,
18 Your Honor, if the Commission were to not adopt
19 37.030(4)(A)(3), which appears in Staff's comments
20 renumbered as 37.030(4)(C), as in Charlie.

21 I think it's (C)(3) it would be. In the
22 published version it would be (B)(3) -- or (A)(3).
23 Excuse me.

24 Unless you have any questions, Mr. Olson is
25 prepared to testify as necessary, but I believe we're

1 complete.

2 JUDGE DALE: Thank you.

3 Commissioner Clayton, do you have any
4 questions at this time?

5 COMMISSIONER CLAYTON: May I ask how many
6 witnesses have gone through?

7 JUDGE DALE: We've only had one.

8 COMMISSIONER CLAYTON: Okay. I missed the
9 star of the show.

10 We have another hearing going on. Maybe I
11 should just go straight -- if I may ask a few questions.
12 Is that okay?

13 Can you summarize -- forgive me.

14 Can you just briefly summarize the concerns
15 that AT&T spells out in its comments?

16 MR. GRYZMALA: Our principal comment,
17 Your Honor, had to do with 37.060(1)(2); that is,
18 Subsections 1 and 2, and Staff's new proposed addition 3.
19 That is the reporting requirement.

20 And very briefly stated, it appeared to us
21 that with the Friday addition of 37.060(3), Staff was
22 looking for the NRUF report. That is the Number Resource
23 Utilization Forecasting report. We provide it twice
24 annually to NANPA.

25 The rule says all carriers shall provide it.

1 The FCC envisions that the commissions will have state --
2 I'm sorry -- password protected access to the NANPA
3 database. We gave a citation to Judge Dale.

4 That report likewise makes unnecessary the
5 indirect carrier reporting, which Staff concedes is
6 effectively an effort to get at the inter-- or, rather,
7 the --

8 COMMISSIONER CLAYTON: Not being one who
9 reviews each of the reports that come in at any given
10 time at the Commission, is the report different than what
11 is supplied to the FCC, the NRUF report? Is it different
12 what they're asking than what's already being produced?

13 MR. GRYZMALA: I don't know. Here is what
14 is said.

15 Staff has been informed that carriers
16 periodically provide the administrator, the NANPA
17 administrator, a report associated with the various
18 numbering resource categories, and they outline six of
19 them.

20 The FCC rules require that we provide twice
21 annually reports on five of those categories. That's
22 what told me that they were looking for the NRUF.

23 COMMISSIONER CLAYTON: So is the information
24 the same, basically they're just asking for a copy of
25 that, of the same report?

1 MR. GRYZMALA: That's the way we read it.
2 And in particular they're focusing on the intermediate
3 numbers.

4 COMMISSIONER CLAYTON: How is that a burden
5 on -- or are you saying it's not a burden; it's just
6 we're not allowed to have it?

7 MR. GRYZMALA: No, no, no, no. I want to be
8 very clear.

9 The FCC rule prescribes the State commission
10 shall have access to it, and in their orders they set up
11 a mechanism by which commissions are given -- because
12 they're password protected -- access to the NANPA
13 database.

14 COMMISSIONER CLAYTON: Okay. Got you.

15 MR. GRYZMALA: That is why there is no need
16 for carriers to provide it.

17 Quite frankly, it is a big chunk of material
18 from AT&T, and may well be from all of the other carriers
19 as well.

20 NANPA does things with it as far as
21 organization, manipulation, and we believe it would be
22 very helpful to the State commission.

23 COMMISSIONER CLAYTON: So it's a matter of
24 time as opposed to -- it's a matter of the number of
25 reports as opposed to just issuing the same report that

1 is sent to the FCC. Is that what you're saying?

2 MR. GRYZMALA: Effectively.

3 COMMISSIONER CLAYTON: It's the frequency of
4 the report rather than supplying the report that is due
5 twice a year?

6 MR. GRYZMALA: That is the only report --
7 that is the only time we file those reports, twice
8 annually.

9 COMMISSIONER CLAYTON: Maybe I'm not making
10 myself clear. I wasn't making myself clear in the other
11 hearing room either, so . . .

12 JUDGE DALE: You have two problems with the
13 reporting requirement. One is that if it's the NRUF, we
14 already get it?

15 MR. GRYZMALA: Correct. That's one.

16 JUDGE DALE: And the other one is that you
17 only do it twice a year to the FCC and we can't do it
18 because the rule -- the proposed rule says within 30 days
19 the carrier shall submit it?

20 MR. GRYZMALA: Well, we don't -- insofar as
21 Staff having access to it within 30 days of our providing
22 it to the Administrator, Staff can have access to it by
23 accessing NANPA's database.

24 JUDGE DALE: This isn't within 30 days of
25 when you submit it. It's within 30 days of the

1 assignment or transfer of a block.

2 MR. GRYZMALA: I'm sorry. Maybe we're
3 talking about a different rule.

4 I'm looking at --

5 JUDGE DALE: Are we at 37.060 --

6 COMMISSIONER CLAYTON: Isn't this the Atmos
7 rate case?

8 MR. GRYZMALA: No. I was looking at the new
9 addition on Friday. Each carrier shall submit a copy of
10 its number use categories report.

11 JUDGE DALE: Okay.

12 MR. GRYZMALA: That's what I think you were
13 talking about.

14 JUDGE DALE: So you don't have a problem
15 with 37.060(3)(1)?

16 MR. GRYZMALA: No, we do. We absolutely do,
17 Judge.

18 Because the NRUF report requires as part of
19 its reporting that you report, you break out separately,
20 all of the intermediate numbers that have been assigned
21 to other telecom carriers or nontelecom carriers, and
22 Staff says that is what it is after in its comments.

23 Intermediate numbers most closely match the
24 intent of the reporting requirements of Section 1. Your
25 Honor, that's the indirect carrier reporting. That being

1 the case, the NRUF should fill the bill.

2 We identify, as I mentioned, the names of
3 those entities to whom we release or assign numbers. So
4 Staff will have the names of those aging companies,
5 wireless companies or whatever else. We have a name that
6 we indicate have those numbers in the NRUF filed twice
7 with the FCC.

8 We do not believe 37.060(3), the -- whatever
9 the number use categories report is, we don't -- we don't
10 have that. We have the NRUF, which is what we think
11 they're going after.

12 That rule is unnecessary. They already have
13 access to it through the FCC's rules, through NANPA. It
14 makes unnecessary the indirect carrier rule because the
15 intermediate numbers block provides the information I
16 just outlined.

17 And, candidly, it's beyond the State's
18 jurisdiction to order that we provide information
19 regarding assignment of numbers to indirect carriers.

20 We're not entirely clear what an indirect
21 carrier is. The FCC has never to my knowledge used that
22 term, but it sure looks a whole lot like intermediate
23 numbers category on the NRUF.

24 Our position is that 37.060(1) and (2) as
25 published, with all due respect, should not be adopted,

1 and that the Friday proposal of Staff for Subsection 3
2 should not be adopted because --

3 COMMISSIONER CLAYTON: That's your only
4 gripe with the whole thing?

5 MR. GRYZMALA: I outlined one on the
6 uncontaminated rule when you came in, Your Honor.

7 COMMISSIONER CLAYTON: And --

8 MR. GRYZMALA: The uncontaminated rule was a
9 good move by Staff on Friday.

10 COMMISSIONER CLAYTON: About providing the
11 verified statement of why -- tell me what is wrong with
12 that. Why isn't that appropriate that you do that third
13 statement?

14 MR. GRYZMALA: There are two pieces to it.

15 The FCC -- the FCC has said, when you open
16 up an uncontaminated block prior to using all of the
17 available numbers in a contaminated block, you shall be
18 prepared to demonstrate to the Commission two things:
19 that you've got a specific genuine request from a
20 customer and that we are unable to meet the specific
21 customer's request from the available numbers within the
22 telephone -- within the service provider's open blocks.

23 And that's fine. It's a matter of FCC law.
24 We have to live with it and we are prepared.

25 What happens in this rule, though, is that

1 the third leg, verifiable need, we're not entirely clear
2 how to demonstrate what the verifiable need is. The
3 customer tells us what their need is.

4 COMMISSIONER CLAYTON: So are you saying
5 that we're going beyond our authority or are you saying
6 that it's vague or are you saying --

7 MR. GRYZMALA: I think it's going beyond
8 your authority.

9 COMMISSIONER CLAYTON: As a matter of law
10 we're going beyond our authority?

11 MR. GRYZMALA: I believe so, Your Honor.

12 And in answer to your second question, it's
13 also vague to the extent that if we have already
14 satisfied Step 2, we have written a description in detail
15 of why we are unable to meet that customer's request,
16 what more can we say? What more is expected?

17 COMMISSIONER CLAYTON: So in addition you're
18 saying it's redundant?

19 MR. GRYZMALA: That is probably a better
20 choice of words than vague.

21 COMMISSIONER CLAYTON: Actually, it would be
22 a third objection.

23 MR. GRYZMALA: Well, I would say --

24 COMMISSIONER CLAYTON: I'm not trying to
25 make your arguments for you, but in a whole bunch of

1 words you're saying that we're going beyond our scope,
2 you're saying it's vague and it's redundant.

3 Now, is there anything else?

4 MR. GRYZMALA: I will take back redundant.
5 It is beyond the authority because it imposes a third
6 piece. It also purports to impose something more than
7 simply saying and explaining why you're unable to meet
8 that customer's request.

9 COMMISSIONER CLAYTON: What's wrong with
10 asking for more if we feel it's important?

11 MR. GRYZMALA: I don't know that we're
12 entitled to ask that of the customer.

13 We assign telephone communication services
14 to customers and numbers in connection with that service.
15 We generally are not inquiring -- we generally do not
16 inquire of the reason for which they're going to put
17 that -- that service.

18 The indirect carrier is identified in part
19 as being a carrier capable of providing two-way voice
20 service. Now, that's --

21 COMMISSIONER CLAYTON: Other than 37.060 and
22 then this uncontaminated -- what is that?

23 MR. GRYZMALA: 030(4).

24 COMMISSIONER CLAYTON: (4).

25 And you're good with the rest of it?

1 MR. GRYZMALA: That's it.

2 COMMISSIONER CLAYTON: Right?

3 MR. GRYZMALA: That's it.

4 And Staff made some -- adopted a couple of
5 our corrections of a minor nature.

6 COMMISSIONER CLAYTON: We appreciate you
7 being helpful in that regard.

8 MR. GRYZMALA: Thank you.

9 COMMISSIONER CLAYTON: Can I ask Staff a
10 question?

11 Ms. Dietrich, can you respond to the NRUF
12 reporting issue again? You said the information was
13 insufficient.

14 MS. DIETRICH: Right.

15 COMMISSIONER CLAYTON: And is it because of
16 timeliness? Is it because of lack of access, because of
17 lack of accuracy? Are you asking for specific
18 information? Just get to the heart of why that
19 information is not sufficient.

20 MS. DIETRICH: Timeliness, lack of
21 information. For instance, it doesn't at least always
22 provide the -- what we're calling the indirect carrier.
23 And then also there are some accuracy issues with it too.

24 COMMISSIONER CLAYTON: Why do you believe
25 the information you would get through this rule would be

1 more accurate than the information being reported to the
2 FCC or to NRUF or to the NANPA, whoever receives the
3 other report? Why would it be more accurate?

4 MS. DIETRICH: Because the way we structured
5 it in the rule, we think we're asking for the information
6 that is lacking or insufficient at this point.

7 COMMISSIONER CLAYTON: Okay. And Is it
8 Staff's opinion that this Commission has the authority to
9 make that request for reporting?

10 MS. DIETRICH: Yes.

11 COMMISSIONER CLAYTON: And is that subject
12 to general statutory -- particular statutes or in general
13 FCC order or is it the specific Missouri FCC order that
14 we have granting us pooling authority?

15 MS. DIETRICH: All of the above.

16 COMMISSIONER CLAYTON: All of the above.

17 Okay. The third prong -- or the third leg
18 of 030, Subsection 4, what is the difference between the
19 third prong of demonstrating the -- verifying the need
20 versus -- I think the first seemed kind of similar.

21 MS. DIETRICH: The first?

22 COMMISSIONER CLAYTON: I apologize that I
23 don't have the rule.

24 I've got all of these copies here. I have
25 AT&T pages 1, 2, 3, 4, 10, 8 and 6, and I don't even have

1 the whole rule with me.

2 Tell me why you believe this Subsection 3 is
3 not redundant. I mean, a demonstration that the carrier
4 has a verifiable need would possibly be outlined in
5 describing the genuine requests under Subsection 1, and
6 then the whole question of exhaustion under 3 would
7 possibly fall under 2.

8 Could you elaborate why you believe you need
9 that Subsection 3?

10 MS. DIETRICH: The Federal regulations state
11 that the carrier is to supply the items in No. 1 and
12 No. 2, and that a State commission is to make a finding
13 or determine that a demonstration has been met.

14 And so we wanted to make sure that you had
15 the information necessary to make that determination.

16 It could be that a carrier submits enough
17 information under 1 and 2 that would provide the
18 information, but we wanted to provide it -- or to allow
19 an avenue to getting additional information if necessary,
20 so you had the documentation in the record to make the
21 determination.

22 COMMISSIONER CLAYTON: But isn't it asking
23 for the same thing? What information would you get under
24 Subsection 3 that you wouldn't get under 1 and 2?

25 MS. DIETRICH: It's probably going to have

1 to be on a case-by-case basis.

2 COMMISSIONER CLAYTON: Well, obviously. But
3 can you give me an example?

4 MS. DIETRICH: I'm trying to think of some
5 we've had offhand.

6 COMMISSIONER CLAYTON: Subsection 1 requests
7 a specific need for telephone numbers and No. 3 asks for
8 a verifiable need for the assignment.

9 The second part of that, it says a detailed
10 explanation as to the carrier's inability to meet the
11 request versus has exhausted all other available remedies
12 designed. That's a little different.

13 MS. DIETRICH: Right. I mean, I think what,
14 you know, No. 1 would be, say, for instance, a letter
15 from the customer saying we want these numbers. No. 2
16 would be a statement from the carrier saying they've
17 requested these numbers and we don't have those numbers
18 available so we need.

19 COMMISSIONER CLAYTON: Okay.

20 MS. DIETRICH: Then, you know, that they've
21 gone to the pooling administrator, asked for the numbers,
22 they've been denied. They supply that information.

23 As far as exhausting other remedies, I'm not
24 sure what else they have -- what other remedies they have
25 or what they could provide -- or what they could provide.

1 clear. At page 6 of its comments, roughly six lines
2 down, has a statement to the effect, quote, although
3 several carriers do not currently have competitors in
4 their area to take advantage of thousands-block pooling
5 at this time -- and that's the end of the quote at least
6 for purposes of my point -- that's not really accurate
7 with respect to the small companies that I represent.

8 I would say that the vast majority of those
9 carriers do not have competitors. As a result, later in
10 their comments, at page 8, Staff correctly notes -- I
11 haven't checked the numbers but I'm assuming it's
12 correct -- that there are 855 uncontaminated thousands-
13 blocks in areas of certain rural ILECs.

14 Those two statements taken out of context
15 may suggest that there are numbering resources available
16 for other carriers, and that's really not the case.

17 At the present time, since there are no
18 competitors to speak of in our exchanges, there is no
19 demand for those numbers.

20 While those numbers may be available, as
21 Mr. Johnson correctly points out in his comments, they're
22 only available in the rate centers where they're
23 currently assigned.

24 That doesn't mean that the small companies
25 can't and won't conserve the growth of numbers and are

1 fully prepared to comply with the conservation
2 requirements of the rule. It's the number pooling
3 requirements that cause us some concerns.

4 Staff's proposal in its comments filed
5 Friday I think attempts to get to the same result that we
6 were proposing, but I'm not sure it's going to get us all
7 of the way there or work.

8 Staff's proposal is that carriers donate
9 uncontaminated blocks of a thousand numbers to the
10 pooling administrator. And while I agree that those --
11 that that exercise, if you will, does not appear to
12 trigger implementation of LNP, local number portability,
13 or require significant expenses, it only goes so far.

14 It assumes that those numbers -- at least
15 the data request we received. It assumes that those
16 numbers will then be held by the pooling administrator.
17 In other words, simply reside there or sit there and not
18 be reassigned.

19 The problem or the question then becomes,
20 what if those numbers are, unbeknownst to us, unbeknownst
21 to the Commission, subsequently assigned to a carrier who
22 wants numbering resources in our exchanges.

23 That could be a wireless carrier with point
24 of presence in St. Louis or Kansas City but wants
25 thousands-block of numbers in, say, Farber, Missouri, or

1 a VOIP provider who claims they're not subject to
2 Commission jurisdiction, doesn't have the certificate,
3 but nevertheless through an affiliated cable TV company
4 is offering a voice product and wants local numbers in
5 Farber, Missouri, for example.

6 So the problem with donating these
7 thousands-blocks, albeit uncontaminated at the pooling
8 administrator, is if the pooling administrator then turns
9 around and assigns them to a carrier who assigns them to
10 customers, I'm thinking at that point it might trigger
11 local number portability.

12 It will also trigger, or possibly trigger,
13 the virtual NXX issue that remains unresolved both in the
14 State and at the Federal levels.

15 So there are, in my opinion, unintended
16 consequences by what Staff has proposed in an effort to
17 address exempt carriers.

18 Our proposal is very simple. It was very
19 clean and it was lawful, and that is, simply define
20 exempt carriers in your rule the same way the FCC has
21 defined them, and then you don't have any problems, any
22 unintended consequences or costs that may not have any
23 intended benefits attributable to them.

24 JUDGE DALE: I have one question.

25 If you were to turn in your uncontaminated

1 blocks and if the numbering administrator were to assign
2 one of those blocks to a VOIP carrier or to some other
3 competitor, do you believe it would be doing so
4 unlawfully?

5 MR. ENGLAND: No. I -- I didn't go that
6 far. I'm just saying that they would do so perhaps
7 without our knowledge, at least initially, without your
8 knowledge.

9 As I understand, numbers are distributed by
10 the NANPA without too much oversight certainly by other
11 carriers, if any, and I think your oversight is to
12 reverse their rulings, not to authorize them or approve
13 them in the first place.

14 JUDGE DALE: So why would it be bad?

15 MR. ENGLAND: Well, once those numbers are
16 then assigned to another carrier, then we might have to
17 begin doing database dips in order to complete calls to
18 those numbers that had been assigned to customers.

19 And when we do that, essentially we've now
20 implemented local number portability, which entails all
21 of the costs that we've demonstrated in submittals to the
22 Staff and the Commission previously.

23 And in some instances -- one carrier's
24 updated costs show it's going to be \$5 per subscriber per
25 month. And if that's -- if that carrier, for example, is

1 a wireless carrier with presence in St. Louis and
2 Kansas City and no facilities in Farber, Missouri, for
3 example, what's the benefit of opening up those numbers
4 requiring Farber customers to pay the costs of LNP, local
5 number portability, to complete calls to -- to those
6 customers where there has been no -- no investment by the
7 carrier, the wireless carrier in that example, to compete
8 in that area?

9 JUDGE DALE: So are you saying that they
10 would assign numbers that -- that the numbering
11 administrator might assign numbers that wouldn't be used
12 in Farber?

13 MR. ENGLAND: No. I'm saying they would be
14 used -- they would be rated to Farber if it's a wireless
15 carrier. He may live there but he may commute to
16 Columbia, Kingdom City, St. Louis, perhaps. I'm not sure
17 where he used the phone.

18 But they would be rated to Farber, and the
19 wireless carrier would expect Farber landline customers
20 to call that Farber wireless customer on a locally dialed
21 seven-digit basis.

22 And at that point I believe we have to do
23 database dips to make sure we route that call correctly,
24 and in that instance we have to route it to St. Louis or
25 wherever that wireless carrier is connected with the

1 landline network.

2 So you've got the costs of implementing LNP
3 and you may have the costs of transiting -- or
4 transporting that call to St. Louis to wireless carriers.

5 And something else that I -- in regard to
6 donating thousands-blocks of numbers, uncontaminated
7 thousands-blocks of numbers, later in the rule it allows
8 carriers to open up uncontaminated thousands-blocks of
9 numbers if they meet certain criteria.

10 And a question that I can't answer, just ask
11 it for the record is, if you donated thousands-blocks of
12 numbers to the pool, how does a carrier unilaterally open
13 those up without requesting them back from the pooling
14 administrator?

15 COMMISSIONER CLAYTON: Take your time,
16 Judge. It's all right.

17 JUDGE DALE: I'm finished.

18 COMMISSIONER CLAYTON: Mr. England, how many
19 exchanges are served by your clients?

20 I think if I say, how many small companies
21 do you have, it would be the same as asking how many
22 exchanges?

23 MR. ENGLAND: The short answer is I don't
24 know how many. There are roughly 29 companies comprising
25 the Small Telephone Company Group. Some of them are

1 single exchange companies like Farber. Others, like
2 Grand River Mutual, Fidelity Telephone Company, Kingdom
3 Telephone Company, Green Hills, have multiple exchanges,
4 five to ten to fifteen or more exchanges.

5 So I --

6 COMMISSIONER CLAYTON: That's all right.
7 Let's not belabor that. That was just starting off this
8 conversation.

9 Would a company like Fidelity have notice
10 that a new NXX has opened up for, say -- I think Sullivan
11 is one of its exchanges. How would -- if somebody wanted
12 to open up a virtual NXX, open up a new NXX for Sullivan,
13 would Fidelity be aware of that?

14 MR. ENGLAND: I suppose -- at the very least
15 they would become aware of it when the wireless or
16 whoever -- excuse me -- whatever carrier it is that
17 obtained that new NXX said, we now have an NXX rated to
18 Sullivan, Missouri. We want you to open up local dialing
19 to our customers. And they might do that in the context
20 of requesting interconnection.

21 COMMISSIONER CLAYTON: So your company would
22 have to be notified before a wireless or a CLEC company
23 could locally dial one of your customers? You-all
24 control that?

25 MR. ENGLAND: I would think so, but I'll be

1 the -- we haven't had that situation arise where someone
2 has obtained it unbeknownst to us and then expected us to
3 turn up local dialing. I don't know what the procedure
4 would be.

5 COMMISSIONER CLAYTON: Technically the phone
6 call wouldn't go through, I'm assuming?

7 MR. ENGLAND: Correct.

8 COMMISSIONER CLAYTON: So they would contact
9 you and say we want to establish local dialing? They'll
10 do it by interconnection agreement, like you said. What
11 other method would occur? Anything else?

12 MR. ENGLAND: Typically as part of that
13 interconnection agreement they would request local number
14 portability. So that if our customer wanted to drop our
15 service and go to theirs but keep their number, they
16 could do so, or vice versa.

17 And that's where -- that's, if you will, the
18 beauty of the FC-- the definition of the FCC exemption.
19 It talks about you exempt until you receive a request to
20 implement local number portability, and at that time all
21 of those issues of interconnection, how you're going to
22 exchange calls, how you're going to port numbers is
23 addressed.

24 Whereas under the Staff's definition, it may
25 happen in a de facto fashion. In essence, the cart is

1 getting put before the horse.

2 There is no request for local number
3 portability that would tee up all of those questions and
4 hopefully a resolution before it happened.

5 COMMISSIONER CLAYTON: In your opening
6 comments you made reference to a Staff reference to 855
7 uncontaminated thousand-blocks of numbers --

8 MR. ENGLAND: Uh-huh.

9 COMMISSIONER CLAYTON: -- that may be
10 floating around out there.

11 Is it your opinion or your statement that
12 each of those uncontaminated thousands-block of numbers
13 are located within exchanges in which there is no
14 competitive presence?

15 MR. ENGLAND: Generally speaking, yes.

16 COMMISSIONER CLAYTON: I guess we can say no
17 CLEC presence?

18 MR. ENGLAND: Correct.

19 COMMISSIONER CLAYTON: Or no interconnection
20 agreement with a wireless carrier that would permit local
21 dialing which would permit the usage of that NXX?

22 MR. ENGLAND: Of the companies that I
23 represent, the only company that I'm aware of that has a
24 direct local interconnection with a carrier and has the
25 ability to port numbers, apparently has not done so yet,

1 is Citizens Telephone Company.

2 They have an interconnection agreement with
3 what was formerly Mid-Missouri Cellular but I believe is
4 now part of the Horizon Wireless.

5 COMMISSIONER CLAYTON: They're on the
6 cutting edge there at Higginsville, cutting edge of
7 technology.

8 MR. ENGLAND: Just as a standard traditional
9 CLEC, there are none that I'm aware of operating in any
10 of our exchanges.

11 COMMISSIONER CLAYTON: Okay. I understand
12 that there are significant difficulties with the
13 Commission or anyone else messing with contaminated or
14 uncontaminated blocks of numbers located using an NXX in
15 which -- in which there is no one else providing any
16 service. I think I understand that issue.

17 Is there a mechanism that the Commission
18 should establish to provide an opportunity for the
19 Commission or someone to participate in the event that a
20 competitive presence comes in to address using
21 uncontaminated thousands-block in those areas?

22 Is there a procedure that we should set up
23 to plan for that in the future?

24 MR. ENGLAND: It would be nice. I don't
25 know how you'd go about doing it.

1 COMMISSIONER CLAYTON: Yes, but I don't
2 know.

3 MR. ENGLAND: I mean, that's why I keep
4 coming back to the FCC's definition, where they say you
5 have to have the bonafide request for LNP.

6 Because at that point everyone, at least the
7 parties involved, are put on notice that there is a
8 competitor who wants to port numbers who is in your
9 exchange attempting to compete or wanting to compete with
10 you.

11 COMMISSIONER CLAYTON: Okay. So your
12 problem is fixed by addressing the definition of exempt
13 carrier --

14 MR. ENGLAND: Yes, sir.

15 COMMISSIONER CLAYTON: -- correct?

16 Has the definition been modified at all
17 since the original filing in this case?

18 MR. ENGLAND: Staff has proposed a
19 modification, and their modification is not necessarily
20 to address the definitions of an exempt carrier so much
21 as to limit the obligations of an exempt carrier to only
22 donating uncontaminated blocks of numbers to the pool
23 inventory.

24 COMMISSIONER CLAYTON: Okay. Ms. Dietrich,
25 do you want to respond to any of this?

1 MS. DIETRICH: First of all, to clarify what
2 Mr. England just said at the end, we did not change the
3 definition of exempt. The exempt carriers stay the same.

4 What we modified was a carrier that would
5 not be exempt. We limited their obligations. A carrier
6 that is a road carrier that is technically capable of
7 providing LNP, so they would not qualify as an exempt
8 carrier, that's what we tried to limit. That's what we
9 tried to limit.

10 COMMISSIONER CLAYTON: So you're saying they
11 don't qualify as an exempt carrier but they also don't
12 qualify as a carrier that is not exempt?

13 MS. DIETRICH: If you want to look at it
14 that way. I mean, they don't qualify --

15 COMMISSIONER CLAYTON: Isn't that what you
16 just said? Didn't you just say that?

17 MS. DIETRICH: They don't qualify as an
18 exempt carrier.

19 COMMISSIONER CLAYTON: Okay. So you didn't
20 change the definition of exempt carrier, which is what
21 Mr. England wants. Correct?

22 MS. DIETRICH: Right. Right.

23 MR. ENGLAND: Excuse me. I agree with
24 everything, by the way, Natelle has said, but their
25 definition of exempt carrier is what I -- as published is

1 what I object to.

2 COMMISSIONER CLAYTON: That's what you want
3 to change in the definition of exempt carrier?

4 MR. ENGLAND: Yes.

5 COMMISSIONER CLAYTON: To try to remedy his
6 issues you changed the definition of a carrier that is
7 not exempt. Correct?

8 MS. DIETRICH: To try to remedy his issues,
9 we clarified when a carrier has to participate in
10 pooling. And instead of making it all numbers have to be
11 donated back to the pool, it's only uncontaminated blocks
12 that have to be donated back to the pool.

13 That way at least, like Mr. England said,
14 while they're just sitting there, there are no database
15 dips, no local number portability.

16 COMMISSIONER CLAYTON: What would we do with
17 those uncontaminated blocks?

18 MS. DIETRICH: They would sit there ready
19 for when a competitor came in to access them.

20 It's our understanding that once pooling is
21 implemented in an area, which it would be in the entire
22 state, then it could take four to six months for a
23 carrier, a small LEC, say, for instance, to donate the
24 numbers back to the pool in order for the competitor
25 wanting to start up in that area to be able to access

1 them.

2 So by making them donate the uncontaminated
3 blocks, the numbers would be sitting there for when the
4 carrier wants to come in.

5 Assuming that the numbers just sit there
6 until the competitor comes into the area and then would
7 have to request interconnection, local number portability
8 to exchange the local numbers, then it would trigger the
9 other part of the rule that requires the rural carrier to
10 respond to a bonafide request within 30, 60 or 180 days.

11 And I'm assuming from the types of carriers
12 that we're addressing here, which are carriers that their
13 switches and their software are both LNP capable, then
14 they would fall under the 30-day request.

15 COMMISSIONER CLAYTON: Okay. How do you
16 respond to the concern that these uncontaminated blocks
17 are going to go to someone, someone's going to get a
18 little out of hand?

19 Maybe it's a Friday afternoon. They just
20 start issuing thousands-blocks at four o'clock on a
21 Friday when no one is watching and that they will get
22 assigned to someone else and we get into this virtual NXX
23 issue or the technical issues associated with LNP? What
24 is your response to that?

25 MS. DIETRICH: I think we've addressed that

1 concern by -- first of all, like Mr. England said, the
2 numbers are rated to the rate center of the particular
3 LEC.

4 It's my understanding that if they wanted to
5 set up a type of scenario, there would be some kind of
6 notification to the ILEC.

7 Now, when we did the local number
8 portability suspension request, where there was an issue,
9 and there would still be the issue of whether it's
10 through the pooling rule or a bonafide request, the issue
11 of who is going to pay for transferring that call from,
12 say -- what company were you talking about? Citizen,
13 Farber -- from Farber to St. Louis where the wireless
14 switch is located, that issue would still remain.

15 And that's been an issue along, who is going
16 to pay for the transport of that call.

17 In those particular cases, the Commission
18 came up with the resolution that the small LEC would put
19 some kind of intercept message on their switch, so that
20 if a carrier attempted to -- if a customer attempted to
21 make the call, they would be given a notification that
22 this is not a local call. It would require a toll. And
23 that perhaps is something --

24 COMMISSIONER CLAYTON: What case was that?

25 MS. DIETRICH: There were several of them.

1 It was --

2 MR. ENGLAND: In Mr. Johnson's comments he
3 cites the six cases that affected his six companies. We
4 could provide that after the fact. But virtually every
5 small company obtained that same directive there.

6 COMMISSIONER CLAYTON: What is your response
7 to Ms. Dietrich?

8 MR. ENGLAND: Well, as I said, I think Staff
9 is trying to address our concerns, but they're kind of
10 doing it in a roundabout fashion that I'm not sure gets
11 us where we need to be.

12 COMMISSIONER CLAYTON: I'm not sure if they
13 want to get to where you want to be. I mean, I think
14 there is a difference in positions, and I think they're
15 trying to satisfy the paying -- your paying issues but
16 still get where they're trying to be.

17 MR. ENGLAND: Right. And the problem then
18 they have, with all due respect, is it's not lawful.

19 When you-all were delegated the authority by
20 the FCC to implement number pooling in the state, the
21 delegation specifically said, well, by the way, maintain
22 the rural exemption that we have directed or mandated.

23 So to the extent that you have included FCC
24 exempt carriers into your nonexempt now category --

25 COMMISSIONER CLAYTON: Basically not exempt

1 but no demands on you right now. It's like a different
2 category?

3 MR. ENGLAND: Right. I believe that's an
4 exercise of delegate-- of authority beyond your
5 delegation.

6 COMMISSIONER CLAYTON: So you're saying
7 that's unlawful?

8 MR. ENGLAND: Correct.

9 COMMISSIONER CLAYTON: We're not allowed to
10 do that?

11 Do you think we're allowed to do that,
12 Ms. Dietrich?

13 MS. DIETRICH: Yes. I think in the FCC's
14 latest order, which we reference it on page 3 of our
15 comments, they, perhaps by accident, but the FCC has
16 backed off of their exception.

17 COMMISSIONER CLAYTON: So on this issue,
18 Staff's point is that the Commission needs to be in a
19 position so if competition attempts to stick its head up
20 in a particular exchange, we want to be prepared to offer
21 the resource, the numbering resource, to make that
22 happen?

23 MS. DIETRICH: Right.

24 COMMISSIONER CLAYTON: But we don't control
25 those numbers. How would just breaking off those

1 uncontaminated blocks and then going to the pooling
2 administrator, how would it be -- how does that reduce
3 the time, the four to seven months, that it takes to
4 transfer over an uncontaminated block? How does that
5 actually happen?

6 MS. DIETRICH: For the carriers we're
7 talking about, they would make a bonafide request to the
8 rural ILEC. The rural ILEC would have to respond within
9 30 days as opposed to four to six months.

10 Because the number -- they would meet the
11 bonafide request in the 30 days. The numbers would
12 already be sitting there that the competitor could use.

13 COMMISSIONER CLAYTON: So we would be
14 forcing -- I mean, this would be forcing LNP then, would
15 it not?

16 MS. DIETRICH: Not until there is a bonafide
17 request.

18 COMMISSIONER CLAYTON: Well, I know. But
19 once there is a bonafide request, they got -- they get
20 the six months, don't they? Don't they get a significant
21 amount of time?

22 MS. DIETRICH: Depending on the type of
23 switch, the readiness of the switch, it's 30 days,
24 60 days or 180 days.

25 Since the types of carriers we're talking

1 about both have technical -- hardware and software for
2 LNP, I'm assuming they would fall under the 30 day,
3 because they don't have to replace their switch. They
4 don't have to modify their switch. They don't have to
5 purchase software. It's all there.

6 MR. ENGLAND: My turn?

7 What I think I'm hearing is Staff is
8 circumventing either directly or indirectly our ability
9 now to seek suspensions and modifications of our
10 requirements indirect -- or excuse me -- to directly
11 connect and to implement LNP. Those are firmly ensconced
12 in the Telecommunications Act of '96.

13 And what Staff is attempting to do here is
14 to make numbers available to competitors and implement
15 number of pooling perhaps -- or excuse me -- number of
16 portability sooner than we might otherwise be required to
17 do if we can demonstrate to you that it's technically
18 infeasible or unduly economically burdensome.

19 So I keep coming back to the fact that until
20 we have a request for LNP, that to me should be -- and
21 that tees up everything. That tells you who is coming
22 in, how they want to interconnect, what they want to do,
23 and that puts everyone on notice that somebody is there.

24 Now, the fact that it may take six months to
25 sort it out as opposed to 30 days, well, maybe that's

1 what we're entitled to under the Federal act.

2 COMMISSIONER CLAYTON: I think what
3 Ms. Dietrich was saying was that the category -- that
4 this section would only relate to the companies that are
5 already technically able to do LNP, they have the hard-
6 and-software to be LNP.

7 MS. DIETRICH: Correct.

8 COMMISSIONER CLAYTON: And I guess you're
9 saying that the definition doesn't make that clear, or
10 doesn't make it clear and it's still wrong and illegal
11 and mind your own business?

12 MR. ENGLAND: I didn't go that far,
13 Your Honor.

14 It's still not right. It's still wrong.

15 COMMISSIONER CLAYTON: Okay.

16 MR. ENGLAND: By the way, I went back and
17 quickly read the quote Ms. Dietrich was referring to in
18 this recent FCC, and I still don't understand how they've
19 somehow released states to define exempt carriers
20 differently than they've defined them.

21 And in a recent -- which we have got quoted
22 in our comments on page 5. They continue to admonish
23 states. They say, we expect rural carriers who are not
24 LNP capable, will not be required to implement pooling
25 solely as a result of the delegation of authority set

1 forth in this order.

2 I mean, it's pretty clear to me that they
3 don't want this unintended consequence as a result of the
4 number of pooling.

5 COMMISSIONER CLAYTON: I love this.

6 Ms. Dietrich.

7 MS. DIETRICH: I respectfully disagree with
8 him.

9 From the same paragraph it says we therefore
10 expect that rural carriers who are not LNP capable will
11 not be required to implement full LNP capabilities solely
12 as a result of the delegation of authority.

13 And I think what Mr. England said was
14 pooling, and that's where we're making the distinction,
15 that pooling is required and full LNP capability is not.

16 COMMISSIONER CLAYTON: But what's the point
17 of pooling if you can't use the numbers? I mean, I
18 think --

19 MR. ENGLAND: But it's when pooling begets
20 LNP, whether intended or unintended, that you've
21 overstepped the direction and the desire of the FCC.

22 COMMISSIONER CLAYTON: There was a time when
23 we talked about how many uncontaminated thousand blocks
24 of numbers were out there, and I assume that you did that
25 data request and that's where that 855 came from?

1 MS. DIETRICH: Correct.

2 COMMISSIONER CLAYTON: So implementing a
3 reporting requirement so that the Commission -- or that
4 our number person sitting in the back is aware of these
5 resources and the -- the fact that we are aware of them,
6 does that change in any way the ability of Staff to help
7 foster competition?

8 I mean, this is a whole chicken and the egg
9 thing.

10 It's, like, well, competition isn't here but
11 we aren't going to make the resources available until
12 it's here, but we want to encourage it.

13 I mean, there are all problems all
14 associated with this, I understand that, but the
15 reporting of the numbers, does that help at all in the
16 Commission Staff being aware of whether competition is
17 trying to come into an exchange compared to the status
18 quo?

19 MS. DIETRICH: The reporting of the numbers
20 let's us know what the ILEC has done with the numbers and
21 that they're just sitting there or that they've used
22 parts of them. It doesn't address competition at all.

23 COMMISSIONER CLAYTON: But you're aware of
24 them?

25 MS. DIETRICH: Right.

1 COMMISSIONER CLAYTON: But are we even
2 contacted if, say, NANPA was going to open up an entire
3 new NXX because a competitor was going into an exchange?
4 Would they consult us?

5 MS. DIETRICH: There is no requirement for
6 NANPA to notify us of anything. They do occasionally if
7 they see something that is unusual or something that, you
8 know, would have a large impact, they do contact us and
9 say we just want to make you aware.

10 COMMISSIONER CLAYTON: Well, if Vonage
11 wanted to go make a -- they wanted to increase their
12 market share in Sullivan. That would be a worthy goal.
13 Right? So they go into Fidelity's territory and they
14 want their own NXX -- and let's avoid the virtual NXX
15 issue right now.

16 Is there a way for the Commission to suggest
17 that, no, let's not open up a new 10,000 block and burn
18 the NXX but, rather, they should use an uncontaminated
19 block of the NXX already in place?

20 MS. DIETRICH: If I'm understanding --

21 COMMISSIONER CLAYTON: Isn't that the point
22 of number pooling, that rather than burning 10,000
23 numbers, we're doing an entire NXX, opening up 10,000
24 blocks, that we use, you know, the 9,000 block of that
25 exchange that isn't being touched?

1 MS. DIETRICH: Correct.

2 And Fidelity is perhaps a good example,
3 because according to the data request responses -- it's
4 proprietary.

5 COMMISSIONER CLAYTON: There is a good
6 reason to mention Fidelity for the record, but we can't
7 tell the record why it's a good reason.

8 MS. DIETRICH: If a carrier -- if a small
9 ILEC is not participating in pooling and a carrier such
10 as Vonage went into their area and requested numbers,
11 then it would be from a 10,000 block.

12 If a carrier -- I mean, if a Vonage-type
13 carrier went in and asked for numbers in an area where
14 that small ILEC was participating, then it would be in
15 thousands-blocks.

16 Keep in mind, just to clarify for the
17 record, Vonage doesn't ask for the numbers, but it would
18 be somebody, like, say, Level 3.

19 And that's a situation that we ran into that
20 we used in one of our comments at the FCC -- at the FCC
21 requesting this authority is because Level 3 requested --
22 I think it was thirteen 10,000 blocks around the state
23 for that type of situation where they were giving a few
24 numbers to Vonage.

25 And in that case they had to receive the

1 10,000 blocks because pooling was not implemented. And
2 we'd have the same type of situation if they requested
3 the numbers in small ILEC territories.

4 And at least for the ones that were -- what
5 we're calling technically capable did not participate.
6 They would still get the 10,000 blocks.

7 COMMISSIONER CLAYTON: I think that gets to
8 the heart of the whole issue. I don't know how we
9 address the issue of using existing NXXs that are nowhere
10 near being exhausted without opening up the new NXX.

11 I mean, I don't think -- and I can't speak
12 for other commissioners, but I don't think there is any
13 effort to force something that is not required of one of
14 your clients by law.

15 But how do we get to the point of making
16 sure that there are ample numbering resources that are
17 out there right now, that we try not to contaminate
18 blocks that are not contaminated right now and make those
19 available should ever a competitor comes in? Is there a
20 way to address that?

21 MR. ENGLAND: Well, your rules do tell us
22 not to open up new uncontaminated blocks until we've
23 exhausted existing contaminated blocks, and we don't have
24 a problem with that.

25 We do have some concerns about meeting

1 specific customer requests, but if you tell us not to,
2 that's fine. We'll tell the customer we'd like to
3 accommodate that that vanity number but we can't. In
4 order to do that we have to open up an uncontaminated
5 block and that's not permitted.

6 So I think you've -- that's -- what I call
7 the number -- or the conservation aspects of the rule
8 that we don't really have a problem with.

9 But it's this automatic donating of numbers
10 back to the administrator, that at that point we're
11 probably okay with it, but it's what the administrator
12 does it with it later and what that ultimately leads to
13 that I keep coming back to that causes us concern.

14 COMMISSIONER CLAYTON: Okay. Mr. Johnson,
15 you've been listening to this. I don't know if you want
16 a piece of this action or not.

17 MR. JOHNSON: Well, the only thing that
18 crossed my mind --

19 COMMISSIONER CLAYTON: You've been sitting
20 there very disciplined, minding to stay back. So if you
21 want to say something about anything we talked about.

22 MR. JOHNSON: I heard someone in passing
23 exchange that -- I think there is a process by which when
24 new numbers are activated, the industry is notified.

25 Whether it's a new number assignment in an

1 area where LNP is not being done or maybe a separate
2 notification that's done when local number reporting is
3 being done.

4 But to the extent there was a suggestion
5 that the industry doesn't know when new numbers are being
6 placed into use, I don't think that's right.

7 Because everyone subscribes to the Local
8 Exchange Routing Guide and somebody has the
9 responsibility to notify participants in that guide when
10 numbers are being turned on and going to be used.

11 Back in the MCA days that was Southwestern
12 Bell, but I understand now that that's been taken away
13 from them and has been given to either NANPA or NeuStar
14 or someone like that.

15 But to the extent that impacted on your
16 consideration, I think -- I think it's correct to state
17 that there is industry notification when numbers are made
18 active.

19 COMMISSIONER CLAYTON: That's after, like, a
20 new NXX has opened up. Right?

21 MR. JOHNSON: Well, I would imagine that the
22 administrator doesn't open an NXX unless he's been
23 authorized to do it in some way, shape or form. It
24 doesn't assign that number until it's available.

25 COMMISSIONER CLAYTON: I have a feeling that

1 I ought to know when he's authorized to do that, but I
2 don't.

3 MR. JOHNSON: We would know more about this
4 except we haven't been active in this because there is no
5 demand for our numbers, except outside of our rate
6 centers, and that gets us back to the heart of this
7 discussion.

8 Until there is a way to assign these numbers
9 outside our rate centers, then I'm not sure you're going
10 to accomplish anything.

11 I'm a little dubious about four to seven
12 months that Ms. Dietrich stated she understood it took
13 for numbers to actually get donated to the administrator.
14 I don't understand that period of time, and I'm not
15 sure --

16 COMMISSIONER CLAYTON: You're saying it's
17 never happened to you?

18 MR. JOHNSON: Right. I'm not disagreeing
19 with you. I'm just saying I don't understand that and I
20 wonder what it's based upon.

21 COMMISSIONER CLAYTON: I'm not even going to
22 ask.

23 Can you tell me, do you bring up any other
24 concerns separate for your clients that are any different
25 than those that have already been raised?

1 MR. JOHNSON: No.

2 COMMISSIONER CLAYTON: It's a definitional
3 question?

4 MR. JOHNSON: It's a definition of the
5 exception that triggers all of our concerns.

6 COMMISSIONER CLAYTON: Okay. I don't have
7 any other questions. Thank you.

8 Thank you.

9 JUDGE DALE: Well, actually, I don't think
10 there is anything else to do here.

11 COMMISSIONER CLAYTON: He may want to make
12 other statements.

13 MR. ENGLAND: I'm done.

14 JUDGE DALE: Is there anything further that
15 needs to be done in this hearing on this record?

16 When we adjourn this record, it will be
17 closed. No further filings will be accepted, and we will
18 begin deliberations in the final rulemaking process.

19 Seeing nothing further, then we will be
20 adjourned and off the record.

21 COMMISSIONER CLAYTON: Thank you all very
22 much.

23 WHEREUPON, the Public Hearing was concluded.

24

25