

0124

1

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

2

3

TRANSCRIPT OF PROCEEDINGS

4

5

Public Hearing

6

7

January 10, 2006  
Jefferson City, Missouri  
Volume 2

8

9

10 In the Matter of Proposed New Rule )  
11 4 CSR 240.3-570 Regarding Eligible )  
12 Telecommunications Carrier ) Case No. TX-2006-0169  
Designations for Receipt of Federal )  
Universal Service Fund Support )

13

14

15

COLLEEN M. DALE, Presiding,  
CHIEF REGULATORY LAW JUDGE  
JEFF DAVIS,  
CHAIRMAN  
ROBERT CLAYTON,  
LINWARD "LIN" APPLING,  
COMMISSIONERS

16

17

18

19

REPORTED BY: Monnie S. VanZant, CCR, CSR, RPR  
Midwest Litigation Services  
714 W. High Street  
Jefferson City, MO 65102  
(573) 636-7551

20

21

22

23

24

25

## 1 A P P E A R A N C E S

2 For Staff of the Missouri Public Service Commission:

3 Mr. Marc Poston  
4 Missouri Public Service Commission  
5 200 Madison Street  
6 P.O. Box 360  
7 Jefferson City, MO 65102  
8 (573) 751-8701

9 For Spectra Communications Group, LLC, d/b/a CenturyTel and  
10 CenturyTel of Missouri, LLC:

11 Mr. Charles Brent Stewart  
12 Stewart & Keevil  
13 4603 John Garry Drive, Suite 11  
14 Columbia, MO 65203  
15 (573) 499-0635

16 For Small Telephone Company Group:

17 Ms. Sondra B. Morgan  
18 Brydon, Swearngen & England  
19 312 E. Capitol  
20 P.O. Box 456  
21 Jefferson City, MO 65102  
22 (573) 635-7166

23 For Office of the Public Counsel and the Public:

24 Mr. Mark Wheatley  
25 Office of the Public Counsel  
P.O. Box 7800  
200 Madison Street  
Jefferson City, MO 65102  
(573) 751-5559

26 For Southwestern Bell Telephone, LP, d/b/a AT&amp;T Missouri:

27 Mr. Robert J. Gryzmala  
28 Attorney at Law  
29 One SBC Center, Room 3516  
30 St. Louis, MO 63101  
31 (314) 235-6060

0126

1 For U.S. Cellular:

2 Mr. Karl Zobrist  
3 Sonnenschein, Nath & Rosenthal  
4 4520 Main Street, Suite 1100  
5 Kansas City, MO 64111  
6 (816) 460-2545

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

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

2 JUDGE DALE: We're back on the  
3 record. We are now reconvening Case No.  
4 TX-2006-0169 In the Matter of Proposed New Rule  
5 4 CSR 240-3.570 Regarding Eligible  
6 Telecommunications Carrier Designations for  
7 Receipt of Federal Universal Service Fund  
8 Support.

9 We are here today to answer questions from  
10 commissioners who were not able to ask their  
11 questions on Friday, and we are going to begin  
12 with Chairman Davis.

13 Before we do that, are there any  
14 preliminary matters that I need to address  
15 before we proceed?

16 I will remind Ms. Dietrich and Ms.  
17 Meisenheimer that you are both still under  
18 oath, and we'll go from there.

19 Chairman Davis?

20 CHAIRMAN DAVIS: All right.  
21 Mr. Zobrist, you're representing U.S. Cellular;  
22 is that correct?

23 MR. ZOBRIST: Yes, sir.

24 CHAIRMAN DAVIS: All right. I have  
25 read your Pleading here. I guess -- I have not

1           had an opportunity to review the transcript. I  
2           don't even know if we have it back yet, so I  
3           have not had the benefit of examining that. So  
4           forgive me if some of this is redundant from  
5           the other day. I was -- didn't find out about  
6           that hearing. I was not informed of it until,  
7           I guess it was, Thursday, and I'd already made  
8           plans to be elsewhere last Friday. So thank  
9           you all for showing up and bearing with me  
10          today.

11                 So what are your comments on the proposed  
12           rule-making, Mr. Zobrist? Could you summarize  
13           those for me briefly?

14                         MR. ZOBRIST: Yes. I -- I certainly  
15           can, Mr. Chairman. And we did file an  
16           additional response to Staff's comments this  
17           morning. I only had a chance to take a look at  
18           that.

19                 The major concern that U.S. Cellular has  
20           is this appears to be a case of a proposed rule  
21           that, in part -- not entirely, but in part  
22           consists of wire line regulations that are  
23           being imposed on wireless companies without any  
24           adjustment.

25                         CHAIRMAN DAVIS: Okay. Can I stop

0129

1           you right there?

2                       MR. ZOBRIST:   Sure.

3                       CHAIRMAN DAVIS:   Isn't that what  
4           we're doing when we're, quote, leveling the  
5           playing field?   Isn't that -- isn't that what  
6           you want?   Didn't you just -- didn't you  
7           request a level playing field?

8                       MR. ZOBRIST:   Yes.   But we didn't ask  
9           to be regulated like wire line traditional rate  
10          of return utilities.

11                      CHAIRMAN DAVIS:   Well, I think some  
12          of those utilities aren't traditional rate of  
13          return anymore, aren't they?   Aren't they price  
14          -- aren't they price cap regulated and all  
15          sorts of other good stuff now?

16                      MR. ZOBRIST:   Certainly, some of them  
17          are.   But when we go out into the rural areas,  
18          we're dealing with traditional small telephone  
19          companies, and they're still subject to rate of  
20          return regulation.

21                      But I guess -- but I guess the point that  
22          I would make is that regardless of whether they  
23          are entirely regulated traditionally where  
24          they're subject to price caps or certain of the  
25          other modifications, they are still incumbent

0130

1 monopolies.

2 And when U.S. Cellular or other companies  
3 seeking ETC status come in, they are employing  
4 different technology. They're employing  
5 different calling scopes. They're employing  
6 different types of services.

7 And whereas the Commission should  
8 certainly require a degree of reporting from  
9 them, to just take a wire line regulation and  
10 impose it on a wireless company just doesn't  
11 make sense. I mean, there was one example that  
12 we gave in the comments that we smiled (sic) --  
13 that we filed this morning where if you simply  
14 looked for a -- an analogous cell -- cellular  
15 technology in a given area, it would ask for us  
16 to install a piece of equipment in five days.

17 That just didn't make any sense because  
18 when you go out and buy a wireless phone or  
19 cell phone, you go in and you get service, and  
20 frequently you walk out of the building, you  
21 know, with your hand set. And so, you know --

22 CHAIRMAN DAVIS: So you'd have no  
23 trouble complying with the five days.

24 MR. ZOBRIST: Well, but why should we  
25 have to spend the money to report all that

0131

1           stuff to you? If you want to -- if you want to  
2           devise a different kind of reporting --

3                   CHAIRMAN DAVIS: Well, if you want  
4           our money, don't you think you should meet --  
5           have to meet some quality of service  
6           requirements?

7                   MR. ZOBRIST: Yes. I think that's  
8           true. But it's not --

9                   CHAIRMAN DAVIS: How do you feel  
10          about filing maps of coverage areas?

11                   MR. ZOBRIST: Well, we've got some  
12          maps right off here to the right, Mr. Chairman,  
13          that we filed -- that we filed as part of our  
14          ETC application. We would certainly be willing  
15          to file maps on an -- either an annual basis or  
16          whatever basis, you know, would make sense that  
17          so that you know the status of our build-out  
18          plan.

19                   CHAIRMAN DAVIS: But not -- but  
20          not a quarterly basis?

21                   MR. ZOBRIST: We would prefer annual.  
22          But if the Commission wants quarterly maps, I  
23          do think that's something that we can do. That  
24          at least relates to the service that we're  
25          providing, and that -- that does make sense to



0132

1           us.

2                   CHAIRMAN DAVIS:  Okay.  I'm sorry,  
3           Mr. Zobrist.  I interrupted you.  Would you  
4           care to continue and summarize your comments?

5                   MR. ZOBRIST:  Yeah.  Some of the  
6           other specific comments that we made in our  
7           initial comments were, first of all -- and I  
8           think staff has taken -- at least last week  
9           they took a step in this direction.  They tried  
10          to make the reporting function to be more  
11          uniform.

12                   In the original comments, they had some  
13          annual reports due in April and they had some  
14          due in August.  And at least on Friday they  
15          recommended that they get rid of the annual  
16          reports in April and we just had a set of  
17          August reports that would deal with  
18          certification and annual follow-ups in August.

19                   And whatever they filed this morning said,  
20          Well, maybe that's not such a good idea.  And,  
21          again, I think reporting is a good idea, but it  
22          ought to be more uniform and it ought not to be  
23          burdensome.

24                   CHAIRMAN DAVIS:  I -- I agree with  
25          you Mr. Zobrist.  I am -- I am unadmissioned to

1 free people from their administrative burdens  
2 here.

3 MR. ZOBRIST: One of the points that  
4 we have brought up is I think both Section 2  
5 and Section 24 required ETCs to certify that  
6 they spend money only to improve coverage,  
7 service quality and capacity in Missouri, and  
8 that is narrower than the federal law.

9 The federal law says that high cost  
10 support should be used -- used on the  
11 provision, maintenance and upgrading of  
12 supported services and facilities. So once you  
13 build, you know, a new set of 20 cell towers,  
14 you can use that money to continue to support  
15 them.

16 Now, you may want to -- to know where that  
17 money is going, what money is going toward new  
18 equipment and what money is going to  
19 maintenance. But to say it can only be used to  
20 improve the coverage is narrower and is  
21 inconsistent with federal law. And that's --

22 CHAIRMAN DAVIS: So the -- so the  
23 federal law says that we can't -- it contains  
24 no stricter than language? Is that -- is that  
25 what you're telling me? Your language is

1 strict -- is more strict than the federal law?

2 MR. ZOBRIST: Yes, sir.

3 CHAIRMAN DAVIS: Does the federal law  
4 prohibit us from seeking rules that are -- that  
5 are more stricter than -- than what they have  
6 pronounced to us?

7 MR. ZOBRIST: Well, in this case, I  
8 think it does. And I think that rule would be  
9 subject to preemption. I don't know if that's  
10 true in all cases because State Commissions do  
11 have certain rights in certain areas.

12 CHAIRMAN DAVIS: Okay.

13 MR. ZOBRIST: There is reference in  
14 Section 12 that appears to incorporate certain  
15 tariff type requirements, and I'm not sure if  
16 that's what was intended. If it's information  
17 only, that would be one thing. But if it is  
18 more of a standard type of tariff, that could  
19 be viewed, again, as pre-empted by federal law  
20 because the standard type of filing rates and  
21 tariffs is -- is inconsistent with what the  
22 Communications Act has provided.

23 We made some comments about equal access  
24 that we thought needed to be revised just to  
25 make certain that the -- the equal access in

0135

1           the sense of dialing parity and presubscription  
2           among IXCs is -- is similar to what the FCC  
3           provides. If You've got the ability to talk  
4           about equal access, again, just to be  
5           consistent with the -- the federal law.

6           As far as quality of service, I guess what  
7           -- what U.S. Cellular would like to see is  
8           something similar to what the Iowa Utilities  
9           Board promulgated and also what the Washington  
10          Commission is considering. And we attached  
11          that to -- to our -- to our responses that we  
12          filed this morning that don't go into the  
13          detail that some of your rules have prescribed  
14          but generally deal with how is the money used,  
15          how are -- what are the levels of complaints,  
16          what are the levels of unfulfilled service  
17          requests and things of that nature.

18          And from our way of thinking, imposing --  
19          or promulgating that type of a rule that sets  
20          forth general statistics and then have the  
21          Commission take a look and see what kind of  
22          data it's collected and how valuable that is  
23          for an initial set of regulations would be  
24          better than not the very detailed regulations  
25          that we're seeing that staff has approved here

0136

1           -- has proposed here.

2                   CHAIRMAN DAVIS: Can you be a little  
3 more specific with that?

4                   MR. ZOBRIST: Yeah. Yeah. I can  
5 give you -- I mean, I saw, for example, in what  
6 Staff filed, I think, last night that not only  
7 in -- in reporting, although I presume they'd  
8 want in if in continuous reporting, but in the  
9 ETC applications, I mean, they're requesting  
10 information about the percentage of  
11 improvements used by USF monies versus the  
12 percentage of improvements funded from a source  
13 other than USF in an application.

14                   They want to know the percentage of  
15 improvements in Missouri compared to the  
16 percentage of improvements in other states in  
17 the application. I mean, that type of detailed  
18 information, I'm not sure -- and, first of all,  
19 I think it would be speculative when you're  
20 putting it in your application because you  
21 don't know what you're going to get. And I'm  
22 not certain if that type of detailed  
23 information -- I'd just have to think about it.  
24 I'm not sure if any other state has requested  
25 that. I don't know whether it would be subject

1           so preemption. It certainly might be.

2           So extent that you're imposing a whole set  
3           of regimen based upon what this company is  
4           doing in a whole lot of other states, I just  
5           don't know --

6           CHAIRMAN DAVIS: Well, I think --  
7           now, Ms. Dietrich, Ms. Meisenheimer, somebody  
8           can correct me if I'm wrong, but the -- and you  
9           can correct me, too, if I'm wrong, Mr. Zobrist,  
10          but I would think that the rationale is if --  
11          if we do promulgate these strict regulations,  
12          we'd like to be able to -- to -- to measure  
13          ourselves against other states to see if we're  
14          -- if we're getting better results in terms of  
15          how the money is being spent.

16          Is that a fair assessment, Ms. Dietrich,  
17          or am I lost in the wilderness here?

18          MS. DIETRICH: No. I think that's a  
19          fair assessment. At least some sort of  
20          accountability for the money.

21          CHAIRMAN DAVIS: All right.

22          MR. ZOBRIST: Well, that --

23          CHAIRMAN DAVIS: Mr. Zobrist, do you  
24          not want us to know if we're getting more bang  
25          for our buck than Iowa is?

1                   MR. ZOBRIST: I guess I don't really  
2                   care if you know. I don't know if that  
3                   information is out there. I mean, I --

4                   CHAIRMAN DAVIS: I would hope that if  
5                   you want this money that you would supply it.

6                   MR. ZOBRIST: No. I'm saying I don't  
7                   even know if my company keeps this kind of  
8                   information. I mean, I presume that it does.  
9                   But you're asking in an application for a  
10                  company -- and I'm not talking about U.S.  
11                  Cellular because our application is already in.

12                 But you're talking about another company  
13                 estimating the percentage of improvement in  
14                 Missouri that it's going to get compared to,  
15                 you know, one of the things it may get from  
16                 another source. I don't think it's a matter of  
17                 accountability because this is in the  
18                 application.

19                 Now, maybe once it's certified and you're  
20                 -- and you're looking at the money that's going  
21                 to be --

22                 CHAIRMAN DAVIS: You think we should  
23                 maybe look at it more retroactively?

24                 MR. ZOBRIST: Well, at least -- I --  
25                 I would say not hypothetically because that --

0139

1           that's what it strikes me as.

2                   CHAIRMAN DAVIS: Right. Well --

3                   MR. ZOBRIST: -- in this case.

4                   CHAIRMAN DAVIS: So maybe -- so maybe  
5           we should maybe require a little less up front  
6           and maybe a little -- little more as -- as time  
7           goes by and you're actually spending the money,  
8           you know, we need to know how that money it  
9           being spent here, and I think we'd just like  
10          some estimate of how that money is being spent  
11          elsewhere.

12                  MR. ZOBRIST: Well, I --

13                  CHAIRMAN DAVIS: How else do we  
14          measure if our stricter rules are effective?  
15          Or are you just saying we shouldn't have strict  
16          rules?

17                  MR. ZOBRIST: Well, you should not  
18          have the same type of quality of service rules  
19          that you currently have over the incumbent  
20          local exchange companies. I firmly believe  
21          that.

22                  CHAIRMAN DAVIS: So should we relax  
23          those rules for the incumbent local exchange  
24          companies to level the playing field?

25                  MR. ZOBRIST: I'm not -- I'm not



0140

1           really prepared to comment on that.

2                       CHAIRMAN DAVIS: Well, how do I level  
3           the playing field, Mr. Zobrist?

4                       MR. ZOBRIST: Well, what you're --  
5           what you're talking about, Mr. Chairman, is  
6           taking the regulations that have been developed  
7           for monopoly services and you want to -- and  
8           you want to impose them on a competitive  
9           service, and that just doesn't make any sense  
10          because, first of all, they're not regulated  
11          like these other companies.

12                      Secondly, they offer a different type of  
13          technology, and some of the quality of service  
14          rules just don't transfer to cellular and  
15          wireless technology.

16                      In terms of accountability, I think you  
17          have an absolute right to know how much money  
18          is coming in and where is it going. Now,  
19          Missouri has got a different geographical and  
20          geological format than the state of Iowa. And  
21          I'm not sure if it doesn't cost more if you're  
22          running -- if you're building cell phones, you  
23          know, down in the Ozarks than you do up in  
24          northern Iowa where there's not probably not a  
25          hill, you know, to be seen.

0141

1           So I just think you need to be careful in  
2           saying, you know, we want to know what you're  
3           doing here versus what you're doing, you know,  
4           in Nevada and Iowa and Maine. Certainly,  
5           you've got to have some benchmark, and I assume  
6           that those dollars and those figures are  
7           available someplace. I just think you ought to  
8           focus on what's happening in this state and in  
9           seeking accountability here as opposed to  
10          conducting studies of what's going on in other  
11          states.

12                   MS. MEISENHEIMER: I actually would  
13          like to respond to that as well since the  
14          other --

15                   CHAIRMAN DAVIS: Ms. Meisenheimer, I  
16          would like for you to jump right on in here.

17                   MS. MEISENHEIMER: I appreciate it.  
18          I have three points to make on this issue, and  
19          they deal primarily with whether it is  
20          appropriate for you to ask for something that  
21          will compare companies' performance in the  
22          state of Missouri versus other states. Okay?

23                   The first point is that your authority in  
24          overseeing this money comes from the federal  
25          level. It's been assigned to you to watch

0142

1 over, to be the ward of this money, to ensure  
2 that it's being used for the appropriate  
3 purpose. And, therefore, I think it is wholly  
4 appropriate for you to expect the information  
5 that you need to evaluate your success in  
6 fulfilling your obligation in that capacity.  
7 That's first.

8 CHAIRMAN DAVIS: Uh-huh.

9 MS. MEISENHEIMER: Second is that  
10 that type of information would certainly help  
11 you to evaluate, as a State Commission, how are  
12 you doing. It would give you more information  
13 than you'll have if you don't get it. It seems  
14 reasonable to me.

15 I see some benefit into getting  
16 information upfront, an estimate of what they  
17 intend to do.

18 CHAIRMAN DAVIS: Uh-huh.

19 MS. MEISENHEIMER: Because you don't  
20 -- you don't have -- that's what you get from  
21 them. You get a promise. Incumbent carriers,  
22 the rate of return -- or the small companies  
23 that get USF funds, they have to -- they get it  
24 based on what they've already done two years  
25 ago.

0143

1                   CHAIRMAN DAVIS: Right. They -- they  
2 collect it in arrears.

3                   MS. MEISENHEIMER: That's right. And  
4 so here what -- what you have to demand from  
5 these wireless carriers is what are you going  
6 to do for us? So, you know, we're willing to  
7 work on exactly what that is, but I see some  
8 benefit in that upfront information.

9                   Also, certainly, you want to follow up and  
10 see did you really get what you were promised.  
11 Because that's -- you know, that's the -- the  
12 most important --

13                   CHAIRMAN DAVIS: Right.

14                   MS. MEISENHEIMER: -- thing is  
15 whether you got that. So that was the second  
16 point, that it will help you as a State  
17 Commissioner.

18                   CHAIRMAN DAVIS: Okay.

19                   MS. MEISENHEIMER: And then the third  
20 point is that across the country, distributing  
21 funds that are gathered from all states and  
22 distributed to only some only where there is  
23 high cost -- where there are high cost areas, I  
24 view it as a partnership between states to  
25 ensure that in total the universal service

0144

1 money is getting used for the appropriate  
2 purpose.

3 And so it seems to me that in gathering  
4 this type of information and, in fact, if all  
5 states gathered such information and this  
6 Commission actively participates in NARUC that  
7 in partnering with other states, you may be  
8 able to make comparisons between states. And I  
9 bet you that between our staff and the folks in  
10 Iowa, they're going to have a reasonable  
11 understanding of the differences if -- if they  
12 had a chance to discuss it. And at the federal  
13 level there are certainly plenty of forms where  
14 states participate together and do exchange  
15 information.

16 And I'm not sure if you're aware of it,  
17 but I -- I have for years served on the  
18 Universal Service Joint Board staff. And so  
19 these comments that I make to you regarding the  
20 federal level are not simply Office of the  
21 Public Counsel and the State of Missouri.  
22 These are my opinions based on that additional  
23 experience that I've had for a number of years.

24 CHAIRMAN DAVIS: Thank you, Ms.  
25 Meisenheimer. Ms. Dietrich, did you want to

0145

1 add anything?

2 MS. DIETRICH: I guess the only thing  
3 I would add would be on the upfront  
4 information, I think at least as the rule is  
5 drafted, it calls for the -- or it has the  
6 concept that ETC designation could be revoked  
7 if the Commission is made aware of some kind of  
8 violation of the rule.

9 And so I think that the Commission should  
10 have the comfort upfront before granting the  
11 ETC designation that the funds are going to be  
12 used for the purpose intended that there is  
13 specific intent for the funds because in order  
14 to revoke the certification, it's not just a  
15 matter of, Oh, we don't think you get it  
16 anymore. I mean, it has to be a violation --

17 CHAIRMAN DAVIS: There has to be a --

18 MS. DIETRICH: -- or a complaint.

19 CHAIRMAN DAVIS: Yeah. There has to  
20 be some sort of tangible reason.

21 MS. DIETRICH: Correct.

22 CHAIRMAN DAVIS: Mr. Zobrist? Reply?

23 MR. ZOBRIST: I don't have any  
24 problem with making that commitment. You know,  
25 I might just make an observation that, at least

0146

1           as far as my client's concerned, it's been in  
2           this state for, you know, a number of years,  
3           and it's made an investment in this state, and  
4           hasn't gotten one dime of Universal Service  
5           Fund money. So it's not like, you know, we're  
6           trying to come in as a carpet bagger and  
7           haven't done anything in the state. So I have  
8           no --

9                         CHAIRMAN DAVIS: How many -- how many  
10           towers have you built? How many do you own?

11                        MR. ZOBRIST: You know, Mr. Chairman,  
12           I'd going to have to -- I don't have my notes  
13           here on that. I know it's a couple hundred.  
14           And we provided that information in our  
15           application. And I can -- I can get that to  
16           you. But it's -- it's in the hundreds. I know  
17           that. I have no problem in -- in -- in fact,  
18           there is an obligation --

19                        CHAIRMAN DAVIS: I guess -- I guess  
20           what I'm trying to see, Mr. Zobrist, is -- and  
21           this is new money, correct? This is -- this is  
22           being new -- this would be -- hypothetically  
23           speaking, if -- if we promulgate this rule,  
24           U.S. Cellular were to apply under this rule and  
25           receive -- receive these funds, these would be

0147

1 new money to U.S. Cellular, correct?

2 MR. ZOBRIST: It would be new money  
3 to -- to my company. There are other ETCs who  
4 are not wireless companies who already receive  
5 money.

6 CHAIRMAN DAVIS: Right. But it would  
7 be -- it would be new money to your company?

8 MR. ZOBRIST: Yes, sir.

9 CHAIRMAN DAVIS: And the question is,  
10 would it be -- you be using that new money to  
11 maintain those existing towers in whole or in  
12 part? Or would you be using it to build new  
13 towers, combination of both? Or would -- you  
14 know, what would you be doing with that money?

15 MR. ZOBRIST: You have an absolute  
16 right to know that. And the commitment that my  
17 client has made is that the new money that it's  
18 going to get is going to be into new  
19 infrastructure.

20 All I'm saying is that, as a State  
21 Commission, I don't believe that you can  
22 require that the money only be used for that  
23 simply because the federal law is broader than  
24 that. And as new cell towers and other  
25 equipment are being built in this state, you



0148

1 don't have the power, as I read the federal  
2 law, to say say, Well, you can't take, you  
3 know, a dollar that comes in in 2008 and use  
4 that to maintain that cell tower that you built  
5 in 2007. That's all I'm saying.

6 CHAIRMAN DAVIS: Okay. So you're  
7 saying that you're going to build new towers  
8 with the new money and that you'd also like to  
9 be able to use that money in the future to  
10 maintain those new towers that you build; is  
11 that correct?

12 MR. ZOBRIST: Well, no.  
13 Mr. Chairman, this is -- I'm just talking about  
14 the rule-making. I'm not talking about my  
15 client. And what I'm --

16 CHAIRMAN DAVIS: Okay. So --

17 MR. ZOBRIST: And all I want to  
18 say --

19 CHAIRMAN DAVIS: So the rule -- so  
20 you're saying that the rules should -- should  
21 contemplate, you know, new -- so are you saying  
22 that the rules should contemplate supplanting  
23 money that is currently being spent by, you  
24 know, ETC carriers to maintain towers with --  
25 with new Universal Service Funds?

0149

1                   MR. ZOBRIST: No. All -- all I'm  
2                   saying is that your rules have to be consistent  
3                   with federal law, that -- which indicates that  
4                   Universal Service Fund money may be used not  
5                   only for new construction, but also to maintain  
6                   examination construction. But you have an  
7                   absolute right to know --

8                   CHAIRMAN DAVIS: To main --

9                   MR. ZOBRIST: -- what we do with that  
10                  money.

11                  CHAIRMAN DAVIS: All right. So you  
12                  get -- so you say it should be used to maintain  
13                  existing construction, any existing  
14                  construction?

15                  MR. ZOBRIST: Well, I'm -- you know,  
16                  Commissioner, all I'm doing is quoting the --  
17                  the rule. And --

18                  CHAIRMAN DAVIS: Well, I know. And  
19                  I'm trying to -- I'm trying to get you to help  
20                  me divine what -- what that rule means. And  
21                  I'm thinking that -- I mean, I'll -- I'll  
22                  phrase this maybe in a -- in a way that you can  
23                  answer it. Supplant or supplement or both?

24                  MR. ZOBRIST: Well, it certainly is  
25                  not supplant because it's not meant to

0150

1           substitute. The -- in Section 254(e) -- and  
2           what it says is that high cost money can go to  
3           support, maintain and upgrade services and  
4           facilities. So it can be used not only for new  
5           equipment but for old equipment.

6                 Now, you've got an absolute right to know  
7           where it goes.

8                         CHAIRMAN DAVIS: Right.

9                         MR. ZOBRIST: And I think you would  
10          be understandably concerned if all the money  
11          simply went to support and maintain existing  
12          facilities. I think you'd be quite critical of  
13          any company that would take that money and only  
14          use it to support existing facilities.

15                        CHAIRMAN DAVIS: Right. That's why  
16          we're very concerned about that, I believe.

17                        MR. ZOBRIST: Right. Right. But  
18          what I'm saying is that a state regulation that  
19          would be narrower than the federal law that  
20          would say you can only use this to, you know,  
21          improve coverage, service quality or capacity  
22          is inconsistent with federal law and could be  
23          preempted.

24                        CHAIRMAN DAVIS: So should this rule  
25          have a severability clause in it so that if you

0151

1 do take us to court and attempt to sever it  
2 that the rest of it still stays in effect? Or  
3 should we just say that the -- the whole thing  
4 is one package and that if a part gets severed,  
5 then the rest of it should be withdrawn?

6 MR. ZOBRIST: I -- you know,  
7 Commissioner, I really don't have a view on  
8 that. All I can say is I think if you write a  
9 rule that's consistent with the federal  
10 regulation and that you come in after the fact  
11 and say, you know, Company A, you're not  
12 spending enough money on new construction, then  
13 that company has to answer to that.

14 CHAIRMAN DAVIS: Okay. Now, going  
15 back to one of your previous pleadings, did you  
16 get your quarterly versus annual reports? Was  
17 there any resolution to that, or is there still  
18 -- I think you noted in one of your file --  
19 Pleadings on page 8, Section 18 would require  
20 wireless ETCs to submit quarterly reports  
21 detailing number of consumer complaints and  
22 number of requests for service that could not  
23 be satisfied, even though the same information  
24 would be required in the annual filing required  
25 on -- in Section 24.

1                   MR. ZOBRIST: We just don't see the  
2                   need for quarterly filing. I mean, if that's  
3                   what the Commission wants, then -- then if that  
4                   looks to be a proper exercise of its  
5                   discretion, then we'll obviously comply.

6                   CHAIRMAN DAVIS: Okay.  
7                   Mrs. Meisenheimer, Ms. Dietrich, do you have  
8                   any thoughts as to why this quarterly versus  
9                   annual issue?

10                  MS. DIETRICH: On the complaint  
11                  process in our comments that we filed, we  
12                  recommended that the quarterly complaints not  
13                  be filed but that be available upon request by  
14                  either the Commission staff or Office of Public  
15                  Counsel to take care of that discrepancy.

16                  As far as quality of service reports, the  
17                  ILECs and CLECs currently file those quarterly,  
18                  so we used that standard. The annual report  
19                  requirement was the annual report requirement  
20                  that ILECs and CLECs currently file.

21                  In our comments that we filed last week,  
22                  we recommended that that be removed because it  
23                  wasn't clear what additional information that a  
24                  wireless provider would provide in an annual  
25                  report that would be within the Commission's

1 jurisdiction in that annual report.

2 On Friday, from -- from questions from the  
3 bench, Commissioner Gaw asked what he could use  
4 in order to determine what expenses in its  
5 entirety that a wireless carrier had planned --  
6 or had expended, not just associated with ETC  
7 designation, and he asked us to suggest some  
8 language. So in yesterday's filing, we said  
9 that to address that concern, if it is a  
10 concern that you want to see the entire expense  
11 accounts of a wireless carrier as opposed to  
12 just the ETC-related accounts, then perhaps the  
13 annual report filing should be left in there  
14 because then you would get the additional  
15 information.

16 The August 15th filing is the annual  
17 certification filing that all carriers under  
18 the current process, including wireless, would  
19 be required to submit information. And I think  
20 that takes care of all of them.

21 CHAIRMAN DAVIS: Okay. Ms.  
22 Meisenheimer, did you want to add anything?

23 MS. MEISENHEIMER: I guess I would  
24 agree with Ms. Dietrich on that. We would  
25 certainly prefer quarterly filings. It allows

0154

1           us to monitor how Missouri customers are being  
2           treated and to respond faster in cases where  
3           there seem to be problems.

4           Although I -- although I'm afraid I'm  
5           shooting myself in the foot a little bit here,  
6           I -- I might make a comment on the maintenance  
7           issue. And you may --

8           CHAIRMAN DAVIS: Ms. Meisenheimer, I  
9           -- please go ahead and make your comment.

10          COMMISSIONER CLAYTON: Shoot away.

11          MS. MEISENHEIMER: What?

12          COMMISSIONER CLAYTON: Shoot away.

13          MS. MEISENHEIMER: The purpose of  
14          Universal Service money is to promote -- or is  
15          to preserve and promote the availability of a  
16          basic set of services in high cost areas and to  
17          low income customers. And -- and so, you know,  
18          conceptually, to preserve -- does conceptually  
19          include the concept of -- of maintenance and  
20          maintenance is a component of the cost that  
21          carriers that currently receive Universal  
22          Service money get, whether they get support  
23          based on a model that --

24          CHAIRMAN DAVIS: Right. At some  
25          point, it's conceivable that in ten years we

0155

1           could have cell phone towers -- enough cell  
2           phone towers built all over this state where we  
3           would not require any more, that we could go to  
4           some YMAX or satellite technology or something  
5           of that nature where -- where maybe towers  
6           wouldn't -- you know, would go the way that  
7           some people are arguing the way that land lines  
8           are going.

9                       MS. MEISENHEIMER: Well, I would -- I  
10          would acknowledge that it would be my  
11          expectation that the maintenance costs would be  
12          far lower for a wireless carrier than for a  
13          wire line carrier --

14                     CHAIRMAN DAVIS: Uh-huh.

15                     MS. MEISENHEIMER: -- with respect to  
16          Universal Service obligations. And, therefore,  
17          in the event that -- I'm not a lawyer. In the  
18          event that you review the law you're working  
19          under and you ultimately do feel that you  
20          should include maintenance as a component, I --  
21          I would certainly recommend that you be very  
22          critical of the level of maintenance that --  
23          that might be included and that especially for  
24          wire line -- wireless carriers, in promoting  
25          universal service, you should be focused on



0156

1           their spending money to -- to build out. So I  
2           would certainly expect the lion's share of  
3           their money to be going for building new  
4           facilities.

5           I just wanted to give you has input to the  
6           extent that -- that you find it relevant. I  
7           mean, we have many more lawyers on -- on the  
8           Commission, and I'm sure you all have opinions  
9           about what you're required to do. So I -- I  
10          just wanted to -- to add that comment.

11          CHAIRMAN DAVIS: Right. So to  
12          summarize, you think there ought to be some  
13          provision for maintenance, but that at -- at  
14          least initially, the bulk of the monies ought  
15          to be spent on expanding and enhancing the  
16          existing wireless networks; is that a fair  
17          summary?

18          MS. MEISENHEIMER: That's true. Yes.

19          CHAIRMAN DAVIS: Okay. Okay. Ms.  
20          Dietrich, what about these -- these tariffing  
21          requirements? Are they informational tariffs?  
22          Or what kind of information would you be  
23          expecting these tariffs to provide us?

24          MS. DIETRICH: For CMRS providers,  
25          they would be informational filings. In our

0157

1           comments that we filed, we attempted to remove  
2           any kind of connotation of filing by making  
3           them submission, removing any kind of  
4           connotation that the Commission would review  
5           and approve those, but just that they would be  
6           something that would be available here for the  
7           Commission and the public to -- to have if they  
8           wanted to -- a source to access the  
9           information.

10                   CHAIRMAN DAVIS: Okay. Mr. Zobrist,  
11           are you okay with -- with some sort of just  
12           informational filing?

13                   MR. ZOBRIST: Well, it's certainly  
14           better than what the rule previously had. But  
15           I think it might simply be better to mandate  
16           that the companies have this information  
17           available, for example, on a web site.

18                   I mean, I just don't know how many people  
19           actually roll up to the Public Service  
20           Commission and say, you know, I want to see X.  
21           I think that it would be, you know, more  
22           logical to think that they're going to go to a  
23           telephone company and say, I want to  
24           see a copy of your contract, or on the Internet  
25           or I want to see it, you know, advertised.

0158

1           And, certainly, that's one obligation that an  
2           ETC has to advertise.

3           So I mean, I think an informational filing  
4           is certainly better than what the rule  
5           originally had. But I think it's -- it would  
6           probably be more helpful to consumers for this  
7           Commission to say, All right, ETC, you need to  
8           make these outreach efforts and to have this  
9           information publicly available and we're going  
10          for have our staff and Public Counsel check up  
11          on you from time to time to make sure that's  
12          out there.

13          CHAIRMAN DAVIS: Well, do you view  
14          land lines and, I guess, these small ILECs as  
15          competitors of U.S. Cellular? I know they're  
16          different technologies, but aren't you  
17          essentially competing for at least a portion of  
18          the same market?

19          MR. ZOBRIST: Well, certainly,  
20          they're all in the telephone business, so I  
21          think it's fair to call them competitors.  
22          Right.

23          CHAIRMAN DAVIS: And, you know, do  
24          you think if -- if someone has a billing  
25          dispute, you know, or if they have questions

0159

1           when they're trying to compare services, don't  
2           you think it would be more beneficial to  
3           consumers that they could -- could come to a  
4           web site operated by either the Missouri Public  
5           Service Commission or the Public Counsel to get  
6           -- to get an honest comparison of what the  
7           rates might be between U.S. Cellular, Cingular  
8           Wireless, Southwestern Bell?

9                       MR. ZOBRIST: I really don't think  
10           that's necessary. I really don't. I mean,  
11           this is becoming a commodity. This is like --  
12           I mean, do you need to come to -- you know, do  
13           you need to go to some board in St. Louis to  
14           figure out whose got the cheapest milk or  
15           gasoline? I mean, this is becoming so -- you  
16           know, such a competitive area.

17                      CHAIRMAN DAVIS: I mean -- okay.  
18           Let's -- let's go back to the -- to the gallon  
19           of milk. When you go to the grocery store, you  
20           can look and you can see what the price on --  
21           on a gallon of milk is. But, you know, we have  
22           universal service charges. We have intrastate  
23           access charges. We have interstate access  
24           charges. We have -- there are all sorts of --  
25           of, you know -- I guess I'd call it -- I don't

0160

1 know if it's fair to characterize them as gray  
2 math or not. But, certainly, there are lots of  
3 charges and taxes on people's phone bills.

4 And, you know, we've had discussions here  
5 at this commission about -- about truth in  
6 billing because, you know, when you say you can  
7 -- can buy all the long distance service you  
8 can eat for 29.99 a month, shouldn't that  
9 really be 29.99 a month plus tax, or is it  
10 29.99 a month plus an interstate access charge  
11 plus some -- you know, some fees?

12 And I guess, you know, what I'd -- so  
13 you're -- you're saying that -- that consumers  
14 don't need any help, that they're all perfectly  
15 capable of -- of representing themselves and --  
16 and making informed decisions without any  
17 assistance from -- from this agency or from the  
18 Office of Public Counsel or anywhere else in  
19 the state?

20 MR. ZOBRIST: Well, I think you have  
21 an obligation to make certain that the  
22 companies are living up to their commitments  
23 under federal law and state law. But I guess  
24 what -- what I see is -- is the -- the  
25 Commission contemplating through this

0161

1 rule-making a series of additional reports and  
2 a series of additional disclosures that, you  
3 know -- that I don't think need to be made. I  
4 mean, I'm just -- I reflect upon, you know, my  
5 family's and my own experience.

6 And, you know, we've certainly had issues  
7 with Verizon Wireless, which is the one we've  
8 had. And, you know, those people are -- are  
9 pretty sympathetic to our complaints. And you  
10 don't win every time that you complain, but  
11 they know that there's a lot of competition.  
12 You go to Cingular or somebody else.

13 And, you know, I mean, I just don't think  
14 that -- I think that the regulations you're --

15 CHAIRMAN DAVIS: So they're not  
16 necessary -- you say -- if I heard you  
17 correctly, you said they're not necessary. But  
18 do you think they would be helpful to consumers  
19 if we collected this information?

20 MR. ZOBRIST: Well, I -- I -- just  
21 based upon my experience working in this area,  
22 I don't think that people are going to avail  
23 themselves of that. They will look to other  
24 sources. They'll look to web sites. They'll  
25 look for publicly available information.

0162

1           They'll comparison shop.

2                   And I don't think the Public Service  
3           Commission needs to -- to stand, you know, in  
4           the way of that, particularly, since you've got  
5           the FCC which is doing truth in billing and  
6           other things, you know, on a uniform basis.

7                   I mean, for example, I know that  
8           U.S. Cellular has pledged to abide by the  
9           CTIA, you know, consumer code. And if you find  
10          out that they're not doing that, then I think,  
11          you know, they need to be called to account.

12                   MS. MEISENHEIMER: I would like to  
13          respond to some of that.

14                   CHAIRMAN DAVIS: Ah, Ms.  
15          Meisenheimer, please, go ahead.

16                   MS. MEISENHEIMER: I think it is more  
17          than reasonable for you to require these  
18          carriers to keep on -- to keep information  
19          available at the Commission to submit it on a  
20          regular basis, and I have a few reasons for  
21          that.

22                   The first reason is that, certainly, these  
23          types of packages that are offered to customers  
24          change over time. The term of offers may  
25          change, and so it's important that there be

1           some record of, you know, what is the  
2           progression of offers made to consumers to --  
3           to be able to monitor, Are those staying within  
4           the bounds of what is required for the -- for  
5           the use of universal service money.

6           The second is it allows the Commission to  
7           monitor. It allows the Public Counsel to  
8           monitor. And it's -- you know, it's -- it's  
9           easy for those of us who are computer literate  
10          to, you know, fall -- fall too easily into the  
11          trap of that everyone's got access to Internet.  
12          Well, that just not the truth. I -- I speak to  
13          customers still regularly that have such bad  
14          connections that they don't even have basic  
15          dial-up service.

16          And so, you know, making something  
17          available to customers, especially rural  
18          customers, on a web site may not be a very good  
19          way to -- to, in fact, make it available to  
20          them.

21          The third is that as a State Commission,  
22          and I talked about this before, this authority  
23          is designated to you from the federal level.  
24          And so in a sense -- I mean, I -- it seems  
25          reasonable to me that you, in turn, would want



1 to be able to demonstrate your success at  
2 achieving what you've been assigned to do and  
3 -- I -- you know, the -- the State Commission  
4 also has a separate responsibility to ensure  
5 universal service separate from whatever is  
6 designated to you from the federal level. And  
7 actually, with respect to both of those, I  
8 think it -- it seems perfectly reasonable for  
9 you to want to be able to measure your success.  
10 And one way to do that is to be able to have a  
11 record and to keep -- to be able to keep track  
12 of what kinds of rates and terms of service  
13 customers have had available to them.

14 And I provided testimony in the U.S.  
15 Cellular case that was Case No. TO-2005-0384  
16 where I extensively talked about why I thought  
17 it was important for specific information and  
18 what specific information. Maps, I think those  
19 are very important, the types of maps that you  
20 can get from company web sites. I've done a  
21 lot of digging around on web sites looking for  
22 maps. And many of them are not at a level of  
23 detail.

24 In fact, most of the companies that I  
25 visited were not at a level of detail that

0165

1           would really truly tell a customer what's the  
2           quality of the signal at your location, things  
3           like that. Is it actually available at your  
4           house? Often, they offer, Well, you've got so  
5           many days to -- to bring it back. But this is  
6           universal service. This isn't just --

7                     CHAIRMAN DAVIS: Right.

8                     MS. MEISENHEIMER: -- you know, you  
9           can get this -- this new bell and whistle.  
10          This is an alternative to people's basic  
11          connection to the rest of the world. And it's  
12          important that it be available and of high  
13          quality for these companies to be getting  
14          additional money to -- to support that.

15                    CHAIRMAN DAVIS: Okay. All right.  
16          Mr. Zobrist, if you wanted to reply to that  
17          really quickly, and then we'll try to move back  
18          to the actual rule-making here.

19                    MR. ZOBRIST: Well, the only reply I  
20          would say is that Ms. Meisenheimer said that,  
21          you know, we should make these filings so that  
22          the Commission knows the progression of the  
23          offers. You know, that's very close to rate  
24          regulation. It's really not a State Commission  
25          function to know what the progression of the

0166

1 offers are, up or down or whether this is a  
2 better deal or whether you got a better deal  
3 six months ago.

4 What you want to assure yourself is that  
5 the money that they take is being spent  
6 appropriately. And I agree with her when she  
7 says that, you know, you have a right to know  
8 where that money is going. And you have a  
9 right to know that the quality of -- of service  
10 is adequate out there.

11 But it's -- it's something different to  
12 say, you know, we need to know, you know, the  
13 progression of your offers and we need to know,  
14 you know, the finances of your company in order  
15 to be an ETC in this state.

16 CHAIRMAN DAVIS: But don't we do that  
17 for rate of return regulated companies?

18 MR. ZOBRIST: Precisely. You do  
19 that. You don't need to do that for  
20 competitive ETCs.

21 CHAIRMAN DAVIS: So that would be an  
22 unlevel playing field, wouldn't it?

23 MR. ZOBRIST: I -- you know,  
24 Commissioner, I'm not sure where you're coming  
25 when you're talking about level playing field.

1                   CHAIRMAN DAVIS: Well, I thought I  
2                   read -- I thought I read -- here in your  
3                   filing, you said something about level playing  
4                   field. Let me see if I can find that  
5                   reference.

6                   MR. ZOBRIST: But I'm not -- I think  
7                   maybe you and I have a different definition of  
8                   that. And what I'm saying that the level  
9                   playing field is not taking the regulatory  
10                  level that incumbent carriers have been on and  
11                  make everybody fit at that level. That is not  
12                  what U.S. Cellular believes is a level playing  
13                  field.

14                 What they're saying is that for the  
15                 purposes of allowing companies to take  
16                 universal service dollars by virtue of being  
17                 designated ETC, you need to be to have a level  
18                 of regulation upon those companies that is  
19                 consistent with the services that they're  
20                 offering and the money that they're spending.  
21                 And that doesn't mean regulate them just like  
22                 you do an incumbent company.

23                 In other words, I think the distinction  
24                 that was made was between regulatory parity,  
25                 which is not what we're seeking.

0168

1 CHAIRMAN DAVIS: Oh.

2 MR. ZOB RIST: And then a level  
3 playing field.

4 CHAIRMAN DAVIS: Okay.

5 MS. MEISENHEIMER: Commissioner --  
6 or, Chairman, I -- I forgot to give you the  
7 cite to what I think is specifically relevant  
8 to this issue in terms of -- their commitments.

9 CHAIRMAN DAVIS: Okay. Please put  
10 that in the record, Ms. Meisenheimer.

11 MS. MEISENHEIMER: All right. Under  
12 Servicing Provisioning Commitments, Carriers  
13 are required to provide a local -- a local  
14 usage plan comparable to those offered by the  
15 incumbent local exchange carrier in the area  
16 for which the carrier seeks designation.

17 And so you are required to enforce that  
18 they are providing comparable plans. And  
19 comparable, to me, means in price, in terms and  
20 conditions. So it's important for that to be  
21 available to the Staff and Public Counsel to  
22 evaluate whether, in fact, they are comparable  
23 plans available on an ongoing basis and to  
24 monitor the -- the progress of those comparable  
25 plans.

1                   CHAIRMAN DAVIS: Okay. All right.  
2           Mr. Zobrist, in one of your pleadings, you  
3           propose that Section 9 be stricken as redundant  
4           since all carriers, including wireless  
5           providers, are subject to the FCC's truth in  
6           billing rules.

7                   Do you -- and although I briefly skimmed  
8           the FCC truth in billing proposed rules at one  
9           time, it's been some time. Can you refresh --  
10          for my recollection, do those FCC truth in  
11          billing rules contain a requirement that  
12          billing descriptions be, quote, brief, clear,  
13          non-misleading and in plain language?

14                   MR. ZOBRIST: That's my  
15          understanding, Mr. Chairman.

16                   CHAIRMAN DAVIS: So the FCC -- okay.  
17          So those are the FCC rules?

18                   MR. ZOBRIST: Yes, sir.

19                   CHAIRMAN DAVIS: Okay. And what does  
20          Section 9 -- what is your impression of Section  
21          9? What is -- what are you -- does it contain  
22          the same language or different language?

23                   MR. ZOBRIST: I think it was  
24          essentially the same. But it says, you know,  
25          carriers developed as ETCs -- pardon me.

0170

1 Carriers designated as ETCs shall develop a  
2 bill design that can be easily interpreted.  
3 And our only point was if the FCC has already  
4 got a set of standards, make us adhere to  
5 those. And if there's something Missouri  
6 specific that it fails to cover, then -- then I  
7 think we should talk about it. But that's  
8 never been proposed by Staff, I mean, in  
9 Missouri, a specific problem that wouldn't be  
10 covered by those federal truth in billing  
11 regulations.

12 CHAIRMAN DAVIS: Uh-huh. Ms.  
13 Dietrich?

14 MS. DIETRICH: Just to clarify, what  
15 -- what Section 9 in the rule that was filed in  
16 is Section 11 in our comments that actually  
17 says, Carriers designated as ETCs shall develop  
18 a bill design that can be easily interpreted by  
19 their customers and clearly sets forth charges  
20 and compliance with state and federal billing  
21 requirements. And then it goes on to talk  
22 about discretionary cost.

23 CHAIRMAN DAVIS: Okay.

24 MS. DIETRICH: So I think it  
25 contemplates state and federal requirements

0171

1 without putting specifics on it as --

2 CHAIRMAN DAVIS: Right. But I guess  
3 does that assume that their current bill design  
4 is inadequate?

5 MS. DIETRICH: Not necessarily. I  
6 think it just puts forth a requirement -- I  
7 mean, it doesn't say, This is what a clear --  
8 clearly designed bill looks like it. It just  
9 says, you know, make sure that it is clear for  
10 your customers and takes into account federal  
11 and state rules. And perhaps the "clearly  
12 designed" could be removed and just say a bill  
13 design that's consistent with state and federal  
14 requirements, which I think is the focus.

15 CHAIRMAN DAVIS: Okay. Mr. Zobrist,  
16 did you want to add anything else?

17 MR. ZOBRIST: No, no. I mean, I  
18 think that -- that was a comment that we made.  
19 We weren't really raising an issue of  
20 preemption or -- you know, a great concern.

21 CHAIRMAN DAVIS: Okay. Ms.  
22 Meisenheimer, is there anything else that you'd  
23 like to add?

24 MS. MEISENHEIMER: I was going to  
25 stay quiet on this one. But the one point I



0172

1           would make is that I view it more as a  
2           clarification of what is meant by clear. And  
3           so I don't see any reason with it --

4                     CHAIRMAN DAVIS: Right. Right.

5                     MS. MEISENHEIMER: -- being  
6           burdensome the way it is.

7                     CHAIRMAN DAVIS: Right. Redundancy  
8           is -- you know, if you're filing multiple  
9           reports, that's redundancy. But if you're just  
10          restating, you're complying with the same set  
11          of law, that's really just more of a  
12          restatement than redundancy. Is that what you  
13          think, Ms. Meisenheimer?

14                    MS. MEISENHEIMER: Yeah. And I think  
15          it adds a little -- a little finer level of  
16          detail about what you believe is clear to  
17          customers. They have to have a bill that's  
18          understandable to them.

19                    CHAIRMAN DAVIS: Uh-huh. Ms.  
20          Dietrich, did you have any further comments?

21                    MS. DIETRICH: No.

22                    CHAIRMAN DAVIS: Ms. Morgan, is there  
23          anything else you think I need to know about  
24          these rules?

25                    MS. MORGAN: Well, the Small

1 Telephone Company Group supported the original  
2 rule as it was proposed as it was published in  
3 the Missouri Register. We kind of feel like  
4 we've been left behind with -- with all the  
5 changes that the Staff has proposed.

6 And I understand there was another filing  
7 yesterday that I haven't seen yet, so we are a  
8 little concerned that the proposal to change  
9 the rules kind of at the last minute here and  
10 make the ILECs that are currently designated as  
11 ITC -- ETCs subject to the same requirements  
12 because we think there are important  
13 differences and distinctions between the  
14 competitive and -- and wireless companies and  
15 the incumbent companies, primarily, as Ms.  
16 Meisenheimer has pointed out in the method of  
17 reimbursement and the fact that our companies  
18 are not -- do not receive federal USF monies  
19 except for costs that they have already  
20 incurred, money they've already spent.

21 Even then, it's not a dollar for dollar  
22 reimbursement. There's a -- there are all  
23 sorts of formulas and algorithms that are  
24 applied. And then there is a two-year lag  
25 before the companies receive the money.

1           On the other hand, the competitive  
2           companies that are new designated -- newly  
3           designated ETCs will immediately start  
4           receiving the funds based on the same amount of  
5           money that the -- the incumbent receives.

6           And so for that reason, I think it is very  
7           important that you have some sort of rule in  
8           place to make sure that that money is being  
9           spent appropriately and that the service and  
10          the quality of service that those companies  
11          provide will be comparable to what the  
12          incumbent provides.

13                   CHAIRMAN DAVIS: Mr. Stewart?

14                   MR. STEWART: Thank you,  
15          Mr. Chairman. Like Ms. Morgan, CenturyTel  
16          supported the rule as published in the  
17          Register. And we, too, have not seen what the  
18          Staff filed yesterday. I -- I did have a  
19          conversation with Mr. Poston and Ms. Dietrich  
20          yesterday briefly, and -- and I appreciate what  
21          they're trying to do here.

22                   I think there's a couple of things based  
23          on this morning's -- or this afternoon's  
24          discussion I'd -- I'd like to touch on. The  
25          first is the distinction between the

0175

1 maintenance issue for the competitive or  
2 wireless carriers versus the incumbent's.  
3 Fundamentally, we're -- we have two separate  
4 situations. In most instances, the incumbent  
5 carrier that has -- has already received ETC  
6 status is complying with Section 214(e) of the  
7 Federal Act by providing service throughout the  
8 entirety of its ETC service area.

9 On the other hand, when -- and this came  
10 up in the U.S. Cellular application, for  
11 example, it was clear that, as the new carrier,  
12 the new kid on the block, their infrastructure,  
13 their network is not anywhere near covering the  
14 entire service area. So in that context, the  
15 notion of requirement five-year build-out plan,  
16 requiring some upfront commitments on an  
17 encouragement to expand that infrastructure  
18 makes a lot of sense.

19 Once that infrastructure is built, the  
20 focus can shift. It's a timing question. But  
21 at least in the initial stages and as -- as the  
22 initial rule was -- was, I think, intending to  
23 do, it was encouraging that build-out for those  
24 new kids on the block. And that's important.  
25 And I think that's why the five-year

0176

1 requirement, frankly, is a good one.

2 I looked at the -- if you go back and look  
3 at the FCC's March ETC designation order, it  
4 contemplated not the question of the incumbents  
5 who are already ETC serving throughout their  
6 service area. It -- it was focusing on the  
7 wireless carriers and the competitive carriers,  
8 the new folks.

9 In that regard, the incumbent carriers, as  
10 we've heard, are already heavily regulated by  
11 existing quality of service and -- and customer  
12 billing standards through their -- their  
13 tariffs on line extension policy, carrier of  
14 last resort obligations and -- while the  
15 wireless carriers are not. And because you  
16 have that dynamic, it only makes sense to be  
17 looking at these new rules that are applicable  
18 to the new entrants, especially if you're  
19 trying to encourage the infrastructure  
20 development.

21 And, again, I -- I think a lot of the -- a  
22 lot of the comments made earlier today are --  
23 tie in that Section 214(e) about serving  
24 throughout the entire service area. And that's  
25 why CenturyTel, frankly, is supportive of the

0177

1 rule's provisions that encourage the build-out  
2 under the context of a five-year plan and  
3 follow-up filings. I think that's all I have.

4 CHAIRMAN DAVIS: Mr. Martinez, any --  
5 any follow-up comments to that?

6 MR. STEWART: He has not been worn in  
7 yet.

8 JUDGE DALE: I'm sorry. Are you  
9 going to make comments? Raise your right hand,  
10 please.

11 MR. MARTINEZ,  
12 being first duly sworn to testify the truth, the whole  
13 truth, and nothing but the truth, testified as follows:

14 MR. MARTINEZ: Mr. Chairman,  
15 Commissioners, we've touched on a -- several  
16 key points today. And CenturyTel doesn't  
17 disagree with Mr. Zobrist and his client.

18 USF -- the purpose of USF is for the  
19 provision, maintenance and upgrade of  
20 facilities. But as Mr. Stewart pointed out,  
21 the ILECs have done that. And it is the  
22 continued maintenance and the upgrade of the  
23 facilities that we are undergoing on a yearly  
24 basis.

25 We also provide to Staff every year, as

1 part of our USF certification, the dollars that  
2 CenturyTel has actually spent over the previous  
3 year versus the USF support that we have  
4 received for that year as well as a comparison  
5 to show and identify for Staff that we have, in  
6 fact, invested amounts in excess of the USF  
7 having been received. Those accounts are  
8 uniform system of accounts that we're required  
9 to follow not only on the federal side, but  
10 also on the state side.

11 The other point I would like to make is we  
12 are subject to Chapter 32 and 33 quality of  
13 service surveillance and customer protection  
14 billing practice standards that the wireless  
15 carriers today are not. The supported services  
16 today -- or the basket of support and services  
17 is called basic service. And today, an ILEC,  
18 whether competitive or not, cannot disconnect a  
19 customer for non-payment of basic services.

20 I mean, that's just one item where there  
21 is this disparity between regulation of the  
22 wire line -- of the wireless companies and  
23 companies like CenturyTel. Now, there is not a  
24 separate basket of supported services for  
25 wireless carriers versus ILECs or incumbent

1 carriers. It's one basket of services, and  
2 that's what's being supported. And CenturyTel  
3 would urge this Commission to adopt rules that  
4 would bring those competitive ETCs up to the  
5 same level of scrutiny that the incumbent  
6 carriers face today.

7 And it's only in that respect that we can  
8 ensure that service by wireless or competitive  
9 carriers is provisioned throughout the service  
10 area and which would address one of the issues  
11 that -- that Commissioner Appling has brought  
12 up about an acquaintance of his who -- who died  
13 as a result of a farming accident.

14 The only way to ensure that these carriers  
15 are actually building a network that is going  
16 to be available ubiquitously or nearly  
17 ubiquitously in the state is by addressing the  
18 214(e) question. And that question is service  
19 throughout the territory. Thank you.

20 CHAIRMAN DAVIS: Thank you.

21 Mr. Gryzmala?

22 MR. GRYZMALA: Good afternoon,  
23 Chairman. Thank you for the opportunity to  
24 speak. I'll try and be brief. Thank you for  
25 the opportunity to speak, Mr. Chairman. I just



0180

1           turned my microphone on. I'm sorry.

2                   CHAIRMAN DAVIS: And welcome here on  
3           behalf of your -- is it AT&T?

4                   MR. GRYZMALA: It is, indeed, AT&T  
5           Missouri, your Honor.

6                   COMMISSIONER CLAYTON: Communications  
7           of the Southwest? Was that AT&T Communications  
8           of the Southwest, Inc., or AT&T Communications  
9           Long Distance? Which AT&T?

10                  MR. GRYZMALA: I represent  
11           Southwestern Bell Telephone, LP, the ILEC,  
12           doing business as AT&T Missouri.

13                  COMMISSIONER CLAYTON: Thank you.  
14           Thank you for that clarification.

15                  CHAIRMAN DAVIS: All right. All  
16           right. Mr. Gryzmala?

17                  MR. GRYZMALA: How about that? Our  
18           -- our position has not changed from last  
19           Friday.

20                  CHAIRMAN DAVIS: And can you refresh  
21           for my recollection what your position was?  
22           Because I was not here.

23                  MR. GRYZMALA: Yes. I would be happy  
24           to do that.

25                  We generally support the rule as was

0181

1 published in the Missouri Register in early  
2 December.

3 Our primary interest in this matter has  
4 been no secret. We do believe that the FCC's  
5 ETC order reflects the kind of requirements  
6 that Missouri should likewise adopt for the  
7 same reasons that the FCC adopted them for  
8 applications it looks at. There needs to be  
9 more rigor. There needs to be more  
10 accountability about where this money is being  
11 spent. The amount of the fund is growing at an  
12 alarming rate. And this Commission has  
13 indicated it understands that problem.

14 CHAIRMAN DAVIS: Right.

15 MR. GRZYMALA: So for that purpose,  
16 we rep -- we believe that the rule as published  
17 is generally good. There are some instances,  
18 however, where we felt it missed the mark. One  
19 example, which is easily appreciated, is that  
20 we believe the rule as does the FCC's order as  
21 does the statute, the rule should reflect that  
22 the request for the ETC application should  
23 reflect that the application's consistent with  
24 the public interest, convenience and necessity.

25 No ETC designation can be had, whether at

1           the federal or the state level, unless it's  
2           consistent with the federal -- with the public  
3           interest, convenience and necessity. We felt  
4           that's an important integral part of the rule.

5           We also felt that an important integral  
6           part of the rule was a five-year network plan  
7           that describe on a wire -- by wire centered  
8           basis how you, ETC applicant, are going to  
9           deploy your services throughout the area that  
10          you want designation for.

11          And we also felt that the annual reporting  
12          requirement should be a rigorous one. And I  
13          think that the Commissioners' comments from  
14          last Friday reflected that sort of interest, to  
15          make sure that there's accountability both at  
16          the front end of the request process and at the  
17          back end in the accountability process on an  
18          annual basis.

19          I will be happy to say that in Ms.  
20          Dietrich's comments last Friday and since then,  
21          I think that the Staff has -- has indicated  
22          they are supportive of the comments and the  
23          actual edits we suggested to the rule when we  
24          filed our comments on February 3 with two  
25          exceptions. And they have -- and I am quite

1 acceptable with them.

2 That is, one of the annual reporting  
3 requirements would have to do with the outages  
4 encountered by the applicant. We have a  
5 Commission rule on outages. And so instead of  
6 referring to the FCC sort of outage reporting  
7 obligations on an annual basis, we just defer  
8 to the Missouri rule that's already on the  
9 books.

10 And then the other has to do with the  
11 issue we talked about this morning,  
12 provisioning maintenance and upgrading.

13 We also would like to be sure that we --  
14 we see in the rule, as I said, the public  
15 interest. The five-year plan is an important  
16 one to us. And I think what Mr. Stewart says  
17 rings a cord, a very significant cord.  
18 214(e) (2) is absolutely clear that there has to  
19 be deployment. There has to be service  
20 provided throughout the area for which you're  
21 asking for designation.

22 Five years is a reasonable period of time  
23 within which an applicant is to build out its  
24 network. And that means on a universal level  
25 as universal service implies throughout the

0184

1           unserved territory. So I have nothing further  
2           on that.

3           A couple of minor -- or additional points,  
4           and then I'll be done, Chairman, if you will.

5                     CHAIRMAN DAVIS: Sure.

6                     MR. GRYZMALA: With respect to  
7           comments that the Staff filed, I believe, late  
8           yesterday afternoon -- I saw them this morning  
9           after I drove in. Very briefly, there  
10          apparently was -- or there was some discussion  
11          last week between Commissioner Gaw and  
12          initially Ms. Meisenheimer and then Ms.  
13          Dietrich with the ETC appli -- ETC carrier's  
14          obligation to bring that network out to the  
15          customer. And then there was discussion of  
16          special construction.

17                    In other words, the rule contemplates at  
18          some point the customer may be responsible to  
19          pay a portion of the money to take that network  
20          out to him or her. And there was some  
21          discussion about that. And in the rule that's  
22          proposed -- or as -- as since edited by Staff,  
23          it says that there will be special construction  
24          accommodation. And, in particular, it  
  
25          indicates that one mile of facilities to

1 provide minimum class of service will be  
2 provided at no charge.

3 I would only wish to point out that the  
4 ILECs, I should say AT&T Missouri, have a  
5 construction tariff in place.

6 CHAIRMAN DAVIS: Right. And you  
7 filed -- you filed that as part of this case.

8 MR. GRYZMALA: Yes, chairman, we did.

9 CHAIRMAN DAVIS: And I had it here.

10 MR. GRYZMALA: And that would be the  
11 reason for which I would strongly urge that  
12 whatever the construction rule be in the end in  
13 this rule that it either limit -- is limited to  
14 the wireless ETC or that there is some  
15 indication that the construction charges as  
16 reflected in the tariffs of an ILEC are  
17 acceptable.

18 Because, otherwise, to give you a rubber  
19 meets the road example, we have in our tariffs  
20 today a theme in which to pull the facilities  
21 out to your home along right of way, the --  
22 beyond the hypothetically where it is today.

23 CHAIRMAN DAVIS: Right.

24 MR. GRYZMALA: The first half a mile  
25 is on our nickel. The next half a mile and

0186

1           thereafter, the customer pays X amount. I  
2           think it's a hundred dollar every one-tenth of  
3           mile. This says one mile of facilities is at  
4           no charge. That is different. And that is our  
5           principal point with regard to all of these  
6           rules as an ILEC. We have tariffs. We have  
7           Chapters 2, 3, 32 and 33. We just want to be  
8           very certain that would don't need to look in  
9           two different places for the appropriate rule  
10          and they should be consistent.

11                   CHAIRMAN DAVIS: Right. So you're  
12          saying half a mile?

13                   MR. GRYZMALA: Well, I -- my  
14          preference would be that we limit the special  
15          construction at least here in the case of two  
16          -- I should say wireless ETCs.

17                   CHAIRMAN DAVIS: Okay.

18                   MR. GRYZMALA: Or competitive ETCs  
19          who otherwise have no tariff coverage of the  
20          matter.

21                   CHAIRMAN DAVIS: All right.

22                   MR. GRYZMALA: We have an effective  
23          tariff. And I understand the ILECs do. I  
24          think I saw another ILEC file their tariff  
25          yesterday. I think I've just about finished.

1           One last point, and I -- and it is in  
2           keeping with what I just talked about. At the  
3           end of Staff's comment that were filed  
4           yesterday afternoon, I read, Staff recommends a  
5           generic statement be added to the rule to  
6           clarify that in the event that there is a  
7           discrepancy for ILECs or CLECs between the rule  
8           and another Commission rule that the other  
9           Commission rule contains the applicable  
10          requirement. We -- we support that  
11          unquestionably. It tells us what rules we are  
12          -- we must abide by. We know what those rules  
13          are, and they shouldn't be heightened merely  
14          because we happen to be an ETC applicant.

15          Likewise, if they're referenced not in  
16          another Commission's rule, but an example I  
17          just gave you in the construction case, the  
18          tariff, then our tariff should prevail.  
19          It's been approved and it's effective.

20          I otherwise have nothing further. Thank  
21          you very much for hearing us out.

22                 CHAIRMAN DAVIS: Ms. Meisenheimer,  
23          you're catching my eye here. Would you like to  
24          say something?

25                 MS. MEISENHEIMER: I would.



0188

1 Commissioner Gaw --

2 CHAIRMAN DAVIS: Uh-huh.

3 MS. MEISENHEIMER: -- requested  
4 information regarding the extension policies  
5 for various utilities. I agreed to provide a  
6 schedule that showed that, and I believe that  
7 that's been filed now in the case. I also do  
8 have copies that I brought with me just in case  
9 you. You may not want to get into that level  
10 of detail.

11 But what I found in doing that research is  
12 that many companies, many utilities, don't  
13 charge customers at all for extensions to serve  
14 more remote locations. And so I would -- and  
15 whether that be through tariff or through  
16 practice, they may actually -- the language may  
17 actually limit them to not charging or it may  
18 use the term "may" where they're allowed to,  
19 but they don't in practice.

20 And so I would encourage you to look at  
21 that. And I -- he also asked for a  
22 recommendation on that issue. And my  
23 recommendation was that those carriers -- that  
24 wireless carriers should provide it or should  
25 receive no more money than a wire line carrier

0189

1 would.

2 And I -- I think it makes sense if you  
3 want to ensure that universal service funds  
4 aren't being wasted to review whether they even  
5 need the same amount of money as the ILECs  
6 because they're not building the same types of  
7 facilities. I think their costs may be lower.

8 CHAIRMAN DAVIS: Okay. And I have  
9 one last question, and it's for the Judge.

10 MS. MORGAN: Commissioner, could I  
11 add something on that?

12 CHAIRMAN DAVIS: Absolutely, Ms.  
13 Morgan.

14 MS. MORGAN: Commissioner Gaw's  
15 question was directed at our companies as well.  
16 And I attempted to do a survey of those  
17 companies, but I -- I don't have a very good  
18 response yet. But what I have found, as a  
19 preliminary matter, is that although most of  
20 the companies do have a special construction  
21 provision in their tariff, it's like Ms.  
22 Meisenheimer says, they usually do not apply  
23 that.

24 CHAIRMAN DAVIS: Right.

25 MS. MORGAN: Most of -- most of our

0190

1           companies do attempt to provide service within  
2           their service area as a carrier of last resort  
3           with no charge to the customer.

4                   CHAIRMAN DAVIS: Okay. Sort of that  
5           old theory that growth pays for growth?

6                   MS. MORGAN: Yes.

7                   CHAIRMAN DAVIS: Thank you. Judge,  
8           my question to you is, we recently had a  
9           rule-making where there were some late-filed  
10          comments that came in at the end of the  
11          process. I don't know if you want to leave the  
12          record open for another day or two or how you  
13          want to handle it.

14                  But I want to make sure that everybody has  
15          one last opportunity to get all their last  
16          comments in but that, you know, after that,  
17          it's -- you know, there are subsequent comments  
18          of the parties need to be based on the evidence  
19          that's -- that is in the record. Do you  
20          understand what I'm saying, Judge?

21                   JUDGE DALE: Yes, I -- yes, I do.  
22          Well, there we go.

23                   CHAIRMAN DAVIS: I'm certainly  
24          willing to entertain more comments here in the  
25          future, you know, regarding this. But I just

0191

1 want to make sure that the comments are based  
2 on the record that's in front of us and --

3 JUDGE DALE: The -- the record has  
4 remained open. It was not closed as would  
5 normally be the process when there is a  
6 hearing. So we did not close it on Friday and  
7 kept it open in the interim. If there appear  
8 to be any other filings that will -- where  
9 commitments are made today to put more comments  
10 in the record, then we'll hold it open for a  
11 specified period of time.

12 Otherwise, I'm presuming that at the end  
13 of this preceding today, the matter will be  
14 closed. At least the record will be closed for  
15 further comments.

16 MR. ZOBRIST: Mr. Chairman, if I can  
17 make a comment, I appreciate what you say  
18 because a lot of us have not had a time -- an  
19 opportunity --

20 CHAIRMAN DAVIS: Right. And I -- I  
21 was very cognizant of the fact that you had not  
22 seen some of the comments yet. So I definitely  
23 wanted to give you an opportunity to respond  
24 there. But just to let everybody know that,  
25 you know -- you know, I don't want to get a

1 month down the road here and our clock is  
2 ticking and then, you know, people coming and  
3 sending comments that aren't, you know, part of  
4 the official record that could be a problem in  
5 the rule-making process.

6 MS. MORGAN: As I requested the other  
7 day, we would like to be able to file reply  
8 comments to the Staff's proposals, and I have  
9 not seen what was filed yesterday from the  
10 Staff. So a reasonable amount of time to do  
11 that would be appreciated.

12 MR. STEWART: Judge, I would echo  
13 that and also ask, do we know when the  
14 transcripts from these hearings will be  
15 available?

16 JUDGE DALE: I don't know when the  
17 transcripts will be available. But we're not  
18 going to wait on the transcripts. This isn't a  
19 contested proceeding, so people don't  
20 necessarily have an opportunity for replies and  
21 things like that. It's comments. It's rounds  
22 of comments.

23 So this round of comments, then, we'll  
24 close at the close of -- well, at 11:59 next  
25 Tuesday night. That gives you a week and a

0193

1           day. And that's more generous than I've been  
2           so far.

3                   CHAIRMAN DAVIS: And a three-day  
4           weekend, to boot.

5                   JUDGE DALE: That will be really fun.

6                   MR. STEWART: I appreciate that. The  
7           only reason I raised the transcript question is  
8           because there have been so many changes  
9           proposed that in writing we had not seen yet,  
10          and I just was thinking maybe we could have --  
11          where it was discussed in the transcript at  
12          least that would make sure we had them all to  
13          comment on. But that -- you're right on that.

14                  JUDGE DALE: I believe that parties  
15          have so far complied with the requirement that  
16          if they make specific language changes, they  
17          are to provide marked copies with insertions  
18          and deletions of the rule. If you have  
19          specific changes and you have not done so, if  
20          you want your changes to be considered, you  
21          must do so by 11:59 Tuesday.

22                  CHAIRMAN DAVIS: Thank you, Judge.  
23          I'm done.

24                  JUDGE DALE: All right. Before we  
25          move on to the other commissioners, if we may

0194

1 take a brief recess.

2 COMMISSIONER CLAYTON: Brief.

3 JUDGE DALE: And this group is  
4 usually pretty prompt. Ten minutes.

5 (Break in proceedings.)

6 JUDGE DALE: Thank you. We're back  
7 on the record and ready to proceed with  
8 Commissioner Clayton's questions.

9 COMMISSIONER CLAYTON: Thank you,  
10 Judge. The first thing I want to do is get  
11 some clarification on filings that came in,  
12 have come in that are floating around out there  
13 because I'm a little confused as to the purpose  
14 of where we are in this proceeding.

15 It's my understanding that last Friday was  
16 the beginning of the hearing for this  
17 rule-making that since then certain filings  
18 have come in or perhaps revisions of the rule  
19 that Staff has filed, and I'm not sure why  
20 those filings have come in.

21 And then, also, there were some -- in part  
22 of the Staff's filings, it made reference to  
23 the Commission asking for certain things, and  
24 I'm not sure if that was Commission or certain  
25 Commissioners asking for additional

1 information. So if Staff could clarify that  
2 either from -- either from counsel or from Ms.  
3 Dietrich?

4 MS. DIETRICH: Excuse me. What we  
5 filed yesterday, the entire document was in  
6 response to questions from Commissioner Gaw and  
7 Commissioner Murray from Friday's hearing, with  
8 the exception of the very last paragraph, which  
9 says, Staff's recommendation to expand  
10 competitive ETC requirements to ILECs for  
11 competitive neutrality of the proposed ETC  
12 rule.

13 In Friday's hearing, it was brought up  
14 that there were some inconsistencies between  
15 the ETC rule and other Commission rules related  
16 to ILECs and CLECs. And so we went through all  
17 the other Commission rules and tried to clean  
18 up any in -- inconsistencies. For instance, in  
19 the ETC rules, it talked about responding to  
20 customer complaints within 24 hours. In  
21 Chapter 33, it talks about responding to  
22 complaints within one business day. So we  
23 included that in the filing. But the remainder  
24 of the filing was in response to questions from  
25 the Bench.



1                   COMMISSIONER CLAYTON: Okay. Well,  
2                   looking at this -- and I hope I'm looking at  
3                   the right document. The document I'm looking  
4                   at beginning at the old Section 18 and it's got  
5                   a line scratched through that, beginning 21,  
6                   and then there are -- there are basically  
7                   deletions or lines scratching out language for  
8                   the rest of that page down one complete page  
9                   and about a quarter of another page. Do you  
10                  follow -- do you see what I'm talking about?

11                 MS. DIETRICH: No.

12                 COMMISSIONER CLAYTON: Because you're  
13                 not looking or you're not trying or what?

14                 MS. DIETRICH: That's -- that's not  
15                 -- I don't see that in what we filed yesterday.

16                 COMMISSIONER CLAYTON: Okay. Well, I  
17                 don't know what I'm looking at, then.

18                 MS. DIETRICH: It sounds like you're  
19                 looking at a portion of the comments that we  
20                 filed last week.

21                 COMMISSIONER CLAYTON: It's a  
22                 red-line version of the rule, except mine's not  
23                 red. And on the first page -- let me give you  
24                 an example. It's got a new Section B. 1-B  
25                 says, Carrier first alternative local exchange

0197

1 carriers. So I'm looking at -- so I'm looking  
2 at your suggested changes following your  
3 original rule.

4 MS. DIETRICH: You're looking at the  
5 comments we filed last week with suggested  
6 changes, yes.

7 COMMISSIONER CLAYTON: Okay. Then --  
8 then -- then this is the revised comments?

9 JUDGE DALE: That was the revised.

10 COMMISSIONER CLAYTON: Oh, this is  
11 AT&T then.

12 JUDGE DALE: I'm sorry.

13 COMMISSIONER CLAYTON: AT&T  
14 Southwest; is that correct? Your comments were  
15 filed under AT&T Southwest?

16 MR. GRZMALA: AT&T Missouri, we  
17 filed, Commissioner, January 3. And as an  
18 attachment, we had red-line edits into the word  
19 doc., if you will, of the originally proposed  
20 rule.

21 JUDGE DALE: That's this is the  
22 January 3rd filing. This is Staff's comments.

23 COMMISSIONER CLAYTON: Okay. So  
24 Staff's subsequent filing is only for partial  
25 changes. It's not a complete re-write which

0198

1           was filed as part of your original comments?

2                   MS. DIETRICH: That's correct.

3                   COMMISSIONER CLAYTON: Okay.

4                   MR. GRYZMALA: And, Commissioner, if  
5 I can respond to the filing we made?

6                   COMMISSIONER CLAYTON: I hadn't  
7 really gotten to your filing yet, Brother. Be  
8 patient with me.

9                   MR. GRYZMALA: Okay. You mentioned  
10 other filings. I'm sorry.

11                   COMMISSIONER CLAYTON: I did. I'm  
12 trying to figure out what documents I have here  
13 in front of me, and I'm a little behind,  
14 obviously. So -- okay.

15                   So, Ms. Dietrich, so looking at the  
16 document that you filed as attached to your  
17 original comments, why do you all suggest  
18 deleting Subsection 18 through 21?

19                   MS. DIETRICH: We're not suggesting  
20 deleting Section 18. We're suggesting  
21 clarifying it so that it applies to all ETCs  
22 and that the information that is maintained  
23 under that section would be submitted to the  
24 Commission and Staff or OPC upon request as  
25 opposed to --

0199

1 COMMISSIONER CLAYTON: That's the new  
2 18. I'm talking about the old 18.

3 MS. DIETRICH: That's what I have as  
4 old 18. Okay. Just a second.

5 COMMISSIONER CLAYTON: It's the new  
6 -- well --

7 MS. DIETRICH: What -- what we're  
8 suggesting be deleted is the requirement that  
9 each ALEC, which is competitive, same as a CLEC  
10 that is designated as ETC submit quarterly  
11 quality of service reports to the Commission  
12 because they are already required to do that by  
13 other rules.

14 And then we're -- we're suggesting as far  
15 as actually deleting information from this rule  
16 starting with Section 20, which is the annual  
17 report requirement for CMRS providers. And the  
18 reason we were suggesting that be deleted is  
19 because the CMRS providers are submitting  
20 various information in their annual  
21 certification process that documents -- what  
22 funds are used related to ETC purposes.

23 The annual report, in our opinion, would  
24 perhaps go beyond the Commission's jurisdiction  
25 because it would be asking for information that

0200

1 is related to their entire business, all of  
2 their expenses, all of their revenues as  
3 opposed to those revenues and expenses related  
4 to ETC designation.

5 COMMISSIONER CLAYTON: Okay. So how  
6 many filings has Staff made since Friday?

7 MS. DIETRICH: Since Friday? Just  
8 the one yesterday.

9 COMMISSIONER CLAYTON: Just the one.  
10 Okay. And that was responding to specific  
11 commissioner requests?

12 MS. DIETRICH: Correct.

13 COMMISSIONER CLAYTON: So the  
14 reference to the Commission making directions  
15 was actually individual commissioners, not the  
16 Commission?

17 MS. DIETRICH: That's correct.

18 COMMISSIONER CLAYTON: Unless you all  
19 made a decision while I was not here.

20 MS. DIETRICH: No. It was in  
21 response --

22 COMMISSIONER CLAYTON: Wouldn't be  
23 the first time.

24 MS. DIETRICH: It was in response to  
25 questions from Commissioner Gaw and

0201

1 Commissioner Murray.

2 COMMISSIONER CLAYTON: Okay.

3 Mr. Zobrist, Chairman Ameritus?

4 MR. ZOBRIST: Yes, sir.

5 COMMISSIONER CLAYTON: Does the FCC  
6 order on eligible telecommunications carrier  
7 designation permit states to go beyond the  
8 suggested criteria that are listed within their  
9 order, or is it a limitation?

10 MR. ZOBRIST: Well, it depends on  
11 what you're doing. I mean -- and I think that  
12 the -- sort of the gray area is, you know, when  
13 you get into certain things that go beyond  
14 traditional setting of rates. I mean, I think  
15 there's room in the area of what they call  
16 terms and conditions.

17 But it depends on -- on, you know, what --  
18 what the state is trying to do. For example,  
19 there's a recent case that we cited in the  
20 filing that we made this morning that came out  
21 of Minnesota where the Minnesota legislature  
22 put a freeze on new rates. It didn't prohibit  
23 them and didn't attempt to regulate them but  
24 said that if a cellular company or wireless  
25 company is rolling out a new rate, they have to

1 do certain things and within a 60-day period,  
2 it cannot come into effect. And they found  
3 that that was rate regulation. So there is a  
4 bit of a gray area there.

5 I mean, the ETC order sets certain  
6 parameters, but it doesn't really go beyond it  
7 and give you, you know, green lights and red  
8 lights. And I think when you go beyond the  
9 scope of the language in the ETC report order,  
10 that's, you know, where you have to be careful

11 COMMISSIONER CLAYTON: So the answer  
12 to the question is yes, but?

13 MR. ZOBRIST: I think that's correct.  
14 And we did supply in our comments this morning  
15 a draft to be considered by the Washington  
16 State Commission, which we think, you know,  
17 would be a good starting point which appears to  
18 be consistent with that report and order.

19 COMMISSIONER CLAYTON: Well, forgive  
20 me. I haven't read those comments. We've had  
21 a few other things going on today. What --  
22 what types of things are -- are listed within  
23 your filing with regard to the Washington  
24 Commission?

25 MR. ZOBRIST: Well, we actually set

0203

1           forth the whole rule, and it's not real long.  
2           It's about six or seven pages. And I certainly  
3           understand --

4                   COMMISSIONER CLAYTON: We can make  
5           ours longer than that.

6                   MR. ZOBRIST: I know. And the  
7           proposal is certainly a lot longer than that.  
8           But what it does is it -- it doesn't have the  
9           detail type of filing that Staff's provision  
10          has right now. And instead of going through a  
11          lot of quality of service, you know, specifics,  
12          and try to import in, you know, some of the  
13          wire line in a specific benchmark, it says, you  
14          know, you have to comply with the CTIA, you  
15          know, consumer codes and do other things like  
16          that.

17                  It does require maps. It does require  
18          detail on, you know, ability to provide  
19          emergency service, complaints, services --

20                  COMMISSIONER CLAYTON: Does it --  
21          excuse me. Let me ask you this.

22                  MR. ZOBRIST: Sure.

23                  COMMISSIONER CLAYTON: Because you're  
24          giving me a great list. But does it provide  
25          for sitting of towers or designating certain



1 areas as needing additional attention with  
2 regard to coverage?

3 MR. ZOBRIST: No, it does not. But  
4 it does require, you know, report on the  
5 progress that's being made. So I would  
6 certainly think that it -- once the Commission  
7 has that report, if it, you know, should have  
8 additional questions about, you know, the  
9 specifics of that report, I think that's an  
10 area where a Commission certainly can ask for  
11 more information.

12 COMMISSIONER CLAYTON: Is there an  
13 appropriate way for the Commission to work with  
14 a wireless company in -- in addressing coverage  
15 problems within a state?

16 MR. ZOBRIST: Well, I think the  
17 answer is yes. Now, I -- I have to tell you  
18 I'm not an expert in telling you what -- what  
19 that, you know, method of -- of operation is.  
20 I mean, certainly, I think, you know,  
21 consulting with Staff and Public Counsel on an  
22 as-needed basis is something the Commission  
23 should expect. But I -- but I just don't know  
24 enough about this area since we don't have any  
25 ETCs in Missouri, and that's all that I've had

0205

1 to do. So I can't really tell you, you know,  
2 what's the best method to, you know, make  
3 certain that where there are coverage problems,  
4 how are they being addressed.

5 You know, you've got your six steps in the  
6 rule that reflects the federal rule. But how  
7 that is actually carried out, I can't be  
8 specific on that.

9 COMMISSIONER CLAYTON: Is -- is it  
10 even appropriate for a State Commission to  
11 convey concerns about coverage areas that --  
12 that -- that don't have adequate coverage where  
13 a tower perhaps is necessary or perhaps the  
14 geography lessens coverage in a particular  
15 area, is it even appropriate for a State  
16 Commission to be involved in communicating  
17 those concerns to a -- to a wireless company?

18 MR. ZOBRIST: I don't see anything  
19 that is inappropriate about that, Commissioner.  
20 No, I don't.

21 COMMISSIONER CLAYTON: Do you think  
22 it would be inappropriate to look at ETC  
23 designation as more of a partnership among a  
24 state and a wireless company in -- in working  
25 together to establish goals within the idea of

1 universal service?

2 MR. ZOBRIST: Well, I'm not sure I  
3 know what the word "partnership" means, but I  
4 certainly think that there needs to be lines of  
5 communication open and that once a company is  
6 certified to be an ETC that it has to, you  
7 know, obviously retain a presence in that state  
8 and speak with Commission, members of the  
9 Staff, members of the Office of the Public  
10 Counsel.

11 COMMISSIONER CLAYTON: I'll give you  
12 -- try to give you an example, and I don't know  
13 if this will make sense. Probably won't look  
14 like it makes sense on the record, but I'll try  
15 anyway. You are given a map of a wireless  
16 company and the map has a supposed coverage  
17 area, and the coverage is designated by just a  
18 circle, kind of a round description of where  
19 supposedly coverage is available. But perhaps  
20 a State Commission would identify that there  
21 are certain areas where that coverage is not  
22 working.

23 What would be the best method of -- of  
24 trying to solve that type of coverage with a  
25 wireless company?

1                   MR. ZOBRIST: Well, I think what you  
2                   do is you call the company, point of conduct,  
3                   and say, We need to have a meeting about, you  
4                   know, the problem within a particular area and  
5                   you --

6                   COMMISSIONER CLAYTON: Is it  
7                   appropriate, though, in this context to say,  
8                   We'd like to you spend money from your ETC --  
9                   or from the Universal Service Fund to address  
10                  this issue?

11                  MR. ZOBRIST: If that area is  
12                  contained in the build-out plan, which based  
13                  upon your example I would think it would --

14                  COMMISSIONER CLAYTON: What happens  
15                  if it's not in the build-out plan that's been  
16                  suggested by the company and it's just another  
17                  area that needs additional service or perhaps  
18                  has coverage problems but it's not in the  
19                  proposed plan by the company? How does the  
20                  Commission effect change or address those  
21                  concerns?

22                  MR. ZOBRIST: Well, I think in the  
23                  recertification process, that's where that  
24                  conversation occurs. And, obviously, if a  
25                  company looks like they're not spending money,

1           you know, in Missouri, if it looks like they're  
2           not following the build-out program, if they're  
3           being, you know, obstinate, then decertifying  
4           them is an option.

5                       COMMISSIONER CLAYTON: Can the  
6           Commission modify a company's proposed plan and  
7           then grant ETC designation? Should that be  
8           part of this rule? Well, I know what your  
9           answer to that question is going to be. But is  
10          that even possible given the FCC order, to  
11          modify a filed plan?

12                      MR. ZOBRIST: You know, I'm not -- I  
13          don't know. I don't know enough about the  
14          process to be able to really give you an answer  
15          on that. I'm not aware of any State Commission  
16          that has modified a plan.

17                      I mean, I think that it's like, you know,  
18          integrated resource planning. I mean, you  
19          have, you know, conversations with the utility,  
20          and you try to come to an accommodation on, you  
21          know, what type of planning ought to occur.

22                      COMMISSIONER CLAYTON: Do you believe  
23          it's an inappropriate characterization to call  
24          ETC designation and wireless universal service  
25          support as a partnership between a state and a

1 wireless company? Do you think that's an  
2 inappropriate characterization of this  
3 relationship?

4 MR. ZOBRIST: I just don't know what  
5 a partnership means. I mean, I'm not aware of  
6 another partnership. I mean, I don't know if  
7 ETCs feel like they're in partnership with the  
8 Federal Communications Commission. I -- to me,  
9 that's just kind of a dangerous sort of term  
10 because it -- that's what -- that's what  
11 business partners deal with.

12 And you're a regulator, and this is a --  
13 this is a company. And there has to be a  
14 relationship between the two that -- that works  
15 and that benefits consumers. But I just -- you  
16 know, I'm not trying to dodge the -- the  
17 bullet. But I just don't know what the word  
18 "partnership" means, so I can't really commit  
19 to it.

20 COMMISSIONER CLAYTON: Well, we can  
21 get the Business Organizations CLE book, and we  
22 can get the definition out of it. And it  
23 probably won't address the circumstances here,  
24 but this is an odd relationship between a  
25 wireless company and a State Commission when we

0210

1 do not have any jurisdiction generally over a  
2 wireless company, except with regard to this  
3 limited circumstance. And in determining what  
4 the state role is here, do we rubber stamp an  
5 application that comes in? How rigorous of an  
6 application process should we have? What  
7 demands should with we be making for consumers  
8 of this state?

9 And I suppose that I was -- partnership  
10 may not be the most accurate word. But I see  
11 it as -- as a possible description of the  
12 relationship between the Commission and a  
13 wireless company because we are working with  
14 you to grant this classification. But we also  
15 have concerns that we want to have addressed.  
16 And I don't know the best mechanism to -- to  
17 have the give and take.

18 MR. ZOBRIST: Well, I -- I really  
19 don't think it ought to be called a  
20 partnership. You are a certifier. You are a  
21 monitor. You know, you are a grantor of this  
22 status. And I think that's the better way to  
23 put it. You have the -- I mean, you've got the  
24 authority if -- if the facts support your  
25 decision to pull the certification from any

0211

1 ETC.

2 COMMISSIONER CLAYTON: Does a  
3 wireless company have to file a tariff for its  
4 services at the FCC?

5 MR. ZOBRIST: Not that I'm aware of.  
6 No.

7 COMMISSIONER CLAYTON: Are there any  
8 filings at the FCC that a wireless company must  
9 make that describes its rates, its terms and  
10 conditions, its -- there's nothing similar to  
11 what we would have in Missouri as tariff filing  
12 by an ILEC?

13 MR. ZOBRIST: I believe that's  
14 correct. There are examples that -- that you  
15 have to file with the Federal Communications  
16 Commission. I'm not a expert in that area, but  
17 I don't believe it -- it is at all like --

18 COMMISSIONER CLAYTON: So there  
19 wouldn't be a filing that you do at the FCC  
20 that you could just copy the Missouri  
21 Commission and it would just be filed here as  
22 well for an information purpose?

23 MR. ZOBRIST: Well, I -- I think  
24 whatever at least U.S. Cellular files at the  
25 FCC it would be willing to file at this



0212

1 Commission or any other Commission.

2 What concerns that I have expressed  
3 earlier today were that you would design a  
4 system that we would have to engineer just for  
5 the State of Missouri and that, you know, then  
6 when we go to the Nebraska, we'd have to do it  
7 there and if we go to Oregon, we'd have to do  
8 it there. And that's the thing that I'm trying  
9 to, you know, get away from.

10 COMMISSIONER CLAYTON: How many  
11 states is your client certified -- or  
12 designated as ETC right now?

13 MR. ZOBRIST: I think it's six or  
14 seven.

15 COMMISSIONER CLAYTON: Six states.  
16 Are those generally Midwestern states or --

17 MR. ZOBRIST: No. We're -- U.S.  
18 Cellular is certified, I believe, in Maine, I  
19 believe Iowa, I think Oregon, and I can -- I  
20 can get you that list. But it's actually  
21 across the country.

22 COMMISSIONER CLAYTON: Across the  
23 country.

24 MR. ZOBRIST: But it's -- it no more,  
25 I think, than six or eight states. And I

0213

1 believe in Oklahoma as well.

2 COMMISSIONER CLAYTON: Are -- and are  
3 each of those states identical or substantially  
4 similar in the requirements that their -- those  
5 state commissions place upon U.S. Cellular to  
6 achieve ETC status?

7 MR. ZOBRIST: No. They are  
8 different. I mean, I know, for example, that  
9 the -- the Oklahoma rules are more detailed  
10 than, say, the -- the Oregon rules or the West  
11 Virginia rules.

12 COMMISSIONER CLAYTON: How familiar  
13 are you with the requirements in those ETC  
14 designations?

15 MR. ZOBRIST: I really can't speak to  
16 them in any detail, Commissioner.

17 COMMISSIONER CLAYTON: Okay. Okay.  
18 Earlier, you made reference to the CTIA Code of  
19 Conduct and the willingness of U.S. Cellular to  
20 abide by that code in terms of consumer service  
21 or consumer affairs. I'm not sure about that  
22 terminology. Is that correct?

23 MR. ZOBRIST: That's correct.

24 COMMISSIONER CLAYTON: And what do  
25 you -- what does your clients see as being the

1           -- the mechanism of enforcement of that code or  
2           addressing possible grievances if -- if there  
3           were a violation of that code to be found?

4                   MR. ZOBRIST: Well, I'm -- I'm not  
5           sure you have the -- the ability to -- to file  
6           a complaint case. I haven't really thought  
7           about that. But the annual certification is  
8           the clearest ability that a commission has to,  
9           you know, tell an ETC company that's not  
10          performing well that, you know, we're going to  
11          decertify you, and, you know, that's it. You  
12          know, if you've got a problem with that, then  
13          appeal it and take it to the FCC.

14                   Hopefully, there are, you know, meetings  
15          and, you know, a relationship that is  
16          established to try to head those problems off.  
17          But that's the ultimate ability of the  
18          Commission to control the process that it  
19          finds, you know, is not carrying out the  
20          objectives that it wants.

21                   COMMISSIONER CLAYTON: That would be  
22          -- I hate to say to call us the -- call that  
23          characterization, but it seems extreme that if  
24          there is one or a handful of disputes over a  
25          possible violation of the code of conduct to

0215

1 pull a designation that means millions of  
2 dollars a year.

3 MR. ZOBRIST: Commissioner, I just --  
4 I haven't practiced in this area, to be blunt,  
5 enough to be able to tell you that in another  
6 case, you know, a complaint case was filed and  
7 a fine was levied. That may clearly be within  
8 the jurisdiction of the Commission. I just  
9 have not explored that for purposes of looking  
10 at the rule-making. The rule-making did not  
11 address it, and I have not researched it.

12 COMMISSIONER CLAYTON: Well, the  
13 rule-making does deal with a method of dealing  
14 with consumer complaints.

15 MR. ZOBRIST: Correct.

16 COMMISSIONER CLAYTON: That would  
17 involve using the existing complaint process of  
18 the Commission. Does your client have a  
19 problem using that complaint process  
20 recognizing that there's not a \$100 a day  
21 penalty hanging at the end?

22 MR. ZOBRIST: Right. I mean, I don't  
23 think in theory that it does.

24 COMMISSIONER CLAYTON: Okay. Does  
25 your client have a better suggestion of

0216

1           resolving customer disputes in some type of  
2           organized fashion, working with the Missouri  
3           Public Service Commission other than what has  
4           been filed in this rule?

5                   MR. ZOBRIST:  No.  I mean, there's  
6           not a lot of meat on the bones here, but I  
7           don't think we have a problem with establishing  
8           a protocol that would be agreed to by the  
9           parties.  And, in fact, you know, if that's  
10          your thought in terms of a partnership that,  
11          you know, Public Counsel and Staff would sit  
12          down with, you know, ETC designated companies  
13          and say, you know, would you agree that this is  
14          how we're going to handle complaints, I think  
15          that's a good idea.  And I think that type of a  
16          partnership between Government and -- and a  
17          company makes a lot of sense.

18                   COMMISSIONER CLAYTON:  Okay.  Thank  
19          you, Chairman Ameritus.

20                  Ms. Meisenheimer, wake up.

21                   MS. MEISENHEIMER:  I'm awake.  
22          Listening intently.

23                   COMMISSIONER CLAYTON:  Does the  
24          Office of Public Counsel have a state in mind  
25          that it thinks does the most effective job in

0217

1           -- in granting ETC designations on wireless  
2           companies that also have mechanisms designed to  
3           protect the public or promote the public  
4           interest?

5                       MS. MEISENHEIMER:  I -- I haven't  
6           done extensive research on the methods used in  
7           other states.  I have, however, provided a  
8           great deal of testimony to you on these issues  
9           and set forth a list of conditions that I think  
10          will make Missouri among the best in terms of  
11          ensuring that customers receive the benefit of  
12          money that's gathered from customers.

13                      COMMISSIONER CLAYTON:  And how does  
14          the original rule, I want to stay consistent  
15          here, focus on the rule as published?  How does  
16          the original rule fit with your suggested  
17          criteria that you've just mentioned?

18                      MS. MEISENHEIMER:  Well, I -- I think  
19          that it -- the original rule incorporated a  
20          number of the things that I've talked about in  
21          proceedings before you.  I think there were  
22          some areas that needed refinement.

23                      We are generally in agreement with the and  
24          support the Staff's comments to you.  I -- I  
25          think that there are a few areas that still

0218

1           need some sprucing up. I've provided a -- or  
2           we are filing something -- in fact, it should  
3           be filed now, that -- that in addition to  
4           providing information on extension policies, it  
5           -- it will also make a couple of  
6           recommendations that I felt that Commissioner  
7           Gaw asked for from us.

8                       COMMISSIONER CLAYTON: Is there --  
9           are there any areas in which OPC and Staff  
10          would disagree with regard to the rule?

11                      MS. MEISENHEIMER: There was an issue  
12          that came up in our previous testimony, and it  
13          was with respect to the interpretation of  
14          Section 24(e), I believe.

15                      And the Staff, after having heard more on  
16          -- on my thoughts on that may have -- you know,  
17          there may not be as much difference as I think.  
18          But I interpreted Section 20 -- 24(e) -- the  
19          original language required a demonstration that  
20          the receipt of high cost money was only used to  
21          improve coverage. And when I -- or my  
22          interpretation of demonstration -- and I've  
23          provided language to -- that I think will  
24          clarify this as comments in the -- and you'll  
25          have that today. Or it should already be filed

0219

1           -- is to more clearly clarify that that  
2           requires supporting evidence documentation.

3           I view that as being a standard where you  
4           should be getting numbers and evidence that  
5           support that money is being used that money is  
6           being used for intended purpose. The Staff  
7           made a comment on that, but I'm not sure  
8           exactly today after -- I'm not sure if they  
9           would have a problem with this recommendation  
10          that -- that we submitted today. I don't think  
11          they've had a chance to see it on that -- on  
12          that issue.

13          In terms of other areas where we may still  
14          have a problem, I was reading, and maybe Ms.  
15          Dietrich can help me, with where the location  
16          was for the one mile --

17                 MS. DIETRICH: That's in 10.

18                 MS. MEISENHEIMER: Okay. The Staff's  
19          provided with you updated comments that I -- I  
20          haven't fully reviewed yet. However, I did  
21          review that section. And all I would add to  
22          that is I agree that wireless carriers  
23          shouldn't get more money than the incumbent.  
24          And, in fact, I think it's reasonable at some  
25          point for you to look at whether they should



0220

1           get less, simply because they have lower costs  
2           for that -- for that part of the -- for that  
3           purpose.

4                   COMMISSIONER CLAYTON: Do we have the  
5           authority to change the -- the actual dollar  
6           amount?

7                   MS. MEISENHEIMER: I think you have  
8           the authority on how money that's received is  
9           directed toward different purposes. So it  
10          wouldn't necessarily reduce their total draw  
11          from the fund. The -- the incumbent carriers  
12          don't file and say, Well, we connected Farmer  
13          Smith down the road, and, therefore, we're  
14          going to get X dollars back for that. Instead,  
15          it is a total support level based on their  
16          total cost of service.

17                   COMMISSIONER CLAYTON: But the  
18          mechanism is set up. We can't modify the  
19          mechanism. All we do is certify and then  
20          monitor the expenditure of the funds. We can't  
21          determine how much they actually receive, can  
22          we?

23                   MS. MEISENHEIMER: They get -- they  
24          get the same amount per customer. It's on a  
25          per -- or a per line basis. And I'm not -- I'm

0221

1 not suggesting that you change that. What I'm  
2 suggesting is that when you're determining  
3 whether their plan and what they've spent the  
4 money on is appropriate, I'm suggesting that  
5 the weight you would give to that aspect or --  
6 you know, you would expect higher expenditures  
7 elsewhere like in building out new facilities  
8 as opposed to that build-out being covered as  
9 much by customers if it doesn't cost as much  
10 for that to happen.

11 COMMISSIONER CLAYTON: Okay. Thank  
12 you.

13 Ms. Dietrich, what role do you see the  
14 Staff playing in assessing a -- a proposed  
15 build-out plan in determining where towers are  
16 going to go and where service is going to be  
17 provider both within a -- an -- supposedly an  
18 existing service territory or a new territory?  
19 What is the Staff role, if any, in looking at a  
20 proposed build-out plan?

21 MS. DIETRICH: I think at this point  
22 I wasn't anticipating any Staff role in -- in  
23 the build-out plan. With the initial  
24 application, we would have the opportunity to  
25 respond to what they propose. But then on an

1 ongoing basis when they updated their plan and  
2 kept -- you know, moved it forward for the next  
3 five years or kept it rolling, it would just be  
4 something that they would submit to the Staff.  
5 And it would be --

6 COMMISSIONER CLAYTON: So Staff would  
7 not evaluate the plan?

8 MS. DIETRICH: We would look at it to  
9 make sure that it met the requirements of the  
10 rule. But as far as saying, yes, the cell  
11 tower should go here versus some other place, I  
12 wasn't anticipating that Staff would have that  
13 role. I think that --

14 COMMISSIONER CLAYTON: Is there a  
15 problem with Staff having that role?

16 MS. DIETRICH: I don't know that we  
17 could do that once the plan is submitted. I  
18 think, you know, it's a possibility that we  
19 could work with the company saying, Hey, we've  
20 had these complaints or these are areas where  
21 we've seen -- where there is a problem. Can  
22 you include these areas in your build-out plan?  
23 But once a plan is submitted to us, I don't  
24 know that we have the ability to go back and  
25 say, No, I don't like where you you're

1           proposing.

2                   COMMISSIONER CLAYTON: Well, frankly,  
3           the -- the way you say that, I kind of see  
4           these plans coming in, there's just no  
5           evaluation. It's like as long as there's a  
6           plan, we'll recertify them. They continue to  
7           get their money and very little monitoring of  
8           how the funds are going to be spent.

9                   That doesn't give me a lot of confidence.  
10          Should Staff have a more enhanced role in  
11          looking at what these build-out plans are and  
12          assessing whether the public is benefiting from  
13          the expenditure of these funds?

14                  MS. DIETRICH: I think for them to be  
15          an effective plan, that would be a -- a good  
16          idea. And I think it has to be before the plan  
17          is submitted to Staff.

18                  COMMISSIONER CLAYTON: Does the rule  
19          do that? Does the -- does the rule provide  
20          that ability of the Staff to evaluate a plan on  
21          its merits or on some public interest standard?

22                  MS. DIETRICH: Well, there -- there  
23          would be the public interest standard. And  
24          it's -- it's expected under the ETC order. And  
25          under AT&T's comments we've agreed that it

1           should be added. But as far as in the annual  
2           certification process, there is not included in  
3           the rule any kind of mechanism for any kind of  
4           review of this information and, Hey, we have a  
5           problem.

6                       COMMISSIONER CLAYTON: Should there  
7           be?

8                       MS. DIETRICH: It makes sense. Yes.

9                       COMMISSIONER CLAYTON: Phrasing it  
10          that way is quite different than phrasing it as  
11          a partnership. I was trying to be nice before.  
12          As a working relationship. But if one looks at  
13          it as looking at strictly on a public interest  
14          standpoint, I wonder what the best mechanism to  
15          have that dialogue, have that communication  
16          between Staff, reviewing complaints, reviewing  
17          information that comes in on how -- how service  
18          is being procured and out in a particular area  
19          and having the company work with the Staff in  
20          addressing those concerns.

21                      What -- what you've just mentioned to me  
22                      is that the company will make some sort of  
23                      business decision on -- just in its interest.  
24                      And I'm not saying it's going to be against the  
25                      public interest, but the company is going to

1 make a plan that's going to benefit it and its  
2 marketing plan and business plan that may not  
3 be in the best interest of the public or  
4 certain parts of public.

5 And I guess I want to know from you, Ms.  
6 Dietrich, is what is the best way to have that  
7 communication and to involve Staff in assessing  
8 those build-out decisions?

9 MS. DIETRICH: I think it should be  
10 done before the plan is actually submitted, a  
11 dialogue, a workshop, something along those  
12 lines when the company is preparing the plan.  
13 And I'm not talking about their initial  
14 application plan, but ongoing. Some kind of  
15 dialogue, This is what we intend to do and a  
16 dialogue whether that meets the needs of what  
17 we've heard.

18 Now the problem is, at least right now, we  
19 don't have any kind of expertise in wireless  
20 service. So, I mean, it would strictly be  
21 relying on where we know customers have had  
22 problems and things like that.

23 COMMISSIONER CLAYTON: Is there  
24 training available to -- to help with working  
25 on those issues?

0226

1                   MS. DIETRICH: I don't know. And I  
2                   would also say that I wouldn't just limit it --  
3                   if we're going to do that, I wouldn't just  
4                   limit it to wireless providers. I mean, we  
5                   also have competitive carriers, CLECs, that  
6                   would be going into these areas and would not  
7                   be building out to the extent that the ILECs  
8                   have already built out. They would still have  
9                   areas they need to reach.

10                  COMMISSIONER CLAYTON: Now, in the  
11                  original rule, there was a five-year plan. So,  
12                  basically, you would have a five-year plan.  
13                  And I suppose Staff would monitor each year  
14                  whether the company is complying with that  
15                  five-year plan --

16                  MS. DIETRICH: Correct.

17                  COMMISSIONER CLAYTON: -- as the  
18                  original draft of the rule --

19                  MS. DIETRICH: Right.

20                  COMMISSIONER CLAYTON: --is written?

21                  MS. DIETRICH: Right.

22                  COMMISSIONER CLAYTON: Now, in the --  
23                  this modification that you have, it lists a  
24                  two-year plan, and I'm not sure how the five  
25                  was changed to a two, but you've got a two-year

0227

1 plan. So would you just see -- you would work  
2 on the plan to start evaluate in the next year  
3 on whether they're complying with that plan and  
4 then do a new plan?

5 MS. DIETRICH: That's the way the  
6 language is written right now. That was not  
7 the intent. The intent that was it be a  
8 rolling two-year plan so that there would  
9 always be -- each annual certification process  
10 they would submit updates on what they've done  
11 so far and what they plan on doing in the next  
12 two years, which is why we were willing to back  
13 off to two years instead of five years.

14 COMMISSIONER CLAYTON: Is that  
15 something that -- that the wireless companies  
16 would prefer, Mr. Zobrist? Do you like the  
17 shorter term plan or the longer term plan?

18 MR. ZOBRIST: We like the shorter  
19 term plan.

20 COMMISSIONER CLAYTON: Okay. Do you  
21 have a problem with the concept of the rolling  
22 plan?

23 MR. ZOBRIST: We do not.

24 COMMISSIONER CLAYTON: Okay. Okay.  
25 Thank you. Ms. Dietrich, what -- what do you



1 believe the beth -- the beth -- the best  
2 mechanism. I want to see that in the  
3 transcript -- the best mechanism for resolving  
4 consumer complaints would be if someone alleged  
5 a violation of the CTIA Code of Conduct?

6 MS. DIETRICH: I think in order for  
7 the Commission to have any kind of teeth in a  
8 consumer complaint process, it would have to be  
9 subject to the Commission's complaint process  
10 where they would either do it informally  
11 through consumer service or formally through  
12 the complaint process.

13 Just by complying -- or a -- in agreement  
14 to comply with the CTIA code, I don't think the  
15 Commission would have any authority to do  
16 anything to say, Well, you know, we had this  
17 many complaints for this provision. And so I  
18 think we actually need the -- the language in  
19 there for the complaint process where something  
20 is formally brought before the Commission or  
21 informally brought up before the Commission.

22 COMMISSIONER CLAYTON: Are you  
23 suggesting that the wireless company -- if --  
24 if there was a complaint that a consumer had,  
25 would it be your understanding, according to

0229

1           this draft of the rule, that the wireless  
2           company could be named as a respondent or a  
3           defendant in a -- in a formal complaint case  
4           before the Commission?

5                     MS. DIETRICH: That's correct.

6                     COMMISSIONER CLAYTON: Would you  
7           agree that the only way to assume personal  
8           jurisdiction over the company would be, I  
9           suppose, by their submission by filing an  
10          application for ETC designation according to  
11          this rule? Is that your understanding?

12                    MS. DIETRICH: As an non-attorney,  
13          yes.

14                    COMMISSIONER CLAYTON: I'm not going  
15          to let you get away with that. Ms. Dietrich,  
16          do you believe that the State can go beyond the  
17          requirements that are suggested in the FCC  
18          order?

19                    MS. DIETRICH: I think there are  
20          certainly provisions in the March 5th order  
21          that anticipate that State Commissions could,  
22          yes.

23                    COMMISSIONER CLAYTON: So some  
24          things, we could, some things, we could not?

25                    MS. DIETRICH: Well -- just one

0230

1           second. For instance, in -- in the March 5th  
2           order, the FCC encourages states to apply its  
3           standards, but it doesn't mandate those  
4           standards. It notes that State Commissions  
5           have used additional factors, and it  
6           specifically talks about Alaska where Alaska  
7           has talked to -- or has analyzed availability  
8           of new choices, affordability, quality of  
9           service, service to unserved customers,  
10          comparison of benefit to public costs and  
11          considerations of material harm.

12                 And then they go on to say later on in the  
13          order that they decline to mandate that State  
14          Commissions adopt the requirements because  
15          State Commissions are more able to evaluate  
16          local factual situations and exercise  
17          discretion in reaching their own conclusions.

18                 So I think they throw some catch phrases  
19          in the order such as that that allow the State  
20          Commissions to go beyond their rules.

21                         COMMISSIONER CLAYTON: Okay. Okay.  
22          Thank you, Ms. Dietrich.

23                 Ms. Morgan, forgive me. In the file that  
24          I was handed the other day with -- for this  
25          case and all the comments in it, it didn't have

0231

1           the Small Telephone Group, so I apologize for  
2           asking some silly questions or perhaps  
3           questions that would be more easily answered if  
4           I were better prepared.

5                     MS. MORGAN:   Okay.  I'll forgive you.

6                     COMMISSIONER CLAYTON:  Does the Small  
7           Telephone Group support the rule as published?

8                     MS. MORGAN:  Yes, we do.

9                     COMMISSIONER CLAYTON:  Are there any  
10          areas in which the Small Telephone Group  
11          believes that the rule should go farther in  
12          placing requirements or burdens on a wireless  
13          applicant?

14                    MS. MORGAN:  The -- the one area that  
15          we thought perhaps the rule could be expanded  
16          was to include Chapter 33 as well as Chapter  
17          32.

18                    COMMISSIONER CLAYTON:  And forgive  
19          me.  What are Chapter 32 and 33?  Would you  
20          just tell me what those are?

21                    MS. MORGAN:  Natelle, would you --

22                    COMMISSIONER CLAYTON:  Pretend that I  
23          know what Chapter 32 -- okay.  You pretend that  
24          you know what Chapter 32 and 33 are.

25                    MS. DIETRICH:  Chapter 32 is quality

1 of service rules, and Chapter 33 are the  
2 billing requirement rules.

3 MS. MORGAN: Thank you.

4 COMMISSIONER CLAYTON: Okay. And  
5 those are not -- those are not -- those  
6 requirements are not within the rule right now?

7 MS. MORGAN: Some provisions, to --  
8 to a certain extent. And like I said, we have  
9 not had a chance to really review what Staff's  
10 most recent filing.

11 COMMISSIONER CLAYTON: Well, let's  
12 work off the published copy.

13 MS. MORGAN: The published -- yes.  
14 Here are some things that -- that are not in  
15 there, in the published rule.

16 COMMISSIONER CLAYTON: Why does the  
17 Small Telephone Group think that such a high  
18 standard should be met by the wireless  
19 companies to achieve ETC designation?

20 MS. MORGAN: Well, we've talked about  
21 the level playing field before, and we just  
22 feel that it's only fair for those companies  
23 that are going to be receiving the same funds  
24 based on the incumbent company's costs, we feel  
25 that they should be subject to the same level

0233

1 of regulation as far as possible.

2 We realize that there will be differences  
3 in technology where the rule would not be  
4 feasible. But as far as feasible, we believe  
5 that they should be subject to the same level  
6 of regulation as the incumbent.

7 COMMISSIONER CLAYTON: But by placing  
8 these higher standards on wireless companies,  
9 isn't that going to make them even more  
10 competitive with your clients than they would  
11 be if they didn't have to achieve quality of  
12 service standards? Do you want really want  
13 them to have to have high quality of service?  
14 Wouldn't that make them tougher competitors?

15 MS. MORGAN: I suppose it would, yes.

16 COMMISSIONER CLAYTON: Does the Small  
17 Telephone Group support the concept of -- of  
18 the Commission actively working on filling  
19 holes in coverage areas or working with the  
20 company in placement of towers?

21 MS. MORGAN: We certainly support the  
22 coverage because, as CenturyTel mentioned, we  
23 believe that the rule requires that the -- the  
24 ETC provide service throughout the area for  
25 which they have been designated.

1 COMMISSIONER CLAYTON: Of course,  
2 that would make them competitive in even more  
3 areas where your clients would operate.

4 MS. MORGAN: Yes. Yes, it would.  
5 But if they're -- if they're receiving the  
6 funds, then we believe they should provide  
7 comparable service and ubiquitous service.

8 As far as the Commission's role in -- in  
9 placing the towers, I'm afraid I don't have an  
10 opinion as to whether that's within your  
11 jurisdiction or authority or not.

12 COMMISSIONER CLAYTON: It is.

13 MS. MORGAN: Okay. If you say so.

14 COMMISSIONER CLAYTON: Okay. Is the  
15 position of SBC Missouri, d/b/a AT&T Missouri,  
16 d/b/a AT&T of the Southwest Communications,  
17 Inc., is your position any different than the  
18 Small Telephone Group in that regard? Any of  
19 the questions that I talked to Ms. Morgan  
20 about?

21 MR. GRYZMALA: Yes. I -- I think so.

22 COMMISSIONER CLAYTON: Can you  
23 identify the differences?

24 MR. GRYZMALA: In terms of the  
25 proposed rules, I --

1                   COMMISSIONER CLAYTON: Just the  
2 differences between you and Ms. Morgan.

3                   MR. GRYZMALA: All right. I would  
4 say the principal difference is we don't  
5 necessarily -- we have not necessarily,  
6 Commissioner, taken a position on the extent to  
7 which the Commission should embark on placing  
8 service quality or billing rules or other items  
9 on a wireless ETC applicant.

10                  We agree the ETC order is clear that in  
11 recognizing the Fifth Circuit Court of Appeals  
12 holding that nothing in Section 214 of the Act  
13 prohibits the states from imposing their own  
14 eligibility requirements in addition to those  
15 described in the Act itself. So you have the  
16 legal authority.

17                  And last Friday when we joined --

18                  COMMISSIONER CLAYTON: Does that  
19 different in opinion -- I don't want to lose  
20 sight of the answer here.

21                  MR. GRYZMALA: Our opinion is --

22                  COMMISSIONER CLAYTON: Do you have a  
23 difference --

24                  MR. GRYZMALA: The difference in  
25 opinion, I believe, if I heard correctly, is ST



0236

1           -- SCTG has affirmatively advanced the  
2           proposition that Chapter 32 and 33 should be  
3           imposed and we have not.

4                   COMMISSIONER CLAYTON: Okay. Do you  
5           think they ought to be included, aside from the  
6           jurisdictional question?

7                   MR. GRYZMALA: That would be a  
8           personal opinion, you know, Commissioner, but  
9           not on behalf of the company.

10                  COMMISSIONER CLAYTON: Okay. Then  
11           don't have --

12                  MR. GRYZMALA: No.

13                  COMMISSIONER CLAYTON: Don't have an  
14           opinion on behalf of SBC Missouri, d/b/a AT&T  
15           Missouri?

16                  MR. GRYZMALA: Today. That's right,

17                  COMMISSIONER CLAYTON: Okay.  
18           Mr. Stewart, is the position of -- are you here  
19           for CenturyTel d/b/a Spectra or Spectra d/b/a  
20           CenturyTel?

21                  MR. STEWART: Spectra Communications  
22           Group, LLC, d/b/a CenturyTel.

23                  COMMISSIONER CLAYTON: I guess  
24           you're --

25                  MR. STEWART: You started all of

0237

1           this.

2                   COMMISSIONER CLAYTON:  No kidding.  
3           Is your possession any different than the Small  
4           Telephone Group or that of Southwest -- SBC,  
5           d/b/a AT&T?

6                   MR. STEWART:  We -- we are aligned  
7           with the Small Telephone Company Group  
8           believing that Chapter 32 and Chapter 33 should  
9           be the baseline to be imposed on -- on wireless  
10          carriers.

11                  I would say this, though.  There are -- as  
12          the Staff has recognized, there are a few areas  
13          that due to the different in technologies or  
14          whatever that it just doesn't fit.  And that's  
15          fine, too.  But generally speaking, yes, we --  
16          we would like to see Chapter 32 and 33, to the  
17          extent possible, imposed on all carriers.

18                  COMMISSIONER CLAYTON:  Okay.  So  
19          CenturyTel of Missouri is not in this case?

20                  MR. STEWART:  No.  We -- I'm  
21          representing both.

22                  COMMISSIONER CLAYTON:  So you're  
23          representing both.  Okay.

24                  MR. STEWART:  Yeah.

25                  COMMISSIONER CLAYTON:  Okay.

1 Chairman Ameritus, Steinmeyer, are you in the  
2 house? Alltel is not here, are they? I assume  
3 they join U.S. Cellular in their comments?

4 MR. ZOBRIST: I'm certain that's  
5 true. They filed separate comments actually  
6 before U.S. Cellular did, Commissioner.

7 COMMISSIONER CLAYTON: I think theirs  
8 is the thickest one. Okay. I want to thank  
9 everyone for coming back here today. I know  
10 this was -- kind of turned a one day hearing  
11 into a two-day hearing. And I apologize for  
12 not being able to be here on Friday, but this  
13 is something that really does concern me. And  
14 -- and I appreciate everyone's indulgence from  
15 answering my questions. Thank you.

16 JUDGE DALE: Thank you, Commissioner.

17 Commissioner Appling?

18 COMMISSIONER APPLING: You know, the  
19 nice thing about being the junior guy in this  
20 Commission --

21 JUDGE DALE: Oh, excuse me.

22 COMMISSIONER APPLING: You see --  
23 see, you get no respect.

24 JUDGE DALE: She needs to change  
25 paper.

1 COMMISSIONER APPLING: I probably  
2 don't need to go on the record with what I'm  
3 saying no way.

4 JUDGE DALE: Off the record.

5 (Discussion off the record.)

6 JUDGE DALE: Back on the record.

7 COMMISSIONER APPLING: But there's a  
8 couple of things that -- a couple of questions.  
9 And then I said I needed to be out of here at  
10 3:00, and I still hold to that, so I will not  
11 go into a lengthy question that has already  
12 been asked and answered.

13 For the Small Telephone Group, who is  
14 representing Small Telephone Group? On page 3  
15 of your comments, you stated -- if you could  
16 turn to that, it's the first paragraph on page  
17 3. And I think it reads, Since the cause of  
18 telecommunication networks are readily fixed,  
19 the split in the rule market between two or  
20 more providers generally cause the service cost  
21 to increase for each of them. Do you see what  
22 I'm talking about?

23 MS. MORGAN: Yes, sir.

24 COMMISSIONER APPLING: And has that  
25 been the experience of the small companies in

0240

1 the past?

2 MS. MORGAN: Well, I can't say that  
3 it's from the personal experience of the small  
4 companies that we represent. It has been the  
5 experience across the country, I believe. And  
6 it was -- this was in part of Mr. Schoonmaker's  
7 testimony, I believe, in one of the ETC  
8 application cases where he had done some  
9 research and had determined that that was the  
10 case.

11 COMMISSIONER APPLING: To apply to --  
12 to wireless carriers, also?

13 MS. MORGAN: I think it would, sir,  
14 yes.

15 COMMISSIONER APPLING: Okay. Does  
16 anyone else have a comment to make on that?

17 Okay. Last question. Is there a response  
18 to Alltel's comments that the wireless  
19 providers will leave the market if they become  
20 over regulated? That's for anybody that would  
21 like to comment on that.

22 MS. MEISENHEIMER: I'll -- I'll  
23 comment on that.

24 COMMISSIONER APPLING: Good.

25 MS. MEISENHEIMER: Those carriers do

0241

1 not have to subject themselves to any  
2 regulation that they feel is burdensome. They  
3 can still provide services they could today in  
4 the State of Missouri.

5 What we're talking about is how do they  
6 get this extra money that is specifically  
7 intended to bring them out into areas where  
8 they wouldn't otherwise go to serve. And so  
9 for you to impose additional standards for that  
10 is perfectly reasonable.

11 And the FCC has specifically said that you  
12 -- they left you the discretion to do that.

13 COMMISSIONER APPLING: Anyone else?

14 MR. ZOBRIST: Well, Commissioner, I  
15 would just say that it depends on how detailed  
16 the regulations are. I think that Ms.  
17 Meisenheimer and Staff are correct that if a  
18 company comes in and applies for ETC status and  
19 receives it and receives the money, it  
20 certainly expects to be accountable. It  
21 expects to provide this Commission with plans  
22 and to answer questions and to be responsive.

23 However, if the level of reporting is such  
24 that it exceeds that of -- of all, you know,  
25 but a couple of states, you know, they may very

0242

1 well decide, Well, this is just not for us  
2 because it's costing us too much and move on to  
3 other fields.

4 But I think they do expect that there are  
5 responsibilities that come with the ability to  
6 use universal service funds in the state.

7 COMMISSIONER APPLING: Okay. Anyone  
8 else want to comment on that? Good. Then I  
9 will -- I will -- will end my questions here  
10 because it's after 3:00, and I know that most  
11 of you have other things that you would like to  
12 be doing.

13 But accountability for this plan is  
14 something that I will be looking for. So if  
15 you have ears to head to make sure that that's  
16 nailed down pretty tightly before you send it  
17 forward.

18 Thank you very much for coming. I am  
19 sorry. I will get Jeff Davis to let me go  
20 first the next time around. Okay? Thank you.  
21 Have a good evening.

22 JUDGE DALE: Are there any other  
23 matters that need to be decided or brought  
24 before me before we close this record?

25 We will be closing the hearing, but the

0243

1 record for the late-filed comments -- well,  
2 they won't be late-filed comments. For further  
3 filing of comments will be, as I stated, 11:59  
4 next Tuesday.

5 Anything else? With that, we are  
6 adjourned. Off the record.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25