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PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

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Public Hearing

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

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COLLEEN M. DALE, Presiding,
CHIEF REGULATORY LAW JUDGE
CONNIE MURRAY,
STEVE GAW,
COMMISSIONERS

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

2 JUDGE DALE: We're on the record.

3 Good morning. We are here In The Matter of The
4 Proposed New Rule 4 CSR 240-3.570 Regarding
5 Eligible Telecommunications --
6 Telecommunications Carrier Designations for
7 Receipt of Universal Service Fund Support, Case
8 No. TX-2006-0169.

9 We will begin with entries of appearance,
10 please, starting with Staff.

11 MR. POSTON: Marc Poston, appearing
12 for the Staff of the Missouri Public Service
13 Commission.

14 MR. DANDINO: Dan Dandino, Office of
15 the Public Counsel, Post Office Box 2230,
16 Jefferson City, Missouri, 65102, representing
17 the Office of Public Counsel and the public.

18 MS. MORGAN: Sondra Morgan of the law
19 firm of Brydon, Swearngen & England, Post
20 Office Box 456, Jefferson City, Missouri,
21 65102, appearing on behalf of the Small
22 Telephone Company Group, group of small local
23 exchange -- local exchange carriers.

24 MR. STEWART: Charles Brent Stewart
25 of the law firm of Stewart & Keevil, LLC, 4603

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1 John Garry Drive, Suite 11, Columbia, Missouri,
2 65203, appearing on behalf of Spectra
3 Communications Group, LLC, doing business as
4 CenturyTel and CenturyTel of Missouri, LLC.

5 MR. GRYZMALA: Good morning, your
6 Honor. Bob Gryzmala. I am at One SBC Center,
7 Room 3516, St. Louis, Missouri, 63101,
8 appearing on behalf of Southwestern Bell
9 Telephone, LP, d/b/a AT&T Missouri.

10 MR. ZOBRIST: Good morning, Judge.
11 Karl Zobrist of the law firm of Sonnenschein,
12 Nath & Rosenthal, LLP, 4520 Main Street, Suite
13 1100, Kansas City, Missouri, 64111, appearing
14 on behalf of U.S. Cellular whose formal name in
15 Missouri is U.S. COC of Greater Missouri, LLC.

16 JUDGE DALE: Thank you. Before we
17 went on the record, we decided the order in
18 which parties would proceed to give their
19 comments.

20 Keep in mind that this is not a contested
21 proceeding, so there will be no
22 cross-examination. There will only be
23 questions from the Bench.

24 And with that, staff may proceed.

25 MR. POSTON: Thank you, your Honor.

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1 Today, prepared to testify on behalf of Staff
2 is Natelle Dietrich.

3 JUDGE DALE: Thank you. Ms.
4 Dietrich, if you will, stand and raise your
5 right hand.

6 NATELLE DIETRICH,
7 being first duly sworn to testify the truth, the whole
8 truth, and nothing but the truth, testified as follows:

9 JUDGE DALE: Thank you. Be seated.

10 MS. DIETRICH: My name is Natelle,
11 N-a-t-e-l-l-e, Dietrich, D-i-e-t-r-i-c-h. I'm
12 employed by the Telecommunications Department
13 of the Missouri Public Service Commission, and
14 I'm here to testify on behalf of Staff.

15 The proposed rule establishes criteria for
16 submission to the Commission when a company
17 seeks designation as an eligible
18 telecommunications carrier or ETC, and it also
19 establishes criteria for carriers designated as
20 ETCs already.

21 Throughout the rule-making process,
22 concerns were raised about the competitive
23 neutrality of the rule, and several changes
24 were made to address these concerns.

25 In its comments the Staff filed, Staff

1 suggested further changes to apply the rule to
2 all carriers seeking ETC status or currently
3 designated as ETCs.

4 In Staff's opinion, these changes serve to
5 make the rule even more competitively neutral
6 than the version filed in the Missouri
7 Register. To the extent Staff's comments
8 extend various sections of the rules to ILECs
9 and/or CLECs, those provisions are largely
10 requirements in other Commission rules or
11 statutory requirements.

12 Therefore, Staff does not view these
13 changes as extending any new requirements on
14 ILECs through the revisions proposed to the ETC
15 rule. However, to the extent that there may be
16 slight differences in requirements in current
17 Commission rules and a proposed ETC rule, Staff
18 suggests some generic language be added to the
19 ETC rule to say that - to the extent that other
20 Commission rules have other requirements, those
21 rules apply to the ILECs and the CLECs or take
22 precedent over the ETC rule in case there are
23 some discrepancies.

24 Staff supports the proposed rule with the
25 changes suggested in Staff's comments because

1 the rule provides the Commission with
2 consistent guidelines for the review of ETC
3 requests and provides standards for the ongoing
4 certification of ETCs.

5 Staff has reviewed the comments filed in
6 this case and offers the follows responses to
7 those comments: First, Alltel. Alltel, in its
8 comments, suggests the FCC rules as outlined in
9 the March 2005 ETC order, with limited
10 exceptions, are appropriate for the designation
11 of ETCs.

12 They also suggest that the proposed rule
13 contains requirements not related to ETC status
14 and that the proposed rule is bad for Missouri
15 consumers. The FCC, in its ETC order,
16 "encourages states to apply."

17 The FCC's analysis in determining whether
18 or not the public interest would be served by
19 designating a carrier as an ETC, and that's
20 found at paragraph 3 of the order.

21 The FCC at paragraph 40 and, more
22 specifically, in Footnote 111 states, "State
23 Commissions have used additional factors beyond
24 the principles detailed in the Act to analyze
25 whether an ETC is in the public interest."

1 And they go on to reference the Alaska
2 Commission, which considers such things as the
3 availability of new choices, affordability,
4 quality of service, service to unserved
5 customers, comparison of benefits to public
6 costs and considerations of material harm.

7 Finally, the FCC at paragraph 61 of the
8 ETC order makes such statements as, "We decline
9 to mandate that state commissions adopt our
10 requirements for ETC designations, state
11 commissions evaluate local factual situations
12 and state commissions exercise discretion in
13 reaching their conclusions."

14 In Staff's opinion, these various excerpts
15 demonstrate the FCC's intentions for state
16 Commissions to use the FCC guideline simply as
17 that, as guidelines in developing the standards
18 the State needs to make informed decisions
19 regarding requests for ETC status.

20 Moving on to AT&T's comments. AT&T
21 offered several modifications to the proposed
22 rule providing further clarification of the FCC
23 guidelines. Staff does not object to most of
24 AT&T's recommendations but suggests the
25 Commission, where applicable -- where

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1 applicable, combine those changes with Staff's
2 suggested changes proposed in its comments.

3 The only exception would be AT&T's
4 suggested changes to Section 24, which appear
5 on page 7 of AT&T's red line version of the
6 rule. And in that particular section,
7 subsection B -- in subsection B, AT&T suggests
8 expanding the outage requirement consistent
9 with the FCC's ETC rule. Staff objects to this
10 clarification because the addition is not
11 consistent with 4 CSR 240-3.550, which governs
12 LEC outage requirements.

13 If the Commission determines that
14 clarification is needed to this section of the
15 proposed rule, Staff recommends the proposed
16 rule require detailed information on outages
17 consistent with Commission Rule 4 CSR 240-3.550
18 as opposed to AT&T's suggestion.

19 In subsection F of that same section, AT&T
20 suggests language be added to require an
21 affidavit to state that the ETC has used
22 support only for the provision, maintenance and
23 upgrading of facilities and services for which
24 the support is intended.

25 If Staff's recommended language for

1 Section 23 is incorporated in the rule, then
2 the change proposed by AT&T is not necessary.
3 Staff's proposed language requires the
4 affidavit to state the ETC has used support
5 consistent with Commission rules an the
6 Telecommunications Act.

7 CenturyTel and the Small Telephone Company
8 Group recommend the Commission expand the ETC
9 rule to require CLECs and CMRS providers to
10 comply with Chapter 33, the service and billing
11 practices rule.

12 Staff, through its comments, recommended
13 several changes to the proposed rule to advance
14 competitive neutrality. The proposed rule with
15 Staff's suggested changes incorporates many of
16 the concepts of Chapter 33, such as requiring
17 compliance with state and federal billing
18 requirements, requiring the ETCs to notify
19 customers of the Commission's informal and
20 formal complaints procedures, requiring
21 tracking of customer complaints and requiring
22 customer contact information on bills,
23 requiring current company contact information
24 for Commission records and requiring compliance
25 with the current version of a wireless code of

1 conduct as supported by CTIA or the Cellular
2 Telecommunications Industry Association.

3 Additional provisions of Chapter 33 such
4 as pay telephone provisions are clearly beyond
5 the scope of applicability to wireless
6 providers and are already applicable to CLECs.
7 Staff suggests that if the Commission chooses
8 to expand Chapter 33 requirements to wireless
9 ETCs through the ETC rule that it does so in a
10 manner consistent with the applicability of
11 Chapter 32 to wireless ETCs.

12 For Chapter 32, we went through each
13 provision of Chapter 32 and determined only
14 those provisions that made sense to be applied
15 to wireless carries. And that would be our
16 suggestion for Chapter 33 if the Commission
17 decides to go down that road.

18 This ends Staff's formal comments, and I'd
19 be happy to answer any questions.

20 JUDGE DALE: Thank you.

21 MS. DIETRICH: Thank you.

22 Commissioner Murray, do you have any questions?

23 COMMISSIONER MURRAY: Just one
24 second, please.

25 JUDGE DALE: Thank you.

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1 COMMISSIONER MURRAY: Ms. Dietrich,
2 do these proposed rules require that the CMRS
3 providers meet more stringent standards than
4 the CLEC ETCs in any respect?

5 MS. DIETRICH: No, they do not. With
6 our proposed comment changes, we've tried to
7 make them even more obviously competitively
8 neutral.

9 COMMISSIONER MURRAY: But they do
10 bring -- would wire -- CMRS providers under
11 more provisions of our rules than they are --
12 than they currently are; is that correct?

13 MS. DIETRICH: Only to the extent
14 that a CMRS provider is granted ETC status.

15 COMMISSIONER MURRAY: But for those,
16 it -- it does add requirements for them?

17 MS. DIETRICH: Correct.

18 COMMISSIONER MURRAY: Okay. I -- I
19 may come back to you later, but --

20 MS. DIETRICH: Okay.

21 COMMISSIONER MURRAY: I just -- I
22 might have something else right now. Yes, I do
23 have another question. Why -- why wouldn't we
24 just simply adopt the FCC rules?

25 MS. DIETRICH: Well, I think the FCC

1 rules are a good place to start, but there are
2 some things that this Commission has expressed
3 interest in. There are some things that this
4 particular area has noticed where there's
5 concerns like, for instance, quality of
6 service. And those are the types of areas
7 where the rule expands current Commission rules
8 to wireless providers.

9 Just as an aside, yesterday, I had a phone
10 conversation with some of the other states, and
11 it's my understanding that 11 states are
12 currently either in the process of or have
13 completed a rule-making process. And of those,
14 several of the states have expanded at least
15 quality of service requirements to wireless.

16 COMMISSIONER MURRAY: Of course, that
17 doesn't necessarily impress me. But I'd like
18 to ask you, on Alltel's comments where they --
19 they list the areas in which the rule contains
20 requirements that are not related to ETC
21 status, how do you respond to that? And that
22 was actually on page 5 of Alltel comments.

23 MS. DIETRICH: Those are largely the
24 quality of service requirements. And I think
25 it can be looked at two ways.

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1 Yes, you can say quality of service is not
2 directly related to ETC status. But on the
3 other hand, if these carriers, whether it be
4 wireless, CLECs or ILECs are asking for
5 universal service support, then they should be
6 using that money to improve the service
7 quality, to expand the current service that
8 these provide, those types of things, which
9 would fall under quality of service review of
10 the Commission.

11 COMMISSIONER MURRAY: Alltel goes on
12 to say that regulation -- let's see -- that the
13 standards associated with the Commission's
14 rules on customer service and engineering and
15 maintenance, for the most part, cannot be
16 translated from ILEC technology to wireless
17 technology. How do you respond to that?

18 MS. DIETRICH: That was one reason
19 why in our proposed comments -- or in our
20 comments we proposed to change to say to the
21 extent that the Commission rules for Chapter 32
22 talk about basic local service or ILEC
23 facilities or copper facilities, those types of
24 things, that it's specific to wire line
25 service, that the translation be made where the

1 CMRS provider would substitute, say, for
2 instance, basic local with CMRS service. If
3 it's a reference, say, for instance, to a
4 remote terminal, they would substitute a remote
5 terminal to whatever the CMRS equivalent to
6 that would be, perhaps a cell tower, to kind of
7 clarify that we're not saying that they have to
8 apply the basic local standards, but whatever
9 the CMRS equivalent to that would be.

10 COMMISSIONER MURRAY: And where do
11 you say that?

12 MS. DIETRICH: It's in -- it's in our
13 comments that we filed.

14 JUDGE DALE: Page 13.

15 MS. DIETRICH: Page 13. And then on
16 the red line version of the rule on page 4,
17 that was attached to our comments.

18 COMMISSIONER MURRAY: Okay. I think
19 that's all I have for you right now. But as I
20 say, I may come back to you. Thank you.

21 MS. DIETRICH: Okay.

22 JUDGE DALE: Commissioner Gaw had a
23 couple questions that I will still ask you.
24 The first question is, when you talk about the
25 substitution of the CMRS applicable facilities

1 in place of the -- the regular wire line
2 facilities, who will make a determination of
3 whether or not they have chosen the appropriate
4 equivalent? Who will decide if it really is
5 equivalent or really applicable at all?

6 MS. DIETRICH: The CMRS provider
7 would have the initial obligation to determine.
8 They would, under the rules, submit quarterly
9 service reports to the Commission Staff in the
10 same manner that the LECs could submit those
11 reports. Commission Staff could look at that
12 and, theoretically, have a concern with it and
13 try to address it informally.

14 Or then there's also the process built in
15 here where Staff or any entity could file a
16 complaint if they think a certain portion of
17 the rule has been violated. Of course, those
18 reports are highly confidential, so most people
19 wouldn't see them. That condition would be
20 left up to Staff.

21 JUDGE DALE: But how would you
22 proceed if the CMRS provider decided it wasn't
23 applicable and so they didn't -- they didn't
24 fill in a certain blank on the quality of
25 service reports because they don't believe it's

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1 applicable to them --

2 MS. DIETRICH: Right.

3 JUDGE DALE: -- but Staff disagrees?

4 MS. DIETRICH: We would start with
5 initial conversations. We've run into that,
6 even with the LECs, where there's been a
7 misunderstanding of what the current Chapter 32
8 rules are trying to elicit as far as
9 information and they start out with, you know,
10 conversations, meetings.

11 We do have the ability to file a formal
12 complaint if we need to where there's still
13 disagreement, you know, if we can't reach a
14 meeting of the minds.

15 JUDGE DALE: Have you explored
16 whether or not you could actually make the
17 proposed rule more clear so that a CMRS
18 provider could actually look at the rule and
19 know what was expected of them with some degree
20 of certainty?

21 MS. DIETRICH: We have not had
22 discussions as to, you know, what would those
23 words actually look like if we made them CMRS
24 specific.

25 JUDGE DALE: The other question that

1 I have is about the fiscal impact on this
2 agency. If the Staff begins to receive quality
3 service reports or other -- is engaged in other
4 monitoring, other regulating, has the Staff
5 determined how many additional employees will
6 be necessary to handle that additional work
7 load?

8 MS. DIETRICH: Well, we have
9 determined that there would be no additional
10 employees needed to handle the workload as
11 anticipated by the rule.

12 JUDGE DALE: Thank you. Commissioner
13 Gaw?

14 COMMISSIONER GAW: Thank you, Judge.
15 Just to follow up, would it be possible for
16 Staff to grid out the rules that are in Chapter
17 concerned so that there were -- there was a
18 column that said, These rules clearly are
19 applicable, a column that says, These rules may
20 or may not be applicable or not -- or could be
21 subject to controversy, and, lastly, These
22 rules are clearly not applicable? How
23 difficult would that be to do?

24 MS. DIETRICH: As far as the quality
25 of service rules?

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1 COMMISSIONER GAW: Yes.

2 MS. DIETRICH: Not very difficult at
3 all.

4 COMMISSIONER GAW: And if that were
5 -- has that already been done in some fashion?

6 MS. DIETRICH: Not to that extent.
7 We have a grid that says, This is what the ETC
8 rule said, at least as was originally proposed,
9 and these are the various Commission rules or
10 federal rules or guidelines where the
11 corresponding ILEC or CLEC rule ap --
12 applicability comes from.

13 But that's as far as we've taken it. But
14 we have gone through and looked at each of the
15 quality of service rules and made a
16 determination as to what may make sense to
17 apply to wireless and what definitely doesn't.
18 We just don't have it in grid form yet.

19 COMMISSIONER GAW: Would -- would you
20 be able to do that for -- for the Commission?

21 MS. DIETRICH: Yes.

22 COMMISSIONER GAW: And if -- if you
23 could share that with other parties and then
24 perhaps they can suggest whether they have
25 disagreements? And then within the -- the

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1 category of this may or may not, then the
2 Commission perhaps -- and I don't know whether
3 we would or not, but perhaps could give some
4 guidance so that people would -- companies
5 would have some idea ahead of time which areas
6 were supposed to be applicable.

7 I'd rather do that than try to clean this
8 up on a company by company basis after the fact
9 and have a lot of questions lingering out
10 there. Perhaps we can limit the number of
11 potential questions by going through that
12 process.

13 MS. DIETRICH: Okay.

14 COMMISSIONER GAW: That's all I have
15 right now. I'm going to defer till later.
16 Judge, thank you.

17 JUDGE DALE: Commissioner Murray, did
18 you have anything else?

19 COMMISSIONER MURRAY: Not right now.

20 JUDGE DALE: Okay. Thank you, Staff.
21 Public Counsel?

22 MR. DANDINO: Your Honor, Barbara
23 Meisenheimer is here to testify on behalf of
24 the Public Service Commission -- or Public
25 Service Commission. Excuse me. For the Public

1 Counsel. And I would like to, before she
2 testifies, make a few introductory remarks.

3 JUDGE DALE: Certainly.

4 MR. DANDINO: May it please the
5 Commission. One thing I -- I would like to
6 remind the Commission is that philosophically
7 and, really, legally and realistically is that
8 we're talking about -- when we're talking about
9 universal service funds, we're talking about
10 the ratepayers' money. They have paid it
11 directly into the fund.

12 The -- even though it is an assessment
13 upon the telecommunications industry, the
14 various carriers, most of them have chosen to
15 make it a direct charge to the ratepayers. And
16 for that reason, we see it as a direct funding
17 of the -- of the Universal Service Fund and the
18 money that flows back to under the ETC program
19 is my clients' money.

20 And so that -- to that effect, I think it
21 is reasonable and just and proper for any of
22 the recipients of the ETC money to be held
23 accountable and responsible for the use of
24 those funds for the benefit of those
25 ratepayers.

1 And I think that's kind of the overall
2 philosophy that I think these -- these rules
3 and even the -- as Commissioner Gaw was talking
4 about, the -- comparing the quality of service
5 regulations, what's required of the -- of the
6 wireless carriers.

7 And as Commissioner Murray mentioned that
8 right now the wireless carriers are not subject
9 to the Commission's jurisdiction. But if they
10 are accepting, basically, the money that flows
11 through -- or not flows through, but is -- is
12 authorized by the status -- whose status is
13 authorized by this Commission, then I think
14 they should abide by these quality of standard
15 regulations.

16 And for that reason, I think that the
17 Staff, even with their amendments, Public
18 Counsel generally concurs with those because I
19 think it even strengthens it and makes it more
20 fair and just, their proposed amendments.

21 Now I'd like to have Ms. -- Ms.
22 Meisenheimer testify on behalf of Public
23 Counsel and, you know, answer any details
24 questions you may have. Thank you.

25 JUDGE DALE: Ms. Meisenheimer --

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1 COMMISSIONER MURRAY: Judge, before
2 that, I have a few questions for Mr. Dandino.

3 JUDGE DALE: Okay.

4 COMMISSIONER MURRAY: In response to
5 your remarks, Mr. Dandino, I have a couple of
6 questions.

7 MR. DANDINO: Sure.

8 COMMISSIONER MURRAY: You indicated
9 that the --

10 JUDGE DALE: Excuse me, Commissioner.
11 Your mic. is not on.

12 COMMISSIONER MURRAY: Thank you. You
13 indicated that your customers or clients, the
14 ratepayers, have been -- it is their money in
15 the fund; is that correct?

16 MR. DANDINO: It --

17 COMMISSIONER MURRAY: That they've
18 paid into it.

19 MR. DANDINO: That they've paid into
20 it, yes.

21 COMMISSIONER MURRAY: Now, aren't the
22 wireless customer paying into the fund?

23 MR. DANDINO: That's -- That's true.
24 So it's my client and -- well, let's put it
25 this way: Under ET -- ETC status, basically,

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1 we're here also to protect those wireless
2 customers, too.

3 COMMISSIONER MURRAY: So you agree
4 that they've been contributing to the fund and
5 continue to do so?

6 MR. DANDINO: Well, certainly.
7 Certainly.

8 COMMISSIONER MURRAY: You also
9 indicated that it's appropriate and just for
10 any recipient to be held accountable for the
11 use of those funds. Do you think the way that
12 the Universal Service Fund is currently
13 structured is adequate to ensure that all
14 recipients are properly held accountable for
15 the use of those funds, or do you think that it
16 is wise to be looking on a national basis at
17 how that fund should be structured and how
18 carriers should be held accountable?

19 MR. DANDINO: Well, there's certainly
20 always room for improvement. One of the things
21 that -- and, you know, I think past history,
22 both in this state and in other places, has
23 demonstrated that, you know, there's always
24 room for improvement on accountability for use
25 of Government funds.

1 COMMISSIONER MURRAY: And many people
2 think there's a great deal of room for
3 improvement. Would you agree with that?

4 MR. DANDINO: Well, some people think
5 that, yes.

6 COMMISSIONER MURRAY: Thank you.

7 JUDGE DALE: Ms. Meisenheimer, if you
8 will please stand and raise your right hand?

9 BARBARA MEISENHEIMER,
10 being first duly sworn to testify the truth, the whole
11 truth, and nothing but the truth, testified as follows:

12 JUDGE DALE: Thank you. You may be
13 seated.

14 MS. MEISENHEIMER: I will be brief.
15 Public Counsel -- or my testimony is that I
16 concur with the testimony of Ms. Dietrich. I
17 appreciate the hard work that the Staff has
18 done on this issue, in particular, Ms. Dietrich
19 and Mr. McKinney with the Staff.

20 The rule as -- with the suggestions of the
21 Staff goes a long way to address the concerns
22 that Public Counsel has raised in testimony
23 regarding wireless ETC status.

24 I -- I might also respond to Commissioner
25 Murray with that the Commission's authority in

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1 that that should include EAS, not just the
2 actual exchange because EAS is part of the
3 basic local calling scope for customers. It's
4 an added on to their local rate, so customers
5 should not be made worse off in terms of their
6 calling scope ability.

7 And -- and other plans that the Commission
8 has found to be appropriate local plans
9 available to the customers in a designated
10 area, I would be supportive of -- of and help
11 with developing a more detailed list of quality
12 of service standards so that that is set out in
13 advance as opposed to having to do it in each
14 particular application to ETC status.

15 And the rule will require companies to
16 provide information to the Commission on an
17 ongoing basis, including detailed service area
18 maps. And then there's another description of
19 just other information. I support that. I
20 think it makes a lot of sense that the
21 Commission, the Staff, the Public Counsel,
22 should have ready access to information
23 regarding where a company provides in the state
24 and so that customers have a single source to
25 go to to verify what -- where service should be

1 available to them.

2 Also, I believe that information should
3 include current copies of the contracts, sample
4 contracts that the customers might sign.
5 That's consistent with my testimony in past
6 cases, including Case No. TO-2005-0384.

7 And I would be happy to answer any
8 questions that the Commission might have.

9 JUDGE DALE: Thank you, Ms.
10 Meisenheimer.

11 Commissioner Murray, do you have any
12 questions?

13 COMMISSIONER MURRAY: One or two.
14 Thank you, Judge. Ms. Meisenheimer, in terms
15 of calling scope, it's always confusing to me
16 when we start talking about CMRS providers
17 providing information as to calling scopes
18 because I -- I don't know how you equate that
19 with the fact that you can get nation-wide
20 calling for one rate from many of the CMRS
21 providers.

22 So how do we bring in the calling scope
23 issue to those providers?

24 MS. MEISENHEIMER: Well, carriers
25 have often a number of different plans

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1 available. And one of them might be
2 nation-wide calling, which would certainly
3 incorporate, depending on the number of
4 minutes, a reasonable level of calling to their
5 -- to a customer's community of interest.

6 And the real important thing, from my
7 perspective, is that in addition to those plans
8 with all of the bells and whistles that cost
9 customers a lot of money, there ought to be a
10 reasonably priced, and I mean comparable to the
11 incumbent's, plan that allows the customer at
12 least the calling scope that they have now with
13 a reasonable number of minutes.

14 And we had a lot of discussion of those --
15 of what those minutes might be and what was
16 available when you heard that case,
17 TO-2005-0384.

18 And, also, you know, in considering what
19 is the rate for that reasonable local calling
20 scope, I think it's important to be sure that
21 there aren't any hidden fees that are added to
22 customers if they're -- say they're billing
23 their total plan that they subscribe to as
24 below a certain level, there wouldn't be any
25 additional tacked on charges. So apples to

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1 apples comparison of at least a minimum calling
2 scope with the price for that calling scope
3 between the two carriers.

4 COMMISSIONER MURRAY: Okay. So at
5 least philosophically, you don't think that
6 Universal Service Funding should be used to
7 enhance the calling scopes?

8 MS.MEISENHEIMER: The intended
9 purpose of Universal Service -- and for a
10 number of years, I served on the Universal
11 Service Board Staff. The intended purpose of
12 the Universal Service is to ensure the
13 availability of an affordable minimum package
14 of services, which includes loc -- some level
15 of local calling.

16 It is not defined to be unlimited local
17 calling at the federal level because I think,
18 in particular, this issue of wireless carriers,
19 how -- how many minutes. And in other areas,
20 there are -- there used to be like a measured
21 service, where you didn't have to get -- pay
22 for unlimited. You could just get a discount,
23 and be just on measured service. So they
24 didn't adopt a specific number of minutes, but
25 it does call for some level of local calling.

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1 You, as a State Commissioner, determine
2 what is that appropriate level of local
3 calling. And so to the extent that if there is
4 a reasonably priced alternative available to
5 everyone and a consumer chooses to subscribe to
6 more of that on top of that, then it may
7 promote an expansion of the calling scope by --
8 by making the service more affordable when you
9 provide high cost money that lowers the total
10 cost of providing in a -- in a particular area
11 and is intended to help ensure that rates can
12 be low.

13 COMMISSIONER MURRAY: Okay. But as
14 it is --

15 MS. MEISENHEIMER: Yeah. Long
16 distance service is -- is not supported under
17 the federal mechanism.

18 COMMISSIONER MURRAY: So that as
19 Universal Service rules are currently written,
20 the -- what it can be used to promote is just
21 more of what we currently have under our old
22 land line system; is that right?

23 MS. MEISENHEIMER: Well, the -- the
24 --

25 COMMISSIONER MURRAY: In other words,

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1 it can't -- it's just -- it's just looking at
2 things the way they are today. We've got
3 calling scopes, defined calling scopes, and
4 Universal Service Funding can be used to make
5 those calls within those calling scopes
6 affordable and perhaps more widely available?

7 MS. MEISENHEIMER: I would say yes to
8 that. And it also, as an indirect benefit,
9 provides more. Because what you're doing when
10 you provide high cost support to wireless
11 carriers that expand their networks in an area,
12 if they're expanding their own physical
13 networks, you promote the likelihood that
14 competition is going to exist and you promote,
15 in some cases, a better level of technology
16 that then was available in the area previously.
17 And you promote access to perhaps additional
18 services that might include a wider calling
19 scope than had previously assisted.

20 So there is that additional benefit that
21 flows from providing high cost support. And
22 that would be whether it's to a wireless
23 carrier or to land line carriers.

24 COMMISSIONER MURRAY: Okay. Thank
25 you.

1 MS. MEISENHEIMER: Thanks.

2 JUDGE DALE: Commissioner Gaw?

3 COMMISSIONER GAW: Do you have any
4 idea whether there have been costs comparisons
5 on build out in rural parts of the United
6 States between service provided by wireless
7 carriers and service provided by wire line
8 carriers?

9 MS. MEISENHEIMER: I cannot -- I
10 can't cite any particular numbers. But as a
11 general rule, my experience at the federal
12 level, my understanding is that the wireless
13 technology is a less expensive form of reaching
14 more remote areas.

15 COMMISSIONER GAW: Do you know
16 whether there is a difference in the amount of
17 USF funds received by a wireless carrier as
18 compared to a wire line carrier if they're
19 authorized to receive USF funding?

20 MS. MEISENHEIMER: No. They receive
21 the same amount as does the incumbent carrier.
22 The incumbent carrier may have desegregated its
23 support. But, ultimately, the wireless carrier
24 gets the same amount.

25 And I -- I can tell you that that has been

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1 a concern, at least to some previous Universal
2 Service Board members at the federal level.
3 There --

4 COMMISSIONER GAW: What -- do you
5 know what the status is on the -- on that
6 discussion? And if Ms. Dietrich has an idea,
7 that would be fine.

8 MS. DIETRICH: That discussion, at
9 least right now, is largely tied to the
10 inter-carrier compensation docket. And the
11 last I heard, they've wrapped up kind of the
12 informal proceedings, and they hope to get
13 something to the FCC as far as a group
14 consensus proposal, if you will, and the FCC is
15 supposed to act on it sometime this year.

16 COMMISSIONER GAW: Okay. Ms.
17 Meisenheimer, if -- if there is a -- if the
18 same amount of money is received by a wire line
19 carrier as a wireless carrier and -- under USF,
20 and if your assumption is generally correct
21 that it's less expensive to serve rural areas
22 by wireless than it is by wire line, and if the
23 wireless carrier is not subject to as much
24 scrutiny regard to consumer protection issues,
25 where -- where do -- where does this get

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1 equalized so that this -- this mechanism makes
2 sense under its current structure?

3 Is there something that the wireless
4 carriers are having to bear as a burden that
5 makes up the difference? Or can you -- can you
6 shed some light on that, please?

7 MS. MEISENHEIMER: I agree that there
8 is a difference, and it is a difference that
9 should be addressed. Addressing it will come
10 in a number of steps. Ms. Dietrich explained
11 where the current status is. I haven't -- I
12 haven't been as involved with the joint board
13 Staff recently, so I appreciate that
14 contribution. I would -- you know, I would
15 think that it's important of -- of important
16 consideration.

17 One way to equalize the difference is for
18 you, as a Commission, overseeing the use of
19 this money to hold the wireless carriers to
20 high standards and similar standards as land
21 line carriers would be required to and -- and
22 to demand from them evidence that they are, in
23 fact, building facilities in Missouri and that
24 those facilities are going to benefit
25 Missourians and that customers in Missouri have

1 access to the information that they need given
2 that you don't have the same level of oversight
3 over these wireless carriers.

4 And so in a number of proceedings, I've
5 testified that I think these carriers need to
6 have the detailed maps of where they are
7 available on a going-forward basis with their
8 build out plans, they will tell you
9 specifically, What are you doing for
10 Missourians?

11 And I think that it's important as well to
12 require specifically that these carriers keep
13 current model contracts that they have
14 customers on file so that you are able to
15 evaluate our -- our customers in Missouri
16 getting a reasonably priced service that is
17 comparable.

18 So you really get to be the task master in
19 terms of holding them to demonstrating that --
20 that they are, you know -- you know,
21 personally, I think they should be held very,
22 very close to the same standards. But that's
23 coming in steps.

24 And I think the FCC did very well in
25 identifying guidelines, but not forcing a state

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1 to take them because then you couldn't do more.
2 You can do more, and they want you to, I
3 believe, by giving you that discretion based on
4 your unique knowledge of issues that affect
5 Missourians.

6 COMMISSIONER GAW: In talking about
7 comparability, my recollection is in one
8 wireless case that we have had in front of us
9 that there was a suggestion that the carrier
10 would be willing to ensure that households in
11 the rural area would be able to receive an
12 adequate signal -- signal from their wireless
13 phone in their home in order to -- to be able
14 to -- to receive and -- and make telephone
15 calls.

16 Is there anything in the rule proposed
17 currently that would make that a requirement,
18 if you know?

19 MS. MEISENHEIMER: I -- I believe
20 that the rule does have a number of mechanisms
21 by which a carrier can provide service to
22 ensure that the customer has an adequate signal
23 at their home.

24 They are required to provide service by
25 one of many means. It may be through their

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1 cell tower that already exists. They may put
2 an antenna at the customer's house and give
3 them a fixed wireless application. They may
4 use resold services. And I've testified in a
5 previous case that I think it's pretty
6 important that carriers that don't have a lot
7 of facilities and can't reach all the customers
8 that they could, in the areas they're
9 designated for, they need to come in early and
10 demonstrate that they have resale agreements or
11 can get them very quickly to ensure that that's
12 an option for the people where the signal isn't
13 good enough to meet a minimum service quality
14 standard.

15 And I very much support where I --
16 what I think you have an interest in, and that
17 is having a more detailed list of what the
18 quality of service requirements are. I think
19 that would go a long way to ensuring that
20 people have an adequate signal at their
21 premise.

22 COMMISSIONER GAW: Do you know
23 whether or not there is a list that has been
24 offered by any of the parties in this
25 rule-making? And I'll ask Ms. Dietrich in a

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1 minute if -- if that's helpful.

2 MS. MEISENHEIMER: Maybe we could let
3 Ms. Dietrich go first. I --

4 COMMISSIONER GAW: Ms. Dietrich?

5 MS. DIETRICH: The -- the proposed
6 rule as it was published includes provisions
7 that you've been talking where a carrier has to
8 make efforts to accommodate customer requests
9 for service, including the things that Ms.
10 Meisenheimer listed such as roof-mounted
11 antennas and things like that.

12 There's a provision for customers
13 requesting new service in an area that doesn't
14 currently receive service, and there's also --
15 it goes on to just service in general.

16 COMMISSIONER GAW: Give me a
17 comparison about what that would mean as it --
18 as it relates to service to a home and -- for a
19 wireless carrier as compared to what a wire
20 line carrier would -- would be required to do
21 to provide service.

22 MS. DIETRICH: Well, the way -- at
23 least the way we've proposed changes to the
24 rule, it would apply to wireless and wire line
25 carriers.

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1 As far as physically what they would do,
2 I'm -- I mean, they -- they would either have
3 to get the facility out there. If they were a
4 wire line, they would have to -- if they were
5 wireless, like Ms. Meisenheimer said, it would
6 be perhaps a roof-mount antennae, build a new
7 cell tower, resale service. Depending on that
8 wire line's certification, they could also
9 perhaps resale service.

10 Then there's also a provision in there
11 where there's a consideration of cost because,
12 you know, if it means building, say, for
13 instance, a cell tower for one customer, you
14 know, several miles away from everybody else,
15 it may be cost prohibitive. So there are some
16 provisions in there to look at costs, also.

17 COMMISSIONER GAW: How is that -- how
18 is that review handled?

19 MS. DIETRICH: The rule language says
20 that the company would evaluate costs and
21 benefits of using the high cost support to
22 serve the customers requesting, and then where
23 special conditions or special arrangements are
24 involved, construction or installation costs,
25 the customer may be required to pay a portion

1 of those installation costs.

2 And it goes on to talk about making
3 arrangements with the company. You know, it
4 may not be you pay a thousand dollars upfront.
5 It may be monthly payments or something like
6 that. So it talks about the company being able
7 to work with the customer to determine the best
8 possible way to bring it back.

9 And then if there's no possible way to
10 resolve what the customer is requesting, then
11 they have to report that to the Commission in
12 their annual certification process that we had
13 "X" number of customers that we were not able
14 to serve based on, you know, whatever the
15 reasons might be.

16 COMMISSIONER GAW: Tell me what --
17 how that's handled with that wire line company.

18 MS. DIETRICH: If --

19 COMMISSIONER GAW: If there is a --
20 if there is a request for telephone service
21 that is considerable distance from the end
22 line, how that cost is shared or handled.

23 MS. DIETRICH: It's very similar to
24 what I just described. We used language in
25 wire line tariffs as far as special

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1 construction and compensation for that in order
2 to develop the ruling, which --

3 COMMISSIONER GAW: And if there's a
4 dispute in regard to how much that customer is
5 to bear, who resolves that dispute?

6 MS. DIETRICH: A complaint can be
7 filed with the Commission. We have had
8 complaints similar to that filed in the past.
9 And that would apply under the rule to wireless
10 also.

11 COMMISSIONER GAW: Are there
12 standards that give the Commission guidance in
13 regard to coming to a conclusion about how to
14 handle splitting those costs?

15 MS. DIETRICH: Not that I'm aware of,
16 other than just, you know, the general just and
17 reasonable type provisions of the statutes.

18 COMMISSIONER GAW: Because I know
19 personally that there are wire lines scattered
20 all over the state, some of which run for not
21 just yards, but sometimes for multiple miles to
22 serve very few residences that were constructed
23 over the course of time in the last half
24 century or so.

25 I was -- I would assume that those were

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1 not all paid for by the individual customers
2 that were -- that were being served when those
3 lines were initially constructed. Do you know
4 how those costs were handled?

5 MS. DIETRICH: Well, that -- that
6 would have been included in the rate base over
7 time, you know, when the Commission did rate
8 design and those types of things. What we're
9 talking about here, at least for a wire line,
10 would be kind of new requests.

11 It would be, I would assume, you know, one
12 or two customers as opposed to like new
13 subdivisions because new subdivisions, it would
14 be built into the general rate base, also,
15 whether it be rate of return, price cap or
16 whatever.

17 But it would be recovered over time that
18 way, whereas what we're talking about is, you
19 know, one customer lives out, you know, several
20 miles away and they want service and is it
21 feasible to serve them. And there may be
22 special construction costs.

23 An example that had come up during the
24 process of drafting the rule was in the past a
25 wire line customer was not able to get to a --

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1 a wire line company was not able to get to a
2 customer because of their location and the
3 terrain and that type of thing. So they had to
4 do some kind of coordination with a wireless
5 company in the area and kind of combine the two
6 services, for lack of a better way to describe
7 it, since I'm not technical, and get the
8 service out to the customer.

9 It would be those types of arrangements,
10 not just your general, We have a new
11 subdivision going up, we need to get service
12 out to them type thing.

13 COMMISSIONER GAW: I understand what
14 you're -- what you're telling me, but I'm a
15 little unsure about what -- what you're
16 suggesting in regard to some of these lines
17 that are existing having been rolled into rate
18 base.

19 Are you telling me that when -- that at
20 some point in time in the past there was a
21 difference between what -- how this -- how the
22 costs were handled for serving rural customers
23 in Missouri that in the past they have -- that
24 those costs were all rolled into rate base and
25 that at some point in time that shifted so that

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1 the -- there some sort of a discussion or
2 resolution now that must be made before a new
3 customer can be served?

4 I'm trying to understand. Has it always
5 been the case that if you were a customer
6 seeking service that this -- there had to be
7 some resolution about how to pay for the costs
8 of running that line? Or is that something
9 that's -- that's just happened in the last
10 several years?

11 MS. DIETRICH: If I understand what
12 you're asking me, if I think what -- what I'm
13 saying is if -- it would have always been that
14 way if it was special circumstances.

15 But I think the way you originally started
16 the question was it was -- you know, they were
17 rolling out to -- or at least the way I
18 interpreted it, they were rolling out to a mass
19 of customers in a location, not over time where
20 people have moved out farther and farther.

21 COMMISSIONER GAW: No, I'm not,
22 because there have always been people living in
23 remote sites in Missouri.

24 MS. DIETRICH: In that case, yes, I
25 think, you know, it would always have been

1 covered by the special construction in the
2 tariffs.

3 Now, that's probably evolved over time,
4 how that was structured. But it would have --
5 there are provisions in the tariff to cover
6 special construction type arrangements.

7 COMMISSIONER GAW: Do we have
8 information on that -- on that history
9 available?

10 MS. DIETRICH: Not that I'm aware of.
11 I mean, there maybe cases or there may be
12 companies that may be able to answer that.

13 COMMISSIONER GAW: Somebody must know
14 how the lines in this state were -- were
15 constructed, though.

16 Ms. Dietrich, I understand that a lot of
17 those lines predate -- most of those that are
18 here at the Commission. But I would think
19 there would be some that would -- would have
20 some knowledge of that history.

21 MS. DIETRICH: Perhaps Ms. Morgan or
22 Mr. Gryzmala would be able to speak from the
23 company perspective.

24 MS. MEISENHEIMER: I can help a
25 little bit.

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1 COMMISSIONER GAW: Anything would be
2 -- would be good.

3 MS. MEISENHEIMER: As a general rule,
4 in a number of utility areas, including
5 electric, gas to some degree, and telephone, as
6 a rule, carriers, at least for as long as I've
7 been here and even before that to the extent
8 that I've reviewed old tariffs, their carriers
9 have had a clause that allows in cases of
10 unusual build out for the customer to pay a
11 portion of that.

12 However, the company must pay a portion of
13 that. And I would point out that Universal
14 Service money has helped accomplish that. And
15 that's its intended purpose, to get service
16 throughout a service territory.

17 And I would suggest that when and if those
18 complaints come to you about customers having
19 to pay that you keep in mind that you have
20 approved Universal Service money for these
21 wireless carriers, and so they have a number of
22 alternatives to serve that remote customer.

23 And so it doesn't -- you know, I -- I
24 hadn't considered your question until I'm
25 sitting -- you know, sitting here right now.

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1 However, it seems fully appropriate to me that
2 a wireless carrier should not be allowed to
3 collect any more as a customer portion for
4 build out than does the incumbent because they
5 receive exactly the same support money for
6 serving that customer.

7 COMMISSIONER GAW: And -- And that is
8 the direction that I was going in. I
9 appreciate you putting that more in a nutshell.

10 Help me to understand what we could do in
11 language here that would help protect this fund
12 in a way that would ensure that it's going in
13 to be utilized for this purpose and there's not
14 going to be an excessive amount on this --
15 these requests for access that gets pushed over
16 to the consumer for them to pay in addition to
17 the USF funds that the company is -- is
18 receiving.

19 MS. MEISENHEIMER: Certainly, you
20 could add an additional component to a rule
21 that would specifically say that in cases where
22 customers contribute a portion to the building
23 of new facilities that that will be a like
24 amount as the customer would have paid for the
25 incumbent. That's one way you can handle it.

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1 Another, and more generally, you asked
2 about, I think, more detailed quality of
3 service. And from a physical network
4 perspective, I -- I thought that perhaps you
5 were interested in more detailed specifications
6 in terms of the signal quality itself, say, for
7 example, the speed of signal available.

8 COMMISSIONER GAW: That is another
9 area of importance to me.

10 MS. MEISENHEIMER: Also, perhaps, you
11 know, like a land line carrier is required to
12 have installation done in so many days, and
13 they're required to have certain level of
14 answering customer calls about problems with
15 their service quality.

16 If -- if you're looking for something that
17 really nails down the detail and will avoid as
18 you move along with these certifications having
19 to re-do each one and perhaps adopting
20 inconsistent requirements for the different
21 carriers, then it might make a lot of sense to
22 actually sit down and hammer out and get some
23 engineers involved with, you know, what is the
24 appropriate way to describe the detailed
25 quality of service standards in advance.

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1 And you could certainly do that, I would
2 think, as a part of the this rule or as the
3 next step. And Public Counsel would certainly
4 participate in that, you know, to the extent
5 that we have the resources.

6 COMMISSIONER GAW: Would Public
7 Counsel -- would Public Counsel support that
8 general direction?

9 MS. MEISENHEIMER: Absolutely. That
10 -- that's, in fact, something that I -- I think
11 in past testimony I've -- I've raised concerns
12 about, that -- that there isn't -- you know,
13 nailing things down is really important. And
14 it's in a number of aspects related to service
15 quality and customer interaction.

16 COMMISSIONER GAW: When you're
17 dealing with the cost issues again, would you
18 deal with -- with that similarity in regard to
19 amount only, or would you also perhaps put an
20 additional threshold of percentage of shared
21 costs?

22 MS. MEISENHEIMER: I -- my -- my
23 reference here would be for you to allow me an
24 opportunity to review how is it in tariffs or
25 various types of utilities and to provide that

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1 to you as a late filed exhibit, if that's okay.

2 COMMISSIONER GAW: That's
3 satisfactory with me. I -- I'm looking to try
4 to see how we can make this as comparable as --
5 as possible and at the same time, if it is less
6 expensive for the service to be provided by the
7 wireless carrier overall, then -- then just
8 setting a minimum saying it can't be any more,
9 customer share can't be my any more than the
10 amount that would have been charged by the ILEC
11 may not be sufficient.

12 It might need some additional level of
13 protection that -- that also says, And in
14 addition, you can't charge them any more than
15 the percentage share. It's just a suggestion
16 that -- to consider while you're looking at
17 that and give me feedback on it if you want.

18 MS. MEISENHEIMER: One of -- one of
19 the particular points I would make in that
20 regard is that I -- I recently worked on an
21 electric case in reviewing a company's request
22 for an increase. And in that, they have a
23 build out policy that I've recently viewed.

24 And in that one, it -- the company
25 contributes a certain amount toward the build

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1 out, and then the customer picks up the rest.
2 But this is an entirely different situation
3 where there is federal money already being
4 directed to ensure that service is ubiquitously
5 available in rural areas. So I would view it
6 as maybe a percent up to a dollar cap. If we
7 -- if you'd like me to also make a
8 recommendation, we can do that and file it.

9 COMMISSIONER GAW: I'm looking for
10 feedback. So whatever -- whatever you can do
11 to assist on that would be helpful for me. And
12 it is, I think, difficult to compare electric,
13 as you pointed out, unless we're looking at the
14 rural co-ops and how that -- how that fits
15 together since they have -- have in the past
16 had federal support.

17 And I don't know whether that makes --
18 makes sense in general or not. But, Ms.
19 Dietrich, do you have anything further on -- on
20 those particular questions?

21 MS. DIETRICH: Not at this time. No.

22 COMMISSIONER GAW: In regard to the
23 build out plan, Ms. Meisenheimer, where is
24 Public Counsel, again, at this point in regard
25 to how -- how far out those plans should --

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1 should go?

2 MS. MEISENHEIMER: I understand that
3 the Staff is now at a two-year build-out plan.
4 And -- and I -- I don't have any real concerns
5 about making it a two-year plan instead of a
6 five-year plan.

7 And the reason is because I view that as
8 giving you more current information on a
9 regular basis. I mean, certainly, I would like
10 a long-run prospectus that this -- that a
11 particular company is going to continue.

12 However, a build-out plan should give you
13 that -- an indication of whether the company is
14 going to be in -- in the more immediate future
15 be putting in facilities. And so I -- I don't
16 think we have any problem with making it a
17 two-year build-out plan instead of a five-year
18 build-out plan.

19 COMMISSIONER GAW: When we're talking
20 about a two-year build-out plan, are we talking
21 about a rolling plan, in essence, that gives
22 the Commission continuing updates on the plans
23 for construction going forward?

24 MS. MEISENHEIMER: That's how I
25 understand it. Yes.

1 COMMISSIONER GAW: What would be the
2 proposal on the two-year plan, Ms. Dietrich, in
3 regard to how soon that had to be in prior to
4 two-year period starting?

5 MS. DIETRICH: In -- in our comments,
6 we suggest that -- well, first of all, if
7 they're coming in and applying for ETC
8 designation, they would have to submit a
9 two-year plan with the application.

10 If they already have a pending application
11 before the Commission that has not been ruled
12 upon by the time the rule would become
13 effective, we've proposed in our comments that
14 a section be added that they provide a two-year
15 plan. I don't remember what kind of time
16 frame, but we put a time frame in there.

17 COMMISSIONER GAW: Let me go forward
18 with it to -- another step while you're
19 looking.

20 In the event that -- that the status is
21 granted, is it Staff's assumption that, then,
22 there would be a rolling filing of a two-year
23 plan going forward into the future as long as
24 the USF status continued?

25 MS. DIETRICH: Correct. We -- we've

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1 asked since we have received information on --
2 for the annual certification process by August
3 15th of this year, we've used that as the date
4 for either pending requests or carriers that
5 are currently designated adds ETCs to submit
6 their two-year plan.

7 And then by August 15th of each year
8 thereafter, they would have to submit their
9 updates, so that it would be a rolling plan.

10 COMMISSIONER GAW: And the update
11 would be for an additional year, or would it be
12 -- would it include any changes for the -- for
13 the first part of the two years going forward
14 from August?

15 MS. DIETRICH: I believe it's a
16 status update of the plan. And then -- just
17 one second. It's -- it's a progress update on
18 the two-year improvement plan. So it's not
19 clear that the two years would be --

20 COMMISSIONER GAW: Rolling.

21 MS. DIETRICH: -- rolling.

22 COMMISSIONER GAW: Because it needs
23 to be clarified from my standpoint. Is it
24 possible to provide suggested language for
25 that?

1 MS. DIETRICH: Okay. Yes.

2 COMMISSIONER GAW: And then what are
3 the details of what's to be in this plan? Is
4 it -- is it specified in the proposed -- the
5 Staff's proposal and comments?

6 MS. DIETRICH: To some extent, it's
7 included in the proposed rule and Staff's
8 comments. But then AT&T made some suggestions,
9 which we do not object to, where they're making
10 it even more specific.

11 COMMISSIONER GAW: Okay. And does
12 that include specifically what -- what
13 infrastructure will be built and when?

14 MS. DIETRICH: It includes a detailed
15 map of coverage area before and after
16 improvements, a map identifying tower locations
17 for a CMRS provider, specific geographic areas
18 where the improvements will be made, projected
19 start date and completion date for each
20 improvement, amount of investments for each
21 project, estimated population that will be
22 served as a result of the improvement.

23 COMMISSIONER GAW: Okay. Does the --
24 does the -- does the map or do maps that are
25 required to be filed have any information on

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1 areas where service quality is -- is poor or
2 service is not available within regions of the
3 state?

4 MS. DIETRICH: This does not have
5 that specificity. But in what they've provided
6 so far in other cases, it does show that this
7 is where we are and this is the level of
8 coverage.

9 COMMISSIONER GAW: Okay. Should that
10 not be a part of the information that we have?

11 MS. DIETRICH: We can submit language
12 along with the other submissions we're
13 providing.

14 COMMISSIONER GAW: And, in
15 particular, when these tower are up, how the
16 new service is expected to be in comparison to
17 the service before the infrastructure was in
18 place.

19 MS. DIETRICH: Okay.

20 COMMISSIONER GAW: So we can see the
21 additional coverage area generated by the
22 investment.

23 Let me ask you this: Is there -- is there
24 anything in the rule that requires the company
25 to -- to identify whether or not the investment

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1 is intended to replace some particular
2 technology that's being utilized with another
3 technology?

4 MS. DIETRICH: Not that specific.
5 The rule says that the money has to be used for
6 something, an expense or an occurrence, that
7 would not normally have occurred without
8 receipt of the money. But it doesn't talk
9 specifically about types of technology or
10 anything like that.

11 COMMISSIONER GAW: All right. Could
12 that be added as a possibility so that you
13 could tell whether or not this is -- this
14 investment was intended just to -- to move --
15 change technologies?

16 MS. DIETRICH: Yes.

17 COMMISSIONER GAW: And, in
18 particular, I'm referring to the type of
19 technology, wireless technology, utilized. But
20 there may be some other things --

21 MS. DIETRICH: Okay.

22 COMMISSIONER GAW: -- that Staff
23 might have an idea about.

24 MS. DIETRICH: For instance, like
25 going from copper to fiber, those types of

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1 things?

2 COMMISSIONER GAW: That might be.

3 But I'm thinking about whether or not it's a
4 GMS system. I'm not sure that that's the
5 right --

6 MS. DIETRIC: TDMA, CMH and --

7 COMMISSIONER GAW: Yes. Some of
8 those technologies may be more competitive, but
9 not necessarily better in delivery of service.
10 And I'm -- I'd like to know whether this is a
11 competitive strategy or one that's intended to
12 try and reach more Missourians.

13 MS. DIETRICH: Okay.

14 COMMISSIONER GAW: What guarantees
15 are there in the rule, either Ms. Dietrich or
16 Ms. Meisenheimer, to ensure that money that's
17 received as a result of the designation of ETC
18 status in Missouri is actually going to be
19 spent on infrastructure here? Whoever wants to
20 go first.

21 MS. MEISENHEIMER: Well, I mean,
22 that's a -- that's a basic premise of Universal
23 Service, that the money is used for the -- for
24 supported services in the area for which the
25 money is received.

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1 COMMISSIONER GAW: How -- what's in
2 the rule that allows us to verify that?

3 MS. MEISENHEIMER: Well, I -- okay.
4 I think that that is addressed in -- and Ms.
5 Dietrich may want to add if she can think of
6 additional areas. I think that that's
7 specifically addressed within the context of
8 the five-year plan -- or well, it will be a
9 two-year plan that --

10 COMMISSIONER GAW: Whatever it ends
11 up being. Go ahead.

12 MS. MEISENHEIMER: It -- in
13 certification they -- that's a condition of
14 certification.

15 COMMISSIONER GAW: Ms. Dietrich, do
16 you have any more specific information to add
17 to that?

18 MS. DIETRICH: Yes. In their initial
19 application and also in the annual
20 certification process, they have to provide --
21 or demonstrate that the receipt of high cost
22 support was only used to improve coverage,
23 service quality or capacity in the Missouri
24 service area in which ETC designation was
25 granted, so not only just in Missouri, but

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1 actually the area where the designation was
2 granted because some carriers don't get it
3 throughout their entire area.

4 COMMISSIONER GAW: All right. Now
5 let me ask you how I further check this
6 scenario.

7 Let's assume that a particular area is
8 certified by the company to have received their
9 allocated portion of the USF funds. But let's
10 also assume that that area was going to be
11 financed regardless of USF funds or -- or, in
12 particular, had been receiving a certain amount
13 of money over the course of the last few years,
14 but that that funding support was shifted away
15 and only USF money was -- was put into it, but
16 that the overall result was that that -- in my
17 -- in my example, no new money or no additional
18 money over the -- over and above what had been
19 generally invested in that area was actually
20 invested as a result of the USF funds.

21 What do I do to ensure that that does not
22 occur?

23 MS. DIETRICH: In the initial
24 application process, we have language in there
25 where they have to state what you're

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1 suggesting. It is not in the annual
2 certification process. So I think we would
3 have to add language to the annual
4 certification process to ensure the ongoing
5 concept that you're suggesting.

6 COMMISSIONER GAW: Okay. Do we
7 receive information in regard to total -- total
8 expenditures by the company on infrastructure
9 and other things that are appropriate with USF
10 but not limited to USF funding sources as a
11 result of this rule? Will we have that
12 information?

13 MS. DIETRICH: Not on total expenses
14 or total revenues. Just for wireless, it would
15 be just to the extent of the ETC designation.
16 For LECs, it would be for the rule. It would
17 be in the annual certification process would be
18 just to the USF money. But, of course, we get
19 annual -- or annual reports with some of the
20 other information.

21 COMMISSIONER GAW: Without knowing
22 the total expenditures, how do I know whether
23 they've really expended more money as a result
24 of spending -- or having the USF designation?

25 MS. DIETRICH: It would -- the way

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1 the rule is written right now, it would be
2 strictly relying on the affidavit that's
3 associated with the information.

4 COMMISSIONER GAW: And if that isn't
5 sufficient, is there wording that would provide
6 that additional information to the Commission?

7 MS. DIETRICH: There is wording that
8 says the Commission can request any additional
9 information related to ETC designation or
10 certification, but nothing more specific than
11 that.

12 COMMISSIONER GAW: Is there wording
13 that you could suggest that would provide that
14 information?

15 MS. DIETRICH: Yes.

16 COMMISSIONER GAW: And then is there
17 any requirement that the company provide a
18 listing of the percentages of expenditures for
19 infrastructure improvement and other things
20 utilized from USF funds in a way that will
21 allow a state-to-state comparison on the
22 expenditures of those monies --

23 MS. DIETRICH: There is --

24 COMMISSIONER GAW: -- by the
25 companies that are multi-state?

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1 MS. DIETRICH: There is nothing that
2 says, Give us the percentage of the
3 improvements based on USF compared to your
4 general improvements, and there's nothing that
5 says, Give us the percentage in Missouri
6 compared to other states.

7 COMMISSIONER GAW: Okay. Would you
8 mind seeing if we can get some language on it
9 for that?

10 MS. MEISENHEIMER: I don't know that
11 I would entirely agree with that. I -- I think
12 there is a burden on carriers to demonstrate --
13 and I'm sorry it took me a couple of minutes to
14 locate it.

15 COMMISSIONER GAW: That's okay.

16 MS. MEISENHEIMER: But Section 24 --
17 and this is the annual information that they
18 are to provide to you. And, specifically, I
19 would -- I would point you to A, but more
20 importantly, I would point you to E, which
21 requires a demonstration that the receipt of
22 high cost support was only used to improve
23 coverage, service quality or capacity in -- in
24 the Missouri service area for which the ETC
25 designation was granted and that such support

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1 was used in addition -- in addition -- to any
2 expenses the competitive carrier would normally
3 incur.

4 And I think the demonstration sets a
5 little higher standard than simply you just
6 sign something saying you did. Demonstration,
7 to me, as -- you know, for -- in the job I do
8 means that I would be asking to look at some
9 numbers to demonstrate it.

10 And I don't know if Ms. Dietrich would
11 agree with that.

12 COMMISSIONER GAW: Well, if -- if you
13 -- if you wouldn't mind just taking a look at
14 that language. And if there are some things
15 that need to be added to it as a suggestion, if
16 -- to reach what I'm suggesting to you, I'd
17 like to have that feedback in some wording. If
18 it's -- if it's just, We think this is
19 sufficient in accomplishing this goal, okay. I
20 just want that feedback from you.

21 MS. MEISENHEIMER: And I'd work with
22 Staff on that.

23 COMMISSIONER GAW: Whatever you all
24 want to do. I'm looking for -- for just some
25 feedback from you on it. Judge, I think that's

1 all I have for the moment. Thank you.

2 JUDGE DALE: Thank you. Commissioner
3 Murray, did you have some more questions?

4 COMMISSIONER MURRAY: Yes. I have a
5 few more. Thank you.

6 Ms. Dietrich, looking back at Section 24
7 and the subsection D that Ms. Meisenheimer just
8 read from a moment ago, that references only
9 competitive carriers designated as ETCs. Why
10 is that?

11 MS. DIETRICH: The -- at least under
12 the current Commission process, the ILECs have
13 a separate annual certification process where
14 they submit account information of expenses and
15 revenues by specific general ledger accounts,
16 whereas competitive carriers don't track their
17 expenses in the same manner that ILECs track
18 them.

19 And so even in today's process, they have
20 a little bit of different certification and
21 standard that they provide because they don't
22 track their expenses in the same manner that
23 the LECs -- the ILECs track them.

24 COMMISSIONER MURRAY: Well, are you
25 able in annual review of the ILEC ETC to

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1 determine that the high cost support was used
2 only to improve coverage, service quality or
3 capacity in the Missouri service area in which
4 the ETC designation was granted?

5 MS. DIETRICH: No, we are not.

6 COMMISSIONER MURRAY: And you're not
7 able to dem -- to determine whether it was used
8 in addition to any expenses the -- the carrier
9 would have -- would normally incur?

10 MS. DIETRICH: That's correct. We
11 are not. So that -- that may be a section that
12 we could expand to --

13 COMMISSIONER MURRAY: Yeah. I think
14 if we're looking at determining whether these
15 funds are used appropriately, we certainly
16 should not exclude the ILECs in -- in any kind
17 of information that would have to be provided
18 as to the use of those funds.

19 MS. DIETRICH: And that -- the intent
20 was not to exclude the ILECs. It's just -- we
21 knew that there was a different process.

22 COMMISSIONER MURRAY: Yeah. But I --
23 there's been a lot of discussion about what
24 needs to be provided in terms of follow-up on
25 making sure that the funds are used

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1 appropriately.

2 I am extremely concerned about making sure
3 that the ILECs are using the funds
4 appropriately.

5 MS. DIETRICH: Okay. I will take a
6 look at that and include that in our
7 submission, also.

8 COMMISSIONER MURRAY: And any updated
9 reports that are requested -- I think you were
10 asked to work on looking at language that would
11 require more updated reporting. And I didn't
12 catch whether that was only to be done by
13 competitive ETCs or if that was to be done by
14 the ILEC ETCs as well.

15 But I would be very opposed to anything
16 that didn't also include, you know, the same
17 kind of detailed reporting from the ILEC ETCs.

18 MS. DIETRICH: Okay.

19 COMMISSIONER MURRAY: And let's see.
20 I think there was one other question I had
21 about the build-out language.

22 That -- the proposal for our language on
23 build-out, I see the FCC's language, but where
24 is our language?

25 MS. DIETRICH: 2-B, if that's -- I

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1 think that's what you're looking for.

2 COMMISSIONER MURRAY: 2-B. Okay.

3 Now, that's referencing any new requests for
4 ETC designation; is that correct?

5 MS. DIETRICH: That's correct.

6 COMMISSIONER MURRAY: But is it --
7 are any of these requirements applied to ILECs?
8 For example, we've talked about today a
9 two-year build-out plan being updated every two
10 years by those who are currently applied for
11 ETC status.

12 But is there anything that requires ILECs
13 to provide any update for how they're going to
14 continue to -- to make improvements or use the
15 money?

16 MS. DIETRICH: No, there is not.
17 They just have to provide information on
18 quality of service standards and also customer
19 complaints.

20 COMMISSIONER MURRAY: But if we
21 require this of ETC -- of competitive ETCs on
22 an ongoing basis, is it not possible to also
23 require it of the incumbent LECs that have ETC
24 status?

25 MS. DIETRICH: We can take a look at

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1 that and perhaps suggest language. Something
2 to that extent may be -- cause a need to modify
3 the fiscal -- fiscal note that was attached to
4 the rule.

5 COMMISSIONER MURRAY: But it would
6 give us much greater oversight of the use of
7 funds, would it not?

8 MS. DIETRICH: Yes, it would.

9 COMMISSIONER MURRAY: Okay. All
10 right. I think that's it this time, Judge.
11 Thank you.

12 JUDGE DALE: We've been going for 90
13 minutes now. I think it's a good time for a
14 break. We will reconvene in ten minutes.

15 Well, let me ask how long people's
16 presentations are without questions?

17 MS. MORGAN: Five minutes.

18 MR. STEWART: Three minutes.

19 JUDGE DALE: Mr. Zobrist?

20 MR. ZOBRIST: Five minutes.

21 MR. GRYZMALA: Five seems to be the
22 lucky number.

23 JUDGE DALE: Okay. Then let us do
24 reconvene in ten minutes promptly and see if we
25 can at least get through most of this.

1 Keep in mind that we will be reconvening,
2 but I would like to go into the -- we will be
3 reconvening on Tuesday at 1:00. But I would
4 like to at least get through all of the
5 presentations and all of the questions that the
6 Commissioners who are present have at this
7 time, if I'm being clear.

8 MR. STEWART: 1:00 Tuesday?

9 JUDGE DALE: Yes. But in the
10 meantime, ten minutes from now.

11 (Break in proceedings.)

12 JUDGE DALE: Okay. We are back on
13 the record and ready for, I believe, Ms. Morgan
14 representing the Small Telephone Company Group.

15 MS. MORGAN: Thank you, Judge. The
16 Small Telephone Company Group supports the
17 proposed ETC rule as published in the Missouri
18 Register on December 1st, 2005.

19 The STCG believes that this rule is
20 consistent with minimum eligibility
21 requirements established by the FCC to be used
22 to determine eligibility for ETC designation
23 and to determine if the ETC applicants' request
24 is consistent with the public interest.

25 The FCC's stated purpose in establishing

1 these minimum requirements was to create a more
2 rigorous process in order to improve the
3 long-term sustainability of the USF fund.

4 The STC -- STCG also believes that this
5 rule primarily directed at competitive and CMRS
6 carriers also advances the principle of
7 competitive neutrality more fully discussed in
8 the comments filed in this case.

9 However, the STCG does have concerns
10 regarding the proposed changes to the rule
11 suggested by Staff in its comments filed on
12 January 3rd, 2006.

13 Staff now recommends that the definition
14 of carrier be changed to include the incumbent
15 local exchange carriers that have previously
16 been designated as eligible telecommunication
17 carriers. Thus, the rule would now apply
18 equally to new competitive applicants,
19 including CMRS providers as well as ILECs.
20 Staff states that the rule would then be more
21 competitively neutral.

22 Staff's proposal is an 11th hour change,
23 and recommending this change at this point in
24 proceedings deprives the STCG of its statutory
25 right to notice and opportunity to comment on

1 the proposed rule. As counsel for the STCG, we
2 have had no opportunity to discuss these
3 proposed changes with our clients or to
4 determine the impact of the proposed changes on
5 these companies.

6 We would need an opportunity to compare
7 these changes to current regulations that apply
8 to our companies in order to know how they
9 would be affected by these changes. And it may
10 very well be true, what Ms. Dietrich said, that
11 these changes are not making any additional
12 requests of our companies. But we would like
13 an opportunity to determine that for ourselves.
14 And at this point, we haven't had that
15 opportunity.

16 Thus, the -- at this point, the STCG urges
17 the Commission to adopt the ETC rule as
18 originally proposed.

19 However, if the Commission is inclined to
20 accept these proposed changes we ask that we be
21 given an opportunity to file additional
22 comments.

23 And, also, the STCG would point out that
24 there is an important distinction between ILECs
25 that have been designated as ETCs and receive

1 USF support based on funds already spent to
2 provide service and the competitive and CMRS
3 carriers that will receive support based solely
4 on the amount received by the incumbent that
5 has no relation to the competitive or CMS --
6 CMRS carrier's actual cost to provide service.

7 It is this distinction that makes this
8 rule important to the incumbent companies that
9 provide service in rural high cost areas. It
10 is an attempt to level the playing field and
11 make sure that the additional ETC within a
12 service area provide comparable service with
13 the same or similar level of regulation that
14 the incumbent is subject to.

15 Since the new entrant will receive the
16 same level of USF funding as the incumbent
17 receivers, this would advance the principle of
18 competitive neutrality established by the FCC
19 and ensure that the rules neither unfairly
20 advantage or disadvantage one provider over
21 another. And we would urge the adoption of the
22 ETC rule as originally published.

23 JUDGE DALE: Thank you, Ms. -- thank
24 you, Ms. Morgan. Commissioner Murray?

25 COMMISSIONER MURRAY: Yes. I have a

1 couple of questions. Thank you.

2 The problem that you just talked about
3 with the competitive ETCs receiving the same
4 funding as the incumbent are based upon the
5 incumbent's cost to serve an area. I'm not
6 sure this rule as originally proposed or as
7 even with its proposed changes actually
8 addresses that.

9 If -- if the costs of providing service
10 are different for the different carriers, then
11 to give each carrier the same amount of USF
12 once though become an ETC doesn't seem quite
13 appropriate. Do you agree?

14 MS. MORGAN: I do agree. But I think
15 the rule does at least take a step forward to
16 making it more fair.

17 COMMISSIONER MURRAY: And why -- why
18 do you think this rule makes that more fair?

19 MS. MORGAN: Because it ensures that
20 the -- the new provider, the new entrant will
21 provide a comparable service and that they will
22 be subject to quality of service standards and
23 other regulations that the incumbent is subject
24 to.

25 COMMISSIONER MURRAY: Okay. In terms

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1 of the new -- the changes that we've heard have
2 -- have been designed to provide for more
3 competitive neutrality between the ILEC ETCs
4 and the competitive ETCs, your clients wouldn't
5 have any objection to providing as much
6 information about how they are using the USF
7 funds, would they, as we would be requiring of
8 the new ETCs?

9 MS. MORGAN: I would have to see the
10 specific language. But I don't think so. In
11 fact, I think our companies probably already
12 provides that information because it's based on
13 historical costs, and it -- that -- they do
14 cost studies that are provided to USAC and the
15 USF, and those studies are reviewed and
16 audited, if necessary.

17 COMMISSIONER MURRAY: Then do you
18 disagree with Ms. Dietrich's answer to my
19 question earlier that -- in reference to
20 Section 24-D when I asked her if the Staff can
21 determine from what is -- what information is
22 provided by the ILECs whether the high cost
23 support was only used to improve coverage,
24 service quality or capacity in the Missouri
25 service area in which the ETC designation was

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1 granted, and she said that they don't have the
2 information to determine that from what is
3 provided? Do you disagree with that?

4 MS. MORGAN: To a degree because,
5 particularly for our companies, of course,
6 there's no -- there's no doubt that the money
7 is spent in Missouri or in their service area
8 because they are small companies that --
9 limited to a designated area.

10 COMMISSIONER MURRAY: But how do we
11 know that it's used to improve service --
12 improve coverage or service quality or
13 capacity?

14 MS. MORGAN: Well, because that's
15 what the companies do. I mean, that's -- they
16 provide the service, and then they receive the
17 USF funds based on the service that they've
18 already provided.

19 COMMISSIONER MURRAY: But how do we
20 know your clients wouldn't have spent that
21 money anyway, wouldn't have done that --
22 whatever capacity, upgrade or service upgrade
23 without USF funding?

24 MS. MORGAN: Well, it would have been
25 very difficult because most of our companies

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1 rely very heavily on the USF support. And most
2 of them, their local service rates would not
3 support the level of -- the quality of service
4 that they do provide.

5 COMMISSIONER MURRAY: And can you
6 help me understand what would happen if a
7 carrier used Universal Service funding to
8 significantly upgrade its network to the degree
9 that it could provide advanced services that
10 wouldn't be considered basic tele -- local
11 telecommunications services, received a
12 significant amount of USF funding for that
13 purpose, upgraded the network, and then two or
14 three years later decided to use that upgraded
15 network for these expanded services that aren't
16 -- wouldn't be considered local basic service.

17 How -- would -- would you have to report
18 that? Would you have -- would they have to
19 reimburse the Universal Service Fund? How
20 would that be handled?

21 MS. MORGAN: Are the services you're
22 talking about regulated services?

23 COMMISSIONER MURRAY: No. I'm
24 talking about providing -- it could be
25 unregulated services. The network would be --

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1 MS. MORGAN: Well, I would think that
2 the -- the regulated company would have to be
3 reimbursed for any unregulated use of their
4 facilities.

5 COMMISSIONER MURRAY: But the
6 regulated company was already reimbursed by the
7 Universal Service Fund.

8 MS. MORGAN: Well -- but -- but if --
9 if they're using that -- those facilities for
10 some other purpose, then they would have to be
11 paid for the use of those facilities.

12 COMMISSIONER MURRAY: The carrier
13 would be?

14 MS. MORGAN: Yes.

15 COMMISSIONER MURRAY: And then how
16 would the Universal Service Fund be reimbursed
17 for the monies that were put into that upgrade?

18 MS. MORGAN: Well, I don't think
19 there's any procedure to do that as far as I
20 know.

21 COMMISSIONER MURRAY: All right. I
22 think that's all I have right now. Thank you.

23 JUDGE DALE: Commissioner Gaw?

24 COMMISSIONER GAW: Ms. Morgan, when
25 -- when the build-out was done by the rural

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1 telephone companies to reach individuals that
2 lived in -- in agricultural areas in the state,
3 do you -- do you know about the historical
4 nature of how much customers were required to
5 pay to get telephone service to their door?
6 Are you familiar with any of that?

7 MS. MORGAN: I'm sorry. I really
8 couldn't give you a definite answer there. I
9 just know that as Ms. Meisenheimer and Ms.
10 Dietrich have told you that there are
11 provisions in the company's tariff for special
12 construction that -- so that the customer is
13 required to pay a portion of that.

14 Now, I know, you know, our companies are
15 carriers of last resort, so they really don't
16 have a choice about providing service. And
17 sometimes it's very expensive.

18 COMMISSIONER GAW: Does the customer
19 pick up all of that?

20 MS. MORGAN: No. They don't pick up
21 all of that.

22 COMMISSIONER GAW: And -- and so is
23 there some information that you might be able
24 to help procure that would give me some
25 guidance on that?

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1 MS. MORGAN: I can certainly try.

2 Yes. I can do that.

3 COMMISSIONER GAW: I thought I heard
4 you say to Commissioner Murray that the USF
5 money is generally used by your companies to --
6 because of the -- of the historical costs of
7 the -- of the system. I might be using those
8 -- the phrasing wrong.

9 Can you say that again to me? What is the
10 USF money being utilized for by the -- by the
11 small telephone companies that you represent?

12 MS. MORGAN: It's -- it's being used
13 to provide service to customers in high cost
14 areas, which is just what you're talking about,
15 where maybe there's only one or two customers
16 on a -- a long stretch of line. And it's very
17 expensive to be able to provide that service.

18 So that is what the high cost fund is used
19 for by these companies.

20 COMMISSIONER GAW: And when you say
21 expensive, you mean expensive per customer?

22 MS. MORGAN: Right.

23 COMMISSIONER GAW: So if -- if there
24 would be a company that would be utilizing USF
25 money to finance a particular build-out in the

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1 future to enhance services, do you know whether
2 or not the telephone companies are reporting
3 that as a part of -- as a part of their --
4 their plans going into the future when they're
5 seeking certification on an annual basis
6 currently?

7 MS. MORGAN: I don't believe that's
8 part of the annual certification process in
9 Missouri.

10 COMMISSIONER GAW: And you -- you
11 can't tell me one way or the other whether your
12 companies would object to -- to providing that
13 information?

14 MS. MORGAN: I really would prefer
15 not to say at this time because, like I said --

16 COMMISSIONER GAW: I understand.

17 MS. MORGAN: -- I have not had a
18 chance to discuss this with the client at all.

19 COMMISSIONER GAW: But perhaps you
20 could give us that feedback.

21 MS. MORGAN: Okay. I'd be happy to.

22 COMMISSIONER GAW: And what
23 protection is there in regard to the small
24 telephone companies who receive USF not simply
25 just putting other revenue streams into -- into

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1 shareholders' pockets as a result of receiving
2 USF funds?

3 MS. MORGAN: I'm sorry. I'm not sure
4 I understand your question.

5 COMMISSIONER GAW: Well, you covered
6 the base pretty well on saying all the money
7 must be used if it's being utilized by the
8 company in -- within Missouri because of the
9 nature of your companies. They are operating
10 for the -- I think, for the most part,
11 exclusively within the boundaries of the state.

12 MS. MORGAN: Yes.

13 COMMISSIONER GAW: And so if the
14 money is being used, it -- and for build-out or
15 for expenses, those -- those monies would be
16 utilized for -- to serve Missouri customers
17 because of the nature of the companies,
18 correct?

19 MS. MORGAN: Right.

20 COMMISSIONER GAW: That only leaves
21 the possibility, then, of -- of an exception to
22 that being that money might be -- that might
23 otherwise be used for investment might be freed
24 up to be passed along as dividends to
25 shareholders.

1 What is it that -- that gives the
2 Commission some information on the
3 certification process about that possibility?

4 MS. MORGAN: Well, I'm certainly not
5 an expert on the USF process, but I do know
6 that the companies prepare what they call cost
7 studies, and there are only certain things that
8 can be included in those cost studies that are
9 then in turn provided to USAC.

10 And I don't believe that expenses of --
11 going directly to the shareholders are one
12 thing that the companies are reimbursed for.

13 COMMISSIONER GAW: I understand that.
14 That really wasn't my point. But I -- let me
15 ask you this: If there is a -- are most of
16 your companies rate of return companies?

17 MS. MORGAN: Yes, they are.

18 COMMISSIONER GAW: So the rates,
19 then, that are set are subject to review as
20 long as they are rate of return companies by
21 the Commission?

22 MS. MORGAN: That's correct.

23 COMMISSIONER GAW: And there would be
24 some review as to the just and -- justness and
25 reasonableness of the rates so long as they

1 continue to be rate of return companies?

2 MS. MORGAN: That's true. They're
3 subject to the review of the Commission.

4 COMMISSIONER GAW: Now, of course,
5 that changes if they elect price cap, correct?

6 MS. MORGAN: Yes.

7 COMMISSIONER GAW: All right. Or if
8 they get declared to be competitive?

9 MS. MORGAN: Yes. But I don't think
10 our companies are going to be able to be
11 declared competitive in the near future.

12 COMMISSIONER GAW: Well, I'm not sure
13 that I have -- that I know whether that
14 assumption is correct anymore. So that's all I
15 have. Thanks. Thank you, Ms. Morgan.

16 JUDGE DALE: Commissioner Murray?

17 COMMISSIONER MURRAY: Just one quick
18 follow-up.

19 Do you happen to know the late -- the most
20 recent date that any of your clients had a rate
21 case for us?

22 MS. MORGAN: A rate case or an
23 earnings review?

24 COMMISSIONER MURRAY: Well, I guess
25 there -- I assume going to rate case would be

1 going back into ancient history.

2 MS. MORGAN: Yes.

3 COMMISSIONER MURRAY: So let's change
4 it to earnings review.

5 MS. MORGAN: Well, a couple of our
6 companies are subject to review at the present
7 time, I'm sure you know. But I think it was
8 like two years ago that -- that we had three of
9 our companies were subject to an earnings
10 review.

11 COMMISSIONER MURRAY: And do you know
12 how frequently that normally occurs? Or is
13 there such a thing as normally?

14 MS. MORGAN: I -- I haven't had
15 enough experience to be able to say what --
16 what would be normal. I know that
17 periodically, you know, we do have companies
18 that are subject to review.

19 COMMISSIONER MURRAY: Are there any
20 of your clients that have not been subject
21 to review for a number of years?

22 MS. MORGAN: I'm -- I'm sure that's
23 true, yes.

24 COMMISSIONER MURRAY: Do you know
25 what the maximum number of years might be?

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1 MS. MORGAN: No. I couldn't -- I
2 couldn't tell you that.

3 COMMISSIONER MURRAY: Okay. Thank
4 you.

5 MS. MORGAN: Uh-huh.

6 JUDGE DALE: Thank you. I think
7 we're on to Mr. Stewart.

8 MR. STEWART: I'm going to go ahead
9 and come up here. I'm tired of sitting back
10 there. I'll -- I'll keep our comments fairly
11 short. As you can tell by our pre-filed
12 comments, Spectra and CenturyTel do support the
13 rule as published.

14 We did make two possible suggestions for
15 additions to the rule. One involved some
16 language dealing with what, I believe, Ms.
17 Meisenheimer talked about about the comparable
18 local calling plan. And the other one was
19 dealing with the applicability of Chapter 33,
20 which are the service and billing practices
21 rule to non-incumbent carriers.

22 And, of course, the bottom line there is
23 as incumbent carriers, Spectra, CenturyTel, the
24 others, we are required to comply with the
25 entirety of Chapter 33. For that matter, the

1 entirety of Chapter 32 and also with respect to
2 the line extension policies or whatever that
3 might be contained within our Commission
4 approved tariffs.

5 So on the one hand, we have those
6 structures in place for incumbent carriers
7 whether or not they're ETCs, and nothing
8 changes that.

9 The -- the concept of parity, and I -- I
10 do personally appreciate the notion that on
11 quality of service issues there are
12 technological differences between wireless and
13 wire line. I also recognize having sat through
14 several of these hearings that it's difficult
15 sometimes to compare the calling plans offered
16 by wireless carrier versus incumbent carrier.
17 And there are a variety of -- of factors that
18 -- that make that so.

19 But as a general principle, it only makes
20 sense, if you are trying to do anything near
21 parity in terms of the regulatory process that
22 you try to at least ensure that the competitive
23 carriers -- or excuse me -- the wireless
24 carriers because -- I guess the CLECs, too, are
25 subject to the Commission rule, that -- that

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1 they, too, are following as much as possible
2 the same requirements as imposed on the ILECs.

3 The only other thing I -- I would mention
4 here, like Ms. Morgan, we haven't had a chance
5 really to digest and to review and to assess
6 the Staff's proposed changes. Earlier this
7 morning, I've skimmed through them. Some of
8 them look fairly innocuous. Some of them
9 strike me as requiring a little more in-depth
10 analysis. And so, like her, I would suggest
11 that we be given a little bit of time to
12 analyze that and get back to you.

13 And in line with the question of -- raised
14 by -- by both Commissioners about how -- how
15 does this Commission ensure that the ETC money,
16 the high cost funding support that we're
17 receiving is being used for those purposes, I
18 don't know all the answers to that.

19 I do know this much and can you tell you
20 now that there is a process through NECA and
21 USAC and the FCC's Part 32 accounting rules and
22 annual reporting already in place that we --
23 that we follow. And what we'd like do is go
24 back to our people to deal with that and
25 prepare for you an explanation about how that

1 works, what -- what requirements we are, in
2 fact, under right now and submit that as a
3 supplemental filing. I think that might help
4 the Commission as you -- as you go down that
5 line.

6 JUDGE DALE: Actually, if I can
7 interrupt and ask you if -- on Tuesday when we
8 reconvene, if you could have some person who
9 could be conversant in that, we would be glad
10 to ask them questions directly.

11 MR. STEWART: We'll try to certainly
12 do that. It's -- I do know this much. I know
13 it's a complicated process. And -- and it was
14 my understanding, I can tell you this much
15 today, that we expend those funds first. We
16 invest that money first before we ever receive
17 payment for it.

18 And there's a review process in between
19 the time that we expend the funds and then we
20 -- we receive the reimburse or the ETC money on
21 the other hand. I think it's two years. But
22 like I say, it is a complicated process, and
23 I'm not qualified to -- to go into much detail
24 on it. But we'll certainly try to get that to
25 you.

1 Finally, Ms. Dietrich mentioned that what
2 the Staff is trying to do is embody the concept
3 -- I believe that was the phrase she used -- to
4 embody the concept of Chapter 32 or Chapter 33
5 with what the Staff has come up with.

6 Well, I hope that's true. But there's --
7 the devil's in the details, and there's several
8 sections of that, the Staff proposal, that,
9 frankly, we'd just like to spend some more time
10 and look at and certainly provide additional
11 comments.

12 And that's -- that's all I have.

13 JUDGE DALE: Thank you. Commissioner
14 Murray?

15 COMMISSIONER MURRAY: Yes. I -- this
16 may be something that I should know offhand,
17 but it doesn't -- it sounds confusing to me.

18 You said you have to spend the money prior
19 to receipt of the funds up to perhaps two years
20 ahead of time?

21 MR. STEWART: I believe that's
22 correct. Certainly, that's the case with
23 Spectra. It may be slightly different with
24 CenturyTel. I do know this, that the amount of
25 money that we invest and then account for and

1 then submit our cost studies on is based on --
2 and I think this was alluded to earlier -- the
3 entire study area of Spectra, which would be
4 obviously totally within the State of Missouri.
5 I'm not sure exactly how that works with
6 CenturyTel. I think it's more of a per line
7 than an aggregated study area approach.

8 But, yeah, it's my understanding we --
9 they actually invest the money before and then
10 submit the cost support information before they
11 ever receive the cash.

12 COMMISSIONER MURRAY: Well, it sounds
13 to me like what you're saying is that in order
14 to get the funding, you have to provide a --
15 you have to provide documentation of how the
16 funding was spent, how the money was spent.

17 MR. STEWART: Some -- some level of
18 documentation and accounting for that
19 investment. Yes. That's my understanding.

20 COMMISSIONER MURRAY: And then are
21 you ever given a different amount than you
22 request?

23 MR. STEWART: You know, I think there
24 is a true-up mechanism in the process somehow.
25 Again, I'd have to -- I'd have to defer. But

1 there is some sort of a mechanism. And exactly
2 what information we are providing to NEKA or
3 USAC, that is also provided back to the Staff.

4 I'm not sure exactly what that would be.
5 But I would assume that anything we are
6 providing at the federal level would also be
7 made available to the Staff. I -- there may
8 even be -- and, again, I'd defer. But there
9 may even be a -- a modification or a
10 manipulation of that federal information to
11 make it more specific in Missouri wire center
12 type scenarios.

13 I just don't know for sure. But I think
14 there's some sort of a mechanism in there for
15 that.

16 COMMISSIONER MURRAY: So if that is
17 the case, what is the purpose of the annual
18 certification that you're spending the money as
19 required to do if you've already spent it and
20 you've already documented how you spend it
21 before you get it?

22 MR. STEWART: Well, that may be the
23 answer. For the ILEC, there may not be a need
24 for an additional requirement to do that.
25 However, for the competitive wireless carrier,

1 which has not -- they're not under the same
2 regulatory regime, there may be -- need to be
3 some reason to require that.

4 COMMISSIONER MURRAY: How about the
5 competitive -- how about the CLEC?

6 MR. STEWART: I'm not sure what would
7 -- what would apply to the CLEC. I'm not
8 familiar with how they would -- how they deal
9 with their ETC dollars. I'm not sure we have
10 any CLECs in the case, do we, or in the
11 rule-making that could provide -- I'm not -- I
12 don't -- I don't know the answer to that.

13 COMMISSIONER MURRAY: Okay. I --
14 I'll have some follow-up questions regarding
15 this subject for some other people later. But
16 thank you.

17 JUDGE DALE: Thank you. Commissioner
18 Gaw?

19 COMMISSIONER GAW: Not right now.

20 JUDGE DALE: I think then we're ready
21 for Mr. Gryzmala.

22 MR. GRYZMALA: Thank you, your Honor.
23 Good morning, Mr. Commissioner and Ms.
24 Commissioner. I will attempt to be brief. I'm
25 here on behalf of -- good morning, your Honor,

1 and good morning, Mr. Commissioner and Ms.
2 Commissioner, on behalf of AT&T Missouri. I'll
3 attempt to be brief.

4 We, likewise, believe that the proposed
5 rule is generally a good one, that is, the
6 proposed rule as it was published in the
7 Missouri Register.

8 But as Ms. Dietrich and others have
9 commented, but principally Ms. Dietrich, AT&T
10 Missouri offered some additional edits that it
11 proposed in its comments and provided as an
12 attachment in its comments in red line form to
13 sync up, if you will, or add the further detail
14 reflected in the FCC's March 2005 order,
15 including additional detail regarding the
16 requisite elements of a five-year network
17 improvement plan, which the FCC ordered, and
18 including the additional elements relative to
19 annual reporting requirements, I think both of
20 which were subject matter areas the
21 Commissioners asked questions about.

22 However, having said that, we would like
23 to emphasize one point that was not covered in
24 -- in Ms. -- or in the proposed rule which we
25 are particularly focused on and have been

1 focused on since the onset of the ETC cases in
2 this rule-making, and that is the institution
3 of a public interest requirement.

4 The proposed rule as it is written today
5 -- as it was published, rather, in December did
6 not and does not offer a public interest
7 requirement. Section 214 of the Act makes
8 clear that designations must be consistent with
9 the public interest -- public convenience,
10 interest and necessity.

11 And for that reason, as well as the fact
12 that the FCC has ruled affirmatively that it is
13 required, whether in the case of a rural or a
14 non-rural ILEC territory and for the final
15 reason that, your Honors -- your -- the
16 Commissioners have ruled a public interest
17 requirement is needed in a non-rural ILEC
18 territory such as AT&T Missouri back in
19 November 2004, the question should be closed.

20 But to tie that down, we have offered, we
21 proposed and we recommend a solid public
22 interest requirement written in the rule.

23 I want to spend just a couple of moments,
24 if I can, about the specific comments that we
25 offered to Staff's -- or, rather, to the rule

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1 as additional proposed because they do touch on
2 questions that the Commission have -- have
3 asked.

4 With response to Commissioner Murray's
5 question, there is no question that this
6 Commission has the authority to impose greater
7 obligations on eligible telecommunication -- or
8 companies requesting eligible telecommunication
9 carrier status than the FCC's ETC report and
10 order indicates. To the extent that the
11 Commission believes it's necessary and
12 appropriate to do so, the legal authority is
13 there.

14 We would also submit that even apart from
15 the legal authority, which is grounded in the
16 case decided by the Fifth Circuit Court of
17 Appeals, there is the public interest
18 requirement.

19 As Mr. Dandino pointed out, we have to
20 keep the purposes and intentions of the fund in
21 mind. It is to benefit the consumers of high
22 cost areas, and there is a reason to ensure
23 that those consumers are benefited to the
24 maximum extent possible.

25 But, again, to the extent that the

1 Commission believes it may be necessary and
2 appropriate to add additional requirements
3 beyond what the FCC indicated in its March
4 order, it has the authority to do so.

5 We -- I will spend just a couple of
6 moments, if I may, please, with regard to the
7 rule as proposed and then as sought to be
8 modified by Staff's comments filed last
9 Tuesday. Staff recommended clarifying Subpart
10 2-D to indicate that support will be used to
11 cover expenses in addition to expenses normally
12 incurred.

13 I think the point there is -- is that the
14 support -- and I think the intention of Staff
15 is that the support is to be used only to build
16 out the network to unserved areas for service
17 improvements that would not occur absent
18 receipt of such support.

19 That came up in discussions from the bench
20 this morning. It is pointed out clearly that
21 that's the reason and intention for high cost
22 support, and that's paragraph 23 of the FCC's
23 order. So Staff's clarifications is an
24 improvement. Even better would be language
25 that says, Such support will be used only to

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1 cover expenses incurred beyond those expenses
2 the competitive carrier would normally incur.

3 Staff's additional point in its Tuesday
4 comments was with regard to equal access. I
5 think that the Staff indicated that with regard
6 to equal access -- let me back up.

7 The rule, as originally proposed, said,
8 The competitive ETC shall commit to provide
9 equal access. We made comments recommending
10 that the rule be altered to state that the
11 applicant may be required. And that is what
12 the FCC said in paragraph 35 of its order.
13 Staff proposed Tuesday that -- without knowing,
14 of course, what I just said since we filed the
15 same day, Staff recommended adding a clause
16 that said, If ordered by the Commission, we
17 would like to recommend that the Commission --
18 we would advocate that the Commission would
19 allow use of AT&T's language in that rule, that
20 the applicant may be required.

21 And there are a couple of reasons for
22 that. Firstly, if you -- our rule would not
23 invite on its face -- or our proposal would not
24 invite on its face a dispute as to whether this
25 Commission has the authority to order an ETC to

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1 provide interLATA and equal access.

2 I'm not saying it wouldn't because the
3 grant of ETC designation carries with it
4 federal designated authority in essence. But
5 using the -- the language we recommend, that
6 the applicant may be required to provide equal
7 access doesn't walk into an argument, at least
8 not now, as to whether or not this Commission
9 is authorized to order it on an interLATA basis
10 as would Staff's language.

11 Maybe more cutting to the chase, the
12 Commission already has a rule that this
13 Commission by Staff might propose -- might
14 represent conflict with 33.100(4) says today
15 that, InterLATA equal access pre-subscription
16 and processes shall be conducted in accordance
17 with the requirements of the -- of the FCC's
18 orders of -- and there are two of them cited
19 for 1985.

20 So, again, you've got a rule in place that
21 says that interLATA pre-subscription processees
22 will be determined by the FCC.
23 But the rule edit proposed this morning with
24 regard to this ETC equal access matter reflects
25 as ordered by the Commission. So there is a

1 potential issue there, and we recommend our
2 language be employed because it would avoid
3 both those issues I just pointed up.

4 With regard to instances in which a
5 reasonable request is made by a customer for
6 service, Ms. Dietrich pointed out accurately
7 that there are -- that the proposed rule has a
8 five or six step process as to how an ETC is to
9 go about meeting that applicant's need.

10 And in Staff's suggestions here, in the
11 event that they are unable to do so, if there
12 was -- the original rule said if there's no
13 possibility of providing that service to the
14 requesting customer -- now I'm paraphrasing --
15 we're to not -- the ETC is to notify the
16 customer and to insert that occurrence and
17 identify that in its annual report.

18 And Staff came in and -- rather, Staff's
19 recommended changes on Tuesday said, Well, the
20 -- the verbiage should be changed to include --
21 or to, rather, confine the instances of
22 reporting to where there is no reasonable
23 possibility of providing service.

24 I would only suggest to the Commission
25 that that offers a broad -- maybe an unfairly

1 broad amount of discretion to the wireless --
2 or, rather, the ETC applicant altogether as to
3 when service can be denied.

4 And the point of -- of high cost universal
5 service is to provide service to customers
6 throughout the service area for which the ETC
7 designation is granted.

8 I would prefer -- we would prefer, with
9 all due respect, that you revert back to the
10 kind of notion that is written in black and
11 white in the FCC's rules, 54.209(a)(3), which
12 emphasizes that -- that an occurrence must be
13 reported for any unfulfilled request for
14 service. That puts you in a situation of
15 having the opportunity to decide whether or not
16 those unfulfilled requests for service were
17 legitimate.

18 That goes back to the point about
19 fulfilling, Commissioner Gaw, reasonable
20 requests for service in outlying areas.

21 We should -- we would also point out and
22 emphasize as we -- that in response to Staff's
23 Tuesday comments that the rule should explain
24 what attempts the carrier made to provide
25 service as the very same FCC rule requires.

1 The rule should read that, If the competitive
2 ETC does not provide service to the requesting
3 customer, it shall notify the customer and
4 include such information in its annual
5 certification documentation to the Commission.
6 The competitive ETC shall also detail in such
7 documentation how it attempted to provide
8 service to those requesting customers as set
9 forth in subsection -- and the way the rule is
10 proposed in the register, 10(d)(2).

11 Those are the points that we would like to
12 make, AT&T. And I'm sorry I've gone over my
13 time a bit, I hope you don't mind, with respect
14 to Staff's new proposals in Tuesday.

15 Very briefly, if your Honors would allow
16 me just an additional moment, with regard to
17 the small telephone companies observations and
18 Mr. Stewart's observations for Spectra that the
19 comments submitted Tuesday by Staff in which a
20 great number of deletions were made to the
21 references to competitive ETCs, thereby leaving
22 ETCs, does cause concern for our AT&T Missouri
23 as well.

24 And as a -- as a practical matter, if the
25 obligations did not enlarge obligations already

1 held by ILECs in other chapters of the
2 Commission's rules, there would be no real
3 problem. Those rules in -- those rules,
4 however, span Chapters 2, Chapters 3, 32 and
5 33.

6 We have not undergone a complete
7 exhaustive review. We need time to be able to
8 do that. But we have already identified
9 instances in which they are different.

10 Two very quick ones, and I am done. The
11 ETC, according to Staff's proposed subpart 18-A
12 would have to acknowledge to Staff inquiries
13 made about customer complaints, acknowledge --
14 the ETC would have to acknowledge the receipt
15 of Staff's inquiries regarding informal
16 complaints about denial or discontinuance of
17 service within 24 hours.

18 Today, the Rule 33.1103(a) prescribes one
19 business day. Question, what happens if the
20 Commission -- if the Staff's question comes at
21 4:00 on a Friday afternoon? Another one says
22 that, The ETC must submit annually detailed
23 information on outages on its network for the
24 past year.

25 We don't have a specific outage rule that

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1 I was able to find. It's not defined in the
2 proposed rule. The proposed change made by --
3 on Tuesday of the the current rule that comes
4 about as close as we can find, 3.5505(d)
5 addresses abnormal service conditions.
6 Abnormal service conditions do include tandem
7 outages, central office or exchange isolation,
8 et cetera, et cetera that involve 300 or more
9 customers and last 30 minutes or more. We
10 report them.

11 Those are the parameters of reporting.
12 But the fact that those are specifically
13 identified in the current rules is an example
14 of an instance in which there could be conflict
15 between what the ETC rule proposes relative to
16 outages that are undefined and what current
17 rules require that I just read.

18 That's all we have, and I would take any
19 questions you have. Thank you very much for
20 the opportunity to speak today:

21 JUDGE DALE: Thank you. Commissioner
22 Murray?

23 COMMISSIONER MURRAY: Thank you.
24 Your last topic, the changes that are not
25 completely neutral, are we making -- are we

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1 making requirements for the competitive ETCs
2 too stringent? I mean, does it make sense to
3 have to report something within 24 hours versus
4 one business day? Does it make sense to
5 provide outage reports as are required by this
6 language for anyone?

7 MR. GRYZMALA: No. I don't think
8 that -- no. I do not -- I do not think that
9 that does not make sense. I think it does make
10 sense.

11 COMMISSIONER MURRAY: In other words,
12 you think it does make sense?

13 MR. GRYZMALA: It does make sense.

14 COMMISSIONER MURRAY: Why does it
15 make sense for the competitive ETC but not for
16 the incumbent ETC?

17 MR. GRYZMALA: As a general matter --
18 I have two responses for that. As a general
19 matter, it would make equally good sense for
20 incumbents to report on their network outages.
21 But my second point is that as a practical
22 matter, in terms of making sure we engage in
23 legal compliance, our clients know what to do
24 and we now how to advise them, what set of
25 rules apply.

1 I can point the client today to outage
2 rule which I just read you in 33 and ask them
3 the hard questions. Does it affect 300
4 customers? Were you out a half an hour? All
5 right. Then you need to report.

6 If, on the other hand, we're an ETC -- and
7 we are an ETC, Commissioner Murray. We were
8 designated by the Commission as an ETC back in
9 1997. So, therefore, now I'm required to look
10 at an ETC rule, which for purposes of present
11 discussion, simply says, You will report all
12 outages. Well, what does that mean?

13 COMMISSIONER MURRAY: Okay. My
14 question would be more this: If your reporting
15 requirements are adequate, why shouldn't -- why
16 should we make the reporting requirement --
17 requirements for the competitive ETCs
18 different? Why shouldn't we just make them 24
19 hours or -- you know, you pointed out the
20 differences.

21 MR. GRYZMALA: I don't -- we do not
22 submit that they should be any different for
23 competitive ETCs than for ILECs. We're not --
24 we're not saying that. And I hope I didn't --
25 I don't mean to be construed as saying that.

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1 What I did say is that the Commission has the
2 authority to implement rules beyond ETC report
3 and order.

4 And if the Commission believes that the
5 rule applicable to incumbents, that is, the
6 reporting of outages that affect 300 customers
7 for 30 minutes or more is appropriate, then it
8 has the authority to impose that upon a
9 competitive or wireless ETC.

10 Whether it should do so or not, frankly, I
11 haven't asked that question of my client. My
12 intuitive answer is that I don't see why it
13 ought not do that if it feels it's appropriate
14 to do so. It's the same rule we have to live
15 with.

16 COMMISSIONER MURRAY: Okay. You also
17 talked about the change that Staff wanted to
18 make that included language when a service
19 cannot reasonable -- cannot reasonably be
20 provided, I think was not verbatim, but
21 something like that. You said it gives too
22 much discretion.

23 The ILEC ETC today, as I understand it,
24 can determine when it's too costly to provide
25 something to a customer and then charge the

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1 customer. Is that correct?

2 MR. GRYZMALA: I don't know that. I
3 don't know that the ILEC can determine that.
4 Commissioner, the way I think of your question
5 is in terms of a needed reference to our
6 company's tariffs.

7 I do believe there is an obligation to
8 serve. We have that as an incumbent LEC. We
9 have carrier of last resort obligations. As to
10 the specificities and the parameters of what we
11 have to do, those are, I gather, in tariffs.

12 I am generally aware that there is special
13 construction tariffs that outline the
14 circumstances under which we are required to
15 provide service without customer contribution
16 versus the point at which a customer is
17 requested or required to provide a
18 contribution. I do not know them in detail.

19 As a general matter, my understanding is
20 that we will take service up to the -- the
21 right-of-way last available, and that beyond
22 that, whether it be one tenth of a mile or one
23 mile, that is on our nickel, if you will. And
24 then at some point thereafter, the customer is
25 required to -- so if that answers your

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1 question, that's what -- I -- that does not
2 afford us discretion. That is spelled out in
3 tariffs.

4 And the point that we wanted to make and
5 not harp on, frankly, because we just noticed
6 the word, "reasonably possible," is that,
7 again, the point of the Universal Service High
8 Cost Fund is to ensure that consumers receive
9 those benefits throughout. And I emphasize the
10 word "throughout" the service area for which
11 the ETC designation is being requested.

12 And the network build-out plan is supposed
13 to meet that obligation throughout the service
14 area for which ETC designation is requested.
15 That is the point that I tried to make, I guess
16 not very well, with regard to why "reasonable
17 possibility" afforded a little bit more
18 discretion than may be appropriate in a high
19 cost environment.

20 COMMISSIONER MURRAY: Okay. I think
21 that's all. Thank you.

22 MR. GRYZMALA: Thank you.

23 JUDGE DALE: Commissioner Gaw?

24 COMMISSIONER GAW: Would you mind
25 providing that information out of your tariffs

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1 in regard to --

2 MR. GRYZMALA: With respect --

3 COMMISSIONER GAW: -- in regard to
4 the cost issue on connection?

5 MR. GRYZMALA: Yes, sir. We will do
6 that. On special construction and cost
7 connection?

8 COMMISSIONER GAW: Yes.

9 MR. GRYZMALA: We will do that.

10 COMMISSIONER GAW: Thank you. That's
11 all I have.

12 JUDGE DALE: Okay. Before we move on
13 to Mr. Zobrist, I do have one housekeeping kind
14 of item. There has been a great deal of
15 information requested here today. People have
16 asked if they can have more time to respond to
17 things.

18 To the extent possible, if those can be
19 filed in EFIS prior to our reconvening on
20 Tuesday, that will be very helpful to the
21 Commissioners. I understand, especially, from
22 the faces being made that that may not be
23 possible. But to the extent that you have
24 partial information or some of the comments
25 that can be made, the more information that is

1 provided to the commissioners prior to
2 Tuesday's reconvening would be very helpful.

3 Obviously, the record is being kept open
4 in this matter until we resolve all these other
5 questions. So I wanted to mention that.

6 We now move on to Mr. Zobrist.

7 MR. ZOBRIST: Thank you, Judge. I'm
8 going to pass out to you and to the
9 Commissioners here, pardon me, copies of our
10 comments, which I did not file ahead of time,
11 but they're right here.

12 And as I understand, pursuant to your
13 directive, Judge, you would prefer these to be
14 e-mailed later than just the old-fashioned way?

15 JUDGE DALE: Yes. Thank you.

16 MR. ZOBRIST: May it please the
17 Commission. I will not go over these comments
18 in detail. I think they're fairly
19 self-explanatory. But I would like to
20 emphasize a couple of points on behalf of my
21 client, which is U.S. Cellular Corporation.

22 Although U.S. Cellular believes that it is
23 entirely appropriate for this Commission to
24 proceed upon this rule-making, the primary
25 problem that we see with most -- or at least

1 many of the provisions in the proposed rule is
2 that they consist of wire line regulations that
3 are being imposed upon wireless carriers with
4 no adjustment for technology and without
5 apparent consideration of whether these rules
6 which were adopted for our regulated monopoly
7 are necessarily proper in the intensively
8 competitive wireless market.

9 We do appreciate the fact that Staff has
10 approached a number parties in the past and
11 asked for feedback, and we have provided that.
12 We think that these proposed rules here are
13 better than what we have seen in the past, but
14 we still think that there is room for
15 improvement.

16 And I should say that my client, like the
17 rest of the folks here, has not had an
18 opportunity to reflect upon Staff's comments,
19 and we'll try to be responsive on Tuesday. But
20 I think it might be good, even after Tuesday,
21 to give the parties an opportunity to -- to
22 comment.

23 The proposed rule generally extends the
24 reach of the Commission to a number of
25 competitive carriers, the CMRS carriers, in

1 particular, where no record has been developed
2 to -- to demonstrate that the existing
3 certification requirements are not adequate for
4 purposes of determining whether wireless ETC
5 uses its support properly or, secondly, whether
6 competitive pressures and federal requirements
7 are not sufficient to ensure that what wireless
8 ETCs will provide in Missouri is adequate.

9 Although I believe that the Staff should
10 certainly give the Commission the right to
11 enact regulations on its own, we put in one of
12 our footnotes that reference to the Missouri
13 APA which says that a state agency shall
14 propose rules based upon substantial evidence
15 in the record. And I'm not sure we really have
16 -- have accomplished that.

17 I know that the series of technical
18 conferences, for example, that the Commission
19 has implemented with regard to Senate Bill 179
20 in a -- concerned a number of the issues that
21 were raised in that recent legislation. And I
22 think U.S. Cellular thinks that having a series
23 of technical conferences perhaps to consider
24 some of the rules that Ms. Meisenheimer would
25 like to see would -- would give all parties an

1 opportunity in a more informal session to
2 compare proposals and offer counter proposals.

3 One of the issues that we see throughout
4 the proposed rule-making is the extent to which
5 it bumps up against federal law. And we think
6 that the Commission needs to be very careful in
7 that it is -- in certain areas, particularly
8 with regard to the tariff reference, apparently
9 -- we're not certain, but apparently requiring
10 requirements of competitive carriers that it
11 doesn't really have the right to -- to regulate
12 if it's taken literally.

13 We noted that there was a -- a reference
14 about filing an informational tariff.
15 U.S. Cellular has advised that they only do
16 that in one state in Oklahoma and that the
17 annual costs of complying with that -- pardon
18 me -- the initial costs of complying with that
19 were about \$100,000.

20 Section 11 of the proposed rule, which
21 refers to certain of the Commission's
22 regulations referring to tariffs, if taken
23 literally, it could amount to state wireless
24 regulation, which is preempted under federal
25 law. And I've given you that citation on page

1 10. And that may not be the -- the intent of
2 the Commission or the intent of Staff, but we
3 think that that comes very close.

4 We think that there are some duplicative
5 and inconsistent provisions with regard to
6 reporting that the Commission should look at.
7 My client certainly does not object to
8 providing -- to providing periodic reports. It
9 would have to do so if it becomes an ETC. But
10 there are certain quarterly reports and then
11 there's an annual report and then there's
12 another report at a different time. And we
13 think that -- that there could be some clarity
14 some better organization within the reporting
15 functions.

16 We have talked about the required uses of
17 support. And Commissioner Gaw, I know, asked a
18 number of questions, as I believe Commissioner
19 Murray did, about how to ETC certify that they
20 spend support only to improve coverage, service
21 quality and capacity in Missouri. And that
22 right now is contained in Section 2, and
23 there's an analogous comment in Section 4.

24 That, again, is inconsistent with federal
25 law which says that ETCs may use any technology

1 to spend high cost support on the provision,
2 maintenance and upgrading of supported services
3 and facilities. So federal law is broader than
4 what this rule proposes.

5 And, again, your rule says it can only be
6 used to improve, whereas federal law says it
7 can be used for upgrades and build-outs as well
8 as to maintain facilities within the state.
9 And so that's something that we would invite
10 the Commission's attention to as well.

11 I know that the hour is late at that and
12 that we're well into the afternoon. I would
13 like to make one other comment, though. On
14 page 13, we refer to the quality of service
15 standards that the Commission is looking at.

16 The Iowa Utilities Board came down with a
17 decision in October of 2005 which is referenced
18 on page 13. And we think that that provided a
19 better model than what we see as quality of
20 service standards that could be overly
21 prescriptive. And so we would recommend that
22 for your consideration.

23 That's all I have. We'd be glad to answer
24 any questions.

25 JUDGE DALE: Thank you, Mr. Zobrist.

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1 Commissioner Murray?

2 COMMISSIONER MURRAY: Mr. Zobrist, do
3 you think the State Commissions have the
4 authority to limit the use of the USF, Federal
5 USF the way you indicated that we are limiting
6 it more than federal law limits it?

7 MR. ZOBRIST: I would have to see the
8 particular rule, Commissioner, but I think that
9 may not be permitted. I think it might be
10 subject to preemption.

11 Clearly, the FCC says that you've got the
12 right to -- to oversee the ETC process and to,
13 you know, impose reasonable rules. But to the
14 extent that your rules go into the
15 administration of the Universal Service Fund, I
16 think that could be a problem.

17 And if we -- if we were to be able to
18 impose a limitation on the use such as it can't
19 be used to maintain facilities but only to
20 improve and whatever the rest of that language
21 was, wouldn't it be discriminatory if we didn't
22 limit that, the use of the Universal Service
23 Funds to all recipients of the funds in the
24 same manner?

25 MR. ZOBRIST: I think that would be

1 the secondary problem, discrimination. I think
2 the first one would be running afoul of the
3 federal statutes that says that this is how we
4 use this money for all of our states.

5 But I think that discriminatory effect
6 would be very -- I think that would be the
7 second argument as to why the -- the
8 regulation, you know, would be unlawful.

9 COMMISSIONER MURRAY: And what --
10 what would be your position in terms of the
11 wisdom of this Commission simply adopting the
12 FCC ETC rule-making?

13 MR. ZOBRIST: Well, I -- I think
14 U.S. Cellular believes that makes a lot of
15 sense and that that's a good first step.
16 Because if you take those regulations that came
17 down in the ETC order which are certainly more
18 detailed than what the federal communications
19 has proposed in the past, certainly, you would
20 be on safe ground in terms of federal/state
21 regulations.

22 Secondly, I think you would be adopting a
23 very good, comprehensible, reasonable set of
24 regulations. Then to the extent that they do
25 not work out, to be effective in Missouri, you

1 would have a basis -- a factual basis in order
2 to state why they were not effective for this
3 state and be able to propose something that
4 would go beyond them and serve the interests of
5 this state in a more efficient manner.

6 COMMISSIONER MURRAY: And that would
7 overcome the objection you have about there
8 being no record to show that the federal
9 requirements are not adequate, correct?

10 MR. ZOBRIST: Certainly, that's true,
11 in the question that you just posed. My
12 client's concern that was although it felt that
13 this rule-making, you know, was a good idea, it
14 would have preferred having a series of
15 technical conferences where witnesses could
16 come in and comment on Staff's proposals or
17 Public Counsel's proposals and develop a record
18 that way and, also, allow an opportunity for,
19 you know, members of the public to comment.

20 COMMISSIONER MURRAY: But if we were
21 to go forward and simply do a rule-making that
22 adopted what the FCC had done for the State of
23 Missouri, that would allow, on a going-forward
24 basis, more interaction and feedback from all
25 of the parties if there needs to be a

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1 rule-making further than that. Is that -- is
2 that what you're saying?

3 MR. ZOBRIST: Yes, sir. Yes, ma'am.
4 I would agree with that.

5 COMMISSIONER MURRAY: And then --
6 let's see. In terms of the FCC's provisions,
7 there's the five-year plan in that. How does
8 your client feel about there being a five-year
9 plan?

10 MR. ZOBRIST: They have committed to
11 comply with -- if they are an ETC and if that's
12 what this Commission orders, it will produce
13 that plan. I think the -- the testimony that
14 was provided by the witness who was asked that
15 question indicated that in terms of value, an
16 eighteen-month to two-year plan would provide
17 more value to the Commission, but that the
18 Commission wanted to see a plan that reached
19 out five years, that would be produced.

20 COMMISSIONER MURRAY: Okay. Thank
21 you.

22 JUDGE DALE: Commissioner Gaw?

23 COMMISSIONER GAW: I don't think I
24 have any questions.

25 JUDGE DALE: Thank you. Is there any

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1 other business that we need to take up today
2 before we are recess until 1:00 on Tuesday?

3 MR. POSTON: I just wanted to ask
4 about the transcripts about -- will they be
5 expedited?

6 JUDGE DALE: I hadn't planned on
7 expediting this one.

8 MR. POSTON: This one. Okay.

9 MR. ZOBRIST: I guess I've got one
10 procedural question. If non-lawyer witnesses
11 are available from the company, is it the
12 Commission's desire that they be brought here
13 to answer questions?

14 JUDGE DALE: If you have people who
15 can shed more light on the issues into which we
16 are inquiring, it would be a good idea to bring
17 them here and have them available for
18 Commissioner questions.

19 MR. ZOBRIST: Okay. Thank you.

20 JUDGE DALE: Anything else? Mr.
21 Gryzmala?

22 MR. GRYZMALA: (Mr. Gryzmala shakes
23 head.)

24 JUDGE DALE: Okay. Then in that
25 case, we are recessed and off the record.