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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

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Public Hearing

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Jefferson City, Missouri

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Volume 2

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9
10 In the Matter of Proposed New Rule)
11 4 CSR 240.3-570 Regarding Eligible)
12 Telecommunications Carrier) Case No. TX-2006-0169
Designations for Receipt of Federal)
Universal Service Fund Support)

13

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

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P R O C E E D I N G S

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JUDGE DALE: We're back on the

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record. We are now reconvening Case No.

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TX-2006-0169 In the Matter of Proposed New Rule

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4 CSR 240-3.570 Regarding Eligible

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Telecommunications Carrier Designations for

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Receipt of Federal Universal Service Fund

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Support.

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We are here today to answer questions from

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commissioners who were not able to ask their

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questions on Friday, and we are going to begin

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with Chairman Davis.

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Before we do that, are there any

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preliminary matters that I need to address

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before we proceed?

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I will remind Ms. Dietrich and Ms.

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Meisenheimer that you are both still under

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oath, and we'll go from there.

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Chairman Davis?

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CHAIRMAN DAVIS: All right.

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Mr. Zobrist, you're representing U.S. Cellular;

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is that correct?

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MR. ZOBRIST: Yes, sir.

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CHAIRMAN DAVIS: All right. I have

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read your Pleading here. I guess -- I have not

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

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

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

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

25 CHAIRMAN DAVIS: Okay. Can I stop

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1 you right there?

2 MR. ZOBRIST: Sure.

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

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

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

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

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

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1 monopolies.

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

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

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

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

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

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

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

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

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

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

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

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

1 us.

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

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

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

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

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

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1 free people from their administrative burdens
2 here.

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

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

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

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

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

2 MR. ZOBRIST: Yes, sir.

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

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

12 CHAIRMAN DAVIS: Okay.

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

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

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

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

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

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1 -- has proposed here.

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

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

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

1 so preemption. It certainly might be.

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

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

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

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

21 CHAIRMAN DAVIS: All right.

22 MR. ZOBRIST: Well, that --

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

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

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

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

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

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

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

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

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1 that's what it strikes me as.

2 CHAIRMAN DAVIS: Right. Well --

3 MR. ZOBRIST: -- in this case.

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

12 MR. ZOBRIST: Well, I --

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

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

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

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

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1 really prepared to comment on that.

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

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

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

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

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

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

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

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

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

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

8 CHAIRMAN DAVIS: Uh-huh.

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

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

18 CHAIRMAN DAVIS: Uh-huh.

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

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

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

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

13 CHAIRMAN DAVIS: Right.

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

18 CHAIRMAN DAVIS: Okay.

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

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1 money is getting used for the appropriate
2 purpose.

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

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

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

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1 add anything?

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

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

17 CHAIRMAN DAVIS: There has to be a --

18 MS. DIETRICH: -- or a complaint.

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

21 MS. DIETRICH: Correct.

22 CHAIRMAN DAVIS: Mr. Zobrist? Reply?

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

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

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

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

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

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

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

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

8 MR. ZOBRIST: Yes, sir.

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

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

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

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

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

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

16 CHAIRMAN DAVIS: Okay. So --

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

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

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

8 CHAIRMAN DAVIS: To main --

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

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

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

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

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

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

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

8 CHAIRMAN DAVIS: Right.

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

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

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

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

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

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

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

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

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

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

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

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

1 jurisdiction in that annual report.

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

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

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

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

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

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

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

10 COMMISSIONER CLAYTON: Shoot away.

11 MS. MEISENHEIMER: What?

12 COMMISSIONER CLAYTON: Shoot away.

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

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

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

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

14 CHAIRMAN DAVIS: Uh-huh.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 They'll comparison shop.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 CHAIRMAN DAVIS: Right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 CHAIRMAN DAVIS: Oh.

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

4 CHAIRMAN DAVIS: Okay.

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

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

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

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

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

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

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

23 CHAIRMAN DAVIS: Okay.

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

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1 without putting specifics on it as --

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

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

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

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

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

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

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

4 CHAIRMAN DAVIS: Right. Right.

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

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

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

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

21 MS. DIETRICH: No.

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

25 MS. MORGAN: Well, the Small

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

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

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

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

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

13 CHAIRMAN DAVIS: Mr. Stewart?

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

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

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

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

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

1 requirement, frankly, is a good one.

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

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

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

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

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

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

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

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

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

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

25 We also provide to Staff every year, as

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

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

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

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

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

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

20 CHAIRMAN DAVIS: Thank you.

21 Mr. Gryzmala?

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

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1 turned my microphone on. I'm sorry.

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

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

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

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

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

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

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

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

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

25 We generally support the rule as was

1 published in the Missouri Register in early
2 December.

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

14 CHAIRMAN DAVIS: Right.

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

25 No ETC designation can be had, whether at

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

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

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

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

1 acceptable with them.

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

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

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

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

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

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

5 CHAIRMAN DAVIS: Sure.

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

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

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

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

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

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

9 CHAIRMAN DAVIS: And I had it here.

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

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

23 CHAIRMAN DAVIS: Right.

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

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

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

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

17 CHAIRMAN DAVIS: Okay.

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

21 CHAIRMAN DAVIS: All right.

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

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

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

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

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

25 MS. MEISENHEIMER: I would.

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1 Commissioner Gaw --

2 CHAIRMAN DAVIS: Uh-huh.

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

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

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

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1 would.

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

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

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

12 CHAIRMAN DAVIS: Absolutely, Ms.
13 Morgan.

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

24 CHAIRMAN DAVIS: Right.

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

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

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

6 MS. MORGAN: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 JUDGE DALE: That will be really fun.

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

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

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

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

1 take a brief recess.

2 COMMISSIONER CLAYTON: Brief.

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

5 (Break in proceedings.)

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

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

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

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

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

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

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

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

11 MS. DIETRICH: No.

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

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

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

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

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

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

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

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

9 JUDGE DALE: That was the revised.

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

12 JUDGE DALE: I'm sorry.

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

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

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

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

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1 was filed as part of your original comments?

2 MS. DIETRICH: That's correct.

3 COMMISSIONER CLAYTON: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 MS. DIETRICH: Correct.

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

17 MS. DIETRICH: That's correct.

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

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

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

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

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1 Commissioner Murray.

2 COMMISSIONER CLAYTON: Okay.

3 Mr. Zobrist, Chairman Ameritus?

4 MR. ZOBRIST: Yes, sir.

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

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

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

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

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

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

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

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

25 MR. ZOBRIST: Well, we actually set

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

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

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

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

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

22 MR. ZOBRIST: Sure.

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

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

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

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

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

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

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

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

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

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

1 universal service?

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

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

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

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

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

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

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

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

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

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

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

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

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

0209

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

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

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

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

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

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

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

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1 ETC.

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

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

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

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

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

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

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1 Commission or any other Commission.

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

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

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

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

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

22 COMMISSIONER CLAYTON: Across the
23 country.

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

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1 believe in Oklahoma as well.

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

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

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

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

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

23 MR. ZOBRIST: That's correct.

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

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

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

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

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

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

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

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

15 MR. ZOBRIST: Correct.

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

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

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

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

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

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

20 Ms. Meisenheimer, wake up.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 MS. DIETRICH: That's in 10.

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

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

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

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

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

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

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

11 COMMISSIONER CLAYTON: Okay. Thank
12 you.

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

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

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

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

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

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

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

1 proposing.

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

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

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

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

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

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

6 COMMISSIONER CLAYTON: Should there
7 be?

8 MS. DIETRICH: It makes sense. Yes.

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

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

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

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

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

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

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

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

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

16 MS. DIETRICH: Correct.

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

19 MS. DIETRICH: Right.

20 COMMISSIONER CLAYTON: --is written?

21 MS. DIETRICH: Right.

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

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

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

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

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

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

23 MR. ZOBRIST: We do not.

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

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

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

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

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

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

5 MS. DIETRICH: That's correct.

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

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

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

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

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

25 MS. DIETRICH: Well -- just one

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

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

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

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

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

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

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

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

8 MS. MORGAN: Yes, we do.

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

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

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

21 MS. MORGAN: Natelle, would you --

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

25 MS. DIETRICH: Chapter 32 is quality

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

3 MS. MORGAN: Thank you.

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

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

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

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

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

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

1 of regulation as far as possible.

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

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

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

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

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

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

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

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

12 COMMISSIONER CLAYTON: It is.

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

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

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

22 COMMISSIONER CLAYTON: Can you
23 identify the differences?

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

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

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

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

17 And last Friday when we joined --

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

21 MR. GRYZMALA: Our opinion is --

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

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

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

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

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

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

12 MR. GRYZMALA: No.

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

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

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

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

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

25 MR. STEWART: You started all of

1 this.

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

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

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

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

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

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

24 MR. STEWART: Yeah.

25 COMMISSIONER CLAYTON: Okay.

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

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

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

16 JUDGE DALE: Thank you, Commissioner.

17 Commissioner Appling?

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

21 JUDGE DALE: Oh, excuse me.

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

24 JUDGE DALE: She needs to change
25 paper.

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

4 JUDGE DALE: Off the record.

5 (Discussion off the record.)

6 JUDGE DALE: Back on the record.

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

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

23 MS. MORGAN: Yes, sir.

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

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1 the past?

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

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

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

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

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

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

24 COMMISSIONER APPLING: Good.

25 MS. MEISENHEIMER: Those carriers do

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

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

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

13 COMMISSIONER APPLING: Anyone else?

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

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

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

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

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

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

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

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

25 We will be closing the hearing, but the

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

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

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