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THE PUBLIC UTILITIES COMMISSION

APR 27 2005

OF THE STATE OF SOUTH DAKOTA SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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IN THE MATTER OF THE FILING
BY RCC MINNESOTA, INC. AND
WIRELESS ALLIANCE, LLC
D/B/A UNICEL FOR DESIGNATION AS
AN ELIGIBLE TELECOMMUNICATIONS
CARRIER

TC03-193

ORIGINAL

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Transcript of Proceedings
April 12, 2005

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BEFORE THE PUBLIC UTILITIES COMMISSION,
GARY HANSON, CHAIRMAN
BOB SAHR, VICE CHAIRMAN
DUSTY JOHNSON, COMMISSIONER

COMMISSION STAFF

- Rolayne Ailts Wiest
- John J. Smith
- Karen Cremer
- Greg Rislov
- Harlan Best
- Keith Senger
- Dave Jacobson
- Michele Farris
- Steve Wegman
- Jim Mehlhaff
- Tina Douglas
- Heather Forney
- Pam Bonrud

APPEARANCES

- Talbot Wieczorek, RCC Minnesota, Inc. and
Wireless Alliance
- David LaFuria, RCC Minnesota, Inc. and
Wireless Alliance
- Richard Coit, Interveners

Reported By Cheri McComsey Wittler, RPR, CRR

PRECISION REPORTING

L I M I T E D

1 THE PUBLIC UTILITIES COMMISSION
2 OF THE STATE OF SOUTH DAKOTA
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5 BY RCC MINNESOTA, INC. AND TC03-193
6 WIRELESS ALLIANCE, LLC
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34 APPEARANCES
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36 Wireless Alliance
37 David LaFuria, RCC Minnesota, Inc. and
38 Wireless Alliance
39 Richard Coit, Interveners
40
41 Reported By Cheri McComsey Wittler, RPR, CRR
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1 CHAIRMAN HANSON: TC03-193. I will
2 restate the information pertaining to that. In the
3 matter of the filing by RCC Minnesota, Incorporated
4 and Wireless Alliance, LLC doing business as Unicel
5 for designation as an eligible telecommunications
6 carrier. And the Commission will hear oral
7 arguments at this time.
8 Mr. Wieczorek.
9 MR. WIECZOREK: If I may,
10 Commissioner, I'm just going to re-hand out what
11 has been marked as an exhibit. It's not new. It
12 was the Bruce Exhibit B to his rebuttal testimony
13 because Mr. LaFluria might refer to it during
14 testimony, and rather than have you dig through it
15 if you brought your record or if you didn't bring
16 your records, you'll have it in front of you.
17 MR. LAFURIA: Mr. Chairman,
18 David LaFluria here on behalf of RCC Minnesota and
19 Wireless Alliance. We had a brief discussion with
20 counsel for Interveners before starting and just
21 wanted to understand a couple of ground rules.
22 Do you want the Proponent, that is RCC, to go
23 first in the argument? Because I guess the
24 question that was raised by Interveners was they
25 made the Motion originally to reopen the record and

1 APPEARANCES BY TELEPHONE
2 Pat Mastel
3 Colleen Sevold
4 Melissa Thompson
5 Jeff Decker
6 Brad Schardin
7 Beth Cohler
8 Anne Hansen
9 Michelle Swanson
10 Pam Harrington
11
12 =====
13 TRANSCRIPT OF PROCEEDINGS, held in the
14 above-entitled matter, at the South Dakota State
15 Capitol, Room 412, 500 East Capitol Avenue, Pierre,
16 South Dakota, on the 12th day of April 2005, commencing
17 at 10:30 a.m.
18
19
20
21
22
23
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25

1 add additional material for consideration, the most
2 recent FCC order.
3 And I wanted to be sure that you had an
4 opportunity to conduct this in the proper order
5 that you wanted, and also I wanted to get some
6 sense of how much time you'd like from each of us
7 if you have time limits. Because if you did, I'd
8 set aside some time for rebuttal if we were going
9 first. Just wanted to get the ground rules.
10 CHAIRMAN HANSON: Thank you very
11 much for the question. We're comfortable with
12 going either way. We will want to be certain that
13 each side has ample opportunity to answer whatever
14 questions are brought forth by the others during
15 the process.
16 So if you wish to go first, that's fine with
17 me. If you've made other arrangements with
18 Mr. Coit or someone else, that's fine as well.
19 MR. LAFURIA: I think if the oral
20 argument includes -- and I'm prepared to talk about
21 it obviously as much as you wish, but if it
22 includes oral argument on the merits of the case as
23 well as the recent FCC order, then I'd prefer that
24 we go first. If you wish to limit us to the recent
25 Motion, it might be more appropriate for Mr. Coit

1 to go first since he made the Motion.
 2 COMMISSIONER JOHNSON: Mr. Chairman,
 3 I think we want to have it with the FCC order and
 4 not the merits of the case; is that right?
 5 CHAIRMAN HANSON: That's correct.
 6 MR. LAFURIA: I would defer to the
 7 Interveners since they made the Motion.
 8 MS. AILTS WIEST: I guess it was my
 9 understanding that the oral arguments could be
 10 anything with respect to the case. I mean, I do
 11 have questions that relate not just to the FCC's
 12 newest order.
 13 COMMISSIONER JOHNSON: That would be
 14 fine by me.
 15 CHAIRMAN HANSON: All right.
 16 (Discussion off the record)
 17 MR. LAFURIA: Mr. Chairman,
 18 Commissioner Johnson, good morning. David LaFluria
 19 for RCC Minnesota and Wireless Alliance who are the
 20 Petitioners in this case.
 21 I am going to confine my remarks to the FCC's
 22 recent -- what I call the FCC ETC order, and
 23 obviously I'm happy to take any questions that you,
 24 the General Counsel, may have that pertain to any
 25 aspect of the case. We generally prepared for

1 that, and I expect that we should be able to give
 2 you appropriate responses.
 3 By now you hopefully have seen our briefing
 4 paper which we filed yesterday in this matter
 5 responding to the Intervener's request and opening
 6 brief. I think that with respect to this ETC
 7 order, this is a fairly simple analysis. First of
 8 all, it appears that the parties do agree that the
 9 FCC's ETC order is not binding on state ETC
 10 designation cases. That is, we do not have a
 11 change of law here in South Dakota as a result of
 12 the FCC's ETC designation order.
 13 What the ILECs have requested is that this
 14 Commission apply those FCC guidelines immediately
 15 in this case to this applicant. The far better
 16 course is for this Commission to conduct a
 17 rule-making pursuant to which all interested
 18 parties in this state can participate and determine
 19 whether the guidelines that the FCC has set forth
 20 are appropriate here in South Dakota. I think the
 21 FCC has made very clear that states retaining the
 22 authority to conduct public interest analyses --
 23 and I think there's no question if you look at the
 24 statute Congress delegated to this Commission the
 25 ability to make those determinations and,

1 therefore, I can tell you why -- and we don't need
 2 to get that far in this oral argument. I can tell
 3 you why certain of the FCC guidelines would be
 4 appropriate and other of the guidelines might not
 5 be appropriate here in South Dakota.
 6 And surely if you heard from ILECs and CLECs
 7 and cable companies and other wireless carriers who
 8 are not participating here today, you would get
 9 additional views, probably better views than what I
 10 have, quite frankly, and what that would give you
 11 is the ability to look at all the viewpoints,
 12 distill down what you think is best for this state,
 13 and issue rules that everyone would be required to
 14 abide by, including RCC if it were designated here.
 15 I think fundamentally as a legal matter since
 16 we don't have a change of facts, what we only have
 17 is a potential change of law and one which
 18 amounts only to guidelines, RCC really does deserve
 19 a decision based on the record as it stands today
 20 based on the law as it stands today.
 21 I also need to point out one thing that we
 22 managed to leave out of our briefing papers
 23 yesterday, and I think it was included in the
 24 ILEC's brief and, quite frankly, we overlooked it
 25 in the drafting process, and that is if the

1 decision of this Commission is to follow the game
 2 plan that the FCC has put into place, I'd suggest
 3 you look carefully at this new rule which is not
 4 yet effective but will be soon probably at the end
 5 of May, Section 54-202 and Section B, that
 6 section -- it's very short -- "Any common carrier
 7 that has been designated under Section 214(e)(6),"
 8 which is by the FCC, "as an ETC or that has
 9 submitted its application for designation before
 10 the effective date of these rules must submit the
 11 information required by Paragraph A of this section
 12 no later than October 1, 2006 as part of its annual
 13 reporting requirements."
 14 It's very important to understand what the
 15 FCC's done here. What they've said is these rules
 16 are going to be effective let's say May 30. It's a
 17 guess, but it's an approximate date. Every
 18 application that's pending at the FCC, including
 19 one that RCC has pending over there in the state of
 20 New Hampshire and a bunch of others and anybody who
 21 files an ETC before let's call it May 30 of this
 22 year is going to be judged under the law that's in
 23 effect today. All of these additional reporting
 24 requirements and public interest qualification
 25 criteria are not going to apply to those petitions.

9

1 The reason is pretty simple. The Commission
 2 does not want to go about reopening the records for
 3 each one of them taking supplements, additional
 4 arguments, additional briefing. They want to
 5 decide these cases on record as they stand. They
 6 want to move them forward, and anybody who becomes
 7 an ETC is going to have roughly a year and a half
 8 to get in place all of the requirements. Anybody
 9 who doesn't want to abide by those requirements can
 10 withdraw their ETC position or if they become an
 11 ETC and later on figure out they can't do it, they
 12 can withdraw as an ETC.

13 I think this is clearly the better way to go,
 14 and if the Interveners believe running the FCC's
 15 game plan is the way to go, then my advice is run
 16 it all the way and give us a decision under the law
 17 as it currently stands.

18 The other problem that I have with applying
 19 new standards here is that Section 253 of the Act
 20 requires that all new requirements and all
 21 universal service rules be applied in a
 22 competitively neutral fashion. I think it's going
 23 to be pretty hard for the Commission in this
 24 proceeding to determine whether RCC should be
 25 designated to impose new requirements which it then

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1 must consider how to apply them in a competitively
 2 neutral fashion to ILECs and other ETCs in this
 3 case.

4 I mean, that's not what this case is about.
 5 And I could pull out, for example, a five-year
 6 plan. At some point this Commission would have to
 7 look at that in this case and say, okay, if we're
 8 going to do that here, what are we going to do for
 9 the ILECs, what are we going to do for the other
 10 ETCs, and this is clearly not the place to be
 11 making those decisions.

12 I think, to conclude, RCC would like a
 13 decision right away. It's ready to go. It's got
 14 four new cell sites on the drawing board with the
 15 first year of support that it projects that it's
 16 going to get. The consumers out there will clearly
 17 benefit if this construction happens now rather
 18 than later.

19 RCC's petition has been pending since November
 20 of 2003. Consumers in that area would already be
 21 getting service if this petition had been acted on
 22 here, and if we do additional proceeding and this
 23 drags out towards the end of the year, the
 24 construction that RCC committed to this Commission
 25 back in October of last year that it would complete

11

1 in 2005 clearly could not possibly get done if the
 2 proceeding continues on.

3 So I think that the best course of action is
 4 to designate RCC under the law that we have in
 5 place, move them forward, conduct a rule-making
 6 within the year, and determine what's best for
 7 South Dakota, develop those processes in accordance
 8 with the comments from all interested parties, and
 9 then apply them to everyone. And RCC's going to
 10 have to abide by whatever you put into place.

11 I'd like an opportunity to rebut if that's
 12 possible, but I thank you very much for your time
 13 today.

14 CHAIRMAN HANSON: Thank you very
 15 much.

16 Questions?

17 MS. AILTS WIEST: Yes. This is
 18 Rolayne Wiest. I had some questions. I think
 19 staff brought this up in their first brief, and the
 20 question is, you know, designating both RCC
 21 Minnesota and Wireless Alliance in both areas.

22 And so my question specifically is what would
 23 be the problem if this Commission were to designate
 24 RCC Minnesota in the northeast and Wireless
 25 Alliance in the southeast? I mean, would that

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1 cause any problems for you guys?

2 MR. LAFURIA: Would it be two
 3 different designation orders or one designation
 4 order with two captions?

5 MS. AILTS WIEST: I mean, it could
 6 be in the same order or not. I would assume it
 7 would probably be in the same order.

8 MR. LAFURIA: Operationally, I don't
 9 believe having two different designations is going
 10 to be a problem for the company. I mean, I'm
 11 assuming, of course, that the requirements are
 12 going to be identical. They run this network in
 13 the state generally with the same operational
 14 procedures, and also they're not going to have -- I
 15 don't see any disconnects operationally as a result
 16 of doing that.

17 Legally I'm trying to recall if any other
 18 state has done it this way. I don't think that
 19 they have, but I don't think that if you had two
 20 separate designations and sent two separate
 21 certifications up to the FCC, for example, that it
 22 would create a problem for the Commission.

23 I think that the only thing I can think of is
 24 that you've got two separate service areas here
 25 and, as I understand, one designation for the

1 entire state. It would give RCC flexibility in its
 2 planning. For example, if there were a spike in
 3 demand let's say in the southern area of the
 4 Wireless Alliance area, and admittedly I'm
 5 speculating a little bit now but I want you to
 6 consider this, at this rate they're only going to
 7 receive in the first year a million and a half
 8 dollars. So that might be at best four, five cell
 9 sites maximum.
 10 If there were a sudden spike in demand in the
 11 lower portion of this and they made a determination
 12 operationally in one year the best use of those
 13 funds is that, you know, they're getting a lot of
 14 requests for service, we ought to build down here
 15 more quickly because that's where people are really
 16 complaining, they need more service right away --
 17 if they wanted to allocate all of their funds to
 18 that lower portion, I think they ought to be able
 19 to. They should be allowed to.
 20 I think if you do two designations, they may
 21 well find themselves in the spot where there are
 22 funds solely for Wireless Alliance down here and
 23 solely for RCC up here, and it may impair their
 24 ability to move the way they want to to build out
 25 these areas. So in that respect I think you'd be

1 better off with one designation. It is how other
 2 states have done it. Other than that, I can't
 3 think of another thing that would be really
 4 operationally important to it.
 5 MS. AILTS WIEST: Okay. Thank you.
 6 That was helpful. And then I just wanted to make
 7 sure that I have all the areas straight. And, I
 8 don't know, do you have your Exhibit 4 at all?
 9 MR. LAFURIA: I do -- I do have on
 10 my laptop the brief we filed.
 11 MS. AILTS WIEST: I want to get this
 12 straight. Exhibit C, and that's where you want
 13 immediate designation?
 14 MR. LAFURIA: Yes. I'm following
 15 you.
 16 MS. AILTS WIEST: Okay. Would it be
 17 correct that the Alliance Communications
 18 Cooperative, those would be taken off.
 19 RCC Communications, Roberts County,
 20 Stockholm-Strandburg stay on, and Union Telephone
 21 and Valley Telephone are added because those would
 22 be the ones that you want immediate designation
 23 for?
 24 MR. LAFURIA: This would probably be
 25 the question I couldn't answer until I went back

1 and looked carefully at the record.
 2 MS. AILTS WIEST: Just double-check
 3 that but it appears that Union Telephone and Valley
 4 were on the other ones, but I think maybe you
 5 realized that you were really going to serve the
 6 entire area within South Dakota and so it's my
 7 understanding that you're putting them on
 8 Exhibit C.
 9 And I believe Alliance is coming out because
 10 they're actually -- you know, Hudson and Alcester
 11 is part of the other -- it was one study area as
 12 opposed to -- two study areas opposed to one that
 13 you were originally thinking of.
 14 MR. LAFURIA: Yes. I believe that
 15 you're correct. But without -- our brief that I
 16 have on my laptop is only the list of wire centers
 17 we wanted in and out. It doesn't include this part
 18 of it.
 19 MS. AILTS WIEST: Right.
 20 MR. LAFURIA: I'm not able to tell
 21 you with absolute certainty that that's correct.
 22 MS. AILTS WIEST: It's all in the
 23 record. I just want to make sure I have it
 24 correct. And the other thing -- I might be missing
 25 something but in your brief where you listed all of

1 the wire centers -- I think this would be under
 2 option 2, I'll call it.
 3 MR. LAFURIA: Yes.
 4 MS. AILTS WIEST: I didn't see the
 5 ITC Raymond -- was it Raymond exchange on that
 6 list? Did I just miss something there? Was that
 7 changed somehow at the hearing?
 8 In your brief. It is on Exhibit D.
 9 MR. LAFURIA: Tell me which one it
 10 is again. Raymond?
 11 MS. AILTS WIEST: ITC's Raymond
 12 exchange. Is it in your brief? When you listed
 13 all the ones you would serve under option 2.
 14 MR. LAFURIA: Again, I'll have to
 15 check on that.
 16 MS. AILTS WIEST: If you would just
 17 want to double-check that for me. And there could
 18 be a reason for that, I'm just missing it. Okay.
 19 And then I was -- does RCC -- there was talk about
 20 the local usage plans.
 21 Does RCC, do you know, do you have any
 22 unlimited local usage plans?
 23 MR. LAFURIA: Yes. And I would
 24 answer it this way. You know, we have a record
 25 that contains RCC's local usage plans as of the

1 date it filed and then I think there was a
 2 supplement that was in May of 2004 and we discussed
 3 that at the hearing and I think part of RCC's
 4 testimony was, you know, we have this variety of
 5 local usage plans and we have what we have in the
 6 record today but as time goes on the company in a
 7 competitive marketplace continues to develop new
 8 rate plans and add them.

9 So as of today they -- both Wireless Alliance
 10 at the lower end and RCC at the top as of today do
 11 have unlimited local usage plans that offer large
 12 local calling area and an unlimited calling
 13 throughout their footprints.

14 However, I can't say to you for certain that
 15 the plan that they have that's being actively
 16 promoted today is the same as it was back in May
 17 because the company does continue to work to
 18 provide the services and offer consumers -- I mean,
 19 in wireless the prices are going down and the value
 20 is going up. So I can't say for certain that it's
 21 precisely the same as what we have in the record
 22 today, but it is there. It is unlimited. It is
 23 still going on.

24 MS. AILTS WIEST: Okay. And then
 25 going to my question on that rule -- and I read

1 MR. LAFURIA: You've got it
 2 precisely correct. Yes. And I say that knowing
 3 that this was -- this application was filed in
 4 November of '03 and that a number of other states
 5 have designated in that fashion and most recently
 6 in this FCC ETC order the FCC approved petitions
 7 for redefinition. Or I should say they concurred
 8 because they don't really have a right to approve.
 9 They concurred with petitions that came from states
 10 that had done it this way on the theory that these
 11 were in the pipeline and these have been worked on
 12 all of this time, we're not going to upset the
 13 apple cart right now.

14 But for future ETC applications the FCC said
 15 we think that the wire center should be the minimum
 16 area that a competitor is required to serve. So we
 17 come to you now saying that I think that you could
 18 make the designation under option 1. You could
 19 file a petition for redefinition with the FCC on
 20 that basis, and what we would -- what probably
 21 should be added to it is a statement that this
 22 application was filed well before the new FCC ETC
 23 order and it should be processed in the same way
 24 and I'm not certain but I think the FCC would
 25 process it in that fashion because this has been

1 your brief very carefully, you know, 20:10:32:42.
 2 I guess I'm not sure if my question is still
 3 answered. Maybe it's just because I don't
 4 understand your option 1 yet.

5 But my understanding of your option 1 is that
 6 for the ones that you don't serve, you know, the
 7 entire -- Exhibit D, the exchanges on Exhibit D,
 8 you're asking that the Commission redefine those
 9 rural LECs down to the wire center; correct?

10 MR. LAFURIA: Yes. So that each
 11 wireless center is a separate ILEC service area,
 12 right.

13 MS. AILTS WIEST: Is a separate ILEC
 14 service area, right. Under option 1, I'll call it,
 15 what you are also requesting is with respect to
 16 the -- let's say that that happened, they are
 17 redefined down to the individual wire centers.

18 With respect to the wire centers that are not
 19 entirely within RCC's service area, you only serve
 20 part of that wire center.

21 MR. LAFURIA: Correct.

22 MS. AILTS WIEST: You are requesting
 23 that RCC be designated as RCC's ETC service area
 24 just for that part in that -- that's within your
 25 service area and not for the entire wire center.

1 pending for so long.

2 The Commission may go with option B and say we
 3 only want whole wire centers to be served, and if
 4 that's the place where the Commission lands, that's
 5 why we've provided in our briefing papers the list
 6 of the wire centers that would be in and would be
 7 out.

8 And I would add just one last thing, and that
 9 is, you know, we had said -- there are several
 10 places in here where there's a wire center that
 11 overlaps into another state and we wanted
 12 designation in that portion that is served by
 13 South Dakota. And to the extent that that's still
 14 a question in your mind, I know we had briefed that
 15 several states and the FCC had designated for that
 16 portion that's within the state, and a recent
 17 decision I think it was last week down in Texas
 18 there's a Texas Court of Appeals decision, not a
 19 U.S., where the Texas Commission also said that
 20 that was appropriate that the Texas Commission
 21 designate the portion of a wire center that's in
 22 Texas but not the part that's in Arkansas.

23 MS. AILTS WIEST: So then it goes
 24 back again to that last sentence in rule, and so
 25 under option 1 your service areas would be

21

1 different -- and I'm not getting this mixed up with
 2 study areas.
 3 MR. LAFURIA: Correct.
 4 MS. AILTS WIEST: Your service areas
 5 would be different than the RLEC's service areas
 6 for some of those exchanges.
 7 MR. LAFURIA: Correct.
 8 MS. AILTS WIEST: If we went with
 9 option 1.
 10 MR. LAFURIA: For ETC purposes, yes,
 11 that is our ETC service area would be defined as
 12 coterminous with our FCC licensed area throughout
 13 the state. And under option 2 our FCC ETC service
 14 area would be defined as the following ILEC wire
 15 centers with a list.
 16 MS. AILTS WIEST: Right. So how can
 17 we do option 1 with the part of this rule that says
 18 the Commission may not find it be in the public
 19 interest if the provider requesting such
 20 designation is not offering its services
 21 coextensive with the rural company service area?
 22 Not study area.
 23 When you talked in your brief you kept -- I
 24 wasn't even arguing that we couldn't define it down
 25 to the wire center.

22

1 MR. LAFURIA: Right.
 2 MS. AILTS WIEST: My point is the
 3 way I look at the rule it appears that your service
 4 areas that have to be coextensive, and that's not
 5 what option 1 does.
 6 MR. LAFURIA: Yes. Absolutely. The
 7 way I read the rule is that the Commission may not.
 8 And as I understand the word "may" the Commission
 9 has an option to do this. And I don't think it's
 10 required in that rule to have the service areas be
 11 coterminous.
 12 If you read the rule the way I do, you can
 13 make this decision. And I think in our briefing
 14 papers one of the things that we said was, for
 15 example, there could be other reasons, and we could
 16 use cream skimming as an example. If the
 17 Commission had evidence in the record and had a
 18 real concern about that in an area, it could make a
 19 decision to say, gee, we have this concern so we're
 20 not going to do this.
 21 But if the Commission doesn't have that
 22 concern here as a number of other states have
 23 found, as I read that rule, it may not redefine.
 24 It doesn't say it shall not redefine or it's
 25 prohibited, precluded from redefining but it may

23

1 not find it wishes to redefine.
 2 MS. AILTS WIEST: I'm not talking
 3 about redefinition. I'm talking about service
 4 areas, more than redefinition.
 5 MR. LAFURIA: I misspoke. The
 6 Commission may not choose to define a competitor's
 7 ETC service area in a different way than an ILEC
 8 service area. But also it may decide to do so. I
 9 mean, I think that that's why "may" was in there as
 10 oppose today it shall not or it is prohibited from.
 11 MS. AILTS WIEST: Well, actually
 12 when you deal with our LRC they won't let you use
 13 shall not. You have to use may not because may not
 14 means shall not. That's how it's done.
 15 MR. LAFURIA: If that is the case
 16 and you land, as a result, on option 2, again
 17 that's fine with RCC. I also think there was a
 18 secondary argument that we had that talked about if
 19 you read that rule in conjunction with the other
 20 rules that talks about redefinition, I think you
 21 can still get to where we are. We just didn't
 22 press this point really that hard.
 23 I think if you want to get there, you can get
 24 there. And I think if you look to consumers, the
 25 big question would be if a half a dozen or a dozen

24

1 wire centers were to come out of this picture, what
 2 is the result to consumers? I think if you focus
 3 on that, the answer is pretty simple. You're going
 4 to have areas where RCC is advertising either by
 5 newspaper or radio or TV or whatever. And they're
 6 going to advertise the ability of lifeline and
 7 link-up service. And you're going to have a
 8 customer who let's say they have an RCC phone
 9 already and they get this advertisement and they're
 10 really excited about it, this is great, I get a
 11 discount.
 12 They come into the RCC store and they say, I
 13 want lifeline. Well, I'm sorry, you can't have it
 14 because you're in that part of the wire center
 15 where we're not eligible. And the customer says,
 16 well, wait a second. All the other wireless
 17 companies have lousy service. You're the only ones
 18 that service us well. I want your service.
 19 Well, I'm sorry. You're not going to get the
 20 benefits of lifeline and link-up. That's why, I
 21 think, some of the states have come out on the side
 22 of, look, wherever you're designated, get those
 23 benefits out there. Let's not have consumers
 24 coming in from various areas where you're eligible
 25 to get high-cost, perhaps --

1 Or let's if it's an area where -- you know, if
 2 it's an interior area, you might have a cell site
 3 that you build into an eligible area. And let's
 4 say the signal bleeds over into an area where
 5 you're ineligible and customers over there just
 6 happen to get a really good signal. They live on a
 7 hilltop or wherever.
 8 Those customers are going to look at
 9 advertisements and they're going to come and say we
 10 want service. And we're going to say, yeah, we
 11 have an FCC license to serve there. We provide you
 12 high-quality service, but we just can't give you
 13 the lifeline. And that's why we've asked for
 14 option 1 primarily.
 15 MS. AILTS WIEST: Just one last
 16 question. Staff I know reiterated its position you
 17 should serve rural Beresford.
 18 MR. LAFURIA: Yes.
 19 MS. AILTS WIEST: Do you have any
 20 comments on that? Because when I look it at, if
 21 you take rural Beresford and the other ones out of
 22 there, it actually lessens cream skimming, doesn't
 23 it?
 24 It goes down to almost a 1 to 1 ratio as
 25 opposed to 3 to 1 ratio? Basically is it your

1 position that you still would prefer under option 2
 2 that rural Beresford be left out?
 3 MR. LAFURIA: I --
 4 MS. AILTS WIEST: I'm not trying to
 5 push one way or the other. I'm just saying that if
 6 it's a cream-skimming concern, it appears from your
 7 analyst's position is that once you take out rural
 8 Beresford and the other exchange under option 2,
 9 that that actually lessened the cream skimming of
 10 the PrairieWave.
 11 MR. LAFURIA: You know, our view is
 12 if that -- actually I guess the proper answer is
 13 we're not really pushing it that hard either. But
 14 to be precise, you know, I don't believe cream
 15 skimming is an issue at all. I mean, I take a very
 16 hard line on that, that this is something that's
 17 completely within the ILECs to resolve and they
 18 still have disaggregation options to do so.
 19 We believe that no competitor should ever
 20 receive a reward in the form of a subsidy for
 21 coming into a low-cost area. I just want to make
 22 that clear at the outset. The ILECs have complete
 23 power to resolve those imbalances. We don't.
 24 In terms of rural Beresford, our position is
 25 if you designate throughout that area, we're happy

1 with that because it solves the problem I just
 2 spoke to you before about lifeline and link-up and
 3 customers coming to us and being unhappy and
 4 potentially filing Complaints. But if you take it
 5 out, that's fine too. You know, if that's where
 6 the Commission lands, we'll accept that. I mean,
 7 it's not a deal breaker in terms of the grant.
 8 MS. AILTS WIEST: Thank you. That's
 9 all my questions.
 10 CHAIRMAN HANSON: Thank you very
 11 much. Did you have anything else you needed to add
 12 as a result of the questions?
 13 MR. LAFURIA: No, I don't,
 14 Commissioners. Mr. Chairman, if I might have an
 15 opportunity for a short rebuttal if need be.
 16 CHAIRMAN HANSON: You will.
 17 MR. LAFURIA: Thanks very much.
 18 CHAIRMAN HANSON: Mr. Coit.
 19 MR. COIT: Thank you. For the
 20 record, my name is Richard Coit. I am presenting
 21 the argument today not just on behalf of SDTA, who
 22 is one of the intervening parties, but also
 23 presenting this argument on behalf of the other
 24 Interveners.
 25 I'm going to try to keep my comments somewhat

1 brief. We, I think, covered our position pretty
 2 well in the brief that was filed, and I do not want
 3 to get into the same level of detail that we've
 4 included in the brief, of course.
 5 If I look at -- if we look at the Petitioner's
 6 supplemental brief in this matter, they're
 7 approaching things as they have throughout this
 8 case which is really to downplay, I think, the
 9 significance of the entire ETC designation process.
 10 This is something they've tried to do all along,
 11 and we have throughout this proceeding put more
 12 emphasis on competition and have really shied away
 13 from addressing in any realistic way the universal
 14 service concerns that are presented with multiple
 15 designations in high-cost areas.
 16 I think this is probably reflected more than
 17 anything in the testimony of Don Wood that was
 18 submitted in this matter. From our reading of the
 19 testimony of Don Wood, it would appear that from
 20 RCC's perspective there shouldn't be any limit at
 21 all on the number of ETCs that are designated in
 22 rural areas, in high-cost areas. And that, I
 23 guess, would give some reason to question whether
 24 they truly are interested in addressing in a
 25 realistic way universal service concerns.

1 They've stated in their supplemental brief
 2 that it would be inappropriate for the Commission
 3 to apply the newly established standards to this
 4 case which would effectively require reopening of
 5 the record if RCC chooses to further pursue ETC
 6 designation. I think it's pretty clear if you look
 7 at those new requirements and you look at the
 8 current record, the record is not sufficient to
 9 satisfy all of those requirements. And we've noted
 10 in our brief specifically four of the new
 11 requirements that we feel are not adequately
 12 addressed by the current record.
 13 We disagree with the idea that the Commission
 14 cannot apply those standards. And for a number of
 15 reasons. We believe that the Commission should
 16 apply the standards. First from day one in this
 17 proceeding RCC and this Commission have known that
 18 the ETC designation standards that are applied by
 19 the FCC which have consistently been applied by
 20 this Commission in past state designation
 21 proceedings were in the process of change.
 22 The FCC commenced its process of reviewing the
 23 ETC's designation standards and the requirements
 24 back in June of 2002. At that time it issued an
 25 ETC referral order asking the Joint Board to look

1 at certain issues regarding the ETC designation
 2 process. The Joint Board followed with its
 3 recommendations in February of 2004, and then
 4 finally the action has culminated with this
 5 March 17 Order of the FCC.
 6 And we've noted that. We've noted that
 7 throughout this proceeding, that the standards were
 8 subject to change. And that was one of the reasons
 9 in the evidence and the arguments at hearing that
 10 we focused so much on the Joint Board proceeding
 11 and the recommendations of the Joint Board.
 12 We now have had some change requirements and
 13 standards. If we ask ourselves why did the FCC
 14 commence this process of reviewing its ETC
 15 designation rules, the process was started because
 16 the FCC for quite some time has recognized and
 17 accepted the fact that the ETC designation process
 18 as thus far implemented throughout the country has
 19 not been consistent with the intent of Congress in
 20 their ETC designation provisions that are contained
 21 in the 1996 Act.
 22 The FCC has recognized and accepted that the
 23 current process is broken, and it needed to be
 24 fixed. And that's the purpose of the new rules.
 25 The purpose of the new rules is to establish a more

1 stringent test, more rigorous requirements than
 2 those that have been followed thus far.
 3 (Vice Chairman Sahr enters the room)
 4 We would disagree with some of the
 5 characterizations in RCC's brief indicating that
 6 really nothing has changed. Certainly the Highland
 7 and Virginia Cellular Decisions strengthened the
 8 process and strengthened the requirements but these
 9 rules even go further, and they particularly go
 10 further in the area of improvement plans or
 11 construction plans and specifically what ETCs are
 12 required to file to show their commitment and
 13 ability to offer the services throughout the area.
 14 They shed some further light on what the
 15 cream-skimming analysis should consist of, and
 16 there's other requirements as well that certainly
 17 are different and are stronger than even the
 18 standards that Highland and Virginia Cellular put
 19 in place.
 20 Now we've set forth in our supplement brief a
 21 number of arguments as to why this Commission
 22 should apply the newly established requirements and
 23 standards. This Commission I think generally in
 24 the prior ETC designation cases has followed the
 25 FCC requirements and standards that were in effect

1 at those times. And I've commented on that in our
 2 brief as to how this Commission's analysis was
 3 similar to the FCC -- similar in application in
 4 terms of applying FCC standards and requirements.
 5 The intended effect of the FCC's new
 6 requirements is to establish a more rigorous ETC
 7 designation process, according to the FCC one which
 8 ensures that only fully-qualified carriers that are
 9 capable of and committed to providing universal
 10 service will be able to receive support and
 11 standards which improve the long-term
 12 sustainability of the Universal Service Fund.
 13 The FCC in its Order, Report and Order, also
 14 emphasized the need to establish a more predictable
 15 ETC designation process. We urge this Commission
 16 to take action consistent with the stated goals of
 17 the FCC in adopting and utilizing standards that
 18 are more consistent with the universal service
 19 requirements in the Federal Act.
 20 In states like South Dakota where rural
 21 telephone companies serving as carriers of last
 22 resort have a greater reliance on universal service
 23 support than carriers in many other states
 24 protecting the long-term sustainability of the
 25 federal universal service fund should be the

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1 highest concern.

2 We urge this Commission to not shy away from

3 the more rigorous designation requirements that the

4 FCC has recently adopted, certainly which in part

5 have been adopted as a means of addressing concerns

6 over the sustainability of the fund.

7 RCC has stated -- gone so far to state the

8 current record is sufficient to meet the new

9 requirements and standards. We disagree with that

10 strongly. The record is probably more deficient

11 with respect to the construction or improvement

12 plans than in any other area. The FCC rule, as I

13 noted earlier, really goes a lot further than the

14 previous standards or requirements in defining what

15 sort of construction or improvement plan should be

16 insisted upon in the ETC designation process.

17 And we would ask the Commission to look

18 closely at what's required under that rule, and

19 whether the Commission decides to apply the rules

20 or not, we think what the substance of the rules

21 tell you is that the issue of a carrier having

22 the -- or showing the commitment and the capability

23 to offer services throughout the area is a very

24 important element of this entire process, and I

25 think the rules give emphasis to the need for

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1 specific information in that area.

2 And if you look at the record in this matter,

3 there's nothing more than an identification of

4 towers being built in four communities covering two

5 of the ten rural study areas in the first

6 18 months. That's something that falls very, very

7 short of the FCC requirements, and to approve the

8 ETC designation without further evidence on

9 capability and commitment I think is a -- I don't

10 believe that it sends a very good signal with

11 respect to future designations, and it certainly

12 isn't consistent with the public interest if your

13 concern in undertaking the analysis and making a

14 decision in the case is to make sure that consumers

15 will actually benefit from the USF money that's

16 distributed.

17 I would like to, I guess, address just briefly

18 this question of rule-making, and it's been

19 proposed that, you know, the Commission should

20 apply these standards to all carriers in the future

21 by establishing them in rules.

22 The Commission to this point has really not

23 seen the need to come up with specific rules

24 defining what it should consider in its public

25 interest analysis. It certainly looked at, you

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1 know, the FCC rules and looked at the FCC

2 decisions. If you look at the current rules that

3 we have on ETC designations, they don't go so far

4 as to define what the specific criteria are for

5 public interest review or really what the specific

6 requirements are outside of referring to the FCC

7 rules.

8 I don't believe that it's essential for this

9 Commission to apply these new requirements through

10 rule-making. That's not the way they proceeded

11 with ETC designations in the past, and it's

12 certainly within their discretion to continue to

13 review the public interest in a more general way as

14 cases come up on a case-by-case basis looking to

15 the standards that have been established by the

16 FCC.

17 Finally, with respect to the administrative

18 rule, this 20:10:32:42, and I think at minimum what

19 that rule -- what that rule emphasizes is that the

20 definition, defining the applicable service area,

21 is relevant to the public interest analysis. And I

22 think that's consistent with the FCC rule where the

23 FCC has basically now said that, you know, if a

24 carrier is asked for a redefinition, that the

25 public interest should be taken into account within

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1 that request for redefinition.

2 That's all I have, unless there are any

3 questions.

4 CHAIRMAN HANSON: Thank you,

5 Mr. Coit.

6 Questions, Rolayne.

7 MS. AILTS WIEST: If the FCC isn't

8 applying it to pending designations, why should we?

9 MR. COIT: Well, I think that we are

10 a high-cost state, higher cost than most other

11 states, and as I tried to, I guess, make the point

12 in my remarks, issues over sustainability of the

13 fund I think should be deemed more important in our

14 state than maybe in other states. And I would like

15 to see this Commission give, you know, those sorts

16 of goals the appropriate recognition.

17 And I think by applying these new standards

18 which are more consistent with what is intended

19 under the Federal Act and more consistent with

20 sustaining the fund, it all boils down to what's in

21 the public interest. If we're here to review the

22 public interest, in our view, you know, you need to

23 make sure that you've got an appropriate balance

24 between competition and spurring competition and

25 promoting competition and maintaining universal

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1 service. That's the purpose of these new
 2 requirements.
 3 I think if the Commission is interested in
 4 doing that, they should apply the new requirements,
 5 and I think it's within their discretion to do so.
 6 MS. AILTS WIEST: Should the
 7 Commission like the FCC apply these requirements to
 8 all ETCs, including those previously designated
 9 such as your company's?
 10 MR. COIT: Yeah. I think the
 11 requirements apply across the board with respect to
 12 what's required in a specific -- with respect to
 13 filings, I think that common sense should also come
 14 into play. If you've got companies that have been
 15 providing service for 50 years and they have a
 16 network that is built out throughout their service
 17 area, I think that the information that you need to
 18 satisfy yourself that the companies are truly
 19 offering their service throughout the area, I would
 20 think that you would have some discretion in that
 21 area.
 22 I think that with respect to rural companies
 23 that are landline, you know, there's some reference
 24 to, you know, line extension policies, deposit
 25 policies, and so forth where a company has a

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1 ubiquitous network and you're talking about, well,
 2 is that company -- you're asking questions as to
 3 whether that company is offering its services in
 4 response to reasonable request for service. Those
 5 are the sorts of things that are probably more
 6 important with landline than actually ubiquitous
 7 network deployment which you know is there.
 8 MS. AILTS WIEST: That's all I have.
 9 CHAIRMAN HANSON: Thank you.
 10 MR. COIT: Thanks.
 11 CHAIRMAN HANSON: Any questions from
 12 any Commissioners at this point?
 13 VICE CHAIRMAN SAHR: Mr. Chairman, I
 14 would like to note that I am back in the hearing
 15 room. I asked the court reporter to note on the
 16 record when I entered so I'd be able to see what
 17 point I need to read the transcript up to, but
 18 since we have an audio record I wanted to note that
 19 I'm back.
 20 And this is Commissioner Sahr. Thanks.
 21 CHAIRMAN HANSON: Mr. Smith.
 22 MR. SMITH: Thank you. I'm
 23 John Smith, attorney for Commission staff. I
 24 basically agree, I guess, with Mr. LaFluria and RCC
 25 that the new FCC decision I don't believe affects a

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1 change in law. The Decision was clear in the fact
 2 that it is not meant to be a dictate down to State
 3 Commissions. There were some strong encouraging
 4 words in there, but it very clearly and very
 5 explicitly was not made binding upon State
 6 Commissions.
 7 Therefore, I do not think it can be said to be
 8 a change in law, and, secondly, even if it were,
 9 it's not effective as of this date.
 10 That said, even if it were to be perceived to
 11 be a change in law, I did a quick look and even
 12 with respect to such provisions the U.S. Supreme
 13 Court has stated in the old Iowa Public Service
 14 case that in cases where a change in law would
 15 affect a serious injustice, that the provisions be
 16 provided only to cases that are not pending at the
 17 time the law is enacted, absent an explicit
 18 directive from the legislature to do otherwise.
 19 And so I guess it's my feeling here that
 20 realistically that it's -- I think it's unfair to
 21 RCC to apply standards of which it could not be
 22 aware at the time to this case and that other
 23 than -- I agree with Mr. Coit to the extent that
 24 there are certain sort of tenor guidance that you
 25 can get out of the decision in terms of maybe how

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1 to view the standards that existed prior to the
 2 decision and what emphasis maybe to give on some of
 3 those provisions.
 4 And I think those are irrespective of the more
 5 rote particularized requirements that are in the
 6 new decision such as five-year plan and some of
 7 those things that this Commission may or may not
 8 decide to adopt in the future. It's possible you
 9 may disagree with the FCC that some of those things
 10 are useful. And I think it's at least arguable
 11 whether these sort of --
 12 And I think we've gone over this in the past
 13 in the Western Wireless case as to whether we want
 14 sort of a Soviet style five-year plan regime. You
 15 know, does that really work in the real world. Or
 16 do we just want a monitoring process that does hold
 17 the company's feet to the fire and makes them in
 18 the way businesses really do things, which is begin
 19 a capital planning process, something along the
 20 lines of about a 12- to 18-month lead time and with
 21 about a 12- to 18-month lead time which has always
 22 remained subject to contingencies and changes.
 23 That's really the way things work in the real time.
 24 In that particular issue I think the real
 25 issue in the case is the one that I think both the

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1 Interveners and the staff attempted to hammer home
 2 during the proceedings, the hearings, and that
 3 really is taking a close look at whether you really
 4 believe the evidence shows that RCC has that level
 5 of commitment.
 6 And I think, again, this is a little company
 7 by comparison with Western Wireless, and I think
 8 their perspective on what they're able to do and
 9 the confidence with which they're able to assert
 10 that they're able to do it is a little more
 11 circumspect than it was with Western Wireless.
 12 Largely one might say because I think they probably
 13 are constrained in terms of the resources they have
 14 to bring to bear to any particular building agenda.
 15 But that said, if I were to encourage the
 16 Commission to emphasize one particular area, it
 17 would be that and whether you believe that RCC made
 18 the requisite -- showed the requisite level of
 19 commitment to really get out there and build
 20 throughout the service area.
 21 With respect to Mr. Coit's point about
 22 preserving the Universal Service Fund, again, I
 23 really think that puts the Commission in -- and,
 24 again, this is the FCC's problem really. I'm not
 25 blaming SDTA for this or Interveners, but I think

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1 it puts the Commission in really a ridiculously
 2 terrible position to begin to be making decisions
 3 on that basis.
 4 And I don't see really why the FCC can't get
 5 it that it's doing that to us in these cases, in
 6 the sense -- I'll give you an example here. For
 7 one thing, there's no evidence in the record that I
 8 could see that any increase in universal service
 9 funds or any additional pressure would result on
 10 the Universal Service Fund as a result of RCC's
 11 grant of a designation.
 12 I think it's as likely. And one of the areas
 13 of questioning, if you recall, that I pursued
 14 during the hearing was whether the issue isn't
 15 really almost the exact opposite, that it's
 16 possible you're going to have less impact on the
 17 Universal Service Fund with two designees. And the
 18 reason for that is it's at least possible that by
 19 designating more than one carrier in an area you're
 20 going to actually slow the rate of deployment and
 21 unless you assume that two carriers will have a
 22 significantly greater impact on marketing in the
 23 area and the total number of customers electing to
 24 go with a mode, you're actually going to result in
 25 less total lines served and you may, in fact, save

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1 the Universal Service Fund money.
 2 And I only throw that out just to point out
 3 the idea that it might sound like nice verbiage,
 4 but in terms of any actual record evidence we have
 5 in this case or any other case that these
 6 designations are going to cost the universal
 7 service funds money, I just don't think we have it.
 8 And so I just don't see that as a viable means of
 9 making a decision in this case.
 10 The one area you may take a look at and
 11 whether you want to or not is the wire center as
 12 being the minimal area for service area definition.
 13 I don't think that really was an extension of what
 14 the FCC did in Virginia and Highland so I don't
 15 think it's unfair to apply that particular criteria
 16 in this case.
 17 What the FCC did here I think was just
 18 reiterate that and reiterate it more strongly and
 19 more unambiguously than it had in those two cases.
 20 And I think they asserted it more as a universal
 21 principle. Again, as Mr. LaFluria pointed out, the
 22 FCC in the pending redefinition cases before it
 23 elected not to rigidly apply that wire center as a
 24 minimum service area. But it's something you might
 25 at least want to think about. I don't know that it

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1 matters that much in this case.
 2 And pardon my throat by the way. I'm under
 3 the influence of allergy pills, and I have a very
 4 dry mouth. The only thing that did concern me
 5 again in the case concerning the wire center as the
 6 minimum boundary and why it may be that you would
 7 want to do that, again -- and this whole method of
 8 doing this to me is, again, a very bizarre way of
 9 handling things. But it appears as though the FCC
 10 is clearly stating that the actual redefinition
 11 occurs at the local rural LEC level, that it
 12 doesn't just occur with respect to the new
 13 applicant.
 14 So it won't affect just a redefinition for
 15 RCC. It's going to affect a redefinition right
 16 down to the -- with respect to the actual rural
 17 LECs.
 18 I think if you take a look at that map that
 19 was handed out this morning, you'll see that you're
 20 going to then end up with some service areas in the
 21 state if you were to go that way that are literally
 22 a mile wide and a couple of miles long, and you're
 23 going to have the rural LECs have to make their
 24 filings on the basis of a multitude of these teeny
 25 tiny little service areas and to me that is going

1 to mean some additional burden to them. But that's
 2 something just to keep in mind.
 3 And, lastly, I guess I -- the only other
 4 comment I would have is that you might want to add
 5 one condition in this case that could be fairly
 6 general that would just make it clear that if you
 7 elect not to apply the new decision standards in
 8 this case, sort of like a savings condition, that
 9 would state that they will be applied at least to
 10 the extent they are ultimately adopted by this
 11 Commission at some point in the future and that at
 12 such time those provisions will become applicable
 13 to RCC in this case.
 14 Thank you.
 15 CHAIRMAN HANSON: Rolayne, do you
 16 have questions?
 17 MS. AILTS WIEST: Sure. John, do
 18 you still have any concerns with joint designation?
 19 You brought it up in your first --
 20 MR. SMITH: I have a technical
 21 concern. I really do. And I guess it's one of
 22 those frustrating things. In our data request to
 23 the companies I guess we threw out the suggestion
 24 as strongly as we could throw it out that they
 25 amend their petition to make application at the

1 next corporate level up at one parental level up so
 2 we wouldn't have this problem.
 3 Again, it's probably more of a technical
 4 issue. But the fact is Wireless Alliance isn't
 5 authorized to provide service in the northeast
 6 corner of the state, and so they can't possibly
 7 technically provide service throughout that area.
 8 Again, it's a technical nit, I guess, but --
 9 MS. AILTS WIEST: And then you were
 10 talking at the very end about redefining down to
 11 very little service areas. But even under option 1
 12 they're only asking to redefine down to the wire
 13 center, right?
 14 MR. SMITH: Well, if you look at the
 15 original application, their request was that they
 16 be defined along their licensed boundary line
 17 areas.
 18 MS. AILTS WIEST: They'd be
 19 designated as an ETC in the licensed areas but that
 20 the redefinition still would be at the wire center
 21 level.
 22 MR. SMITH: I didn't understand it
 23 that way.
 24 MS. AILTS WIEST: Okay.
 25 MR. SMITH: I understood them to be

1 asking for redefinition of the service area along
 2 their licensed boundary areas. If I misunderstood
 3 that, I'm sorry.
 4 MS. AILTS WIEST: And then with
 5 rural Beresford, do you have -- I guess I didn't
 6 understand staff's concern about cream skimming.
 7 It seems like that was one of the more densely wire
 8 exchanges and so why would --
 9 MR. SMITH: Again, I can't remember
 10 the exact data. It's one that Mr. Best and I
 11 looked explicitly at that. I guess you might take
 12 a look at whether Beresford as it might have shown
 13 up in some of the numbers included Beresford town,
 14 which, as you recall, they originally believed it
 15 did.
 16 Given the rural Beresford service area as it
 17 looks to me on the map, it would be very surprising
 18 to me if that were one of the most densely
 19 populated in that area. But maybe you're right.
 20 Again, I can't remember because it's been a couple
 21 of months since I looked at that.
 22 MS. AILTS WIEST: And then I know
 23 this has been brought up too much, but I know that
 24 in the original petition that they also asked for
 25 it to be granted certification.

1 Do you think the Commission can grant
 2 certification in this proceeding, or should it be
 3 done separately?
 4 You know, our certification proceedings where
 5 they have to show how much money they think they
 6 will get and how much money they intend to spend
 7 throughout the area? Do you think the Commission
 8 can certify in this proceeding?
 9 MR. SMITH: I don't know. I haven't
 10 looked into that. They certainly could not I don't
 11 think with respect to those portions for which you
 12 would have to grant a designation conditionally
 13 because you haven't concluded the redefinition.
 14 MS. AILTS WIEST: For the redefine.
 15 Okay. I was just double-checking your conditions
 16 against the Western Wireless ones, and I know you
 17 left some of them out. I was just wondering if
 18 there was a particular reason and maybe just
 19 because you don't think they need that but like
 20 list of local calling areas ensuring that
 21 agreements are consistent with service quality
 22 rules.
 23 Did you just think it didn't apply in these
 24 cases?
 25 MR. SMITH: I honestly don't

1 remember. I don't remember that.
 2 MS. AILTS WIEST: Okay. That's all
 3 I have. Thanks.
 4 CHAIRMAN HANSON: Any questions by
 5 Commission members?
 6 VICE CHAIRMAN SAHR: I do have a
 7 few, and I was wondering if I could get a copy of
 8 the ETC map that was handed out earlier, please.
 9 (Mr. Wieczorek hands Vice Chairman Sahr document)
 10 VICE CHAIRMAN SAHR: Mr. Smith, when
 11 we look at the two areas that are -- where ETC
 12 designation is being requested, do you see anything
 13 that we should do to distinguish the differences
 14 between the what I'll term the northeast part of
 15 the state and the greater Sioux Falls market?
 16 MR. SMITH: I didn't really see
 17 that. I think the challenge of this whole thing
 18 will be much as -- I think it will be with
 19 Western Wireless, and that is I really think if you
 20 choose to designate both areas, I think the real
 21 challenge is to make sure all the money doesn't get
 22 spent in the Sioux Falls area and in the -- you
 23 know, and I think that's going to be a challenge is
 24 to force any of these companies to get out there
 25 and build in the areas where they're not going to

1 make money, they're going to lose money.
 2 I mean, that's a fact. And they're not going
 3 to want to do it. I mean, in this case we know
 4 that because the testimony of Mr. Bruce was clear,
 5 that they're going to base their decisions on tower
 6 construction, on a particular facility addition
 7 return on investment analysis. That's what he said
 8 at the hearing. And so I think -- assuming you go
 9 forward with designation, I mean, I think the tough
 10 thing is to get it through their heads that, no,
 11 you're not going to do that.
 12 VICE CHAIRMAN SAHR: And do you
 13 think there's any reason to distinguish between or
 14 among different forms of wireless technology? I
 15 mean, as we're trying to grapple with some of these
 16 that are, you know, clearly policy issues is there
 17 some advantage to looking at and saying, well,
 18 there are certainly some public interest in perhaps
 19 a technology that on its face serves a wider radius
 20 and potentially more people, or do you think that
 21 there is some holes in that sort of logic of
 22 looking at it technology by technology?
 23 MR. SMITH: Probably not, although I
 24 honestly think the real issue is commitment to
 25 build-out. You're right. I think the testimony in

1 the record was that the PCS facilities at this
 2 point in time at least have a less wide reach. And
 3 that may be. They have different characteristics,
 4 period, you know, but I didn't see anything in this
 5 record from which I don't think staff would be able
 6 to make a recommendation on the basis of a
 7 particular mode.
 8 There were some issues as between the two
 9 service areas that I think Mr. Coit brought up to
 10 some extent in his brief, and I think those might
 11 relate more to the question Ms. Wiest asked first
 12 in terms of should there be a joint designation and
 13 that may have some bearing on that.
 14 I mean, the two companies don't even use the
 15 same technology. They don't use the same network.
 16 The testimony with respect to the one is their
 17 network is based in Alexandria, and with respect to
 18 Wireless Alliance it uses a completely different
 19 set of network facilities. As I recall, that was
 20 in Eagan, Minnesota or somewhere over in the
 21 Twin Cities area.
 22 VICE CHAIRMAN SAHR: Are there
 23 anything in particular with using two different
 24 forms of technology that you would think the
 25 Commission should pay close attention to if RCC

1 does, in fact, get granted ETC designation in both
 2 areas as far as -- and I think generally it's at
 3 least from our experience from Western Wireless it
 4 was something that I think was fairly generic and
 5 probably could apply regardless of whether you're
 6 talking about PCS or cellular.
 7 Anything off the top of your head that you see
 8 that makes this any different?
 9 MR. SMITH: Not really. As I
 10 recall, they were talking about deploying CDMA
 11 throughout their northern region, which isn't just
 12 South Dakota, and taking that then to the next
 13 level in terms of the new generation of
 14 capabilities in their cellular area. And I think
 15 the thing with PCS, of course, is, you know, if it
 16 has less reach, there may be additional pressure to
 17 be brought to bear to build more tower facilities.
 18 That may be the most difficult thing.
 19 Again, I think being too technologically
 20 specific is -- I don't know that that's authorized
 21 by the rules. As Mr. LaFluria pointed out, the
 22 Commission is required to be competitively neutral.
 23 And, as I recall the rules about competitive
 24 neutrality, those involve neutrality as among
 25 different technologies.

1 VICE CHAIRMAN SAHR: And I think
 2 that's a fair statement. Looking at the --
 3 regardless of technology, looking at the two
 4 different areas, do you think there was any sort of
 5 public policy considerations that we should apply
 6 when you have on its face the northeast corner of
 7 the state where there's a number of small towns
 8 that aren't served?

9 MR. SMITH: Right.

10 VICE CHAIRMAN SAHR: And, frankly,
 11 based upon, you know, what we know about build-out
 12 plans and so on and so forth in rural parts of the
 13 state might be the sort of towns where you might
 14 not expect to get service within the next one to
 15 two to three years as compared to perhaps the
 16 greater Sioux Falls market where you may already
 17 have other providers available, and certainly if
 18 not, you know, there is some likelihood that there
 19 may even be four or five players within these
 20 greater Sioux Falls markets that if they're not
 21 there, could be reasonably expected to make an
 22 effort to go out and build in those I'll call them
 23 suburbs or communities right outside of
 24 Sioux Falls.

25 MR. SMITH: Yes. I think you can

1 consider that. In fact, that's one of the points
 2 Mr. Coit made I think fairly well in his brief,
 3 that in some of the areas here you have several
 4 overlays already. You have some of those areas in
 5 both of these service areas. Along the I-29
 6 corridor whether you go south of Sioux Falls or up
 7 north, you have several different providers already
 8 providing service, and my guess without knowing
 9 totally is if you get down into the more isolated
 10 areas of either of these areas, you're probably not
 11 going to have that.

12 You're right, though. I mean obviously in
 13 that greater Sioux Falls area it's probable to me
 14 that you're going to have deployment of -- by
 15 multiple carriers much sooner. And I think you can
 16 consider that.

17 VICE CHAIRMAN SAHR: And then it's
 18 certainly not an unexpected question. One of the
 19 things that comes up, whether, you know, at the
 20 Commission level or regional meetings or national
 21 meetings when you talk about wireless ETC certainly
 22 is, is it something where we should be concerned
 23 about funding multiple ETCs or, you know, do you
 24 let the market take care of itself? I mean, it's a
 25 per line basis and not per tower, so on and so

1 forth.
 2 I mean, is there a point in time where a
 3 Commission should be concerned about granting two,
 4 three, four wireless ETCs in an area from a policy
 5 standpoint, or do you think that the, so to speak,
 6 the per line funding takes care of itself?

7 MR. SMITH: It's one of the
 8 frustrating things for me about the FCC's decisions
 9 of late. And this one is just another one in that
 10 line. And they seem incapable of comprehending the
 11 real nature of the decision that a Commission's
 12 called upon to make in a very high-cost area. And
 13 that isn't effects on the universal service funds.
 14 It's effects on universal service within that
 15 particular service area.

16 You know, I think if you remember the line of
 17 questioning that I embarked on during the hearing
 18 and mainly concentrated on was really just that.
 19 Might you not -- and, if you remember, a lot of
 20 those questions were directed at Randy Houdek who's
 21 out there running a very high-cost facility right
 22 now and how it might affect his ability within his
 23 particular service area to provide universal
 24 service, particularly out in the real sticks, if he
 25 were denied or if his lower-cost revenues were

1 parcelled up into two, three, four chunks so that
 2 instead of him getting the money from Onida and
 3 from Highmore -- and it's really amazing when we
 4 call that the low-cost areas, but the Sissetons of
 5 the world and those towns, if those funds are
 6 unavailable to you where you can actually make a
 7 buck to spend in Lebanon, you know, or out on a
 8 farm that's 15 miles outside of town, I mean, to me
 9 that is a real concern, that if you begin to carve
 10 up that lower cost pie enough, it would just seem
 11 to me that you're going to have less revenue
 12 available for any carrier that's out there to be
 13 able to go out into that very high-cost area.

14 Now that said, the FCC -- and, again, this is
 15 not binding on this Commission, but in this
 16 particular decision the FCC after going through all
 17 of this nice rhetoric about per line support
 18 amounts and all of that, then it explicitly found
 19 that you should not limit to one wireless and one
 20 wireline carrier or any particular number. Instead
 21 they went off on this thing of worrying about the
 22 effect on the Universal Service Fund, which is
 23 something that any particular state is going to
 24 have an extremely tough time doing because we don't
 25 know what they're doing in Michigan, you know.

1 So for us to say that in this particular case
 2 that by designating RCC we're somehow having an
 3 effect on the Universal Service Fund when it's on a
 4 per handset basis, I just think that's an extremely
 5 difficult finding to make on the record we have.
 6 You know, and that's not to say this Commission
 7 couldn't go a different direction than the FCC. I
 8 think you have to do it, though, on the grounds not
 9 of protecting the Universal Service Fund and all of
 10 that, but you have to do it based on the finding
 11 that it actually will undermine the ability of
 12 universal service to be provided within these
 13 particular proposed service areas. And I don't
 14 think it's beyond the realm of credibility that
 15 that's possible.

16 VICE CHAIRMAN SAHR: In focusing on
 17 the effect, and certainly I think you did a good
 18 job as you mentioned at hearing flushing out some
 19 of the effects on landline ETCs, but just on the
 20 side of wireless ETC's is there some policy
 21 argument -- and, of course, we have to apply this
 22 within the context of, you know, federal law and
 23 federal Commission orders. Is there a policy
 24 argument that perhaps one can even have too many
 25 wireless ETCs in the more rural areas of the state,

1 meaning you essentially could make it so that if
 2 you have multiple people coming in and serving a
 3 very small community -- you know, let's say it's a
 4 200 percent community and you have two ETCs there,
 5 the customer base may be something that would be
 6 difficult for two companies, two providers to
 7 sustain good service in that particular region?

8 I mean, is there any concern that you can see
 9 even among just the multiple wireless ETCs with
 10 having multiple designations in areas or are we in
 11 a situation where, you know, the best policy is to
 12 take the money and run and see what happens with
 13 the market or should we be concerned about the
 14 possibility of getting too many wireless players
 15 into a particular area?

16 MR. SMITH: I think it's a definite
 17 concern. Again, I don't know that we totally know
 18 that yet because I don't know that we've gotten
 19 there yet with respect to any carrier in terms of
 20 compelling the build-out into the very high-cost
 21 and very unattractive areas.

22 The evidence in this case -- just take a look
 23 at your map again. If you take a look at the map
 24 and the evidence we went over and over about that,
 25 where towers get built is where the people are.

1 But I think the challenge in terms of if we really
 2 mean what we say in terms of universal service and
 3 holding companies to universal service principles,
 4 I think universal service it means universal, and
 5 the statute says what does that mean? It means
 6 service throughout the designated service area. It
 7 doesn't mean in places where, you know, I have
 8 enough return, enough revenue from that particular
 9 tower deployment necessarily to earn a profit on
 10 that particular facility.

11 Now what that means -- and there was a number
 12 of places in the record where this was addressed
 13 but it really gets down to averaging. It gets down
 14 to cost averaging, and that's what it boils down to
 15 is looking at the entire service area as a lump, as
 16 opposed to viewing any particular point of
 17 development as a profit center in and of itself. I
 18 think that's going to be the challenge.

19 And I think the answer is it's possible. If
 20 you designate and you carve up the revenue pie --
 21 again, unless the assumption -- we don't really
 22 have evidence on the record as to this so I don't
 23 think you can base a finding on this. Common sense
 24 tells me that when you add multiple carriers you
 25 may have some very small increment of increase in

1 the total number of persons within that area
 2 willing to buy a cell phone. But the total -- the
 3 increase in the total cell phone customer universe
 4 is probably not going to be that huge.

5 So in turn what that means is you're going to
 6 be taking the revenue pie that's available for that
 7 particular area and you're going to be dividing it
 8 up amongst several companies and does that make it
 9 more or less likely that you will have deployment
 10 into the very, very high-cost areas?

11 I think one could deduce from even the record
 12 in this case that it's going to make it less
 13 likely.

14 In staff's brief what we concluded is that
 15 it's possible even to conclude that from the
 16 record, although the evidence wasn't that strong --
 17 we concluded that there was an insufficient
 18 regulatory framework either in federal law, state
 19 law, or FCC guidance from which to go down that
 20 path. And actually this new decision makes it
 21 less -- it lends less support to going down that
 22 path rather than more support.

23 VICE CHAIRMAN SAHR: And let's take
 24 one hypothetical as far as application of what an
 25 Order may look like coming before this Commission

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1 with RCC. You know, let's take a scenario where
 2 we'll say Company A and Company B. Company A comes
 3 in and says here's our build-out plan. We intend
 4 to serve Estelline. Company B comes in and says
 5 here's our build-out plan. We intend to serve
 6 Estelline. Let's say neither one are going to go
 7 out and serve Veblen.
 8 I think one of the last places this Commission
 9 wants to be is second-guessing private businesses
 10 and their decisions. At the same time is there any
 11 considerations given to -- especially if universal
 12 service money is being used to fund these
 13 communities, having any sort of oversight or review
 14 or some sort of role in the process to make sure
 15 that we are, in fact, getting out there and serving
 16 as many underserved communities as possible?
 17 MR. SMITH: I think the answer there
 18 is yes. Again, right now I can only speak with
 19 respect to Western Wireless, who is the only
 20 wireless ETC in the state. And the answer is -- is
 21 really it's in a very embryonic phase. But we just
 22 went through our first report from Western Wireless
 23 that involves the submission of build-out plans,
 24 and that was a concern.
 25 And the concern right now, of course, isn't

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1 electing between two carriers, where are you going
 2 to put your stuff. It really was more taking a
 3 look at what they were proposing and then comparing
 4 it against where the Commission staff may be
 5 perceiving having its maybe differing opinion in
 6 some cases of demand. Sometimes through our own
 7 internal network of Complaints, et cetera, and the
 8 reporting systems that we've developed, which I can
 9 tell you honestly are -- there again, in a very --
 10 we're in the beginnings of doing this.
 11 So that mechanism of getting our input -- the
 12 Commission's input in the form of the staff down
 13 into -- a little deeper and into the planning
 14 process, it isn't there yet, but that is the path
 15 it's going down and, yeah, I would see that as
 16 being possible. Once we're looking at two carriers
 17 with ETC in the same area, I would certainly think
 18 we might be looking at trying to get the two
 19 carriers to maybe be coordinated so we get coverage
 20 sooner.
 21 And, again, remember some of the questions and
 22 evidence from the Commission during the proceeding
 23 dealt with the wisdom of things like collocation
 24 and some other things where we could get cost down
 25 on deployment if we're not going to designate

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1 multiple ETCs, not build a separate tower for every
 2 company.
 3 VICE CHAIRMAN SAHR: Then the final
 4 obvious question is, you know, if we do put
 5 limitations on the number of ETCs, do we create
 6 some sort of race to the Commission?
 7 Is it dangerous policy to look out there and
 8 there's going to be one, there's going to be two,
 9 there's going to be three, pick the number, and
 10 does it create some kind of odd results possibly
 11 with whoever gets here first is the winner and
 12 whoever doesn't is the loser?
 13 MR. SMITH: I think there is. And
 14 one of the precise rationales given by the FCC for
 15 rejecting an arbitrary limitation of number of ETCs
 16 was just that. And, you know, I mean, I think
 17 going down that path, that's a significant policy
 18 departure from what previous FCC decisions have
 19 held.
 20 In effect, as I think we pointed out in our
 21 original brief, that the philosophy when you go
 22 down that path is very similar to any other
 23 franchising type philosophy, and it's pretty much
 24 the philosophy that we have had with respect to
 25 rural LECs historically. I mean, that's really

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1 what we have had historically here is basically a
 2 franchise system. It's what we have today in the
 3 electric system here in South Dakota.
 4 But I think the bottom line is that's really
 5 what you'd be talking about, is in effect -- and
 6 how do those rural LEC franchises or the cable
 7 franchise in Sioux Falls, Midco, how did they get
 8 in that situation?
 9 I mean, the truth is originally at least the
 10 same thing. They were the first there. The
 11 problem I think we have here is I think the legal
 12 framework for that here in this case is very weak
 13 to start saying we're only going to approve one and
 14 make that a cut and dried rote Decision. And it's
 15 even weaker in the wake of the last Decision.
 16 VICE CHAIRMAN SAHR: Thank you.
 17 CHAIRMAN HANSON: Commissioner
 18 Johnson, did you have anything?
 19 COMMISSIONER JOHNSON: No.
 20 CHAIRMAN HANSON: Thank you. At
 21 this juncture Mr. Coit probably feels like he needs
 22 more of a rebuttal than Mr. LaFluria, but
 23 nevertheless, Mr. LaFluria. I will give Rich an
 24 opportunity just to address some of the remarks
 25 that -- do you wish to positively be last?

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1 MR. LAFURIA: Sure. I mean, I'd be
 2 happy to have him go first.
 3 MR. COIT: I think we're okay
 4 actually.
 5 CHAIRMAN HANSON: All right.
 6 MR. LAFURIA: Thank you,
 7 Mr. Chairman, Commissioners. I'll try to be brief
 8 even though I now have more than I had when I got
 9 started.
 10 Let me start with perhaps staff's most
 11 important point and I apologize if I jump around a
 12 little bit and please feel free to jump in with
 13 questions. I think staff's most important point
 14 was, you know, and we agree with it, what is the
 15 effect on the universal service? What is the
 16 effect on universal service, not necessarily what
 17 is the effect on the Universal Service Fund.
 18 And what I wanted the Commission to understand
 19 is that while certainly all of us no matter where
 20 we stand on this would have liked to have seen a
 21 little more detail or a little better guidance from
 22 the FCC, if you look back all the way to 1997 when
 23 their first Report and Order came out, there is a
 24 stack of paper that is probably 4 feet high now in
 25 terms of what they have provided on how the system

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1 is supposed to work and how they want it to work
 2 and they've been very consistent with implementing
 3 a plan for making universal service work coexistent
 4 with advancing competitions required by the
 5 Congress in '96.
 6 So I want to address how they did that because
 7 I think it will bring together a lot of answers to
 8 a lot of the things that were raised in the recent
 9 Q and A.
 10 I think the biggest concern is what happens
 11 when an ILEC has a high-cost area and a low-cost
 12 area and a competitor comes in and takes away the
 13 low-cost customers. If I understand it, that's a
 14 significant concern that this Commission has. What
 15 do we do with an ILEC who was left with only the
 16 high-cost portions? How are they going to meet
 17 their revenue requirements?
 18 I believe the FCC's system sufficiently
 19 addresses that, and it does so in the following
 20 way: Bear with me as I try to pull all of this
 21 together immediately. The FCC currently has rules
 22 in place which say that the ILEC does not lose
 23 support for its network when a new competitor comes
 24 in. That is when RCC or Western or any other ETC
 25 comes into the marketplace they will get support

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1 only when they get a customer, and they get only
 2 the per line support that the ILEC gets for that
 3 customer.
 4 Now it can be presumed based on our rate of
 5 return analysis that the competitors are going to
 6 enter the lower-cost portions first, and, indeed, I
 7 think if you look at this map, you could say
 8 without support -- without any even knowing much
 9 about South Dakota, I know Sioux Falls is the
 10 lower-cost area, and I would make a bet that in the
 11 places where RCC has located these cell sites --
 12 and I think you'll find it in the record that
 13 generally they are the lower-cost portions in that
 14 area. It makes perfect sense without support
 15 that's the only place you're going to construct.
 16 My thesis is this: In places like Sioux Falls
 17 and these communities which are generally lower
 18 cost, competition is going to come here whether you
 19 designate these companies as ETCs or not. They're
 20 going to eat away at the ILEC's dominance, their
 21 monopoly market share in these areas irrespective
 22 of whether you designate them as ETC. If they
 23 never get a dime, they're going to continue to
 24 improve their service in these little areas until
 25 they can compete.

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1 So what is the answer with universal service
 2 support? The answer is competitors in Sioux Falls
 3 and these communities should not be receiving
 4 significant amounts, if any, of high-cost support.
 5 They should not be rewarded for doing so. You can
 6 make a fairly good argument that in Sioux Falls you
 7 may get four or five new competitors in that
 8 market. I argue, great, but they shouldn't all get
 9 a high amount of high-cost support for doing so
 10 because they're going to come here without support
 11 anyway.
 12 The answer that the FCC drew up in 2001 and
 13 the answer which the ILEC signed on to is this
 14 disaggregation of support. It was done after two
 15 years of rural task force hearings and six white
 16 papers and you can look it all up where they all
 17 came to the decision -- as I say, it's one of the
 18 few things that wireless and ILECs agreed on.
 19 There shouldn't be rewards for competing here.
 20 Let's move the support out to these white spaces,
 21 assuming that this map is correct and that these
 22 white spaces represent the higher-cost areas.
 23 Let's get the big dollars out there.
 24 Your question is how do you provide an
 25 incentive for a competitor to get out there? Do

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1 you get in private business decisions and say we
 2 want you to build in this particular community
 3 because it doesn't have service?
 4 My answer is no. My answer is if that
 5 community is truly remote, instead of getting \$2 or
 6 \$1 of support, as should probably be the case in
 7 low-cost areas, have these companies disaggregate
 8 and when they put 20, 30 -- and I know in this
 9 state there's places where there's \$80 of per line
 10 support available per month, per line. You'll
 11 provide a pretty powerful incentive for every new
 12 ETC, every wireless carrier, to do a rate of return
 13 investment analysis.
 14 How many customers are there, how much
 15 supported dollars are available there, how many
 16 customer dollars of revenue are available there,
 17 and how many other competitors are in the market
 18 now? Do I have the ability to build facilities in
 19 this area? If you add all of those up and the
 20 answer is yes, you'll get at least one in there.
 21 Which brings me to the question of what do you
 22 do about the possibility that there's four or five
 23 ETCs out in this high-cost area? Again, the per
 24 line support methodology that the FCC has put
 25 together solves this problem for you. You need not

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1 make market-based determinations the carriers make.
 2 The reason is, let's use that community of
 3 200, for example, and let's assume that it takes
 4 one cell site for the purposes of this example, one
 5 cell site to serve that community and back-off
 6 facilities and it adds up to \$300,000. The first
 7 new ETC that goes in there is going to do that rate
 8 of return analysis and make that determination, can
 9 I build a facility in here and make a return.
 10 If the answer is no, they're not going to
 11 build. And they're still going to have their ETC
 12 obligations so the only way they can fulfill their
 13 ETC obligations is to resell on the existing
 14 carrier's network. That may be all that's
 15 available there. And it's possible that that's all
 16 that's available.
 17 However, if it does make sense and they build
 18 a cell site there, you now have one wireless
 19 carrier in that market. If you designate a second,
 20 third, a fourth, a fifth -- I don't really care how
 21 many you designate. You can designate 20. I
 22 really don't care how many ETCs you designate in
 23 this area. Each subsequent ETC would have an
 24 obligation to serve customers who request in that
 25 area.

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1 But each subsequent ETC also has the common
 2 sense and obvious business requirement to determine
 3 whether they can afford to build a cell site there,
 4 knowing that there's a competitor that's already
 5 got customers, knowing that they have to share
 6 support, knowing that they have no guaranteed
 7 return and knowing that ultimately it has to make
 8 business sense to do so.
 9 So they may decide -- number two, number
 10 three, they may decide that they can't build there,
 11 but what they have to do is resell. And so now the
 12 benefit you have for consumers is, A, they've got
 13 wireless service in the area. Requesting consumers
 14 can get it. And they also have a second ETC that
 15 they can look to who may provide different service
 16 options, different local calling areas -- they may
 17 knit them together with other places in the state
 18 where they provide service and offer features.
 19 There are a whole raft of benefits that
 20 consumers would see in this area from having more
 21 than one competitive ETC, even if they only have
 22 one network on which to make their calls. And as a
 23 reseller in that area, the second, the third, and
 24 the fourth ETC they don't get support for doing it
 25 so if they have a customer buy resell, they get

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1 zero. It's only the carrier with facilities that
 2 gets ETC support.
 3 So coming back to I think it was Mr. Houdek's
 4 concerns, his concerns are very real. His lunch is
 5 going to get eaten first in his lowest-cost areas,
 6 whether that's a really truly low-cost area or
 7 whether it's -- in most rural communities it's the
 8 lower-cost portions. It's still a fairly high-cost
 9 area oftentimes in the rural areas. But
 10 competitors are going to go there first.
 11 And he's got that problem, irrespective of
 12 whether there are ETCs or not. The per line
 13 support methodology and disaggregation forces
 14 carriers to go out to the highest-cost areas if
 15 they want to get any level of support.
 16 So, in conclusion, you may get some areas that
 17 don't get construction. That's always possible.
 18 But what you get is every incentive for it to be
 19 done out there, by having carriers move their
 20 dollars out.
 21 The State of Washington conducted a proceeding
 22 several years ago where they forced every ILEC to
 23 disaggregate their support. They moved all of
 24 their money out to the high-cost portions of the
 25 area. So that as a competitive ETC in Washington

1 if you want to build in the Seattle metro or Tacoma
2 or all of these areas, you get nothing. You get
3 very few dollars sometimes. Sometimes it's pennies
4 per month.

5 But if you go out to eastern Washington where
6 it's just as rural as it is in South Dakota -- it's
7 less than one person per square mile in some
8 cases -- there's real dollars out there. There's
9 up to \$100 a month out there for carriers who are
10 willing to take the chance and go out there and
11 build facilities.

12 If you give me just a moment to go through my
13 notes, I'll try to minimize what I have left.

14 I did want to answer -- I think it was
15 Commissioner Sahr, your question about the
16 technology and the difference in technologies. I
17 can tell you that the technology is transparent to
18 the consumer. In terms of whether they can receive
19 the nine supported services they're going to get or
20 whether it's analog, CDMA, GSM, or otherwise, it
21 matters not how those services are provided to the
22 consumer. It will be transparent to them, and the
23 obligation to provide the nine supported services
24 stays the same no matter which technology the
25 company chooses.

1 I'm not sure if that answers your concern
2 but --

3 I wanted to speak just a moment to Mr. Coit's
4 comments about RCC somehow downplaying the process.
5 I mean, I hardly think that RCC has downplayed the
6 process in this case. The company has been pending
7 for 17 months, and it has submitted a substantial
8 record. I think there's a terrific record in this
9 proceeding on which the Commission can make all of
10 the findings, including capability and commitment,
11 which I'll step to in just a second.

12 I think if you compare the record here with
13 the record in the Western case previously, I think
14 you'll find there's plenty of record evidence to
15 designate. I think if you compare it to the
16 Virginia Cellular and the Highland Cellular records
17 at the FCC --

18 And, honestly, I represented both of those
19 companies. There is no question but that this
20 record is far more substantial than what they
21 submitted there, and for the Interveners to suggest
22 that the FCC has found that the process is broken I
23 think is emphatically so wrong, only because the
24 FCC has never conducted a proceeding that is nearly
25 as detailed or as adversarial or as significant as

1 what we have here.

2 They've never conducted a full hearing.
3 They've never conducted briefings. They've never
4 had oral argument. They've never pulled together
5 the extensive evidence on any issue, including
6 cream skimming, that you have in front of you here
7 in this proceeding. So far from the FCC feeling
8 the process is broken, I think they feel that what
9 they want is more consistent standards in the
10 future. But there was nothing in that Order that
11 indicated and I've heard nothing from the FCC to
12 indicate that states are not doing this properly,
13 and in the very few states that have designated
14 very aggressively the Commission has not pointed
15 them out or in any way made statements to indicate
16 that they're not doing it properly.

17 The State of Washington has never conducted a
18 hearing either, and I've not heard -- and they've
19 designated as much as 10 or 11 ETCs now, and I
20 don't think the FCC has ever said anything that
21 they're not doing this properly or not affording
22 due process or anything else.

23 I think that Interveners in their comments
24 here talked a lot about there being a more rigorous
25 process, and my response to that is it seems to me

1 that what they really want is to selectively apply
2 portions of the FCC's rules. They want you to
3 take, for example, 209 of the new proposed rules
4 that will become effective in May, let's say, and
5 they want you to, say, apply those here right now
6 in this proceeding but while you're at it please
7 ignore B, which says the FCC's not going to apply
8 that in their existing proceedings.

9 And I think their selectiveness here is really
10 the -- I think that's really the turning point of
11 your decision. I think you can look at that and
12 say, you know, clearly this is the way it should go
13 procedurally. There's good law that says a change
14 of law does not result in additional proceedings,
15 and the FCC is doing it this way so if we're going
16 to follow their game plan, we should follow all of
17 it and just not parts of it selectively.

18 As far as RCC's capability and commitment, you
19 know, the company was very specific. It told you a
20 projection of how many dollars they thought they
21 were going to get in the first year, year and a
22 half. They told you how they're going to spend
23 those dollars, where they're going to spend those
24 dollars, and they made provisions so that you
25 understood that all of those dollars are being

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1 spent out in the highest-cost areas to extend their
 2 network beyond where it is now.
 3 I think you have the potential to do a very
 4 good job of calling all ETCs back every year and
 5 asking few very simple questions: How much money
 6 did you get last year compared to what you
 7 projected? What did you do with it to improve
 8 service out in these rural areas? How many dollars
 9 do you expect to get in the next year and where do
 10 you expect to spend those dollars and come back
 11 next year and tell us what you did.
 12 And every single year you can look at this map
 13 and you can say are we doing any better in terms of
 14 filling this in? After 15 years of being
 15 licensed -- there's been a licensee holding this
 16 area for 15 years. RCC hasn't been the license
 17 holder for that whole time. This is what's been
 18 built.
 19 And I would suggest to you if there was a real
 20 business plan to build all of these other areas, it
 21 would have happened. And without support you're
 22 not going to see substantial additional
 23 construction in these areas in the foreseeable
 24 future. That's what this proceeding is all about,
 25 new cell sites in these areas to improve service

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1 for rural consumers.
 2 In terms of sustainability of the fund, I
 3 mean, we couldn't agree more with staff. I think
 4 our calculations are that a million and a half
 5 dollars on a \$3.9 billion fund represents
 6 one two-thousandths of the fund. It's minuscule.
 7 And when it comes to sustainability of the fund, we
 8 urge you not to look to the ILECs for concern about
 9 growth in the fund.
 10 I mean, this is a group that filed suit
 11 against the FCC and Federal Court to overturn caps
 12 when the FCC proposed to cap their funding. Their
 13 concern for growth in the fund has really been
 14 sharpened when competitors have had a chance to
 15 enter in a competitive way and take a bite out of
 16 their customer base.
 17 As far as continuing reporting requirements, I
 18 think, you know, there's no question but that we
 19 need a rule-making here. If I understood anything
 20 from Mr. Coit's comments, you know, you have a
 21 company that's maybe been operating for 50 plus
 22 years. You know, in 2005 -- there are different
 23 questions you have to ask each carrier, and they
 24 can't be resolved in this proceeding in order to be
 25 competitively neutral.

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1 ILECs in the state now get approximately
 2 \$52 million a year in support and I think the total
 3 amount going to competitors, wireless and wireline,
 4 this year will amount to about \$16 million. So I
 5 think your question to the ILECs since they pretty
 6 much -- they have mature networks that as a general
 7 matter are not growing rapidly, the question is
 8 you're getting \$52 million and you've build out the
 9 whole state. What are you doing with these funds?
 10 And I don't think anybody really understands
 11 exactly where these funds go. There's not an
 12 auditing procedure in place at the FCC that
 13 examines closely high numbers of rural ILEC
 14 expenditures throughout the country. We just don't
 15 have that right now. And to the extent that you
 16 want to start to look at that, it's a subject which
 17 is far bigger than this proceeding and obviously
 18 would need to be done in a rule-making. And it may
 19 be that here in the state you have certain controls
 20 and certain things in place where you're satisfied
 21 that the ILECs have done everything they need to
 22 do.
 23 And that's just fine, but to consider it at
 24 all can't be done in this proceeding. To be
 25 competitively neutral getting comments from the

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1 parties throughout this state and looking at it in
 2 a rule-making really is the way to go.
 3 Finally, I just -- one quick comment on staff.
 4 There was one comment from staff that the ILECs
 5 would need to make their filings on a wire center
 6 basis if you redefine them down to the wire center
 7 level and there would be some administrative burden
 8 as a result.
 9 My understanding is that that would not
 10 happen. That is that the redefining of a service
 11 area does not change for the ILECs in any way how
 12 they report their costs to this Commission. The
 13 only time that would change would be if the ILECs
 14 disaggregate their support down to the wire center
 15 level. So for those who have, they're going to be
 16 doing that or they're already doing it, and were
 17 you to do like Washington did, for example, and
 18 cause all of the ILECs to disaggregate their
 19 support, then they would have an additional burden
 20 to report their costs on a wire center by wire
 21 center basis. So I don't think there would be any
 22 additional administrative burden.
 23 Finally, I think on the certification I do
 24 believe there's enough evidence in the record in
 25 terms of the projected amount of support that RCC

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1 would receive in the first year, their commitment
 2 to construct and expand their system with the
 3 dollars that they project that they'll get in the
 4 first year such that you could certify them for
 5 that one-year basis. And we would ask that you do
 6 so shortly after the designation so that funds
 7 could commence at the earliest possible date.
 8 And then a year out from now you'll have an
 9 opportunity to review this again, and if the
 10 company has not -- if the company said we got these
 11 funds and we spent them in Minnesota, for example,
 12 you wouldn't recertify them presumably for the next
 13 year.
 14 And that concludes my remarks. I'm happy to
 15 take any additional questions.
 16 CHAIRMAN HANSON: Thank you very
 17 much. My apologies to Cheri. I didn't know this
 18 was going to go as long as it is.
 19 (Discussion off the record)
 20 CHAIRMAN HANSON: I have a couple of
 21 questions. Some of them are hopefully very obvious
 22 and are the new standards beneficial in your
 23 opinion to the consumers if they are applied?
 24 MR. LAFURIA: That's a good
 25 question. As a general matter, no. And I say that

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1 because I think there are a few that could be, but
 2 just to use the five-year plan, for example, the
 3 Commission was very careful in our Virginia
 4 Cellular case to tell us we understand when you
 5 propose all of these new cell sites that you may
 6 build them in different places or you may spend
 7 your funds in a different way. And that's not a
 8 problem. Come back to us every year and tell us
 9 what you've done, and we're going to examine
 10 whether you're using support to benefit the rural
 11 consumers and expand your network but we're not
 12 going to hold you what to what you propose here.
 13 Now they've come up with a five-year plan and
 14 I think they're going to engender more confusion
 15 and more difficulty than they understand in that,
 16 number one, they'll have to apply it on a
 17 competitively-neutral basis to ILECs in some way,
 18 and I think that represents a whole separate set of
 19 problems.
 20 Number two, in terms of consumers, I don't
 21 know how consumers are going to get service any
 22 faster as a result of a five-year plan or a
 23 one-year plan. Given that there's an annual
 24 review, I don't know that there's any real use for
 25 this Commission seeing plans so far down the road,

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1 which, as anybody knows, in a rapidly changing
 2 marketplace and where technology has changed
 3 rapidly, plans are likely to change.
 4 Any five-year plan that any carrier with an
 5 immature network gives you at this stage is going
 6 to be largely a guess, and it's going to be more of
 7 a guess as you get past 12 months. 12 months I
 8 think you'll get a pretty good fix on what they're
 9 going to do because they've budgeted for the next
 10 year and made those decisions. Two years out it
 11 gets to be more of a guess.
 12 By the time you get to five years there's no
 13 way to know what the market place is going to be
 14 like, what the levels of support will be. I mean,
 15 those rules could change, and if support were cut
 16 in half, for example, then the amount of
 17 construction they could do would presumably go
 18 down.
 19 You have a very practical problem of
 20 communities -- perhaps it would be revealed
 21 publicly that these five communities are on the
 22 plan year three or year four, and when year three
 23 comes if support were cut in half, suddenly they're
 24 not on the plan because there's no high-cost
 25 support to do it, I'd suggest those communities

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1 would be fairly disappointed, whether it be
 2 disappointed with us or the Commission or whoever
 3 else. I don't think the FCC ever took that into
 4 account when they said the five-year plan.
 5 As far as local usage goes, I don't think the
 6 FCC understood fully that competitors already have
 7 a wide variety of local usage plans that provide
 8 plenty of benefits to consumers. The benefits to
 9 consumers don't come from a particular local usage
 10 plan. They come from having new network facilities
 11 so that they can make calls and we can have
 12 economic development.
 13 So when you get a competitor in there a
 14 competitor is going to do everything he possibly
 15 can to give consumers as much value as he can to
 16 take customers from other competitors. So I don't
 17 know that there's a whole lot of other value there.
 18 In terms of how do you handle your network, I
 19 think there is some value to consumers there, and I
 20 think it is worth this Commission at some point
 21 having all carriers be able to report to this
 22 Commission how do they deal with network outages
 23 and problems and how are they designing procedures
 24 to take care of emergencies, for example?
 25 I think that's fair. I think it's reasonably

1 related to the goals of universal service, which is
 2 to see the carriers are providing high-quality
 3 service, and I don't think it's particularly
 4 intrusive. It doesn't get into making decisions
 5 for where a carrier builds a cell site, for
 6 example.

7 And I can't honestly remember the other.
 8 There were four things out there. But I think in
 9 general that covers it.

10 CHAIRMAN HANSON: Well, you've
 11 covered sustainability of USF earlier.

12 MR. LAFURIA: Yes.

13 CHAIRMAN HANSON: So generally
 14 speaking you don't think they're of tremendous
 15 benefit, and possibly one or two of the rules may
 16 be of benefit.

17 MR. LAFURIA: I don't think they'll
 18 have huge benefits to consumers, and I -- you know,
 19 my concern is that the more regulation is placed on
 20 all carriers, the more dollars are spent to comply
 21 with regulations.

22 And I know in the ILEC world because
 23 they're -- they receive support differently than do
 24 competitors. In the ILEC world the cost of
 25 regulation is a part of their rates, and it's

1 reopening of the record and that a carrier is
 2 entitled to a determination of its application or
 3 petition based on the law that's in effect at the
 4 time.

5 In terms of whether this Commission has
 6 discretion, I guess I'd rather choose not to speak
 7 to that. I mean, I think you all are in the best
 8 position to make that call. I think that, you
 9 know, very strongly if you look at the law and you
 10 look at fundamental fairness and you look at the
 11 Administrative Procedures Act, I think there's no
 12 question but that we have a record and we're pretty
 13 far down the road here and RCC should have a
 14 decision based on the law that's in place today. I
 15 think that's clearly where the FCC came out.

16 And so to the extent that you want to follow
 17 anything the FCC did, I would say follow none of it
 18 or follow all of it in terms of deciding to hold a
 19 rule-making to add additional requirements. Also I
 20 would say then go right -- you know, that's in A.
 21 Then go to B, which is and do so outside of the
 22 context of this proceeding, which is what they did.

23 CHAIRMAN HANSON: Thank you. My
 24 last question is if some of the rules are
 25 beneficial to the consumer and if we have the

1 necessarily then a part of their revenue
 2 requirements. It's a part of the universal service
 3 support that they get.

4 So as regulatory requirements rise, thus
 5 also -- although I don't know it's that
 6 significant, there is a corresponding rise in the
 7 need for universal service support.

8 CHAIRMAN HANSON: You heard
 9 John Smith testify that he did not think it was
 10 fair to apply the new regulations, which I assume
 11 you agree with. Is it your opinion that we have
 12 the right to apply them?

13 You had said earlier that there is good law
 14 providing that we should not, so it's for -- my
 15 question is --

16 MR. LAFURIA: Yes.

17 CHAIRMAN HANSON: -- do you mean to
 18 intimate that we do not have that ability?

19 MR. LAFURIA: Well, I think we cited
 20 AT&T v. FCC, I think, which is a Decision out of
 21 the D.C. Circuit, and I think there's another
 22 Supreme Court case in there somewhere that perhaps
 23 staff cited, which I think indicates that under the
 24 Administrative Procedures Act anyway a carrier -- a
 25 change of law does not require an opening -- a

1 ability to apply those, then would it not be in the
 2 best interest to the consumer for this Commission
 3 to apply those new requirements?

4 MR. LAFURIA: No. And I say that
 5 because I think you can balance this. I think that
 6 the balancing here is as follows: The number one
 7 thing that you want to do is you want to get these
 8 cell sites built. You want to get the funds into
 9 the state and you want to force the carrier to
 10 build something and get this done in 2005 and I
 11 think that's why you do the designation now.

12 If you reopen the record, I think you're going
 13 to, with all question, forego a million five or
 14 some substantial portion of that that would come
 15 into this state to build these four cell sites that
 16 RCC has proposed out here. And I think the public
 17 interest, the consumer interest, is much greater in
 18 these four communities, in these areas, in getting
 19 these cell sites done in 2005 than it is to reopen
 20 this record to determine whether RCC can properly
 21 handle a traffic spike, for example.

22 CHAIRMAN HANSON: Thank you. Any
 23 further questions?

24 MS. AILTS WIEST: I just had one
 25 quick one based on that then. I know you objected

1 to one of staff's conditions that said you would
2 build those four sites in 2005. If the Commission
3 were to designate you within the next 30 days -- I
4 suppose we'd have to have redefinition too.

5 Do you have an objection to the Commission
6 requiring those four cell sites to be built within,
7 you know, this year or maybe the first part of next
8 year?

9 MR. LAFURIA: I don't think I can
10 answer that factually on behalf of the client,
11 unfortunately, but what I would say is this: It's
12 unclear to me as of today when the designation --
13 based on when the designation would be made, there
14 is a lag time between the designation and the
15 receipt of funds, and that could be as late as
16 September.

17 The ability of a company, let's say, in
18 September to do four cell sites will depend on how
19 many dollars it actually gets. How does the
20 weather go when you get in towards the winter in
21 terms of construction and the ability to pour
22 concrete and all the other things that they may
23 need to do.

24 So from a very practical standpoint I couldn't
25 make that commitment. The commitment I can make is

1 that once the funds start flowing, those four cell
2 sites -- I think their commitment in the
3 application is 18 months, and those four cell sites
4 are going to get done in 18 and if they don't,
5 RCC's going to come back to you and explain why it
6 didn't happen and what they did with those funds.

7 MS. AILTS WIEST: Thank you.

8 COMMISSIONER JOHNSON: I had some
9 questions about Mr. LaFluria's sort of economical
10 analysis, but the more I think about it, they're
11 mostly argumentative and academic in nature. So I
12 think I'll forego that.

13 MR. LAFURIA: Fair enough. Happy to
14 argue always.

15 CHAIRMAN HANSON: Thank you all
16 very, very much. We appreciate the presentation
17 and the information that you've provided to us. It
18 was for someone who has sat through the ETC
19 hearings prior, I would have preferred to sit
20 through just this portion but I found it all very
21 educational and I appreciated the additional
22 information we received.

23 This will conclude the hearing.
24
25

1 STATE OF SOUTH DAKOTA)
2 :SS CERTIFICATE
3 COUNTY OF HUGHES)
4
5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter and Notary Public in and for the
7 State of South Dakota:
8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 12th day of
11 April 2005, and that the attached is a true and
12 correct transcription of the proceedings so taken.
13 Dated at Pierre, South Dakota this 27th day
14 of April 2005.
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Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter

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