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THE PUBLIC UTILITIES COMMISSION

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OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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IN THE MATTER OF THE FILING BY
WWC LICENSE CO., INC. D/B/A
CELLULARONE FOR DESIGNATION AS
AN ELIGIBLE TELECOMMUNICATIONS
CARRIER IN OTHER RURAL AREAS

TC03-191

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Transcript of Proceedings
May 4-6, 2004

COPY

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BEFORE THE PUBLIC UTILITIES COMMISSION,
ROBERT SAHR, CHAIRMAN
GARY HANSON, VICE CHAIRMAN
JIM BURG, COMMISSIONER

COMMISSION STAFF
Rolayne Ailts Wiest
John Smith
Greg Rislov
Harlan Best
Pam Bonrud

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Telecommunications Co-op, Vivian Telephone
Company, Venture Communications, Tri-County
Telecom, Inc.;

Reported By Cheri McComsey Wittler, RPR

PRECISION REPORTING
L I M I T E D

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2 OF THE STATE OF SOUTH DAKOTA
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29 Pierre, South Dakota 57501,
30 appearing on behalf of Golden West
31 Telecommunications Co-op, Vivian Telephone
32 Company, Venture Communications, Tri-County
33 Telecom, Inc.;
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35 Reported By Cheri McComsey Wittler, RPR

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1 TRANSCRIPT OF PROCEEDINGS, held in the
2 above-entitled matter, at the South Dakota State
3 Capitol Building, 500 East Capitol Avenue, Pierre,
4 South Dakota, on the 4th through the 6th day of
5 May 2004.
6 =====

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(Western Wireless Exhibits 1 through 5 are
marked for identification)

(Intervenors' Exhibits 1 through 10 are
marked for identification)

counsel. She may provide recommended rulings on procedural and evidentiary matters. The Commission may overrule its counsel's preliminary rulings throughout the hearing. If not overruled, the preliminary rulings will become final rulings.

At this time we will take the appearances of the parties. Western Wireless.

MR. WIECZOREK: On behalf of Western Wireless, Mr. Chairman, Talbot Wieczorek with Gunderson, Palmer, and Mark Ayotte with Briggs and Morgan.

CHAIRMAN SAHR: Thank you. Just the attorneys at this point. Thank you.

MR. COIT: Mr. Chairman, representing the South Dakota Telecommunications Association, Richard Coit.

MS. ROGERS: Mr. Chairman, representing Golden West Telecommunications Co-op, Vivian Telephone Company, Venture Communications, and Tri-County Telco, Darla Pollman Rogers. And appearing with me as co-counsel for those clients is Ben Dickens of Washington, D.C.

MR. CREMER: Commissioners, I'm Jim Cremer. I'm an attorney from Aberdeen, and I represent James Valley Telephone.

CHAIRMAN SAHR: I will begin the hearing for Docket TC03-191, In the Matter of the Filing by WWC License, LLC, Doing Business as Cellular One for Designation as an Eligible Telecommunications Carrier in Other Rural Areas.

The time is approximately 9:30 a.m. The date is May 4, 2004. The location of the hearing is in Room 412, State Capitol, Pierre, South Dakota. I am Robert K. Sahr, Commission Chairman. Commissioners Gary Hanson and Jim Burg are also present. I am presiding over this hearing.

This hearing was noticed pursuant to the Commission's Order For and Notice of Procedural Schedule and Hearing issued February 13, 2004. The issue at this hearing is whether WWC License, LLC should be granted designation as an eligible telecommunications carrier in the study areas of certain rural telephone companies.

All parties have the right to be present and to be represented by an attorney. All persons so testifying will be sworn in and subject to cross-examination by the parties. The Commission's final decision may be appealed by the parties to the State Circuit Court and State Supreme Court.

Rolayne Ailts Wiest will Act as Commission

MR. SMITH: And I'm John Smith, representing Commission staff.

CHAIRMAN SAHR: Thank you. Any other parties?

Seeing none, I will turn the proceeding over to Rolayne. Thank you.

MS. AILTS WIEST: Before we get started with opening, are there any motions that anybody has or any preliminary matters to bring forward?

If not, I think we can start with opening statements. Mr. Ayotte.

MR. AYOTTE: Thank you. Chair Sahr, members of the Commission. I am Mark Ayotte. I'm with the Briggs and Morgan Law Firm in St. Paul and delighted to be back before you representing Western Wireless.

Western Wireless is a commercial mobile radio services provider in South Dakota. As you probably know, it is authorized by the FCC, and it currently provides services throughout the State of South Dakota. It's licensed throughout the state in all rural service areas, RSAs and MSAs.

Western Wireless has an existing network in place today that provides a variety of services,

1 mobile telephony, data, 911, voice mail, and other 2 features. 3 We filed an application seeking designation as 4 an ETC for the purposes of eligibility to receive 5 federal universal service support in the study 6 areas of seven of the rural LECs. Western has 7 already been designated, as you know, an ETC in 8 South Dakota in Qwest areas as well as the study 9 areas of 26 other rural LECs. 10 Today Western Wireless will offer the 11 testimony of two witnesses to address its 12 compliance and satisfaction of the applicable ETC 13 criteria under Section 214(e) of the Federal Act 14 and which is the same standard set forth in state 15 law. 16 First there will be Jim Blundell. Jim is the 17 executive director of external affairs for Western 18 Wireless Corporation, the parent company of WWC 19 License. Mr. Blundell is responsible for 20 regulatory and legislative matters for the company 21 at both the state and federal levels, and he has 22 lead responsibility for ETC applications before 23 numerous State Commissions and the FCC. 24 We'll also sponsor the testimony of Don Wood. 25 Mr. Wood is an independent consultant, an expert in	9	1 charges using media of general distribution and it 2 can and will make those services available 3 throughout its requested designated service areas. 4 Then there's the public interest 5 determination. And the public interest 6 determination is required under Section 214(e) if 7 the Commission is being asked to designate an 8 additional ETC in an area served by rural telephone 9 company. And our evidence will show that Western 10 Wireless's designation as an additional ETC is 11 consistent with the public interest. 12 And that's what this case is about. It's 13 about the satisfaction of the criteria under 14 Section 214(e) for designation as a federal ETC. 15 Now the incumbent rural LECs where Western is 16 seeking designation, they've already been 17 designated by the Commission as an ETC in all of 18 the South Dakota exchanges where they provide 19 service. Each LEC is the only ETC in their 20 respective exchanges. So the designation of 21 Western Wireless as an additional ETC will enable 22 competition in the provisioning of universal 23 service. 24 And that's also what this case is about, about 25 competition. Now it's not competition for the sake	11
1 economic and regulatory issues in the 2 telecommunications industry. Mr. Wood has a B.A. 3 in finance, an M.B.A. with concentrations in 4 finance and microeconomics. Formerly he's worked 5 in the telecommunications industry for an RBOC and 6 an interexchange carrier. 7 To date Mr. Woods has testified before 8 35 State Commissions, the Commonwealth of 9 Puerto Rico, as well as the District of Columbia, 10 and the FCC. He has expansive experience on issues 11 relating to the design and implementation and 12 administration of universal service support 13 mechanisms and specifically ETC designations. 14 Mr. Blundell will primarily address the 15 statutory requirements for designation as a federal 16 ETC in the rural study areas. As I said, these are 17 the same requirements that are set forth in 18 South Dakota Code 49-31-78, and the basic 19 requirements for ETC status are fairly simple and 20 straight forward. 21 Our evidence will show that Western Wireless 22 meets all of the required ETC criteria. It's a 23 common carrier. It offers the supportive services 24 as required by FCC Rule 54.101. It will advertise 25 the availability of the supported services and	10	1 of competition, but competition as a means to an 2 end. It's about the benefits of competition. 3 Lower rates, the mobility of Western's services, 4 expanded local calling areas, faster deployment of 5 service, improved services, giving the customers a 6 choice. It's about the benefits to the rural 7 consumers. 8 Now the FCC recognizes that promoting 9 competition and advancing universal service are not 10 mutually exclusive. They're compatible goals. 11 Anyone who suggests otherwise is presenting a false 12 choice between competition and universal service. 13 Both are expressed goals of the '96 Act, and both 14 can be accomplished through the designation of 15 Western Wireless as an additional ETC. 16 Now the Intervener's evidence, through their 17 evidence they do not and cannot dispute Western's 18 evidence of its compliance with the basic ETC 19 criteria. Federal law states a CMRS provider such 20 as Western Wireless is a common carrier. Western's 21 existing network provides each of the nine 22 supported services under FCC Rule 54.101. 23 Once designated an ETC, Western will advertise 24 the availability of its universal service offerings 25 and charges using media of general distribution and	12

1 Western Wireless can and will make those services
2 available throughout the requested designated
3 service areas which are listed on Attachment A to
4 the application.
5 In fact, none of the Interveners will sponsor
6 any testimony to dispute or object to Western
7 Wireless's evidence demonstrating its satisfaction
8 of the basic ETC criteria. The Interveners' sole
9 issue relates to whether granting ETC status is in
10 the public interest.
11 Our evidence on the public interest that we
12 will submit demonstrates that Western Wireless's
13 designation is indeed in the public interest. Our
14 witnesses will also be fully prepared to respond to
15 any questions or concerns the Commission may have
16 on these issues. But based on the prefiled
17 testimony, the primary question to be resolved by
18 the Commission is whether Western Wireless's
19 designation as an additional ETC is in the public
20 interest.
21 Our evidence will show that wireless
22 technology provided by Western represents an
23 attractive service option to rural consumers and
24 that the principles of competition and the benefits
25 of an additional ETC will support the public

1 interest determination.
2 Now the public interest is really a balancing
3 test. It's a balance of the benefits against any
4 harms. That's what the Commission previously did
5 when they determined it was in the public interest
6 to designate Western Wireless as an additional ETC
7 in the first proceeding, and it's that similar
8 balancing test you'll hear a lot of testimony that
9 the FCC performed in both the Virginia Cellular and
10 Highland Cellular Decisions.
11 We believe that the Commission should look to
12 whether competition will be promoted and whether
13 consumers will realize the general and specific
14 benefits related to that competition and the new
15 services to be provided by Western Wireless and
16 balance those benefits against any demonstrated
17 harm to the consumers.
18 What this case is not about is that the
19 Interveners will attempt to raise a host of other
20 issues in an attempt to oppose or to limit the
21 application. And those issues are going to be
22 presented in a variety of formats all under the
23 guise of public interest. You'll hear evidence
24 regarding they need to have build-out plans and
25 build more towers. You'll hear evidence regarding

1 the Commission has to make a determination as to
2 the affordability of the services in order to
3 determine that it's in the public interest.
4 And you'll hear a lot of testimony regarding
5 the Joint Board's recent Recommended Decision and
6 how you'll be urged to deny the application because
7 of the potential loss of support to the rural LECs
8 as a result of the Joint Board's recommendations.
9 The sole basis for the intervenor's objections
10 are not criteria, are not criteria for ETC
11 designation, and are not permissible factors to
12 consider as part of the public interest. There are
13 not any lawful requirements that are based on any
14 consideration of Western Wireless's service or its
15 request to be designated throughout the study areas
16 of the seven rural LECs. They only raise
17 speculative uncertainties based on the Joint
18 Board's recommended proposals which cannot be
19 relied on by the Commission to make any adverse
20 public interest determination.
21 Because nobody knows whether, how, when, or if
22 the FCC might respond to the Joint Board's
23 recommendations and, therefore, it cannot be a
24 basis to determine it's not in the public interest
25 and it cannot be a basis to deny the application.

1 Because the result then is otherwise a wholesale
2 denial of ETC designation to an entire class of
3 competitive carriers.
4 In conclusion, our evidence will show that
5 Western Wireless meets the criteria to be
6 designated an additional ETC. It is a common
7 carrier. It offers and provides the supported
8 services. It will advertise the availability of
9 those services and will demonstrate its ability to
10 provide those services throughout the requested
11 designated areas. And Western's existing status as
12 an ETC throughout South Dakota is fairly compelling
13 evidence that it meets those criteria.
14 In addition our evidence will show that the
15 designation of Western Wireless is indeed in the
16 public interest, and we respectfully ask the
17 Commission to approve the application. Thank you.
18 MS. AILTS WIEST: Ms. Rogers.
19 MS. ROGERS: Thank you. I will be
20 the lead batter today. My name is Darla Pollman
21 Rogers. I'm with the law firm of Riter, Rogers,
22 Wattier & Brown, and that's located here in Pierre.
23 As I stated previously, I'm representing
24 Golden West, Vivian, Venture, and Tri-County in
25 this proceeding.

17

1 In preparation of this case it occurred to me
 2 that it is, as Mr. Ayotte said, easy to get bogged
 3 down in some of the details. You have been
 4 inundated with a lot of prefiled testimony, with a
 5 lot of Interrogatory and Discovery Requests and a
 6 lot of exhibits. So I think it's important that we
 7 step back and focus on the big picture.
 8 And what is the big picture? What is the
 9 purpose of this proceeding? Well, it is about
 10 Western Wireless's application to be designated as
 11 an eligible telecommunications carrier in the study
 12 areas of Golden West, Vivian, James Valley,
 13 Tri-County, West River in Hazen, North Dakota,
 14 Venture, and Alliance. An interesting side note is
 15 that those seven rural incumbent local exchange
 16 carriers are the total amount of remaining carriers
 17 in the State of South Dakota with the exception of
 18 CRST. So we are not selecting and excluding
 19 certain ones. This is the balance with the
 20 exception of that company.
 21 Now that's the big picture and what the case
 22 is about on its face. But I think that we need to
 23 narrow the focus a little bit. Why has Western
 24 Wireless submitted this petition at this particular
 25 time? And according to their testimony, they've

18

1 submitted this application in order to be eligible
 2 to receive federal USF moneys. And a more accurate
 3 statement would be to receive more federal USF
 4 moneys. Because, of course, they already have
 5 received and are receiving substantial USF dollars
 6 based on prior designation.
 7 Now having said that and placed the focus
 8 before you, I think it is important to look at the
 9 applicable standards. And the reason I think it's
 10 important in this case is because those standards
 11 have to a certain extent changed or at least there
 12 has been some additional guidance given to you as
 13 State Commissions as you view these cases.
 14 As stated previously, the standards are found
 15 in -- the statutory standards are found in 214(e)
 16 of the Communications Act of 1934 as amended. The
 17 ETC shall throughout the service area, and
 18 importantly this means the study area for rural
 19 telcos, offer the services supported for federal
 20 USF, advertise the availability of those services.
 21 And then for those areas served by rural telcos,
 22 which is the situation we have here, the Commission
 23 must find that the designation is in the public
 24 interest before an additional ETC can be
 25 designated.

19

1 In addition to that, this Commission should
 2 consider and examine the use of the support.
 3 Section 254(e) of the Act states that, "A carrier
 4 that receives USF support as an ETC shall use that
 5 support only for the provision, maintenance, and
 6 upgrading of facilities and services for which the
 7 support is intended."
 8 So how the ETC spends or will spend a federal
 9 USF money has become an important part of the
 10 public interest analysis, and this is especially
 11 true in the aftermath of the Virginia Cellular
 12 case. The FCC recently found in that case that the
 13 public interest test is fact-specific. It's a
 14 fact-specific exercise balancing the benefits and
 15 the costs. And included in that exercise is a
 16 consideration of specific plans to build new towers
 17 and facilities to offer better coverage, and that
 18 goes not only to the public interest test but also
 19 of the availability and commitment of the applicant
 20 to serve -- or to provide services throughout the
 21 study area.
 22 Now having said that, let's look at the
 23 evidence in this case and how that evidence falls
 24 within those standards. First of all, Western
 25 Wireless makes nothing other than a verbal

20

1 commitment that it will provide coverage throughout
 2 the entire service area of the ETC designation
 3 areas in which it's -- or the areas in which it's
 4 seeking ETC designation. In fact, at the current
 5 time they don't even claim to offer services
 6 throughout the entire area. They say that they
 7 have selected these seven companies or areas
 8 because they are capable of offering services to
 9 85 percent.
 10 Now 85 percent is not in the statute. It's
 11 not in the state statute, the federal statute.
 12 And, in fact, that falls far below throughout the
 13 service area. So at the outset there is no
 14 evidence presented that it can offer services
 15 throughout the service area.
 16 Then the question becomes what about in the
 17 future? And there I think it's really important to
 18 look to the new standards that are articulated in
 19 the Virginia Cellular case. The information
 20 required by the Virginia Cellular case as part of
 21 its FCC public interest finding far exceeds what
 22 Western Wireless has presented to you. It
 23 detailed -- it required the Virginia Cellular
 24 company to detail by site, by county, by population
 25 within the coverage contour, by dollar expenditure

21 1 as to how the funds would be spent and when and how 2 much. That's the standard that was required by the 3 FCC in the Virginia Cellular case. 4 We would submit that Western Wireless's 5 evidence falls far short of that so not only have 6 they failed to meet the public interest cost 7 benefit analysis, they've also failed to 8 demonstrate their capability and their commitment 9 to provide coverage throughout the service area. 10 We will present testimony through five 11 witnesses, and they will affirm during this hearing 12 and, in fact, in their prefiled testimony and 13 exhibits that Western Wireless has, in fact, not 14 demonstrated any new services or tangible benefits 15 as a result of the significant sums of USF funds 16 that Western Wireless has already received, nor is 17 there evidence of new services and benefits that 18 would result if this application is granted. 19 Equally, however, and maybe even more 20 important, is Western Wireless's own failure to 21 adequately explain its uses of the USF money, 22 either the money it's already received or the money 23 it will receive on a go-forward basis. 24 We think that it is really important, and we 25 urge you not to wear blinders with regard to what	23 1 currently in place. 2 What the Joint Board Recommended Decision says 3 is the proper place to address these concerns is at 4 the point when the decision is made to designate an 5 additional ETC in an area served by a rural 6 carrier. "If a State Commission believes that a 7 particular rural area or a particular rural carrier 8 cannot stand the loss or dilution of current levels 9 of support, then under Section 214(e)(2) of the Act 10 it should point that additional ETCs are not in the 11 public interest." That's a quote from the Joint 12 Board Recommendation Decision which you as a 13 Commission certainly are free to consider. 14 So there are stringent standards, and Western 15 Wireless we believe at the end of the evidence will 16 not be able to meet them. They will not be able to 17 demonstrate, and they have not done so in the past, 18 their commitment and their capability to meet the 19 standards for the State of South Dakota. 20 And we believe at the end of the testimony, at 21 the end of our evidence you will deny the 22 application. Thank you. 23 MS. AILTS WIEST: Mr. Cremer. 24 MR. CREMER: Thank you. As I said 25 in my introduction, I represent James Valley
22 1 is happening in Washington, D.C., not only with 2 regard to the new cases and guidelines that have 3 come down but also what may happen to the USF funds 4 and standards for eligibility for them on a 5 go-forward basis. 6 The FCC is surely destined to stop the 7 explosive growth in the Universal Service Fund by 8 capping that growth in some manner and I don't 9 think that we can be blind or oblivious to that 10 fact. So the question then becomes in light of all 11 of the evidence that has been prefiled and that 12 will be presented over the next couple of days, 13 what's your focus? Where do you focus? What can 14 you do at this time? 15 What Western Wireless is asking you to do is 16 designate them now and then question the use of the 17 funds later, question their commitment and 18 capability and build-out plans at a later time. 19 And I think this is demonstrated even in their 20 initial application when they requested that this 21 proceeding be put on an expedited path, they asked 22 for an expedited hearing. 23 But what we're asking you to do is take a 24 careful look at this now. And you have the 25 authority to do that under the standards that are	24 1 Telephone. And I would ask the Commissioners to 2 focus on four things with respect to the James 3 Valley service area. 4 Those four things are currently the number of 5 towers that Western Wireless has in the James 6 Valley area. Secondly, the quality of service 7 provided in the James Valley service area from 8 those towers. Third, the amount of money that they 9 would receive if this ETC designation is granted. 10 And then fourth, what they're going to do with that 11 money in the James Valley area to address the 12 service quality problems. 13 And I think at the end of the day when you 14 consider those four factors you will conclude that 15 it is not in the public interest to grant this ETC 16 designation because there will be no benefit to 17 those rural consumers in the James Valley service 18 area. Thank you. 19 MS. AILTS WIEST: Mr. Coit. 20 MR. COIT: I would just like to 21 state for the record that SDTA supports the 22 comments of both Mr. Cremer and Ms. Rogers. Thank 23 you. 24 MS. AILTS WIEST: Staff. 25 MR. SMITH: I'm a relative

25

1 late-comer to this proceeding so pardon me if my
2 sophistication isn't quite up to your level at this
3 point in time. I think the staff's focus will -- I
4 guess just by way of having now read through all of
5 the several inches of prefiled testimony and
6 everything, it occurs to me and to the staff
7 persons that I've worked with on this that -- and I
8 think it's born out by the comments of the other
9 attorneys here that one of the primary and maybe
10 the primary issue in the case boils down to what is
11 meant by the phrase in Section 214(e), "throughout
12 the service area for which the designation is
13 received."

14 Western Wireless has in various places in its
15 testimony made commitments, at least verbal
16 commitments, to extend service throughout the
17 service territory. In its two recent cases the
18 FCC -- that's the Virginia Cellular and Highland
19 Cellular cases. The FCC seemed to state that it
20 agreed with the Petitioners in this case that it's
21 not necessary that the applicant be providing
22 services throughout the service areas ubiquitously
23 at the point at which it files its petition.

24 However, those two cases as I read them do -
25 seem to indicate that some level of commitment, and

26

1 that may be up to the Commission as to what level
2 of commitment you think is appropriate to
3 ultimately as a part and as sort of a quid pro quo
4 for receiving federal funds and customer funds from
5 around the country is required to make a commitment
6 to achieve that at some reasonable time period.

7 The way the FCC addressed that is to take that
8 commitment at face value and to impose that
9 commitment, impose a condition as a condition of
10 continuing certification of ETC status, that those
11 commitments be lived up to.

12 And I think the focus of the staff's approach
13 is going to be as you did in your first Western
14 Wireless case and as the FCC did in its two recent
15 opinions, render a decision that impose conditions
16 on the company and those conditions centered on
17 many things, some of which we covered in our first
18 Western Wireless case and also the condition in
19 both of the Virginia Cellular and the Highland
20 cases that a commitment be made or that a condition
21 be imposed that the extension of service throughout
22 the service areas be accomplished at some
23 reasonable time.

24 And we would ask the Commission to pay
25 particular attention to those concerns as you

27

1 listen to the evidence today. Thank you.

2 MS. AILTS WIEST: Before we begin
3 with our first witness, for the record we have
4 premarked Western Wireless's petition and their
5 prefired testimony. Western Wireless Exhibit 1 is
6 a Petition. Exhibit 2 is Blundell Direct, 3,
7 Blundell Rebuttal, 4, Blundell Surrebuttal, 5, Wood
8 Rebuttal, and, 6, Surrebuttal.

9 And we have also marked the Interveners'
10 testimony. Exhibit 1 is Brown Direct, 2, Brown
11 Surrebuttal, 3, Vanicek Direct, 4, Vanicek
12 Surrebuttal, 5, Groft Direct, 6, Groft Surrebuttal,
13 7, Strandell Direct, 8, Strandell Surrebuttal, 9,
14 Houdek Direct, 10, Houdek Surrebuttal.

15 Were the parties going to stipulate to the
16 admission of all of these exhibits?

17 MR. AYOTTE: Yes. That's agreeable.

18 MR. COIT: Yes. That's agreeable to
19 the Interveners, I believe.

20 MS. ROGERS: Yes.

21 MR. CREMER: That's correct.

22 MS. AILTS WIEST: With respect to
23 Western Wireless's Exhibits 1, 2, 3, 4, 5, and 6,
24 they have been offered and admitted and with
25 respect to Interveners' Exhibits 1 through 10, they

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1 have been offered and admitted.

2 With that, Mr. Ayotte, you may call your first
3 witness.

4 MR. AYOTTE: Thank you. Western
5 Wireless is pleased to call Jim Blundell as its
6 first witness.

7 JAMES BLUNDELL,
8 called as a witness, being first duly sworn in the
9 above cause, testified under oath as follows:

10 DIRECT EXAMINATION

11 BY MR. AYOTTE:

12 Q Mr. Blundell, would you please state your full name and
13 spell it for the record.

14 A James Blundell, B-L-U-N-D-E-L-L.

15 Q By whom are you employed?

16 A I'm employed by Western Wireless Corporation.

17 Q In what capacity?

18 A I'm the executive director of external affairs.

19 Q I normally run through a wonderful series of questions
20 to lay foundation for the exhibits, but you have before
21 you Western Wireless Exhibits 1 through 4 which
22 includes the ETC petition, your prefired direct,
23 rebuttal, and surrebuttal.

24 MR. AYOTTE: The witness is
25 available for cross.

1 MS. AILTS WIEST: Mr. Dickens or
2 Ms. Rogers? I'm sorry. Mr. Coit.
3 MR. COIT: Thank you.
4 MR. AYOTTE: I'm sorry. We
5 discussed this off the record. I'm not sure if the
6 Commissioners were aware, we did have one
7 correction to the Western Wireless Exhibit 3, which
8 is the rebuttal testimony of Mr. Blundell. I
9 almost skipped over my little Post-it note.

10 On page 4, line 18 strike, "in excess of 215,"
11 insert "111," and then after the word "cell sites"
12 insert "and extenders."

13 So that sentence, the first line of the
14 sentence, will read, "Western Wireless currently
15 has 111 cell sites and extenders in its
16 South Dakota." And that change has been made to
17 the official file copy.

18 He's all yours, Mr. Coit.

19 MR. COIT: Thank you, Mr. Ayotte.

20 CROSS-EXAMINATION

21 BY MR. COIT:

22 Q Good morning, Mr. Blundell.

23 A Good morning.

24 Q You have worked for Western Wireless since January of
25 1999; is that correct?

1 A That's correct.

2 Q Were you employed in the telecommunications industry
3 prior to that time?

4 A I was not.

5 Q And you have a law degree; is that correct?

6 A Yes, I do.

7 Q You do not have a degree in engineering?

8 A I do not.

9 Q Do you have a degree in economics?

10 A I do not.

11 Q I'm going to refer you to your testimony as we go
12 along. I'll try to make sure that I reference it as
13 direct or surrebuttal. If you can go to your direct
14 testimony, on page 2, starting on line 25 of that page
15 the statement is made, "Federal regulations require a
16 carrier such as Western Wireless to contribute
17 approximately 9 percent of its revenues to the funding
18 of universal service."

19 Is that percentage you cite exactly the
20 percent?

21 A No. That's why I used the word approximately.

22 Q Okay. What is the exact percentage?

23 A The contribution factor today, the universal service
24 contribution factor, is approximately 8 and a half. It
25 changes quarterly, and it has -- at the time I think it

1 was inching closer to 10. It's now 9 or below.

2 Q Would you agree that currently it's 8.7 percent?

3 A Subject to check, I think that sounds right.

4 Q Now does the federal law when it comes to wireless
5 carriers require a contribution of 9 percent on all of
6 the revenues or just a portion of those revenues?

7 A The contribution factor under federal regulation
8 applies to interstate revenue.

9 Q And is there a safe harbor percentage that is applied
10 to determine what those interstate revenues subject to
11 the contribution would be?

12 A There is indeed. For wireless carriers -- wireless
13 carriers can use an established percentage to determine
14 the percentage of interstate versus noninterstate
15 revenue, and it's currently 28 percent.

16 Q Does Western Wireless use that 28 percent?

17 A Yes, it does.

18 Q So effectively the 9 percent surcharge applies to the
19 28 percent of your total revenues?

20 A That's correct.

21 Q So it does not apply to 9 percent of all of Western
22 Wireless revenues?

23 A That's correct. That's how the federal universal
24 service contribution is calculated, yes.

25 Q Thank you. Going to page 3 of your direct testimony,

1 the statement is made beginning on line 10 that,
2 "Without access to universal service support Western
3 Wireless will be severely limited in its ability to
4 provide competitive telecommunications services to
5 consumers in high-cost areas such as those served by
6 the rural telephone companies."

7 Approximately how many wireless subscribers
8 does Western Wireless currently have in South Dakota?

9 MR. AYOTTE: I'm going to object.

10 Assuming the witness knows, we would treat that
11 information as confidential, and we would need to
12 clear the hearing room for those who have not
13 executed the protective agreement if the precise
14 amount is something important, Rich.

15 MR. COIT: An estimate would be
16 fine.

17 MR. AYOTTE: Well, an estimate is
18 going to be equally confidential.

19 MR. COIT: I agree. And everyone in
20 the room as far as I know has executed the
21 protective agreement at least as far as the
22 interveners are concerned.

23 MS. AILTS WIEST: There are some
24 staff people here also. Do you want them to leave?

25 MR. AYOTTE: No. I assume that

1 staff people are otherwise subject to the
2 Commission's rules. And perhaps we can just check.
3 Is there anyone in the hearing room who is not
4 staff and who has not otherwise executed the
5 protective agreement?

6 (No audible response)

7 MS. AILTS WIEST: Mark this as
8 confidential in the transcript.

9 MR. AYOTTE: At least the number.

10 And boy, Mr. Blundell, I hope you know after all of
11 this.

12 (Confidential proceedings)
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1 Q Do you know where these wireless local loop customers
2 would be located generally?
3 A No. I don't know their location.
4 Q Do you know if they're concentrated in any particular
5 area of South Dakota?
6 A I don't know their location.
7 Q The wireless local loop service that is offered, is
8 that marketed any differently than any of the other
9 Western Wireless services?
10 A Typically our wireless local loop service offering
11 is -- yes, it is marketed slightly differently. It has
12 a different price point. It is a slightly different
13 service offering that appeals to different users so it
14 is marketed differently, yes.
15 Q Does your company have any special marketing materials
16 that it uses in marketing that service?
17 A I believe we do, yes.
18 Q And that is one of your universal service offerings;
19 correct?
20 A That's correct.
21 Q Would you have any objection to providing copies of
22 those marketing materials for the record in this
23 proceeding?
24 A Again, assuming that they exist, I certainly don't have
25 any problem with that.

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1 Q So you're not certain that they exist?
2 A My testimony was that we typically market them
3 differently using slightly different materials. If
4 they exist, I don't have a problem providing those to
5 this Commission.
6 Q So if they exist, you would agree to provide them for
7 the record?
8 A Yes.
9 Q Does the wireless local loop equipment support a
10 digital wireless service?
11 A Yes. We typically use equipment manufactured by a
12 company called Telular, which originally manufactured
13 analog wireless access units, now manufactures digital
14 units using both the CDMA and TDMA technology. We
15 typically use the CDMA technology, given that we are a
16 CDMA provider. So, yes, those are both digital
17 technologies.
18 Q Does that wireless local loop technology provide a data
19 capability?
20 A Yes, it does.
21 Q And do you know what the speed of that data capability
22 is?
23 A Speeds vary, but the current -- the current product,
24 the current high speed data product that Western
25 Wireless provides under the brand name Open Door, is

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1 approximately 60 to 80 kilobits per second, and that's
2 using what's called a 1XRTT technology. That
3 technology supports specifications of 140 kilobits per
4 second. In the real world, as I said, it provides
5 about 60 to 80 kilobits per second.
6 Q Okay. These wireless local loop lines, when you submit
7 lines to the Universal Service Administrative Company
8 you don't just submit these wireless local loop lines,
9 do you?
10 A No, we do not.
11 Q What types of lines are submitted?
12 A The way that Western Wireless counts its lines and
13 submits them is somewhat complicated. Western Wireless
14 assigns a location to each one of its subscribers and
15 geocodes that location, and pursuant to federal rules
16 it's the billing address of the subscriber.
17 So we locate that subscriber in a service
18 area, either a wire center or a study area, and
19 essentially count those subscribers, report them by
20 study area or in some cases by zone or by wire center
21 in the case of a nonrural telephone company and report
22 those numbers to USAC.
23 Q So would it be correct that the lines that you submit
24 are the lines that are associated with universal
25 service offerings of your company?

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1 A The lines that we submit are --
2 MR. AYOTTE: I'm going to object to
3 the question as vague.
4 MR. COIT: I can clarify.
5 Q The lines that you submit -- excuse me. I'll back up.
6 You have certain offerings that are universal service
7 offerings; correct? You have certain mobile or fixed
8 wireless offerings that are categorized as universal
9 service offerings; correct?
10 A Correct.
11 Q And when you submit lines to USAC would you submit just
12 the lines associated with those universal service
13 offerings?
14 A Yes. We submit the number of subscribers on eligible
15 universal service offerings.
16 Q Do you have some way of tagging those particular
17 customers?
18 A Well, essentially it's the -- it's essentially all of
19 the subscribers because all of the plans are eligible
20 for universal service.
21 Q You state on page 30 of your surrebuttal testimony,
22 starting on line -- well, I guess I don't have a line
23 on mine. It's the second -- the first full paragraph
24 after this question that starts, "Would you like to
25 respond to Mr. Brown's accusation?"

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1 You state that, "Western Wireless has never
2 sought to limit the scope of its ETC designation in any
3 particular service offering including its wireless
4 local loop offering."
5 You indicated earlier that you were not a
6 witness or you did not appear at the previous
7 Commission hearing on your prior ETC application in
8 South Dakota. Did you review the transcript of that
9 process?
10 A I believe I -- yes, I've reviewed the, you know,
11 transcript and the portions of the record.
12 Q Now isn't it true that some states have limited the ETC
13 designation to Western Wireless to only those lines or
14 phones that are wireless local loop offerings?
15 MR. AYOTTE: Objection, irrelevant.
16 MS. AILTS WIEST: Any response?
17 MR. COIT: My response would be that
18 it's offered for the purpose of impeachment. He's
19 indicated specifically in his testimony that
20 they've never sought to limit the scope of their
21 offering.
22 The fact of the matter is that it has been
23 limited in certain cases.
24 MS. AILTS WIEST: Objection
25 overruled.

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1 Q So isn't it true that some states have limited the ETC
2 designations to Western Wireless to only those lines or
3 phones that are wireless local loop offerings?
4 A No.
5 Q So no state has limited your recovery from the
6 Universal Service Fund to only wireless local loop
7 lines?
8 A That's not my testimony. You asked whether the
9 Commission in its -- I believe in its Order of granting
10 ETC designation has limited us.
11 Q Not this -- going, I guess, beyond South Dakota and
12 looking at the entire area that you serve and all of
13 the ETC applications that you have submitted, has any
14 state ever limited your designation and eligibility for
15 USF to only wireless local loop lines?
16 A Not in any ETC designation, no.
17 (Interveners' Exhibit 14 is marked for identification)
18 Q Mr. Blundell, do you have that exhibit that just was
19 marked as Interveners' Exhibit 14 in front of you?
20 A Yes, I do.
21 Q Are you familiar with that document?
22 A Yes, I am.
23 MR. AYOTTE: I'm going to object to
24 this document as irrelevant to this proceeding.
25 MS. AILTS WIEST: Can you explain

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1 the relevance, Mr. Coit?
2 MR. COIT: Yeah. It's relevant to
3 the question that he just answered. They've
4 indicated that it's never been limited in any
5 jurisdiction, and this is a stipulation that
6 they've entered into to specifically limit.
7 MR. AYOTTE: I believe the witness's
8 response was that no Commission Order designating
9 Western as an ETC ever so limited the scope of the
10 designation. But, nevertheless, a stipulated
11 settlement agreement with the Texas Public
12 Utilities Commission is irrelevant to the issues in
13 this proceeding.
14 MR. COIT: I guess going back to
15 page 30 of the surrebuttal testimony you've
16 specifically stated that Western Wireless has never
17 sought to limit the scope of its designation in any
18 particular service offering including its wireless
19 local loop offering, and I think this document is
20 specifically in contravention of that statement.
21 MS. AILTS WIEST: I believe he can
22 show whether or not this document does contravene
23 that statement because he did make that statement
24 in his testimony.
25 MR. AYOTTE: The statement in the

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1 testimony is Western never sought to limit its
2 designation. He's now trying to construe that with
3 reference to Commission orders or subsequent
4 settlement agreements regarding a limitation on the
5 designation.
6 MR. COIT: I don't think his
7 statement was that specific in his testimony.
8 MS. AILTS WIEST: You can go
9 forward, Mr. Coit.
10 MR. AYOTTE: Thank you.
11 Q Reviewing this document -- there was a particular
12 paragraph that I wanted to reference. Okay. Paragraph
13 3 of the stipulation on page 3 summarizes the terms.
14 Could you read the first couple of
15 sentences -- at least the first sentence of paragraph 3
16 into the record, please.
17 A "Western Wireless in its --
18 CHAIRMAN SAHR: Excuse me,
19 Mr. Blundell. Somebody just entered the room and
20 may not be a problem but I just wanted to note that
21 we do have somebody new in the room and since we're
22 going to have confidentiality questions come up
23 from time to time, I just want to make sure that we
24 had the person signed on board or if not, that we
25 knew that.

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1 MR. COIT: He's not signed a
2 protective agreement. I know that for a fact
3 because he's not a specific party to the process.
4 CHAIRMAN SAHR: Okay. So let's be a
5 little bit cautious if we move into something
6 that's confidential and certainly, sir, you're
7 welcome to be here and stay, but we may have things
8 come up from time to time that are confidential in
9 nature and at that point in time we may need to ask
10 you to leave. Thank you.

11 Q I guess for the purposes of moving things along, if I
12 could just ask you, I guess, to rather than read
13 paragraph 3, describe what the terms of this
14 stipulation are as set forth in paragraph 3.

15 A Read that paragraph?

16 Q Or just explain what the terms are generally as
17 indicated by that paragraph.

18 A Well, the term in paragraph 3 requires Western Wireless
19 to amend its quarterly line count reports it files with
20 USAC not only on a going backward basis, but also -- to
21 exclude "the number of customer lines in Texas that use
22 handheld mobile phones but also on a going-forward
23 basis."

24 Q So pursuant to the terms of this stipulation in the
25 state of Texas you will no longer be able to submit as

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1 a company anything other than wireless local loop lines
2 for university service support; correct?

3 A No. That's not correct. We filed an application for
4 designation as an ETC, which would essentially allow
5 Western Wireless to file those lines.

6 Q Okay. But that hasn't been granted yet?

7 A It has not.

8 Q Okay.

9 A I'd also say that the first whereas clause acknowledges
10 my earlier statement that the parties to this agreement
11 have a reasonable disagreement between them --

12 MR. COIT: Excuse me,
13 nonresponsive. I didn't ask him any further
14 question.

15 MS. AILTS WIEST: Sustained.

16 Q Going to page 15 of your direct again --

17 MR. COIT: Excuse me. I would like
18 to ask for the admission of Interveners' Exhibit 14
19 into the record.

20 MS. AILTS WIEST: Mr. Ayotte.

21 MR. AYOTTE: Other than my relevancy
22 objection, I have no further objections.

23 MS. AILTS WIEST: I will allow
24 Exhibit 14.

25 Q The general statement is made on page 15 of your direct

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1 testimony lines 10 through 11 that, "The treatment
2 granted to certain wireless carriers under Section
3 332(c)(3)(a) does not allow states to deny wireless
4 carriers eligible status."

5 Would that statement be true if the wireless
6 carrier is not meeting the ETC service requirements or
7 its designation is not found to be in the public
8 interest? Do you want me to rephrase my question?

9 A No. I'm reading my entire answer to the question of
10 the testimony.

11 MS. AILTS WIEST: Could you state
12 the page number you're on Mr. Coit?

13 MR. COIT: Page 15 of the direct
14 testimony.

15 MR. AYOTTE: I will object to the
16 question as being compound.

17 MR. COIT: I can rephrase the
18 question.

19 MS. AILTS WIEST: Go ahead.

20 Q Okay. You've generally stated as I indicated that this
21 section of the federal law 332(c)(3)(a) does not allow
22 states to deny Western Wireless -- or wireless
23 carriers, excuse me, eligible status.

24 Is this a true statement if this Commission
25 finds that the wireless carrier is not meeting the ETC

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1 service requirements?

2 A I think generally speaking this Commission has the
3 authority to grant ETC designation and to take it away.
4 It has continuing jurisdiction to review whether or not
5 Western Wireless or any ETC, for that matter, continues
6 to meet its obligations under the ETC requirements.

7 Q So Section 332 of the Federal Act does not in any way
8 trump this Commission's authority when it comes to the
9 process of designating ETCs?

10 A It actually does trump in a certain way the
11 Commission's authority. It prohibits -- Section
12 332(c)(3)(a) prohibits the State Commission or the
13 State at all from regulating wireless carriers. Either
14 the rates that -- their entry into the market or their
15 rates. So in that -- to that extent it does trump this
16 Commission's authority.

17 But under a different section of law the
18 Commission has authority to designate Western Wireless
19 as an ETC and with that authority the right and
20 responsibility to remove that designation, revoke it,
21 as it does any other ETC, Wireline or wireless.

22 Q Going to pages 16 and 17 of your direct testimony
23 regarding this Commission's authority to establish
24 universal service areas, is Western Wireless in this
25 process seeking to redefine the existing service areas

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1 of any of the rural telephone companies that are
2 subject to its application?

3 A No. Western Wireless has sought ETC designation
4 throughout the entire study area of each of the rural
5 telephone companies included in the application.

6 Q So you are not seeking in this process to redefine any
7 of the current service areas for the purposes of
8 determining Western Wireless's universal service
9 obligations or distributions; correct?

10 A That's correct.

11 Q Is it correct that Western Wireless has not finalized
12 its pricing for the universal service offerings that
13 are available or going to be available in these service
14 areas where it is seeking ETC status?

15 A Yes. And the reason for that statement is that Western
16 Wireless changes its rates somewhat frequently, files
17 those rates on an informational basis here at the
18 Commission, did that in the first case, and those are
19 on file, but Western Wireless certainly reserves the
20 right to change those rates and so prior to ETC
21 designation has not finalized their rates or the
22 offerings that it would file in such a compliance
23 filing.

24 Q So going to page 20 of your direct testimony starting
25 on line 21 -- or line 22, excuse me, you've made the

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1 statement that, "Western Wireless has not finalized its
2 pricing for the universal service offerings but when
3 the entire packages of services and their value are
4 compared side by side" and it goes on, that's what you
5 meant by that statement, that your prices change all
6 the time so you haven't effectively finalized the
7 pricing?

8 A In advance of ETC designation Western Wireless hasn't
9 finalized those offerings. Western Wireless is an ETC
10 today, and it has filed a compliance filing that
11 includes its service offerings, its rate plans. The
12 Commission is satisfied at least by its approval and
13 its acceptance of that compliance filing. This
14 Commission is satisfied with that process and also
15 satisfied with the filing of it, I would guess.

16 Q If I could -- do you have all of the Interveners'
17 testimony available at your desk there?

18 A It looks like it.

19 Q If yes, could I direct you to the Vanicek direct
20 testimony which has been marked for the purposes of
21 this record Exhibit No. 3?

22 A Yes.

23 MR. AYOTTE: Vanicek direct?

24 MR. COIT: Yeah. Vanicek direct.

25 MR. AYOTTE: Thank you.

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1 Q In an exhibit attached to the Vanicek direct
2 testimony --

3 MR. COIT: And, I'm not sure, is
4 this confidential, Mr. Ayotte, this Exhibit 12
5 that's attached to Vanicek's direct with the
6 universal service offerings?

7 MR. AYOTTE: I don't have an
8 Exhibit 12.

9 MR. COIT: It's attached as
10 Exhibit 12 to Ms. Vanicek's testimony. It's the
11 last part of that filing. It's entitled, Universal
12 Service Offerings and Advertisements.

13 MR. AYOTTE: I'm not seeing it.

14 MR. COIT: It's in her rebuttal. It
15 should be attached.

16 MR. AYOTTE: I got it. Do you know
17 the source of this?

18 MR. COIT: It was provided in
19 discovery. Let me look to see the response.

20 THE WITNESS: It's not her rebuttal,
21 though?

22 MR. WIECZOREK: It's in her direct,
23 Rich.

24 MR. COIT: Excuse me. I'm sorry.

25 MR. AYOTTE: It is not a

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1 confidential document. In fact, I believe it's the
2 document produced in discovery, which was also
3 filed with the Commission as part of the original
4 compliance filing.

5 MR. COIT: So we're free to ask
6 questions, I'm assuming, regarding this?

7 MR. AYOTTE: You're free to sign up
8 for any of the rate plans that are identified.

9 MR. COIT: Thank you very much.

10 Q Mr. Blundell, as was noted, this document was provided
11 in response to some rural local exchange carrier
12 discovery by Western Wireless, and that document lists
13 15 different wireless service plans as being universal
14 service plans.

15 Are you familiar with this document, number
16 one?

17 A Yes.

18 Q Would you still agree with the indication, I guess,
19 that these are all of Western Wireless's universal
20 service offerings in South Dakota?

21 A Yes.

22 Q And so pricing information is included on this exhibit?

23 A Yes. This was filed pursuant to the Order in the first
24 ETC Designation Order.

25 Q You still stand by your statement previously that you

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1 have not yet finalized your pricing for the universal
 2 service offerings?
 3 A Prior to designation in this case, no.
 4 Q Does Western Wireless agree with the statement that
 5 competitive ETCs should meet carrier of last resort
 6 obligations?
 7 A Carrier of last resort obligations are typically state
 8 requirements imposed on local exchange carriers that
 9 are similar to but not identical to ETC obligations.
 10 In many ways the ETC obligations are similar.
 11 And so as an ETC we do agree that Western Wireless is
 12 obligated to meet certain service area requirements,
 13 again, similar to COLR obligations but not identical.
 14 So the answer is -- I think the answer is no.
 15 Q So you don't agree that competitive ETCs should meet
 16 carrier of last resort obligations?
 17 A The last time I checked, the COLR obligations are not
 18 required in an ETC as an ETC criteria or requirement.
 19 So they're completely different obligations.
 20 Q Are you familiar with the Federal State Joint Board
 21 Decision? Is that a fair statement on my part?
 22 A Yes.
 23 Q Have you read that document in its entirety along with
 24 some of the -- or the separate statements of the FCC
 25 Commissioners attached to that document?

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1 A Unfortunately, yes.
 2 MR. COIT: I seem to have lost the
 3 document here. Excuse me.
 4 Q Now the Joint Board Decision, which for the record is
 5 FCC 04J-1, includes separate statements including of
 6 FCC Commissioners and Joint Board representatives,
 7 including a separate statement of Commissioner
 8 Kathleen Abernathy. And she makes the statement, if I
 9 can find it here -- here it is, that, "State
 10 Commissions exercising their authority under
 11 Section 214(e)(2) and this Commission acting pursuant
 12 to Section 214(e)(6), therefore, should make certain
 13 that an applicant for ETC status is ready, willing, and
 14 able to serve as a carrier of last resort and is
 15 otherwise prepared to fulfill the goals set forth in
 16 Section 254 of the Act."
 17 Do you agree with that position?
 18 A Where is it found?
 19 Q It's in her separate statement --
 20 MR. AYOTTE: What page, Rich?
 21 MR. COIT: I'm looking. Actually, I
 22 may have mistakenly referred to the Joint Board
 23 Decision when I meant to refer to the Virginia
 24 Cellular case. I'm sorry.
 25 MR. AYOTTE: Then I'll object to

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1 your question as without foundation.
 2 MR. COIT: I think it's on the
 3 Virginia Cellular case, that or the Highland. Let
 4 me find it here. I apologize.
 5 A correction then for the record, and I
 6 apologize, Mr. Blundell.
 7 Q Are you familiar with the Virginia Cellular case?
 8 A Yes.
 9 Q And you've read that decision?
 10 A Yes.
 11 Q Along with the separate statements attached?
 12 A Yes.
 13 CHAIRMAN SAHR: And it's Appendix C,
 14 which is on page 27, and the sheets are not
 15 numbered after that but it looks to me to be the
 16 second or third sheet in.
 17 MR. COIT: Okay.
 18 Q It is FCC document 03-338. I'm referencing page 1 of
 19 that decision -- of her separate statement, excuse me,
 20 and it's in the second paragraph.
 21 Would you like me to reread the statement, or
 22 do you have it in front of you?
 23 A I have it in front of me.
 24 Q Do you agree with her position as indicated by that
 25 statement?

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1 A Well, first of all, Ms. Abernathy, for as much as I
 2 like her, cannot change federal rules or federal law in
 3 a separate statement to a Virginia Cellular case. I'll
 4 continue to maintain my statement, the rules do not
 5 require an ETC applicant to either meet or commit to
 6 meet the carrier of last resort obligations.
 7 Q Thank you. On page 21 of your direct testimony, lines
 8 9 and 11, starting, I guess, on line 8, you made the
 9 statement, "Western Wireless stands ready, willing, and
 10 able to bring competition to consumers in South Dakota
 11 which will result in better consumer pricing, better
 12 service quality, immediate service availability, and
 13 better customer service."
 14 Will the wireless services offered in these
 15 service areas that are subject to this application,
 16 this current ETC application, will they be any
 17 different than the wireless services that you are
 18 offering in those areas where you are already
 19 designated?
 20 A The network is the same essentially. In some cases the
 21 same cell sites and antenna, same switching center.
 22 It's the same radio frequency propagation that we use
 23 throughout. So it is the same network which provides
 24 the services, the same nine supported services if
 25 that's what you mean.

1 Q Has Western Wireless conducted any surveys or studies
2 to measure the current quality of service that is
3 provided by the rural local exchange companies in those
4 service areas where it's seeking designation?

5 A Not that I know of.

6 Q Going to page 18 of your direct testimony, you indicate
7 that you've done, A review and analysis of certain data
8 and information, and you've done your best to identify
9 the study areas where Western Wireless can meet its
10 obligation to respond over time to a reasonable request
11 for service.

12 So did you personally do this review?

13 A Yes, I did.

14 Q Do you know what study areas in South Dakota were left
15 off the list?

16 A I believe it would be the Cheyenne River Sioux and one
17 was mentioned in opening statement and I can't recall
18 the name of it but, no, I hadn't focused on those that
19 had been left off, just those that had been included.

20 Q So when you did your analysis what areas did you focus
21 on, if you're not aware of those that were left off?

22 A Well, for starters, we took all the rural telephone
23 companies' study areas in which we had not already been
24 designated. We superimposed our signal coverage, and
25 were able to assign a percent of population covered by

1 our signal coverage in each wire center and, therefore,
2 in each study area.

3 Those study areas in which Western Wireless's
4 coverage met the 85 percent threshold in all centers
5 and in many it was 90 to 100, those are the study areas
6 that we included in the application.

7 Q Now you state on page 5 of your rebuttal testimony
8 relating to the same matter, beginning on line 14, "I
9 personally reviewed Western Wireless service areas to
10 determine where we would commit to provide service as
11 an ETC. After conducting this analysis we excluded any
12 areas where we reached fewer than 85 percent of all
13 consumers today."

14 Could you indicate for the record what
15 information or documents were part of that personal
16 review or at least what sort of documents were part of
17 that personal review?

18 A I'm not sure that -- excuse me?

19 Q How did you conduct the review? What information did
20 you use? I guess that's the question. What
21 information did you use in conducting the review?

22 A Our engineering department performed the technical sort
23 of overlay of coverage in population and wire center
24 boundaries and matched those three data points up, sent
25 me an Excel spreadsheet electronically.

1 We then used our 85 percent threshold,
2 reviewed each of the percentages in each wire center,
3 and selected those that met the threshold and removed
4 those that didn't.

5 Q Okay. Your testimony indicates that Western Wireless
6 picked those study areas where it could meet its
7 obligation to respond to reasonable requests for
8 service over time.

9 Is there any evidence that you've provided in
10 this proceeding that you could refer to that allows
11 this Commission to judge what time period this would
12 be?

13 A The FCC actually in a case emanating from this state,
14 the South Dakota preemption case set forth that
15 standard of reasonable time, reasonable requests.

16 Q So you haven't -- there's no evidence indicating
17 specifically what that time is in this record.

18 A There's no indication in the FCC's Order that adds to
19 that language, "reasonable requests," and --

20 MR. COIT: I would object. Witness
21 is being nonresponsive.

22 MR. AYOTTE: Perhaps you could let
23 the witness respond to your question before you
24 interrupt him.

25 MR. COIT: He is not responding to

1 my question.

2 Q My question is is there anything in the testimony
3 that's been filed or anything that's already been
4 admitted into this record that would indicate what this
5 reasonable time period is?

6 THE WITNESS: Is there an objection?

7 MR. AYOTTE: There's no objection.

8 MS. AILTS WIEST: Go ahead.

9 MR. AYOTTE: As long as you've
10 committed to respond.

11 A I believe there's substantial evidence in the record
12 about Western Wireless's -- the steps that Western
13 Wireless takes to meet reasonable requests for service.
14 There is no -- there is no evidence in the record that
15 establishes Western Wireless's opinion about what
16 reasonable time means or, you know, that the time frame
17 of a reasonable request for service.

18 Q In your rebuttal answer, rebuttal testimony --

19 MR. COIT: And we're going to
20 reference an exhibit that's confidential. So at
21 this point in time I think anybody that hasn't
22 signed the protective agreement probably needs to
23 leave the room.

24 (Unidentified person exits the room)

25 (Confidential proceedings)

CHAIRMAN SAHR: Mr. Coit, if I may, I would ask that everyone please be cognizant of the fact that we'll be going in and out of confidential materials and the person who has left the room for reasons relating to confidentiality certainly has the right to be back in when we're not discussing confidential information. And for the court reporter's sake I think we also need to be as clear as possible, and this goes for all parties, when we're going in and out of confidential statements. Otherwise, we'll have difficulty tracking in the record and, frankly, it's not fair to a member of the public who came here to listen to the proceedings if we are limiting his or her right to be in here while nonconfidential information is being discussed.

In no way, shape, or form is that directed at you. I think we all need to be very aware of that, especially if we have a member of the public who would like to listen. And I don't know, but I think the last part would have been nonconfidential so if it's a time when they can come back in -- or maybe we've moved into confidential now, but I think we should offer to that member of the public that that part of the record may be reviewed if

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1 it's not confidential.

2 MR. AYOTTE: Agreed.

3 MR. COIT: I agree, and at this

4 point in time I -- I think that person can come

5 back into the room. This is not confidential.

6 MR. AYOTTE: Could we remove the

7 exhibit, at least turn it around?

8 (Exhibit is removed from easel)

9 MR. AYOTTE: Thank you.

10 Q Going to page 13, lines 11 through 13 of your rebuttal,

11 the statement is made, "The rural ILECS in this case

12 have introduced no evidence to suggest that their

13 respective service areas differ at all from those at

14 issue in the earlier ETC case or that they are so

15 exceptional as to deny the consumers in these areas the

16 benefit of competition."

17 Do you know how the rural telephone company

18 service areas that are subject to this current

19 application compare in terms of comparing per line

20 high-cost support amounts to the service areas of those

21 areas in South Dakota where Western Wireless has

22 already been designated an ETC?

23 A No. I haven't examined differences in per line support

24 or, as the question asks, population density between

25 the earlier designated areas and those that are at

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1 issue here.

2 Q So you have not done any sort of an analysis like that

3 yourself in this process?

4 A No. And the question asked about evidence in this

5 case, and the answer is no.

6 Q So you have not compared the high-cost support amounts

7 received by the rural telephone companies that are

8 subject to the current ETC application with any

9 national average?

10 A No, I haven't.

11 Q Mr. Blundell, as an applicant for ETC status, who has

12 the burden of proof in an ETC proceeding?

13 A I think the applicant has the burden of proving that it

14 meets the criteria for ETC designation, and then I

15 believe there is some burden shifting. In other words,

16 I think that in a balancing test that is part of the

17 public interest examination, the rural ILEC Interveners

18 who oppose designation have the burden of showing that

19 there's some harm and then you balance -- the

20 Commission should balance the benefit against the harm.

21 Q On page 18 of your rebuttal testimony you reference the

22 consumer code of the Cellular Telecommunications &

23 Internet Association, CTIA, and you indicate that

24 Western Wireless is a voluntary signatory to the CTIA

25 consumer code.

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1 Is there any entity that enforces those code

2 provisions?

3 A As a competitive carrier the consumer enforces those

4 provisions every day. In other words, we're answerable

5 to consumers. Consumers decide whether they're going

6 to take our service or not, whether it is of high

7 quality, high value, and a good price every day.

8 Q You address -- going on in your rebuttal testimony on

9 page 21, you address briefly Western Wireless's

10 financial resources, and you provide a total market

11 capitalization number, an annual revenue number, and an

12 available cash on hand number.

13 Would you agree with the statement that in

14 order to get a fair representation of a company's

15 financial well-being that the company's debt is

16 relevant?

17 A Yes.

18 Q So is there a particular reason that no debt number or

19 numbers was provided?

20 A We provided a few numbers too from the annual report

21 and one sort of from the market valuation for that day

22 and felt as though that was a pretty good look at our

23 financial capability.

24 Q But there's no specific debt number, is there, that's

25 provided in your testimony?

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1 A There's also no mention of a whole host of other

2 financial factors.

3 Q Would Western Wireless have any objection to putting

4 its latest annual report -- and I'm assuming the latest

5 annual report completed is annual report for 2002.

6 Would you have any trouble with putting that into the

7 report in this proceeding?

8 A The most recent annual report is for 2003, and, no, I

9 wouldn't have an objection to putting either of those

10 two in the record.

11 MR. COIT: I'm not sure how to

12 proceed here. Could we seek the admission of those

13 two reports so the Commission has more information

14 on financial resources?

15 MS. AILTS WIEST: Do you have them?

16 MR. COIT: I've got 2002. I was not

17 provided 2003.

18 MR. WIECZOREK: Just for the record,

19 I think 2000 through 2002 were provided early on in

20 the discovery, and I'm not sure if 2003 was done by

21 that time. So that might have been why you haven't

22 received it at that point.

23 MS. AILTS WIEST: Do you have 2003?

24 MR. WIECZOREK: I don't believe I

25 have it with me today.

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1 MS. AILTS WIEST: Can Western
2 Wireless provide it after the hearing? Is there
3 any objection to marking 2002 as Intervener
4 Exhibit 15 and 2003 as Intervener Exhibit 16?
5 If not, we will mark those. Annual report for
6 2002 is 15, annual report for 2003 is 16.
7 MR. AYOTTE: 16 will just be a
8 late-filed exhibit.
9 MS. AILTS WIEST: That will be a
10 late-filed exhibit. Those will be admitted with 16
11 being late-filed.
12 (Exhibits 15 is marked for identification)
13 Q Going on, you indicate on page 22 of your testimony
14 that gas-powered generators are available to provide
15 backup power to Western Wireless cell sites in
16 South Dakota, should the backup battery power not be
17 sufficient.
18 Are these permanently installed generators at
19 the cell sites?
20 A I'm not sure what you mean by permanently.
21 Q Well, are they mobile units or permanent units affixed
22 to the tower location?
23 A I don't know.
24 Q So you don't know if they're permanent generators or
25 portable generators that are used for backup power on

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1 these cell sites?
2 A I believe the generators installed at the mobile
3 switching centers are permanent. I don't know with
4 regard to cell sites.
5 Q Is it Western Wireless's position that considerations
6 of affordability should have no part in this
7 Commission's public interest analysis?
8 MR. AYOTTE: I'm going to object.
9 Could you define what you mean by affordability?
10 Vague.
11 MR. COIT: Affordability?
12 MR. AYOTTE: Yes.
13 Q As a matter of clarification, I guess we're talking
14 about whether the universal services that are relied on
15 for the purposes of receiving universal service support
16 are affordable.
17 MR. AYOTTE: I will continue to
18 object as being vague and ambiguous. That's merely
19 providing the same term as part of the definition.
20 Are you referring to lifeline qualified low
21 income consumers, or from what benchmark or
22 standard?
23 MR. COIT: We are, I guess,
24 referring to the affordability standards that are
25 set forth in the federal law insofar as they are

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1 set forth in the Federal Act.
2 And it's also -- affordability is discussed in
3 Mr. Blundell's testimony in his rebuttal at
4 page 23, starting at page 23.
5 So I guess within the -- we're referring to
6 affordability as that matter is discussed in his
7 testimony. It's already been provided.
8 MR. AYOTTE: Well, in his testimony
9 he is responding to Ms. Vanicek and her discussion
10 of affordability. That doesn't mean that this
11 witness is adopting or applying that term. I'm
12 just asking you to define it for the purposes of
13 the question.
14 MR. COIT: Well, I am defining
15 affordability, I guess, as it's referenced in the
16 federal law dealing with affordability in relation
17 to universal service.
18 MR. AYOTTE: Could you provide a
19 reference for that, please, because there is no
20 such standard that I'm aware of.
21 MR. COIT: Well, I'm not referring
22 specifically to the Federal Act provisions that
23 relate to 214, but certainly the 254 provisions of
24 the Federal Act relating to universal service
25 reference affordability. They reference

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1 affordability specifically in Section 254(b)(1),
2 quality services should be available at just,
3 reasonable, and affordable rates.
4 MS. AILTS WIEST: Based upon your
5 understanding of those sections, do you have any
6 opinion on affordability?
7 THE WITNESS: I do.
8 Q Can I repeat my question? Do I need to repeat my
9 question?
10 A I don't think so.
11 Q Okay. Go ahead then. Thank you.
12 A The answer is it is not relevant. Affordability is not
13 one of the directives that either the law or the FCC
14 has given to a State Commission in deciding an ETC
15 matter. It is instead a founding federal law in
16 Section 254(b) as sort of a guideline that the Joint
17 Board should consider in making its recommendations to
18 the FCC.
19 Affordability is not a criteria that a State
20 Commission should consider in determining whether or
21 not an applicant should be designated as an ETC.
22 Q Would you agree that one of the primary purposes of
23 universal service support is to make basic
24 telecommunications services affordable?
25 A But that's not a relevant question in this case. The

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1 question in this case is whether Western Wireless meets
2 certain criteria. Affordability is not one of those
3 criteria. So if you're asking me whether under sort of
4 notions of federal policy, whether affordability is
5 relevant, I suppose it is one of those listed factors
6 that the Joint Board should consider.

7 It is definitely -- even if it may not be a
8 relevant consideration for this Commission, it is
9 something that Western Wireless certainly meets. Our
10 services are affordable.

11 **Q** Mr. Blundell, you state on pages 2 and 3 of your
12 surrebuttal testimony starting at the -- in the bottom
13 paragraph on page 2, you state that, The witnesses for
14 Interveners concede that Western Wireless is a common
15 carrier, one. Two, that Western Wireless offers all
16 other required supported services and, three, that
17 Western Wireless will appropriately advertise the
18 availability and charges for the supported services
19 using media of general distribution.

20 How do you come to the conclusion that
21 somebody has conceded an issue?

22 **A** None of the witnesses in this case have put on any
23 evidence whatsoever that Western Wireless doesn't meet
24 the statutory and regulatory requirements for being
25 designated as an ETC.

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1 **Q** Earlier we talked a little bit about burden of proof.
2 Isn't it Western Wireless's burden of proof as the
3 applicant in this case?

4 **A** So by that statement what I mean in conclusion is that
5 Western Wireless has put its case on. No testimony or
6 evidence has been put forward to contest it, and I
7 conclude that the parties must concede that Western
8 Wireless meets those requirements and the Commission
9 should find, therefore, that it does.

10 **Q** So in your view any silence on an issue can be
11 interpreted as a concession?

12 **A** I would conclude that, yes.

13 **Q** Doesn't Western Wireless as the party with the burden
14 of proof -- and you're an attorney. Doesn't Western
15 Wireless have the obligation to present evidence on
16 each factual criteria that this Commission is obligated
17 to address in the ETC designation process under both
18 federal and state law?

19 **A** And Western Wireless has done that, more than
20 adequately, and no party has disputed any of those
21 facts. And I suggest that that means they concede that
22 Western Wireless meets those.

23 **Q** You reference on page 9 of your surrebuttal the
24 propagation map that is provided with Glenn Brown's
25 testimony, and that is in his testimony provided as

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1 GHB 8, and his testimony for the record has been marked
2 as Interveners' Exhibit 1; is that correct?

3 UNIDENTIFIED SPEAKER: Surrebuttal

4 2.

5 **Q** Interveners Exhibit 2, Exhibit GHB 8. Mr. Blundell,
6 have you ever personally conducted what can be
7 characterized as an RF propagation analysis?

8 **A** I have not personally, no, but I've reviewed the
9 results of those analyses within the company on
10 numerous occasions.

11 **Q** You state on page 12 of your surrebuttal testimony that
12 Western Wireless -- let me see what lines. At the
13 bottom of the page starting on the bottom of page 12
14 continuing on page 13 you state, "Western Wireless uses
15 a very sophisticated computerized RF propagation model
16 to analyze its signal coverage and relies on this
17 modeling to operate its business."

18 MR. COIT: At this point I'm going
19 to be referencing a confidential exhibit.

20 MS. AILTS WIEST: Okay.

21 (Unidentified person exits the room)

22 (Confidential proceedings)

25

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1 MS. AILTS WIEST: Off the record.
2 (Discussion off the record)
3 MS. AILTS WIEST: We'll be back here
4 at 1:15. Thank you.
5 (A lunch recess is taken)
6 MS. AILTS WIEST: Mr. Coit.
7 MR. COIT: Thank you.

8 Q (BY Mr. Coit) Mr. Blundell, I would refer you to page
9 13 of your surrebuttal testimony, which indicates that
10 the service area boundaries that Western Wireless has
11 used are those that are within the map info software.

12 And would it be correct that you've used
13 those boundaries as a basis for your conclusions
14 regarding your ability to provide the required services
15 throughout the rural telephone company service areas?

16 A Yes.

17 Q And would you agree that the boundaries contained in
18 the map info software do not in all cases match the
19 actual service area and exchange boundaries that have
20 actually been established by the South Dakota Public
21 Utilities Commission?

22 A I'm not aware of any discrepancies between the map info
23 boundaries and boundaries that the South Dakota
24 Commission has established.

25 Q Now it's our understanding -- well, I'll back up here.

1 Do you have any responsibilities with respect to
2 Western Wireless's activities in the State of Colorado,
3 service-wise?

4 A Service-wise?

5 Q In terms of ETC designations, so forth.

6 A Yes.

7 Q So you're familiar with the process that is occurring
8 over there or has occurred in Wyoming for ETC
9 designation for Western Wireless?

10 A I'm confused. You said Colorado first.

11 Q Excuse me. Colorado.

12 A The company has applied for ETC designation in Wyomin
13 as well as Colorado, and there are pending applications
14 there in both states.

15 Q Would I be correct in saying that in the State of
16 Colorado that you did not use map info boundaries in
17 the State of Colorado with regard to the service area
18 of Century Tel of Eagle, Colorado?

19 A For the purposes of making the same determination? My
20 understanding is we did.

21 Q That you did use the map info software?

22 A Yes.

23 Q So to your recollection you did not in Colorado use
24 actual exchange boundaries rather than those
25 established through map info or indicated in the map

1 info software?

2 A For the purposes of analyzing the population covered

3 and determining which wire centers we would request

4 designation in? We did use map info for that.

5 Q Did you use the actual exchange boundaries for some

6 other purpose in Colorado?

7 A I can't recall specifically. It may have been that

8 another party to the case may have submitted a

9 different map with different boundaries on it. I can't

10 recall in particular.

11 Q You state on page 14 of your surrebuttal -- let me see

12 the lines here.

13 A My apologies that there aren't any line numbers on this

14 testimony.

15 Q In the last paragraph you indicate that, "Interveners

16 agree that the Commission has previously applied an

17 appropriate public interest analysis," referring back

18 to the prior ETC designation proceeding.

19 On what basis do you conclude that the

20 Interveners agree with the analysis that was applied in

21 that prior proceeding in terms of the public interest

22 analysis?

23 A I'm sorry, but I don't see that.

24 Q It's actually in the question. "Do the Interveners

25 agree that the Commission previously applied an

1 appropriate public interest analysis?" And your answer

2 is, "Yes."

3 So I'm asking now what's the basis for that

4 statement?

5 A Well, I think if you go to the last line of my answer

6 on page 14, you'll see that I state that neither SDTA

7 nor the rural LECs dispute that the Commission applied

8 such a balancing test referring to the balancing test

9 that I described in the paragraph.

10 In other words, it's a balancing test similar

11 to that applied by the FCC most recently in the

12 Virginia Cellular case.

13 Q Now are you aware of the fact that Interveners as part

14 of SDTA in the earlier South Dakota Supreme Court

15 proceedings on this Commission's prior designation

16 sought to give this Commission the authority to reopen

17 the record so that it could take additional evidence

18 prior to having to address the public interest

19 question?

20 MR. AYOTTE: Objection, irrelevant.

21 MR. COIT: Well, I think it is

22 relevant because he makes the statement on page 14

23 that we agreed as Interveners to the public

24 interest analysis that was previously applied.

25 MS. AILTS WIEST: That is the

1 statement. You can answer the question.

2 A I don't --

3 Q So the question is are you aware that SDTA in the prior

4 court proceedings, the South Dakota Supreme Court

5 proceedings addressing the prior designation of this

6 Commission, sought to reopen the record to take

7 additional evidence on the public interest issue?

8 A This question and answer has to do with the balancing

9 test used in --

10 Q Can you answer my question? Are you aware of the fact

11 that that was done?

12 A I can hear you just fine.

13 Q Okay. Excuse me.

14 A Subject to check, if that's what you say.

15 Q And are you aware of the fact that the request was

16 denied and that as a result this Commission was not in

17 a position to hear all of the evidence related to the

18 public interest as it related to the prior ETC

19 designation?

20 MR. AYOTTE: I'll object. There's

21 no foundation. That's a misstatement of the record

22 in the first proceeding.

23 MS. AILTS WIEST: That's sustained.

24 Q Going on to page 17 of your surrebuttal, you reference

25 the Highland Cellular Decision, and you tried to attach

1 significance to the fact that the FCC in that decision

2 did not incorporate any of the Joint Board's

3 recommendations.

4 You specifically state in the first paragraph

5 that, "Both witnesses overlooked the fact that the

6 FCC's Highland Cellular Decision was issued after the

7 Joint Board's recommendations were released and the FCC

8 did not incorporate any of the recommendations in its

9 analysis."

10 Mr. Blundell, I've handed you a copy of the

11 FCC's Decision in Highland Cellular Inc. It's

12 referenced as FCC 04-37. And I would direct your

13 attention to paragraph 3 of that Decision. For the

14 record could you read that into the record?

15 A The entire paragraph?

16 Q The entire paragraph?

17 A "In response to a request from the Commission, the

18 Federal State Joint Board on universal service (Joint

19 Boards) is currently reviewing: One, the Commission's

20 rules relating to the calculation of high-cost

21 universal service support in areas where a competitive

22 ETC is providing service. Two, the Commission rules

23 regarding support for nonprimary lines and, three, the

24 process for designating ETCs. Some commenters in that

25 proceeding have raised concerns about the rapid growth

1 of high-cost universal service support and the impact
2 of such growth on consumers in rural areas. The
3 outcome of that proceeding could potentially impact,
4 among other things, the support that Highland Cellular
5 and other competitive ETCs may receive in the future
6 and the criteria used for continued eligibility to
7 receive support."

8 **Q** Now if you go to the first page of the Highland
9 Decision, is there an adopted date listed on that page?

10 **A** February 24, 2004.

11 **Q** And, Mr. Blundell, do you know what date the Joint
12 Board Decision was adopted and released?

13 **A** February 27, 2004.

14 **Q** So would it be fair to say that the Highland Decision
15 was already adopted prior to the Joint Board's
16 Recommended Decision?

17 **A** The point in my answer was this Order was released
18 after the Joint Board Recommended Decision. The FCC
19 new full well about the recommendations contained in
20 that Recommended Decision and did not apply them. They
21 did not apply the very recommendations that you suggest
22 ought to be applied here in a decision, an ETC
23 decision, that they themselves were making at the time
24 that those recommendations were made. So, in other
25 words, they ignored the Joint Board Recommended

1 Decision.

2 **Q** But you would agree that Highland Cellular was adopted
3 on February 24, 2004?

4 **A** The FCC certainly had two months --

5 **Q** Yes or no, please.

6 **A** The Order says adopted one date, and released another.
7 So the Commission certainly had an opportunity to --
8 and was aware of the Recommended Decision by the Joint
9 Board at the time that it released its Order in April.

10 **Q** But would you also agree that in speaking to the Joint
11 Board Decision in the Highland case the FCC referenced
12 that Decision in the future tense.

13 **A** Which makes my point even more important. The FCC
14 referenced the Joint Board Recommended Decision and did
15 nothing about it.

16 **Q** You provided in your surrebuttal testimony as Exhibit
17 JHB 6, if you want to grab that, please.

18 MR. AYOTTE: This is a confidential
19 exhibit, and I assume that the questions will
20 relate to confidential information.

21 MR. COIT: Yes.

22 (Unidentified person exits room)

23 MR. AYOTTE: Thank you.

24 (Confidential proceedings)

25

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1 (Discussion off the record)

2 Q My question was does Western Wireless provide equal
3 access currently to interexchange carriers in
4 South Dakota?

5 A Western Wireless does not provide equal access to
6 interexchange services, cannot technically do so today,
7 and is not required and, in fact, states are prohibited
8 from requiring it under federal law.

9 Q In the Western Wireless petition for designation
10 there's a statement, paragraph 26, "The Western
11 Wireless network will have the capability of providing
12 advanced services that meet or exceed what can be
13 provided on a landline network."

14 Has Western Wireless established any specific
15 date by which it will make these advanced services
16 available in those areas where it's seeking
17 designation?

18 A My understanding is that 1XRTT technology which is our
19 high speed data offering technology will be available
20 throughout South Dakota by the end of '04.

21 Q And throughout the entire state where you have coverage
22 today?

23 A That's my understanding. It is a CDMA technology so it
24 would follow our CDMA footprint.

25 MR. COIT: That's all I have on

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1 cross at this point.

2 MS. AILTS WIEST: Mr. Dickens.

3 CROSS-EXAMINATION

4 BY MR. DICKENS:

5 Q Mr. Blundell, we met the night before last or at some
6 other point since you look familiar. I want to follow
7 up on a question Mr. Coit just asked about equal
8 access.

9 I think as part of your answer to his
10 question you indicated that Western Wireless is not
11 technically capable of providing equal access?

12 A That's correct.

13 Q You're no doubt familiar with the fact that last
14 July 10 the FCC ruled on a Joint Board recommendation
15 concerning whether wireless carriers should have to
16 provide equal access for ETC purposes and declined at
17 that time to adopt the requirement.

18 Do you remember that?

19 A Yes. I believe, yes, I would agree.

20 Q Didn't your company tell the FCC that if they required
21 equal access, you would simply provide it as part of
22 that proceeding?

23 A That is not inconsistent with my testimony here.

24 Q So you could technically provide it?

25 A We've made a commitment to comply with all applicable

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1 lawful requirements, ETC and otherwise.

2 Q Okay. So when you say you can't technically supply
3 equal access that doesn't imply that you couldn't
4 supply equal access?

5 A I think that's correct, yeah.

6 Q Okay. Earlier today before the lunch break you were
7 answering questions from Mr. Coit about the 85 percent
8 population coverage that I believe was discussed in
9 your prefiled testimony that you say determined which
10 study areas you would seek ETC status in and resulted
11 in the study areas identified in this petition.

12 Do you recollect that?

13 A Yes.

14 Q Okay. Let me ask you, when you were analyzing your
15 signal contour coverage at that time was your analysis
16 based on analog technology or digital technology?

17 A The analysis was based on a neg 104 dBm threshold,
18 which is the same threshold that we use and that the
19 FCC uses in determining the CGSA, which is the original
20 analog amps. Well, it is neither analog or digital,
21 the CGSA standard. It was created at a time when amps
22 was the sole technology.

23 Today, of course, we offer both analog and
24 digital. The CDMA coverage that we offer with booster
25 technology approximates the neg 104 dBm threshold. But

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1 it was a neg 104 dBm threshold that I used in analyzing
2 that 85 percent pops covered analysis.

3 Q Well, I guess you may have anticipated my question, but
4 would you not -- would your construction plans in the
5 future not include plans to gradually shift from analog
6 technology to digital technology over some course of
7 time?

8 A As the FCC phases out its requirement for us to provide
9 analog amps technology and as our customer base
10 transitions fully to a digital technology, some point
11 down the road, whether it's five years, 10 years, you
12 know, a few years, I don't know but it's entirely
13 possible that amps technology would be -- would not be
14 provided.

15 Q For the areas that you identified that are covered,
16 where 85 percent of those areas are covered by your
17 existing signal contour, are any of those areas
18 presently served by analog technology?

19 A Yes.

20 Q And do you have any plans in the next, say, 12 months
21 to change that technology out to digital in those
22 areas?

23 A No. Not that I know of, no.

24 Q Would your job responsibilities require you to know
25 that?

1 A Yes. I would -- yes, I would say so, yeah. In order
2 to be fully knowledgeable, I would know that.
3 Q There are two ways to interpret your answer, you know.
4 A Is that a question?
5 Q No. Let me ask you about the 17 -- you know what? I
6 may be getting into a confidential exhibit.
7 MR. DICKENS: I apologize, Jim.
8 (Unidentified person exits the room)
9 (Confidential proceedings)
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1 Q Mr. Blundell, if you can, can you tell me -- I realize
2 that there are a number of variables involved in the
3 answer to the question I'm about to ask you, but can
4 you tell me on average what the reliable service
5 contour is at a cell site? Is it 20 miles or 25 miles
6 or 10 miles?

7 Can you tell us on average what that is?

8 A It varies substantially from cell site to cell site so
9 I don't know an average. I've been told that it varies
10 quite substantially. And it can depend on many
11 factors, you know, where it resides in the network, the
12 geography of the location and surrounding location so
13 it varies substantially.

14 (Confidential proceedings)
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1 Q I can't remember if we talked about this this morning
2 or not, but I think someplace in your surrebuttal
3 testimony you discussed the fact that Western Wireless
4 drive tests its coverage area after -- is that after
5 you do a computer propagation analysis?

6 A I think it's an ongoing process. We're continually
7 monitoring our network for signal coverage and
8 propagation. So it's a continual process.

9 Q As part of the process for filing this application when
10 you were trying to overlay your signal contour results
11 on top of the study areas, I presume that you would
12 have done a propagation analysis to determine what kind
13 of coverage you provide in those areas; is that true?

14 A That was my testimony, yes.

15 Q Okay. Did you drive test that area?

16 A As I said, the company is continually drive testing to
17 update the data in the RF propagation analysis.

18 Q Is the answer yes?

19 A Did I drive test?

20 Q No. Did someone in your company drive test the areas
21 of the telephone companies covered by this application?

22 A Yes.

23 Q As part of the analysis we just talked about?

24 A Yes. Yes. The data represents an analysis that is
25 updated with drive test data.

1 Q And the James Valley service area is up in the
2 northeast part of the state; is that correct?

3 A Yes.

4 MS. AILTS WIEST: I'm sorry to
5 interrupt. Is this confidential?

6 MR. CREMER: It is not.

7 MS. AILTS WIEST: Go ahead.

8 Q Now also on this map Mr. Brown put the cell tower sites
9 of Western Wireless. Is that your understanding?

10 A I don't know whether that accurately depicts that or
11 not.

12 Q If I would ask you to assume that it does, we'll have
13 Mr. Brown testified to that when he testifies, am I
14 correct that there's only one cell tower site in the
15 James Valley service area?

16 A I don't know that -- I don't know that we can assume
17 that.

18 Q Well, I'm asking you for the purposes of your testimony
19 to assume that, and if Mr. Brown doesn't confirm it,
20 then, of course, the hypothetical question that I ask
21 you wouldn't be appropriate, but for these purposes
22 this map would show, does it not, that there's only one
23 cell tower in the James Valley service area of
24 Western Wireless; is that correct?

25 A Does that map show one tower within the James Valley

1 MS. AILTS WIEST: Mr. Cremer.

2 MR. CREMER: Thank you.

3 CROSS-EXAMINATION

4 BY MR. CREMER:

5 Q Mr. Blundell, I'm going to be asking you some questions
6 from some exhibits up here. Let me grab them.

7 Mr. Blundell, you were here when I gave my
8 opening statement, weren't you?

9 A Yes, I was.

10 Q I'm not going to ask how good you listened to it
11 because that might not be fair, but what I told the
12 Commission is I wanted them to focus on four facts as
13 it relates to my client, James Valley, okay. And I
14 want you to help me with three of those facts.

15 One of those deals with the number of towers
16 in the James Valley service area. And I'm going to
17 show you what was produced in Mr. Brown's testimony as
18 Exhibit GHB 3.

19 Did you review that, or did you see that as a
20 part of his testimony?

21 A Yes.

22 Q You will see that on this map of South Dakota he put
23 the service areas in which Western Wireless is seeking
24 ETC status; is that correct?

25 A I think that's correct, yes.

1 study area?

2 Q Yes. That's the question.

3 A I better approach.

4 CHAIRMAN SAHR: Mr. Cremer, perhaps
5 I should be going to my documents, but what is the
6 symbol that denotes a tower, for those of us who
7 are trying to read off the exhibit you put up
8 there?

9 MR. CREMER: I would say it looks
10 like an A, capital A.

11 CHAIRMAN SAHR: Thank you.

12 A As that map depicts it, and I've got some doubts about
13 whether it depicts Western Wireless's cell site
14 locations, as that map depicts it, there is one tower
15 in the James Valley study area.

16 Q Very good. Thank you. Now the second fact that I
17 wanted to present to the Commission dealt with the
18 amount of USF money that Western Wireless would receive
19 in the James Valley service area.

20 I'm going to have you look at Brown
21 Exhibit 1. Would you agree with me that for the
22 James Valley service area the amount of USF funds that
23 would be received annually by Western Wireless would be
24 \$868,032?

25 A I have some questions about that exhibit before I can

1 answer it. I don't fully understand it.
2 **Q** Well, as I understand, Mr. Blundell, these are the
3 number of lines that Mr. DeJordy in his -- the
4 information he supplied as a part of this record told
5 this Commission are in the James Valley service area;
6 is that correct? Is that your understanding?
7 **A** No. They don't match at all.
8 MR. CREMER: I'm going to get into a
9 confidential exhibit.
10 (Confidential proceedings)

1 **Q** Would you agree that the USF per dollar amount for
2 James Valley is \$26.40?
3 **A** I haven't checked that reference, the USAC HCL1
4 recently. But if you say it is --
5 **Q** All right. So then if we simply multiply 2,740 by
6 \$26.40 a month for 12 months, we'd end up with annu
7 USF funds of \$868,032; is that correct?
8 **A** Is that what you've done on the exhibit, you've
9 multiplied it times 12?
10 **Q** That's what I understand was done, that's correct.
11 **A** Okay. Yeah. I mean, if that's -- again, subject to
12 checking the math.
13 **Q** All right. So the answer to my question as we started
14 down this trail was that's the amount of money Western
15 Wireless would receive from the James Valley service
16 area annually, assuming this number of lines, this
17 amount of monthly support; is that correct?
18 **A** There's no way to -- actually there's no way to with
19 much accuracy to predict exactly how much USAC will
20 up distributing to us. Now I assume that the per
21 month -- the per line, per month subsidy is taken from
22 the projection, from HCL1, correct?
23 **Q** Correct.
24 **A** The projection and, you know, any time we speak with
25 USAC about their quarterly projections they equivocate

1 quite a bit about the accuracy of those projections.
2 Because we try to account for the support that we
3 receive, and they very rarely match the projection.
4 **Q** But, Mr. Blundell, based upon what we know today and
5 based on the numbers on this exhibit, this would be the
6 annual amount of support? Isn't that fair to say?
7 **A** No. If you were going to ask me the actual annual
8 support that Western Wireless would receive, no, I
9 can't agree to that. Those projections are fairly
10 inaccurate.
11 **Q** Okay. But what I asked you was assuming these numbers
12 that would be correct; isn't that right, if you assume
13 those numbers?
14 **A** If we assume that USAC pays on the basis of the
15 projections that it makes, then, yes, I suppose that's
16 true.
17 **Q** All right. Thank you.
18 MR. CREMER: I'm going to get into a
19 confidential exhibit.
20 (Confidential proceedings)

1 MR. CREMER: That's all the
2 questions I have. Thank you.
3 MS. AILTS WIEST: Mr. Smith, do you
4 have any questions?
5 MR. SMITH: Just a couple.
6 MS. AILTS WIEST: Are they
7 confidential?
8 MR. SMITH: I don't know.
9 MR. AYOTTE: I'll let you know.
10 MR. SMITH: Okay.
11 MS. AILTS WIEST: Can he open the
12 door?
13 MR. SMITH: Yeah. Open the door. I
14 don't think so.

15 CROSS-EXAMINATION

16 BY MR. SMITH:

17 Q Back to the 85 percent, am I to understand based on the
18 questions that Mr. Cremer just asked you and if I
19 understand your testimony, your direct and your
20 rebuttal and surrebuttal, that after this build-out
21 including the 17 hours is complete that is when the
22 85 percent number that you cite has been achieved?
23 A Yes.
24 Q Is that where the 85 percent number is achieved?
25 A In some wire centers and some study areas it is

1 achieved without the 17 sites. The fact that the
2 company doesn't plan to construct a tower in the
3 James Valley study area is that Western Wireless
4 believes currently today that it can meet the
5 requirement -- the ETC requirements today in that area,
6 that it can respond to reasonable requests for service,
7 and that it can provide service today in a fashion that
8 satisfies the ETC requirements today.
9 Q So the 85 percent number, just to make it real simple
10 here, is the number of at least some of the wire
11 centers or service areas that will -- that's the
12 percentage of coverage you will have following the
13 total build-out that's currently planned?
14 A Correct.
15 Q Currently planned?
16 A Yes. And in some -- just to clarify my earlier
17 statement, in some the plan to build is necessary, and
18 in others it is not necessary to meet our internal
19 requirement of 85 percent. It's our way of deciding
20 whether we can meet those obligations.
21 Q When that build-out is done, though, if my very limited
22 knowledge of math is correct, we'll still have
23 15 percent of the service areas of some of these areas
24 at least, perhaps, not covered as is based upon these
25 test criteria?

1 A Many, if not most, of the wire centers that we analyzed
2 are between 90 and 100 percent well covered. And, yes,
3 in sum that number may drop down to 86 percent,
4 87 percent. What the ETC designation will allow
5 Western Wireless to do is exactly what it's intended to
6 do, to allow us to provide service into that additional
7 15 percent or in some cases 5 or 10 percent.

8 We want to be able to provide service there.
9 We're in the business of providing service, not of
10 denying requests for service.

11 So it's in our interest. There is incentive
12 not only today but also following ETC designation to
13 provide service to those additional 15, 5, 10, 15
14 percent of the population in those areas.

15 Q Just on what may be a philosophical level here, but I
16 think it might get to one of the ultimate questions
17 we're talking about, one of the purposes of the
18 Universal Service Fund is to provide funds for
19 businesses to serve areas, telecommunications carriers
20 to serve areas that using normal free enterprise
21 business cases they would not serve.

22 Is that a fair statement?

23 A It's a mechanism to support the provision of service
24 where it is considered high-cost and, yes, I think, you
25 know, the notion is these are rural remote areas both

1 for wireless and for wireline carriers. It's expensive
2 to provide service there.

3 And so the government decided to create a
4 mechanism to support carriers who desire to serve those
5 areas that are considered high-cost.

6 Q And so might the Commission reasonably expect Western
7 Wireless as one of the quid pro quos, if you will, for
8 receiving a rather large increment of government
9 dollars every year to be willing to maybe even go
10 beyond that 85 percent and to go into areas where it
11 absolutely would not make sense from a normal business
12 case scenario and build out throughout the service area
13 as that term is used in Section 214(e)?

14 A Well, I'm not sure I -- I'm trying to answer your
15 question. The standard for meeting the requests for
16 service of consumers is this reasonable request -- you
17 know, build-out -- or respond to reasonable requests
18 for service. The Commission has an annual
19 certification process that applies to all ETCs,
20 wireline and wireless, and through which Western
21 Wireless has complied and satisfied the Commission's
22 requirements and this Commission has certified Western
23 Wireless under 254(e).

24 If your question is can the Commission
25 through that 254(e) process expect Western Wireless to

1 go beyond the -- let's say the 85 percent and to
2 provide service sort of just automatically without a
3 reasonable request from a subscriber -- keep in mind, I
4 mean, that's really what drives all of this. That's
5 what drives it for the wireline carriers as well as
6 wireless. Wireline carriers don't have nearly the
7 ubiquity of coverage that wireless carriers have
8 because they respond to reasonable requests for
9 service.

10 When a customer builds a house and requests a
11 line, the telephone company extends a line. Should
12 Western Wireless be expected to without a reasonable
13 request build out into that 15 percent? I'm not sure.
14 I kind of think that the standard makes sense. If
15 there are --

16 Q Let me ask you this then. Upon reasonable requests,
17 and I acknowledge that no matter how thoroughly you
18 build your system there are probably going to be dead
19 spots and so on and I understand your testimony in that
20 regard, but in cases like we've had recently where
21 we've had entire communities of people request service
22 because the service is lousy throughout that particular
23 geographic zone or where we have large numbers of
24 complaints, whether or not they're within those 17 will
25 Western Wireless be committed to a continuous program

1 of construction and system upgrades to achieve that
2 objective and with your condition based upon a
3 reasonable request that service be extended throughout
4 the entire service areas of these ILECs?

5 A That's exactly what we're in the business of doing.
6 Western Wireless wants to be a service provider, wants
7 to be in a position to be able to attract customers in
8 our network and to provide them service. We do not
9 want to be in the position of denying service to
10 potential customers. That's what universal service is
11 all about is providing support to enable a carrier to
12 do just exactly that.

13 Q And that means going beyond the 17 towers and making
14 necessary additional build-outs in the future to
15 achieve that?

16 A Sure.

17 Q As a reasonable request?

18 A Absolutely. In other words, the 17 towers represent
19 this year's expenditures. Next year I don't know what
20 it will look like but absolutely.

21 Q There will be some?

22 A There will be. And the standard -- I'm sorry to
23 interrupt.

24 Q Go ahead.

25 A But the standard on that is the upgrade, provision, and

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1 maintenance of the network. So the support under
 2 254(e) has got to be used for the upgrade, maintenance,
 3 and provision of the support.
 4 So, just to be clear, the 17 cell sites
 5 represent one component of that 254(e) requirement. It
 6 also extends to and applies to the maintenance of the
 7 network and the upgrading of the network.
 8 **Q** All right. I understand that. The FCC in both of its
 9 recent Decisions in the section called -- and I can
 10 have you read it and all of that, but I think you're
 11 aware of it, included a section called Regulatory
 12 Oversight. It's in paragraph 43 of the Highland
 13 Cellular Decision.
 14 **A** Okay.
 15 **Q** And although the FCC did not specifically term the
 16 provisions in that paragraph as conditions of its grant
 17 of service, it included specific mandatory conduct on
 18 the part of the company that basically performed the
 19 same function as what we do with conditions or what
 20 this Commission has done with conditions.
 21 Would a condition similar in terms of
 22 build-out and in terms of reporting requests for
 23 build-out that it remain unfulfilled -- or for service
 24 I should say because I realize your argument that
 25 service might otherwise be provided.

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1 Would that kind of annual reporting condition
 2 be something Western Wireless could live with so the
 3 Commission would have a way of monitoring the company's
 4 commitment that it's made here today?
 5 **A** First of all, whether or not this witness feels
 6 comfortable with something is really not the --
 7 shouldn't be the standard. The question is whether
 8 certain requirements and conditions are applicable and
 9 mandatory and actually do apply.
 10 Western Wireless has been designated in this
 11 state, and there were conditions on that designation
 12 that Western Wireless has met and that this Commission
 13 has determined have been met. There are conditions in
 14 other states that are different that have been applied.
 15 In some cases we have challenged those and in
 16 others not and Western Wireless is comfortable with a
 17 level of that sort of compliance and reporting and, you
 18 know, satisfaction of those sorts of reasonable
 19 expectations.
 20 **Q** So the company wouldn't be opposed to the Commission
 21 imposing similar regulatory oversight conditions as the
 22 FCC did in this case?
 23 **A** We've agreed to be bound by, for instance, the CTIA
 24 consumer code, which is listed there, the requirement
 25 to submit build-out plans. You know, I don't know what

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1 you want to call those, and, you know, what we've tried
 2 to do is give this Commission the comfort in my
 3 testimony that we are actually building -- we're going
 4 to be building these sites once designated. Whether
 5 you call that a build-out plan or not, I don't know.
 6 I think one of the problems with that sort of
 7 expectation is that they obviously do need to be
 8 expected of all ETCs, wireless and wireline alike.
 9 When a wireline carrier meets the 254(e) expectation as
 10 well as its reporting to NECA for the purposes of
 11 universal service support it certainly does not project
 12 out what it's going to spend, how it's going to build.
 13 It essentially presents its costs to NECA and to USAC
 14 and expects to be made whole.
 15 So those kinds of expectations on
 16 future-looking build-out plans becomes a little
 17 troubling when you impose that on both wireline and
 18 wireless ETCs.
 19 **Q** I don't know that the Highland Cellular Decision
 20 actually imposed a specific build-out plan filing.
 21 What it did state is a general reporting of your
 22 progress and also reporting of requests for service
 23 that have not been satisfactorily fulfilled and the
 24 general reporting of gradual movement toward fulfilling
 25 the standard.

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1 And I can quote it to you, but basically it
 2 said additional requirements will further the
 3 Commission's goal of ensuring Highland Cellular
 4 satisfies its obligation under Section 214(e) to
 5 provide supported services throughout the designated
 6 service area.
 7 Is that a problem?
 8 **A** Is the imposition of that general notion a problem?
 9 **Q** Would that precise paragraph as its written be a
 10 problem in this case?
 11 **A** I'm sorry. Could you refer me to --
 12 **Q** The paragraph is 43 in the Highland Decision.
 13 **A** Right.
 14 **Q** And, again, there may be things the Commission will
 15 want to do other than that. I'm just trying to get a
 16 feeling here for what Western Wireless's commitment
 17 level -- what you think the commitment is you're making
 18 here because the level of conditions you're going to
 19 live with or provisions in the Order I think tell the
 20 Commission something about that.
 21 **A** Right. I think so too. And I look back to the
 22 original -- the first ETC designation as a sign of this
 23 company's commitment here. This company was subjected
 24 to a series of conditions there, all of which have been
 25 met, not the least of which was the complete revision

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1 of our terms and conditions, our service agreement that
 2 customers use.

3 And we're a company that likes to use the
 4 similar service agreement throughout its nationwide
 5 footprint and to create a special agreement -- that was
 6 something unique that we did, and we've complied with
 7 that. We are subject to reporting today, reporting to
 8 the Commission. We're subject to the Commission's
 9 jurisdiction over complaints. Those kinds of things I
 10 think show this company's commitment pursuant to an ETC
 11 designation, all of which have been imposed by this
 12 Commission and that the company has complied with.

13 Are the specific conditions included in
 14 Highland, is the company comfortable with those? Not
 15 100 percent. But, you know, those types of assurances
 16 that commissions impose, you know, I think we show our
 17 comfort by complying and we've done that today as an
 18 ETC today and we hope to and expect to be able to do
 19 that in the future with another ETC designation.

20 **Q** With respect to the CTIA consumer code, this is a
 21 little issue but again I'm just trying to get to --

22 **A** Sure.

23 **Q** -- Western Wireless's attitude here about all of this.
 24 I noticed recently -- we've heard this a few times.
 25 You've probably heard it too, and it's not just your

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1 company, it's other companies around the country. The
 2 imposition of surcharges more or less out of the blue
 3 of the customer's standpoint.

4 Would you please discuss -- recently on the
 5 website right now it says the surcharge increased from
 6 97 cents to \$1.70 effective January 20. I note that
 7 the standards here or the consumer code says, "Carriers
 8 will not modify the material terms of their
 9 subscriber's contracts in a manner that is material or
 10 adverse without providing a reasonable advanced notice
 11 and allowing subscribers a time period of not less than
 12 14 days to cancel their contracts."

13 Is this the kind of thing that provision is
 14 meant to apply to, paragraph 7?

15 **A** Our interpretation of that is an increase -- the
 16 increase that you're referring to was not material.

17 **Q** Okay.

18 **A** The imposition of the surcharge at the beginning, at
 19 the outset was, and that's why we had -- we did make it
 20 possible for consumers to -- I believe you said a
 21 14-day.

22 **Q** To opt out?

23 **A** To opt out.

24 **Q** Thank you. I'm looking at exhibit -- just an exhibit
 25 here for the purposes of a question on an exhibit for

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1 the purposes of getting maybe the data here as precise
 2 as possible. Exhibit JHP 52, surrebuttal.

3 **A** Yes. I have that.

4 **Q** This is the kind of thing Harlan notices, and I never
 5 would in a million years. At the bottom there you have
 6 West River Cooperative Telephone Company listed, and
 7 it's our understanding that that should be West River
 8 Telecommunications Cooperative.

9 **A** I think you're probably correct.

10 **Q** And it does have a miniature-- it has a small impact
 11 on the numbers there.

12 **A** I see. In other words, you're saying we may have --

13 **Q** Picked the wrong --

14 **A** -- picked the wrong telephone company. Okay. Well,--
 15 we'll definitely take a look at that.

16 **MR. SMITH:** I have no further
 17 questions. Thank you.

18 **MS. AILTS WIEST:** Commissioners?

19 **COMMISSIONER BURG:** I have a couple.
 20 We had quite a bit of discussion of the 85 percent.
 21 Do you know -- just curious on this, do you know,
 22 can an ILEC receive universal service funds if
 23 they're providing at an 85 percent level?

24 **THE WITNESS:** I would actually
 25 say -- I don't mean to be flip about this. I would

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1 say that the ILECs provide service to substantially
 2 less than 85 percent of the territory of wire --
 3 centers. I mean, they are, you know, single line,
 4 very little ubiquity throughout that area.

5 **COMMISSIONER BURG:** Of requested
 6 service of requested residences?

7 **THE WITNESS:** See, that's a
 8 difference that -- but we did not use 85 percent of
 9 requested service to analyze whether or not we were
 10 going to include that area in our service area. So
 11 let me be clear just a moment. In analyzing
 12 whether to include an area we looked at just sheer
 13 population coverage, pops in that wire center
 14 covered.

15 At 85 percent, I mean, that's a very different
 16 thing than geographic coverage. So we believe that
 17 population coverage is a more accurate reflection
 18 of our ability to meet ETC expectations.

19 The standard that the FCC has established in
 20 expecting ETCs to respond to requests for service
 21 is this reasonable request for service standard.
 22 That's a different thing than the 85 percent
 23 analysis we use, which is an internal standard.
 24 It's what we've used to determine whether we feel
 25 we can meet the obligations to serve the customers

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1 in that area.

2 COMMISSIONER BURG: What's the FCC's

3 requirement for reasonable request, what percent of

4 coverage?

5 THE WITNESS: There's no -- you

6 know, reasonable is reasonable. I mean, I think it

7 depends on the specific instances of that request.

8 So, in other words, the FCC hasn't attached a time

9 frame or a percentage. It just means, you know,

10 the carriers both wireline and wireless are

11 expected to respond to reasonable requests for

12 service.

13 COMMISSIONER BURG: Let me turn it a

14 little then. You're saying that under your

15 standard that you could refuse service to

16 15 percent of the reasonable requests and meet that

17 standard?

18 THE WITNESS: No. That's not my

19 testimony at all. The expectation on an ETC is

20 that it offer and advertise -- I mean, the language

21 of the law and of the rule is to offer and

22 advertise the supported services throughout the

23 designated service area. What does that mean?

24 The FCC says it means respond to requests for

25 service within a reasonable time. That's what they

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1 said in the South Dakota Preemption Order. They

2 recognize that competitors would never be

3 designated if they had to be built out essentially

4 100 percent throughout the entire area.

5 So the reasonable request language applies --

6 again, applies to all ETCs. We use the 85 percent

7 threshold as a way of getting at that -- you know,

8 somewhere between, we think, 0 and 100 percent.

9 The FCC says it doesn't expect 100 percent. We

10 want to be able to make assurances to you that we

11 meet it at some level above 0.

12 We think 85 percent of the population covered

13 is a good threshold to use to convince you that we

14 are providing service in that area, it's not 100

15 percent, that we recognize there are gaps. We want

16 to make it better. We want to be eligible for the

17 support in order to expand the network to

18 subscribers there. We want to be able to provide

19 the service to those additional 15 percent.

20 COMMISSIONER BURG: Believe you me

21 we want you to too because we're the ones who hear

22 about it with those that don't. So, I mean, I'm

23 still confused. I still don't understand. Because

24 we hear from that one that doesn't get service.

25 And so what you're saying --

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1 I'm just trying to figure out exactly what you

2 are saying. You tell me that you're not saying

3 that under your own standard that up to 15 percent

4 of the people could be denied service and you'd

5 meet your standard. You're saying that's not the

6 case. What does it mean then?

7 I mean, yes, I know reasonable request, I

8 mean, let me get back to -- I don't think you

9 should have to necessarily meet every valley in

10 your case or in the case of the wireline every

11 mountain.

12 THE WITNESS: Let's assume that

13 Western Wireless is designated in a hypothetical

14 wire center and we analyze it internally as being a

15 90 percent pops covered wire center. So now we're

16 beyond this case. We're actually designated there.

17 Now we're in the business of responding to

18 requests. So we've got 10 percent of the

19 population out there. Let's say it's 20 people. I

20 don't know. Those 20 people, A, could already be

21 subscribers, B, they might not be subscribers but

22 want to be subscribers and ask us for service, or,

23 C, they may not want the service at all.

24 For those B subscribers we have -- there are a

25 number of ways that Western Wireless responds to a

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1 request for service. First of all, I mean -- and

2 let's say it's in an area where we haven't been

3 able to -- we haven't been able to build out yet.

4 If the customer says I want to be a customer

5 but you don't have service in this area, we can do

6 a number of things on kind of an escalating scale.

7 We can make sure that they get the right equipment

8 in their hands, whether that's, you know, a handset

9 that works, a handset with booster technology, a

10 handset that is maybe a 3 watt phone, a number of

11 sort of user equipment ways that we can sort of

12 enhance the likelihood that we'll have service for

13 that person in that spot.

14 There are a number of network things that we

15 can do. We can tweak the network. We can make

16 configuration changes in the network. There is

17 booster technology on the network side that we're

18 looking at, we're going to be looking very

19 seriously at in kind of a test basis starting in

20 Nevada that we think could substantially change the

21 way that our network is amplified and transmitted.

22 There are a number of steps we can take, the

23 last of which is the construction of an additional

24 cell site. If there is, you know, one person who

25 requests service and doesn't have service today and

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1 it would cost, you know, 3 or \$400,000 to build a
2 cell site, is that a reasonable request? I don't
3 know. Probably not.

4 So, you know, each request for service I think
5 is individual, has multiple factors, but Western
6 Wireless responds in a whole number of different
7 ways to be able to provide service to those
8 requesting customers.

9 COMMISSIONER BURG: It is my
10 personal feeling that anybody who has ETC
11 designation, wireline or wireless, should have the
12 same standard to provide service. If there were
13 that one customer or those five customers on
14 wireline, could they deny it the same?

15 THE WITNESS: As an ETC the same
16 standard applies. The FCC in that South Dakota
17 Decision -- in fact, they repeated it in both the
18 Virginia Cellular and the Highland Cellular case.
19 So it is the standard. They said in that context
20 this is the standard that applies to ETC, respond
21 to reasonable requests for service.

22 Does the wireline LEC carrier have perhaps
23 other different state regulatory expectations such
24 as carrier of last resort that might be interpreted
25 to be a different obligation? Sure.

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1 COMMISSIONER BURG: And you don't
2 have a carrier of last resort even though you get
3 the same universal service support.

4 THE WITNESS: The FCC has, in fact,
5 said wireless carriers can't be expected to be --
6 to apply for and be designated as COLRs, as
7 carriers of last resort.

8 COMMISSIONER BURG: But you do get
9 the same universal service support.

10 THE WITNESS: Because we meet those
11 nine supported services. And the FCC and the law
12 says -- basic services, provide the nine supported
13 services, offer and advertise, you've got to be a
14 common carrier. It's that set of obligations, that
15 set of criteria, not state regulatory, you know,
16 carrier of last resort obligations or certificate
17 expectations. It's a different set.

18 COMMISSIONER BURG: What's the
19 difference between an extraordinary and a -- no.
20 An extender and a full cell site?

21 THE WITNESS: My understanding is
22 that an extender is -- runs off lower power, is an
23 extension of another cell site. So it's not a
24 stand-alone cell site in that it is -- it has
25 certain limitations, but it does fill a need to

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1 expand coverage on a somewhat limited basis into an
2 area.

3 COMMISSIONER BURG: Is it quite a
4 bit cheaper?

5 THE WITNESS: I think so, yes.

6 COMMISSIONER BURG: You don't have
7 any idea how much?

8 THE WITNESS: I don't, no.

9 COMMISSIONER BURG: And then I read
10 something in the last week or so where the FCC was
11 considering allowing in certain conditions to put
12 more power to try to get the signal out farther
13 from an individual cell site.

14 Is that something that you can adapt -- is
15 that something that might apply?

16 THE WITNESS: I --

17 COMMISSIONER BURG: I think it was
18 within a certain megahertz band width that they
19 were considering. It has not been approved, but
20 they were considering allowing a stronger signal.

21 THE WITNESS: I didn't see that.

22 It's possible it has to do more with this booster
23 technology possibly. I don't know. I didn't see
24 that.

25 COMMISSIONER BURG: I was just

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1 wondering, you know, if that was something you
2 would be adaptable to.

3 You were asked what the average coverage is
4 for a cell site. You said you could not give an
5 average. What do you use as coverage when you're
6 planning then for a new site?

7 THE WITNESS: I believe the
8 engineers actually try to design and plan a cell
9 site into the network using RF propagation models,
10 which, you know, based on the design and planning
11 of that cell site are going to propagate at, you
12 know, different levels.

13 COMMISSIONER BURG: Are you
14 controlled by the amount of power you can put on
15 your signal by law or rule?

16 THE WITNESS: Yes.

17 COMMISSIONER BURG: So wouldn't that
18 pretty well control how far that signal went? I
19 guess one thing I'm getting at is we go out and we
20 meet -- we're using the criteria of about 15 miles,
21 and from your answer I was saying that doesn't
22 sound like we're being accurate.

23 THE WITNESS: I just don't have
24 any -- I mean --

25 COMMISSIONER BURG: I guess I keep

1 thinking if you don't -- you know, if you don't
2 have an idea of how far a cell site will reach when
3 you're talking in generalities, not specifics, how
4 do you plan, how do you talk to the groups that are
5 wanting more information?

6 THE WITNESS: Well, that's why we
7 ask the RF engineers to -- what the engineer will
8 do when analyzing this is they will, you know,
9 experiment. They'll look at how to design in that
10 area. A lot of it's based on the availability of a
11 location. But they can kind of -- they can sort of
12 approximate where they might put a site.

13 They can model the propagation from that cell
14 site based on, you know, a computer model that
15 generates -- based on a whole bunch of different
16 factors, generates different scenarios. And they
17 can essentially model it. So they don't --

18 COMMISSIONER BURG: So if somebody
19 calls you up and said I don't have a good signal
20 and you say -- they say -- you asked them how far
21 they live and they say I live 19 miles from the
22 tower I'm aware of, you don't say that's stretching
23 our signal or anything like that?

24 THE WITNESS: I wouldn't be able to
25 say that.

1 COMMISSIONER BURG: The last
2 question I have, you answered some questions on
3 James Valley's service. It was indicated that
4 there was only one tower there now in that whole
5 service territory and there is no plans to put any
6 in the proposals that you have before us. And you
7 indicated that perhaps you have adequate coverage
8 there now, you meet the 85 threshold now.

9 Do you have a map that would show how you can
10 meet that with your current one so that -- because,
11 I guess the question I have is if you can't, if we
12 don't know that, how come you're requiring ETC in
13 an area you don't have coverage now within that
14 territory at least and there is no plans to
15 actually build that? So why would you ask for ETC
16 coverage for the area?

17 THE WITNESS: Well, we do have
18 coverage there. In fact, we meet the 85 percent
19 threshold in James Valley. The question was
20 whether there was a site located within that study
21 area. I've got two -- I've got a couple of
22 problems with it. Number one, sites in adjacent
23 study areas most certainly can propagate
24 radiofrequency coverage into the James Valley study
25 area. There's no question that's what's going on

1 there.

2 COMMISSIONER BURG: I guess do you
3 have a map that would show that?

4 THE WITNESS: The maps that have
5 been supplied showed both the James Valley --

6 COMMISSIONER BURG: Yeah. I know
7 that. But the map that we had up there does not
8 show where the cells are that would serve that area
9 if there aren't any in the area.

10 MR. AYOTTE: Excuse me. You
11 understand that wasn't our map? That is a map one
12 of the -- that isn't our map.

13 COMMISSIONER BURG: Right. I
14 recognize that. That's what I was wondering.
15 That's what I asked. Do you have a map that shows
16 where the cell towers are that would serve that
17 area since there's only one in the area?

18 THE WITNESS: We haven't supplied
19 that in this case. We weren't asked to supply
20 that, I don't think. Location of cell sites is
21 somewhat sensitive, but I think under the
22 confidentiality agreement we could --

23 COMMISSIONER BURG: Well, I've
24 always had a problem when they say current cell
25 site is confidential or sensitive. I mean, they're

1 so obvious. I can't imagine why it would be
2 confidential where a current one is located.

3 I can understand the planning ones. But I've
4 heard that before, and I'm thinking that's
5 ridiculous. Like there isn't an elephant in the
6 room.

7 THE WITNESS: Again, subject to the
8 confidentiality agreement, I think we'd be willing
9 to provide that to the Commission.

10 The point that I wanted to -- in responding to
11 Mr. Cremer's question is that I don't believe that
12 Mr. Brown has captured all of the cell sites of
13 Western Wireless in South Dakota, especially if he
14 relied on the ULS database at the FCC. And as I go
15 into some detail in my testimony, the cell sites
16 that are reported to the FCC are only those cell
17 sites that contribute to the exterior boundary of
18 our CGSA.

19 And that's what the FCC's most concerned with.
20 Any changes that we make to our exterior boundary
21 of that CGSA are obviously important because they
22 may come up against other carriers, and that's why
23 the FCC is really in business. They want to keep
24 us away from each other.

25 So I'm fairly well convinced that he didn't

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1 capture all of the cell sites that Western --

2 COMMISSIONER BURG: Is this prefiled

3 testimony that you're going from of Mr. Brown's?

4 THE WITNESS: Yes.

5 COMMISSIONER BURG: Would it not

6 have been a good idea to rebut that with a

7 definition of where they are? Would you be willing

8 to give us a map of all of your cell sites

9 including extenders, even if it's confidential, I

10 don't care, as a late exhibit?

11 THE WITNESS: Yes. The reason we

12 didn't supply it is we felt that showing you the

13 coverage from those sites was more useful to you,

14 more important, more relevant. But we'd be glad

15 to. And the other clarification I'd make is when

16 you talk about the 85 percent I want to make sure

17 that we understand it's not geography covered.

18 It's population.

19 COMMISSIONER BURG: I understood you

20 meant 85 percent. Because I followed Mr. Smith's

21 comments that that means that 15 percent would not

22 have to be covered to meet your standard.

23 THE WITNESS: 15 percent of the

24 population?

25 COMMISSIONER BURG: Right. 15

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1 percent of the population could not be covered and

2 still meet your standard; is that correct?

3 THE WITNESS: Yes. That's correct.

4 COMMISSIONER BURG: That's all I

5 have.

6 CHAIRMAN SAHR: Mr. Blundell, we've

7 talked a lot about how much area towers cover.

8 With those type of questions is that something that

9 typically a system engineer or some type of systems

10 expert for a wireless company would evaluate and be

11 knowledgeable about?

12 THE WITNESS: I suppose so. I'm not

13 sure what answer an engineer would give if asked

14 that question. So I don't myself know the answer

15 that an engineer would give, but, yes, I think

16 that's something an engineer might be asked and

17 might be able to formulate an average.

18 CHAIRMAN SAHR: And realizing there

19 are geographical differences among areas, certainly

20 differences depending on height of tower and so on

21 and so forth, would it surprise you that through my

22 discussions with people in your organization,

23 Verizon and a number of other people that work in

24 the wireless field that for a 250, 300 foot tower

25 in your typical South Dakota terrain on a typical

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1 day acknowledging that snow may help, plants may

2 hurt, those type of factors, that 12 to 18 to 15

3 miles is a rule of thumb at the very least for our

4 radius of that type of height tower?

5 THE WITNESS: I'm not going to

6 dispute it. I imagine there are differences

7 between technology, between maps, and CDMA, TDMA.

8 I'm not going to dispute the average that you have.

9 CHAIRMAN SAHR: Thank you. And the

10 question was asked about whether a site

11 construction -- my recollection is that last

12 year -- and acknowledging that typically build-out

13 will happen in the warmer weather months for

14 obvious reasons, but last year you did put up sites

15 in South Dakota during the winter months.

16 Could you talk about that a little bit?

17 THE WITNESS: Are you talking about

18 the Howard and Parker sites?

19 CHAIRMAN SAHR: Yes.

20 THE WITNESS: It's not typical for

21 us. I think we were trying to be responsive to the

22 concerns of local folks there. They really wanted

23 coverage, and we want to be responsive to that.

24 It's not our typical build time.

25 CHAIRMAN SAHR: But it is

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1 technically -- depending on weather conditions, so

2 on and so forth, it would be technically possible

3 to build a tower even in the fall and winter

4 months?

5 THE WITNESS: We approved it.

6 CHAIRMAN SAHR: Back to the

7 reasonable request for service, I'm just kind of

8 curious, how does Western Wireless evaluate those

9 types of requests?

10 If someone is within an ETC designated area,

11 and I'm not talking prospectively, but it does help

12 us understand how it would work in these particular

13 areas. Let's say an individual consumer calls up

14 or a community contacts you and says -- a

15 regulator, as the case may be, contacts you and

16 says we would really like to see a tower built or

17 acknowledging that you don't necessarily have to

18 build towers to provide coverage, we want you to

19 make some sort of upgrade or change to your system

20 maybe in an adjacent area to cover our community.

21 How would you evaluate that from a -- that --

22 sort of request from an area where there is an ETC

23 designation?

24 THE WITNESS: It's a really tough

25 one to respond to because each one is different,

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1 and I think that's why the FCC recognized that it
2 needs to be somewhat subjective and why they use
3 the words "reasonable."

4 Each one should be evaluated on its own.
5 Western Wireless nor any other ETC can spend, you
6 know, an unlimited amount of time and resources on
7 every request. I mean, there are -- I don't know
8 specifically about South Dakota, but I imagine
9 there are some unserved customers with wireline
10 service. That certainly is the case in most
11 states.

12 So I'm not sure I can help out a lot more than
13 that, that each -- you know, that each request is
14 fairly -- is different, should be probably treated
15 differently.

16 CHAIRMAN SAHR: When we talk about a
17 request, if I walk -- and I may be beyond your
18 knowledge base, let me know, but if I walk into my
19 local Cell One dealer and I say, I live in Blunt,
20 South Dakota and I can't use my phone, I'd like
21 coverage there, I mean, is that a request or do I
22 need to put in something more formalized or file a
23 complaint of some sort or, you know, what's the
24 mechanism for filing this request through the
25 pipeline?

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1 THE WITNESS: Well, I think that is
2 a request. And, you know, nine times out of 10 I'm
3 thinking, hoping, that that can be dealt with at
4 the Cellular One store. The expectation on our
5 employees is that they will escalate those requests
6 if -- you know, if there is trouble getting service
7 to that subscriber.

8 Again, please realize that with mobile
9 service, you know, subscribers that may be in that
10 15 percent -- or, again it might be 5 or 10 percent
11 in the wire center may be subscribers. And because
12 of the ubiquity of our network, they may still
13 enjoy the benefits of the service that we provide.

14 So the customer that walks into the store
15 might also finish their sentence by saying, you
16 know, you don't provide service at my home or at
17 the far end of my ranch but I want the service
18 anyway because I drive a substantial amount and,
19 you know, I'll enjoy the benefits that way.

20 CHAIRMAN SAHR: And I have heard
21 that from a lot of consumers who say maybe I can't
22 use it here, but I like it when I can use it
23 elsewhere, which kind of brings me to another
24 question.

25 In your mind how do you define what is a

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1 service area or what is providing service within a
2 particular market? Is it to the person's house or
3 the ability to use it somewhere within the state,
4 or is it somewhere in between?

5 THE WITNESS: Well, first of all, we
6 consider service and coverage to be quite a bit
7 distinct from, you know, the place that we file for
8 support, which under federal rules is the billing
9 address. So we consider those to be separate
10 matters.

11 Yeah. Is it reasonable or not, I think is the
12 best way. And we'd be open to the Commission for a
13 suggestion as to how -- two things. How might we
14 internally, you know, sort of be more aware, make
15 you more aware of these requests and the
16 reasonableness of them and then, second, how -- you
17 know, how better can we interpret the reasonable
18 request language?

19 Wireline carriers typically have a line
20 extension policy that says the customer typically
21 pays, you know, for some cost above a certain
22 threshold. You know, should we enter into
23 discussions about that? I don't know. We've
24 tossed that around. That's a possibility. So
25 we're certainly open to putting more substance into

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1 that standard.

2 CHAIRMAN SAHR: And you anticipated
3 one of my next questions and I'm going to ask the
4 wireline question, and realizing that you may not
5 know the answer to that question, but you talked
6 about the phrase "line extension" or "line
7 extension fee" or something similar to that.

8 What's your understanding of how that works on
9 the wireline side of things?

10 THE WITNESS: My understanding, it's
11 sort of a typical situation and most of these filed
12 in tariffs, that the line extension policy as a
13 threshold, a cost threshold, beyond which the
14 subscriber would be responsible for, that the
15 wireline carrier would not pay the cost above some
16 threshold, 1,000, \$5,000, something like that.

17 CHAIRMAN SAHR: So there are --
18 under your understanding of how it works in the
19 wireline side of things, there are people out there
20 who wanted service and got that service because --
21 and I'm talking about the customer who got that
22 service because they paid part of that cost; is
23 that correct?

24 THE WITNESS: Yes. It's also my
25 understanding some subscribers can't afford that

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1 cost and so don't have service because they
2 couldn't pay the line extension fee.

3 CHAIRMAN SAHR: Now when we're
4 looking at ETC designated areas and when we're
5 evaluating and I'm trying not to really get into
6 the 85/15 type question so I'm not really going
7 that route, but if somebody makes a request for
8 service, are we evaluating that request from their
9 residence? Are we evaluating that request from
10 where they spend time within the area, where their
11 Post Office Box is? I mean, do you know where that
12 request gets evaluated from?

13 Because with mobile technology, that is
14 certainly an interesting and probably a necessary
15 question because you can use it in multiple spots
16 throughout the ETC designated area. And, I mean,
17 is there any legal standards or business place
18 standards for looking at that that you know of that
19 are hard and fast?

20 THE WITNESS: I don't think so. I
21 think again -- and my apologies for the
22 equivocation but it is what the FCC has given us to
23 deal with and that is a fairly subjective standard
24 of these reasonable requests. If there's a
25 subscriber who is covered, for instance, and wants

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1 service outside of the coverage area, is that a
2 reasonable request for service? It depends on lots
3 of factors.

4 I can answer it best by saying we don't desire
5 to take on these obligations in order to facilitate
6 our denial of service. It is not what we're about.
7 So we don't look at this standard as a way -- as a
8 barrier, as a way to say no. It's something we
9 have to deal with with this Commission and with the
10 FCC.

11 If we can figure out better ways to expand our
12 coverage, upgrade our service, et cetera, we will
13 do that, and we'll do that with your input. It's a
14 hard standard to get around.

15 CHAIRMAN SAHR: Do you know, is that
16 left up to -- can State Commissions do that through
17 rule-making, promulgate those type of standards?

18 What's your understanding about this? Is it
19 something that's done through FCC and case law
20 based on FCC rules and federal law, or is there a
21 rule for the State Commissions in trying to find
22 that type of issue about service area and
23 reasonable requests?

24 THE WITNESS: It's never come up as
25 far as I know, other than the pronouncements from

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1 the FCC. I think there's definitely a role for the
2 State Commission. It is after all a standard that
3 the FCC has sort of placed under this service area
4 requirement, which is part of the State
5 Commission's designation.

6 So, yeah, I think the State Commission
7 definitely has a role to play in determining
8 whether or not a carrier in an ETC is meeting its
9 obligation in that respect.

10 CHAIRMAN SAHR: And kind of in that
11 evaluation mode, my reading of the federal cases
12 is, you know, certainly subject to some strict
13 scrutiny, if you were looking at trying to provide
14 service in a prospectively -- in an area that's
15 going to be designated ETC and it's prospective,
16 that the -- where really the rubber meets the road
17 is in the certification process, or certainly it
18 seems like the FCC and the courts are talking a lot
19 about and even the Joint Board to a certain extent
20 is talking about the role of the certification
21 process in making sure that Universal Service Fund
22 requirements are being met.

23 Are you comfortable enough to talk generally
24 about how that -- your understanding of how that
25 would work?

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1 THE WITNESS: Sure. Yeah.

2 CHAIRMAN SAHR: Please proceed.

3 THE WITNESS: Well, this -- for
4 starters, this Commission has one of the higher
5 expectations, I guess I'd say. I mean, you have
6 expected us to provide some data that we don't
7 provide in other states. And we've done that.
8 We've complied with your requests, and you seem
9 satisfied and made the certification.

10 I think that is probably -- I think you've hit
11 on probably the more important function or role for
12 the State Commission, to kind of provide an ongoing
13 annual process, a checkup, if you will, that a lot
14 of this stuff that we deal with in these ETC cases
15 is really not so relevant now but certainly could
16 be relevant then.

17 So I'm not sure I have a whole lot more to add
18 than that, but I will say this. I think there
19 are -- I think State Commissions should be more
20 concerned about that certification process for both
21 wireline and wireless ETCs. I think that in the
22 rate of return regulation mechanism as a whole at
23 the federal level I think there is a lot of --
24 there are a lot of secrets. And State Commissions
25 could do a better job at looking under the hood a

1 little bit more at the use of universal service by
2 wireline carriers.

3 And we testified to that in the rate of return
4 regulation petition that we filed at the FCC. I
5 think there are lots of opportunities there for
6 further investigation.

7 CHAIRMAN SAHR: Changing modes just
8 a little bit to another issue, and I know it's
9 discussed in the prefiled testimony, but what about
10 the impact on universal service? What about the,
11 you know, potential drain on the fund as more and
12 more companies seek the assistance via universal
13 service?

14 THE WITNESS: The increasing
15 distribution to competitive carriers was clearly
16 contemplated by the FCC and by Congress when it
17 passed the '96 Act and made it possible to support
18 on a per line basis from incumbents to competitors.

19 Clearly growth in the receipt of support by
20 competitors was contemplated or they just didn't
21 know what per line support and portability of that
22 support meant. And I think they did.

23 The growth of the fund to date has been -- as
24 attributable to wireless carriers has been fairly
25 inconsequential. The growth in the fund as a

1 result of proposals made and adopted by the FCC for
2 increases in support that go to ILEC carriers as a
3 result of the MAG and NRTF orders has been
4 substantial and has accounted for the substantial
5 amount of growth in the fund in the last few years.

6 Those are proposals we supported and they were
7 appropriate. But in comparison to any increases
8 that have gone to wireless carriers, increases to
9 competitive ETCs have been inconsequential.

10 And the final thing I'll say is that growth in
11 the size of the fund as a result of competition
12 really should not be a factor. I realize the Joint
13 Board discussed that, but any time you create a
14 system where competitors are eligible to receive
15 support and you're making judgments on those
16 applications, it's kind of a -- it's a cyclical --
17 it's a cyclical reasoning to say, well, if we're
18 going to designate you and you receive support and
19 that support is, you know, X, Y, or Z, then we
20 shouldn't designate you, I think that's a troubling
21 circular argument and I would recommend that this
22 Commission not get into that, not consider impact
23 on the fund as one of the factors it looks at here.

24 CHAIRMAN SAHR: And I may have some
25 more questions after redirect, but I just have one

1 last question for now. Mr. Smith was asking you
2 about some of the standards that were coming out
3 that the Highland case. And, of course, it's
4 difficult in your position to necessarily agree to
5 certain things or not agree to them because of, I'm
6 sure, certain corporate steps that probably need to
7 be followed.

8 That being said, is Western Wireless willing
9 to agree to any -- and there's going to be some
10 legal wrangling within this question, but are you
11 willing to agree to any sort of appropriate legal
12 standard that the FCC has said that states can hold
13 companies requesting ETC designation to?

14 THE WITNESS: Any legal, I think you
15 said --

16 CHAIRMAN SAHR: Legal business.
17 I'll strike legal and just say standard. And thank
18 you for clarifying my own question. But the point
19 is he's asking you from that particular case here
20 are the standards that appear to be coming forward
21 from the FCC and appear to be deemed, I shall say,
22 appropriate -- or permissible perhaps is the right
23 word.

24 You as an attorney for Western Wireless and
25 someone who knows these legal requirements or

1 standards, are you comfortable with the standards
2 that are coming forward from the FCC and if it's
3 something that the State of South Dakota wants to
4 look at and say, well, it appears we can put this
5 in an Order, is that something you're comfortable
6 in agreeing to?

7 THE WITNESS: Again, not
8 100 percent. There are lots of conditions and
9 compliance requirements and reporting requirements
10 that Western Wireless has complied with after the --
11 fact. Whether I tell you today that we agree with
12 them or not is really irrelevant. You know, the
13 question is whether you, first, impose them.
14 Second, you know, whether they're lawful. Third,
15 whether we comply with them.

16 And, you know, we comply today with all of
17 those kinds of requirements that are imposed on us
18 in other jurisdictions. There is some stuff in
19 Highland and Virginia Cellular -- and, by the way,
20 Virginia Cellular is subject to a reconsideration
21 petition. There are some conditions in those cases
22 that we're not comfortable with.

23 I don't think that there is a requirement that
24 an ETC file build-out plans, for instance. Is it
25 appropriate and responsible for a Commission in the

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1 254(e) process to ask them the questions that this
 2 Commission asks in that process? Yes.
 3 But I don't think that 100 percent of the
 4 conditions that were imposed -- and I'm looking at
 5 Highland Cellular here, that we're comfortable with
 6 them.
 7 CHAIRMAN SAHR: Thank you.
 8 MS. AILTS WIEST: I think we need to
 9 take a break for the court reporter.
 10 (A short recess is taken)
 11 MS. AILTS WIEST: Commissioner
 12 Hanson, do you have any questions?
 13 VICE CHAIR HANSON: Yes, I do.
 14 Thank you. First of all, Mr. Blundell, I'd like to
 15 say thank you very much for the completeness of
 16 your answers, and I'd appreciate it if you'd
 17 tolerate if I ask any questions that have already
 18 been asked. I'm doing some reading as we're going
 19 through these processes, and at the same time I may
 20 want you to expand a little bit on some of the
 21 questions that have already been asked.
 22 During the opening statements counsel for
 23 Western Wireless spoke of the responsibilities of
 24 the PUC and what we needed to do here and I'm going
 25 to ask you to speculate a little bit what he meant

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1 when he said one of our responsibilities and main
 2 decisions for the PUC is public center criteria and
 3 we should be concerned with the balancing of
 4 benefits versus harm.
 5 What type of harm should we be looking out for
 6 here?
 7 THE WITNESS: Harm to consumers
 8 primarily.
 9 VICE CHAIR HANSON: What fashion?
 10 THE WITNESS: Well, to tell you the
 11 truth, in a public interest -- in the public
 12 interest balancing tests I've seen I haven't seen
 13 any harms as a result of, you know, competitive
 14 ETCs application and designation. But the types of
 15 harms that I suppose you would look at or look for
 16 would be impacts on prices to consumers, and in
 17 every case I think most would agree competition
 18 spurs lower prices.
 19 So it is a bit speculative, and I'd be glad to
 20 go down that path with you. But that's just it.
 21 There aren't any.
 22 MR. AYOTTE: We rest.
 23 VICE CHAIR HANSON: I recognize it's
 24 difficult to testify against your own position but
 25 at the same time that's our responsibility, and

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1 perhaps I can help you just a little bit.
 2 Well, you had made a statement pertaining to
 3 the Joint Board. You said the FCC referenced the
 4 Joint Board Decision and did nothing about it.
 5 What did you mean by that?
 6 THE WITNESS: What I meant was the
 7 Joint Board made its Recommended Decision, and
 8 that's really all it is. And if you look carefully
 9 at it, there isn't a whole lot for us to place all
 10 of this attention on, but it was issued at around
 11 the same time that the Highland Cellular case came
 12 out. In fact, the Highland Cellular case was
 13 issued after. So after the Joint Board made its
 14 recommendations.
 15 So the FCC in its own case immediately
 16 following the Joint Board Recommended Decision did
 17 not apply the factors that the Joint Board
 18 recommended or the recommendations that the Joint
 19 Board made.
 20 VICE CHAIR HANSON: So do you mean
 21 to imply that we should disregard the Joint Board's
 22 recommendations?
 23 THE WITNESS: Yes. The Joint
 24 Board's Recommended Decision has no binding effect.
 25 It is a recommendation from an advisory group. It

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1 is not binding at all. And even if it were, if you
 2 look at the text of the Joint Board Recommended
 3 Decision, it has very little in the way of
 4 recommendations at all.
 5 VICE CHAIR HANSON: One of the Joint
 6 Board's recommendations was to -- somewhat
 7 piggybacking on Chairman Sahr's statements, the
 8 dilution of Universal Service Funds as a result of
 9 additional ETCs.
 10 Obviously we should be concerned with that.
 11 But I don't mean to testify for you. You had made
 12 a statement during your answer to Commissioner
 13 Sahr, and I thought I heard you say that the
 14 Commission should not consider the impact on the
 15 font through the addition of the ETCs. Is that
 16 what you meant to say?
 17 THE WITNESS: That's what I meant to
 18 say, and that is what I said. If you were federal
 19 policymakers, if you were deciding how to set up
 20 these mechanisms, it might be relative. This
 21 Commission has a set of criteria that are statutory
 22 and regulatory in nature, that the applicant must
 23 show it meets.
 24 This applicant has done that. Your job, I
 25 think, is to evaluate those criteria, determine

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1 whether this applicant has met these criteria and
 2 we have and, therefore, I think you should
 3 designate Western Wireless, irrespective of the
 4 impact on the fund.
 5 Again, I think it's circular to sort of
 6 analyze the impact on the fund of designating an
 7 applicant for ETC designation, you know, by
 8 definition the designation is going to result in an
 9 impact on the fund.
 10 VICE CHAIR HANSON: However, if
 11 we're concerned with service to the consumer, the
 12 law of diminishing returns has to set in somewhere.
 13 If there are too many ETCs, eventually the fund
 14 will be diluted to the extent that the service will
 15 be impacted, won't it?
 16 THE WITNESS: I can sort of give you
 17 my high-end responses. A lot of this discussion
 18 has been taken on by our other witness, Mr. Wood,
 19 and he has addressed those in his testimony. I
 20 really think you have a fairly limited set of
 21 criteria that you look at in designating an ETC.
 22 And those kinds of impacts are relevant in setting
 23 up the federal mechanism, making modifications to
 24 it, and not relevant in deciding whether the
 25 carrier meets the criteria and should be designated

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1 and, therefore, eligible.
 2 VICE CHAIR HANSON: In your
 3 testimony on your surrebuttal testimony on page 8
 4 there was a question, "Does Western Wireless
 5 typically develop capital expenditure plans for
 6 areas where it is seeking ETC designation prior to
 7 obtaining the designation?" Your response was,
 8 "Typically the company would not invest the time
 9 and resources necessary to develop a capital
 10 expenditure plan prior to ETC designation." That's
 11 the first portion of your --
 12 Wouldn't you need to have some sort of
 13 build-out plan in order to -- and you have
 14 demonstrated to an extent 17 sites, cell tower
 15 sites that you're planning on building, that
 16 Western Wireless is planning on building.
 17 Wouldn't you need some sort of plan in order
 18 to request a certain amount of dollars, in order to
 19 justify that you need those dollars?
 20 THE WITNESS: Not the way the
 21 mechanism is designed today. First of all, I mean,
 22 build-out plans are not required. The reason in
 23 these cases in these FCC cases there were build-out
 24 plans at all is because the carriers didn't even
 25 cover -- covered 0 percent. So they had to

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1 establish their effort to and commitment to provide
 2 service there. Western Wireless is a very
 3 different carrier than Virginia and Highland --
 4 VICE CHAIR HANSON: If I may
 5 interrupt, your answer is going to be it's not
 6 necessarily apparently. Isn't it a good business
 7 plan to have that information?
 8 THE WITNESS: Well, I thought your
 9 question was -- and the question that I answered in
 10 my testimony was does the company develop a capital
 11 expenditure plan in advance of and for the purpose
 12 of a designation in a particular area or for
 13 seeking designation in a particular area.
 14 And the answer is no, not specifically, not,
 15 you know, necessarily with that in mind. Does the
 16 company do capital expenditure planning? Does it
 17 do network planning? Yes. Absolutely.
 18 This is different in that the ETC designation
 19 grants certain obligations on the company, certain
 20 expectations. We feel like we need to be able to
 21 meet those and to show you that we meet them we
 22 created this threshold and also have put in
 23 evidence other ways that we're showing this
 24 Commission that we meet the commitment, that we
 25 plan to meet the commitment in the new areas, and

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1 that, gosh, we've been meeting it in the existing
 2 ETC designation for years now with no dispute.
 3 VICE CHAIR HANSON: In regard to
 4 that, you were asked -- I believe Mr. Coit asked
 5 you pertaining to the number of sites if a number
 6 of sites had been constructed, and you answered
 7 that none of the sites had been constructed.
 8 Is there any plan for extenders to be added to
 9 the system?
 10 THE WITNESS: Not in the 17. The 17
 11 are --
 12 VICE CHAIR HANSON: I know -- your
 13 testimony was the 17 are cell sites. I'm asking if
 14 there's any additional plans other than those 17
 15 for -- and I believe there's been discussion about
 16 boosters and extenders, and I'm not certain if
 17 people are meaning to state that boosters are the
 18 same as extenders. Sometimes people say boosters
 19 when they're talking about cellphones so I'm not
 20 certain what the discussion was meaning to state
 21 there.
 22 But I'm curious if there is any plan at this
 23 point for extenders.
 24 THE WITNESS: Not that I know of.
 25 But the nature of extenders is that they can be

1 deployed at a lower cost and less cumbersome
2 fashion than a full cell site. And just to
3 clarify, the booster -- when we talk about booster
4 technology, it is something that can be used at
5 both the end user commitment and also at the
6 network. And it really is a fancy way to think
7 merely of amplifying a signal.

8 And there are ways to do that both with end
9 user equipment and as we are investigating network
10 equipment. That's not the same thing as an
11 extender.

12 An extender would add additional antenna.
13 Booster technology is something that would be added
14 to existing -- you know, existing network coverage
15 to increase the coverage in the output.

16 VICE CHAIR HANSON: Thank you. In
17 the second portion of your answer in the question I
18 referred to earlier you stated as the FCC has
19 observed, such hypothetical planning would be an
20 inappropriate use of resources, referring to the --
21 what I would call a business plan.

22 Did the FCC really say that? Do you find that
23 on page 8, towards the bottom?

24 THE WITNESS: Uh-huh. Yeah. I
25 think what the -- yes. I think what the FCC is

1 saying is it's not -- it doesn't make any sense to
2 require a competitive ETC applicant to do a whole
3 lot of planning for an area that they're not
4 designated in yet. And once they're designated as
5 an ETC, then the obligations apply.

6 Then you ask either at compliance or
7 certification, you know, on a continuing basis are
8 you meeting those obligations.

9 VICE CHAIR HANSON: Ms. Rogers asked
10 or made the statement that there was no evidence of
11 new service from the old Universal Service Fund.
12 I'm going to assume that you would disagree with
13 that.

14 THE WITNESS: I'm sorry?

15 VICE CHAIR HANSON: If I quoted you
16 incorrectly, please let me know. During her
17 opening statement Ms. Rogers made reference to the
18 performance of Western Wireless with its use of
19 Universal Service Funds and stated that there was
20 no evidence of new service from the old USF.

21 I'm wondering if you would agree with that.

22 THE WITNESS: I'm just going to
23 guess on what I think you're --

24 VICE CHAIR HANSON: The previous
25 Universal Service Funds which were received by

1 Western Wireless.

2 THE WITNESS: As a result of the
3 earlier ETC designation?

4 VICE CHAIR HANSON: Correct. Is
5 there any evidence that you can enlighten us of
6 where those funds were used to provide additional
7 service?

8 THE WITNESS: Absolutely. That is
9 exactly what the 254(e) certification process is
10 all about. And the standard, as I had testify
11 earlier, is the upgrade, maintenance -- under
12 254(e) the ETC is required to upgrade, maintain,
13 and provision facilities and services. And in that
14 process this Commission accepted Western Wireless's
15 statements in that regard and the information that
16 we supplied to you as well as all the other ETCs
17 and granted that certification.

18 So you agreed with us that we spent the money
19 appropriately. We've been through one of those
20 processes with you, and we look forward to many
21 more.

22 So has the money that Western Wireless has
23 received as a result of the previous ETC
24 designation been spent according to that set of
25 requirements? Absolutely. And you agreed with us

1 on that.

2 VICE CHAIR HANSON: Mr. Cremer made
3 a statement, and I'll ask all the counsel to
4 forgive me if I testify incorrectly on what you
5 folks stated. You can correct me.

6 Rather than going to his statement I'll ask a
7 question. How will Universal Service Funds
8 increase service to James Valley?

9 THE WITNESS: We will use universal
10 service to -- for the purpose that it's intended to
11 be used for, which, again, sort of the legal
12 technical jargon is upgrade, maintain, and
13 provision service there.

14 As I have testified, you know, there are
15 undoubtedly gaps in our coverage. There are places
16 where the coverage could be improved, and there are
17 probably people in the James Valley study area that
18 would agree.

19 We will use the money in the James Valley
20 study area and everywhere else to expand our reach,
21 to upgrade the network so that we can expand the
22 reach and provide service to as many people as we
23 possibly can.

24 VICE CHAIR HANSON: So no promises
25 of additional towers or services or such other than

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1 continuing to provide general services?

2 THE WITNESS: The promise is that we

3 will meet the obligation, which is to upgrade,

4 maintain, and provision the service. Again, in

5 response to reasonable requests for service, if we

6 need to build out, you know, more, we will do that.

7 VICE CHAIR HANSON: Do you have any

8 idea on the number of requests for service that

9 Western Wireless receives in the areas where you're

10 requesting ETC?

11 THE WITNESS: No.

12 VICE CHAIR HANSON: Do you have any

13 idea how many complaints you receive in any of

14 those areas such as James Valley or throughout any

15 of those areas?

16 THE WITNESS: No. We don't track it

17 by ILEC study area, no. I mean, we don't -- yeah.

18 VICE CHAIR HANSON: Thank you.

19 Thank you very much.

20 COMMISSIONER BURG: I had a couple

21 more that came up. Did you tell me that you get

22 Universal Service Funds designation depending on

23 the mailing address?

24 THE WITNESS: No. Once we're

25 designated and then we file on a quarterly basis

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1 with USAC, we file the subscribers as of their

2 billing address. So we locate them according to

3 their billing address. And that's by federal rule.

4 COMMISSIONER BURG: But from what

5 I've heard are you saying you would not even have

6 to be able to provide service to that billing

7 address in order to collect universal service from

8 that billing address, based on that billing

9 address?

10 THE WITNESS: If we have a

11 subscriber and they're located at a billing

12 address, that's where they're geocoded. That's

13 where we place them for the purposes of reporting

14 to USAC.

15 COMMISSIONER BURG: But you've

16 testified that if somebody's driving around, if

17 they want to go 20 miles from that point, can get

18 service to their customer and you should be able to

19 get recovery. So you're telling me, though, that

20 that person is getting service and you would have

21 the right to Universal Service Funds even if the

22 billing address did not have an adequate signal.

23 THE WITNESS: Yeah. And, I mean,

24 this is all according to federal --

25 COMMISSIONER BURG: Well, I

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1 understand. My problem is not with you as much as

2 it is all the ways the federal law is written.

3 Because I want to follow up on a question that goes

4 similarly then.

5 Do you collect ETC from any funds in the

6 James Valley service territory today?

7 THE WITNESS: No.

8 COMMISSIONER BURG: You have said

9 that you can serve James Valley from your current

10 towers. If you get ETC designation for James

11 Valley, would you immediately get ETC funds from

12 everyone you now serve in service territory?

13 THE WITNESS: Yes, those customer --

14 COMMISSIONER BURG: As well as every

15 one you could sign up?

16 THE WITNESS: Yes.

17 COMMISSIONER BURG: With no intende

18 expenditure today?

19 THE WITNESS: Well --

20 COMMISSIONER BURG: In James Valley

21 service territory. You testify you have no

22 intention or no need to put up any towers.

23 THE WITNESS: Well, all due respect,

24 I did not say that.

25 COMMISSIONER BURG: That's what I

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1 understood.

2 THE WITNESS: No. I said that it's

3 not in the '04 plan to put a tower up there.

4 COMMISSIONER BURG: But you said yo

5 meet your 85 criteria today in the James Valley

6 area.

7 THE WITNESS: Correct.

8 COMMISSIONER BURG: And you only

9 have the one tower there.

10 THE WITNESS: No. I dispute that.

11 I'm not sure that that's correct.

12 COMMISSIONER BURG: Well, that's the

13 one that we saw on the record, and you didn't --

14 you didn't have any way to refute it. Let's put it

15 that way.

16 MR. AYOTTE: Commissioner, with all

17 due respect, I think the witness did refute it and

18 said he did not believe that to be accurate. I'll

19 say it once again, that was an Intervener witness

20 that was put on the board, and we will undertake to

21 file a late filed exhibit per your request showing

22 the location of all our cell sites throughout the

23 entire state of South Dakota.

24 COMMISSIONER BURG: But, regardless,

25 you set those towers up either in or outside the

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1 James Valley service territory without any USF
 2 funds, correct, from James Valley service
 3 territory?
 4 MR. AYOTTE: Well, I think that was
 5 a question to him.
 6 COMMISSIONER BURG: Well, you're
 7 answering for him. Correct?
 8 THE WITNESS: That's correct.
 9 COMMISSIONER BURG: So immediately
 10 upon our designation, and I'm kind of questioning
 11 why we have to designate because you've narrowed
 12 our authority so narrow I'm not sure why we even
 13 have it, but you are saying immediately upon your
 14 designation as an ETC in that territory you will
 15 immediately start to collect from every customer in
 16 that territory that takes service from you and
 17 anymore that you can sign up without any
 18 requirement that additional funds be spent in that
 19 territory. Is that the federal law?
 20 THE WITNESS: I wouldn't give your
 21 last caveat there. No. In fact, that's not true.
 22 Under 254(e) Western Wireless has to show you that
 23 we are continuing to upgrade, maintain, and
 24 provision the service. The 17 cell sites are
 25 planned for '04. You know, we gave you a snapshot

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1 of the plan for '04. We don't have a plan yet for
 2 '05 simply because we haven't done that planning
 3 process.
 4 But we will continue under this probably to
 5 have to upgrade, maintain, and provision the
 6 service. So there will be continuing expenditures
 7 under this obligation.
 8 The fact that -- what shouldn't be lost on you
 9 is that the money that Western Wireless receives
 10 under what I have just explained comes right back
 11 here to South Dakota, and it's spent here in
 12 South Dakota.
 13 COMMISSIONER BURG: Are you require
 14 to account to us the expenditure of all the USF
 15 funds that you receive?
 16 THE WITNESS: Your process, the
 17 process you've set up, I believe it's under
 18 rules -- it may just be -- well, either way your
 19 expectation of us is that we supply both amounts of
 20 support received and capital expenditures and --
 21 well, any expenditures on the upgrade, maintaining,
 22 and provisioning of facilities and services.
 23 So, yes, you require us to do that. We do
 24 that in the 254(e) process, and you've certified
 25 that we meet that requirement.

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1 COMMISSIONER BURG: And if we
 2 would -- we could deny you, what, certification if
 3 we felt you had not met that?
 4 THE WITNESS: Yes, you could.
 5 COMMISSIONER BURG: Is there any
 6 requirement on the federal level that you approve
 7 of the expenditure of the Universal Service Funds?
 8 THE WITNESS: The language
 9 requires -- the language requires either -- well,
 10 it's a self-certification process either at the FCC
 11 and USAC or at a State Commission who then
 12 certifies to USAC and the FCC. We do both in order
 13 to cover ourselves. We want to make sure that
 14 under that sort of dual process that we're
 15 certified. But, I mean, if USAC doesn't get its
 16 certification from you as we proved this last year,
 17 they will not distribute support.
 18 COMMISSIONER BURG: Change the
 19 question just a little bit. Would you provide
 20 service to an area with financial support from that
 21 area if that was the only way they could get it in
 22 the area?
 23 THE WITNESS: I'm sorry. Could
 24 you --
 25 COMMISSIONER BURG: Well, we have a

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1 lot of small areas that no company has decided it's
 2 worth them investing, including yours. And
 3 hopefully that's not one of the 85 percent, it's
 4 one of the 15 that you have said. But if there
 5 were such an area and that area says if we make a
 6 local contribution will you put up a tower, can you
 7 do that, or would you do that?
 8 THE WITNESS: A local contribution
 9 to us?
 10 COMMISSIONER BURG: Yeah. To help
 11 finance the establishment of cell service in that
 12 area.
 13 THE WITNESS: Gee. No one's ever
 14 offered that.
 15 COMMISSIONER BURG: Well, you might
 16 get it. I didn't ask if they offered it. I want
 17 to know --
 18 THE WITNESS: We do not expect that.
 19 COMMISSIONER BURG: That's not my
 20 question. I expect it. I expect some people think
 21 it's so important they would be willing to spend
 22 economic development dollars to get a cell site to
 23 serve their area, and I'm asking you would you as a
 24 company put one up in that situation?
 25 THE WITNESS: I think that the best

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1 way that would work is if a local community wanted
 2 to build -- and I know the legislature here -- I
 3 believe they passed legislation on the water
 4 tower -- if a local community wanted to build
 5 either a tower or, you know, somehow -- or
 6 designate a public location and make it attractive
 7 for us to site our antenna on that location, sure.
 8 COMMISSIONER BURG: What would mak
 9 it attractive? Because we saw a map of water
 10 towers, and you'll get inundated if you'll put one
 11 every place --
 12 THE WITNESS: I'm not saying we
 13 would put an antenna on every water tower. I think
 14 the reason I'm hesitating is it needs to be a
 15 location that fits in with our network, for one.
 16 I've just never -- I have never considered and
 17 so I guess I don't have the authority on behalf of
 18 the company to say whether we would accept money
 19 from a local community. So I'm suggesting that
 20 perhaps the best way to accomplish that would be
 21 through local, you know, communities and their
 22 property and make water towers or other public
 23 facilities available for us to collocate on those.
 24 COMMISSIONER BURG: Well, we've
 25 already had a lot of requests for we've got a water

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1 tower, they can sure use it. So, you know, you're
 2 going to get that request. So I guess I'm saying
 3 you are not aware that the company has a policy of
 4 local support I'll say beyond the water tower.
 5 Because I don't think that's going to be enough for
 6 you in some locations, and I guess what I'm saying
 7 is maybe the company needs to develop a policy.
 8 THE WITNESS: Where we would accept
 9 private dollars?
 10 COMMISSIONER BURG: Let's just say
 11 it takes \$300,000 to put up a site with or without
 12 a water tower and they say, you know, we will raise
 13 50 or \$100,000 towards that cost, will you put one
 14 up with the rest. And I think that's the kind of
 15 question we're going to get into certain areas.
 16 THE WITNESS: I'm sorry.
 17 Commissioner, I can't say without any doubts that
 18 we would do that in every instance. I think that's
 19 a very creative way to get at some of the problems
 20 with local siting and absolutely --
 21 COMMISSIONER BURG: You answered m
 22 question. I asked you if there was a policy, and I
 23 think the answer was we do not have one.
 24 THE WITNESS: Right.
 25 COMMISSIONER BURG: I'm actually

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1 taking that a step farther and saying I think
 2 that's something I'd like to see you approach your
 3 board or whoever about it and make a determination
 4 of how you'd go about the process like that.
 5 THE WITNESS: I don't want my
 6 response to be interpreted as, you know -- I don't
 7 want you to think that I think it's a bad idea. I
 8 think it's a great idea. I think that's a terrific
 9 way to get at some of these, you know, siting
 10 problems and absolutely we would look at that. I
 11 think that's a --
 12 COMMISSIONER BURG: Well, and again
 13 I think we need to look at the Universal Service
 14 Funds as I think they should be available for some
 15 of those areas that are not feasible, and I think
 16 you'd probably say none of these are feasible
 17 Universal Service Funds but I think some of them
 18 you're actually going to come out ahead getting
 19 Universal Service Funds to do it and maybe we look
 20 at some of the marginal ones because we definitely
 21 are going to continue to hear clamoring to get
 22 coverage 100 percent of the area.
 23 THE WITNESS: And I think and I hope
 24 you'll agree we have really tried to be extremely
 25 responsive to the communities and to this

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1 Commission's concerns, specific concerns, and the
 2 identification of specific areas that seem to need
 3 coverage.
 4 I'm not sure we can put a tower every single
 5 place, you know, this year in --
 6 COMMISSIONER BURG: I don't mean
 7 this year.
 8 THE WITNESS: But, you know, we are,
 9 I guess, trying to be extremely responsive to just
 10 those kinds of demands.
 11 COMMISSIONER BURG: And I appreciate
 12 that, and I recognize that. But then when I start
 13 to feel sorry for you I start to look at that
 14 828,000 out of one service area and see that you're
 15 doing pretty well on the universal service side of
 16 it.
 17 THE WITNESS: It's expensive to
 18 provide service in high-cost areas, as I think both
 19 the wireline carriers and us would attest.
 20 COMMISSIONER BURG: That's all the
 21 questions.
 22 CHAIRMAN SAHR: Mr. Blundell, I have
 23 a few more questions and I want to thank you also
 24 for your patience and everyone I think has been
 25 very professional and this obviously is a

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1 contentious issue and you've had long testimony.
 2 And I should say when I came on the Commission
 3 I was really surprised to find out that we weren't
 4 doing what I thought was our statutory authority
 5 under the law as far as wireless services were
 6 concerned. And I know I immediately started
 7 working hard on that to figure out a way to build a
 8 better network across the state. And it's very --
 9 I think it's a very good sign.

10 And I know Commissioner Hanson also was very
 11 active on that pass -- that part of it as soon as
 12 he announced his plans to run for the PUC and
 13 certainly as Commissioner fully supported my
 14 efforts to examine our state of wireless services
 15 in South Dakota expand and it's great to hear that
 16 we have Commissioner Burg on board now as well.

17 COMMISSIONER BURG: I didn't know I
 18 was ever off.

19 CHAIRMAN SAHR: Well, we can debate
 20 that another time. But certainly the build-out on
 21 water towers and partnerships and so on and so
 22 forth I think is something I know I've been
 23 discussing with the public and with your company
 24 and other companies for -- including the rural
 25 telephone co-ops since 2002, and I think this

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1 discussion while perhaps getting a little far
 2 afield is an important one to have at some point in
 3 time and I certainly would echo any comments that
 4 relate to in asking your company to evaluate how it
 5 can do more in any respect. So I appreciate that.

6 One of the things that came up that I would
 7 just like to clarify, we're talking about build-out
 8 plans and we can all kind of debate what isn't an
 9 appropriate build-out plan. But when I look at
 10 this attachment that we -- this is confidential.
 11 Close your eyes, and I think you're okay. I look
 12 at this attachment. It's your map that you
 13 attached, or rebuttal testimony and we can argue
 14 whether this is an appropriate build-out plan or
 15 not but I have a hard time not characterizing this
 16 as a build-out plan when we're talking about 17 new
 17 sites.

18 And maybe there's a couple of them that might
 19 not reach into the territories in question, but to
 20 me I think it clearly shows an effort, whether
 21 planned or coincidental, it shows it demonstrates
 22 some plans to go out there and serve these
 23 territories because almost all of these sites are
 24 either within the areas in question or they are
 25 right outside.

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1 So is it inappropriate for me to think that
 2 this at least for 2004 is a proposed build-out
 3 plan?

4 THE WITNESS: There's been a lot of
 5 discussion about build-out plans and what qualifies
 6 as one or not. You can call it whatever you want.
 7 We don't call it that. It's simply, you know --
 8 and, you know, I would also add that I don't think
 9 build-out plans are required.

10 We wanted to give this Commission assurances
 11 in a couple of areas. One, our networks are not
 12 stagnant. They're dynamic. We're constantly
 13 improving them, expanding them, modifying,
 14 upgrading, and so forth.

15 Number two, assurances that we not only meet
 16 the commitment today, but we will in the future
 17 once designated. And, finally, I guess I think
 18 what it shows is that we don't consider that -- and
 19 I think it's a minimum 85 percent. We don't
 20 consider that to be the end of the story. That's
 21 not -- we don't stand pat on the 85 percent
 22 threshold.

23 We are continually trying to increase that
 24 number. We want to provide service to the
 25 additional folks that aren't covered today. That's

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1 what we're in business to do. So I think that map,
 2 I hope, shows this Commission that this is the
 3 start of, you know, the implementation of, you
 4 know -- your designation as a way to meet some of
 5 the things you just talked about as far as really
 6 enhancing the network in this state and bringing it
 7 to places that might not have it today, remote
 8 areas. And, you know, that's what we wanted to
 9 show with that map.

10 CHAIRMAN SAHR: We've had a lot of
 11 discussion about James Valley, and I'm sure that
 12 will continue on, and they obviously have an
 13 exhibit that's been of note to people and I'm sure
 14 will be tomorrow and I don't want to jump the gun
 15 on this but hearing some of the questions that have
 16 been asked, I'm going to ask you a few questions
 17 about that particular service territory but I'm
 18 asking it maybe in more of a generic sense.

19 And I realize the Interveners certainly may --
 20 they have and certainly probably will disagree with
 21 some of the assumptions and some of the things that
 22 you have supplied the Commission. But I'm going to
 23 look at this April 5, 2004.

24 And Commissioner Hanson asked about new
 25 towers, but you don't necessarily have to put in

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1 new towers into an area to be eligible for the
2 Universal Service Fund as long you are meeting the
3 requirements to get the designation and then going
4 on a forward basis meeting the requirements of the
5 certification that we at the South Dakota Public
6 Utilities Commission sign off on an annual
7 basis.

8 For instance, and we can argue about whether
9 or not this map is accurate, but if you're serving
10 the customers in that area and you ask for ETC
11 designation and you can do it with your existing
12 network, now there may be some restrictions on how
13 you spend that money, but you would still be
14 eligible for that even if you never put up another
15 tower, assuming that you met the requirements with
16 your existing system; is that correct?

17 THE WITNESS: Correct.

18 CHAIRMAN SAHR: And just for my
19 point of clarification, when you received the money
20 for an area which you've been designated as having
21 ETC -- where you have received the ETC designation,
22 and this may have been asked and answered earlier
23 so I apologize if I'm asking something that's
24 already been answered, is the requirement that you
25 spend it within that particular center, is that the

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1 requirement that you spend it within that
2 particular service territory, or is it just within
3 the entire State of South Dakota?

4 How does that work? I mean, if you're getting
5 money from the James Valley customers, so to
6 speak -- I shouldn't say sort of from, but if the
7 money is flowing because you have ETC designation
8 in James Valley and could be anywhere
9 hypothetically, does that have to directly be spent
10 within that particular area or can that be spent
11 anywhere within the State of South Dakota or what
12 are the requirements on the expenditure side of
13 things?

14 THE WITNESS: It's actually flowing
15 from our customers to a greater degree.

16 CHAIRMAN SAHR: And when I say James
17 Valley, I didn't mean -- I meant the people who
18 reside in that area and not the customers of the
19 company.

20 THE WITNESS: There's no more
21 definition on it than that. We consider the
22 designation to -- I mean, we consider it to be a
23 State Commission designation. We put -- and
24 through the certification process, you know, we're
25 responsive to the State Commission. The funds are

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1 spent in South Dakota.

2 CHAIRMAN SAHR: But not necessarily
3 within any particular area, just a requirement that
4 they be spent in South Dakota in those areas,
5 though, where you have ETC designation; correct?

6 THE WITNESS: Correct.

7 CHAIRMAN SAHR: So I should clarify
8 that or perhaps we both should. So the funds have
9 to be spent within ETC designated areas, but you
10 don't necessarily have to spend them in James
11 Valley territory just because you're receiving
12 money for serving -- well, you have ETC designation
13 there and receiving Universal Service Funds?

14 THE WITNESS: It would seem that
15 way. There doesn't seem to be any further
16 requirement to that extent.

17 CHAIRMAN SAHR: And just the final
18 question that I have -- have I said final more than
19 once?

20 And I've read through the Joint Board opinion
21 and the FCC opinions, and I think I'd be remiss if
22 I didn't ask your opinion of this and I invite the
23 Interveners when they have the opportunity to
24 answer this question as well, but what is your
25 interpretation of the way that the FCC and perhaps

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1 even Joint Board, if you care to comment, has
2 looked at the question of -- and I want to say this
3 correctly but I think you'll get the gist either
4 way -- the potential barrier to entry if companies
5 were required to prove that they currently could
6 serve the ETC areas in which they are seeking
7 designation? Not the ones they already have
8 designations but they are seeking. Could you
9 comment about that?

10 THE WITNESS: Sure. As I said
11 earlier, it emanated from a decision this
12 Commission made originally. This Commission denied
13 our ETC designation originally and we challenged
14 that and eventually the FCC said no, you don't have
15 to be fully built out in areas in order to be
16 designated.

17 In fact, the same standard should apply to
18 competitive ETCs as it applies to wireline ETCs and
19 that is the reasonable -- respond to reasonable
20 requests for service standard. That standard
21 recognizes that a competitor by definition does not
22 have the kind of market penetration that an
23 incumbent has. And if 100 percent coverage were to
24 be the required standard expectation, it would,
25 indeed, be a barrier to entry.

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1 That standard has not only been established by
 2 the FCC in the South Dakota Preemption Order but
 3 has also been picked up in the Virginia Cellular
 4 case and the Highland Cellular case and I believe
 5 the Joint Board mentioned it in the Joint Board
 6 Recommended Decision. So it is a fairly firm
 7 precedent that has now been repeated over and over
 8 again and seems to be the standard.
 9 CHAIRMAN SAHR: Thank you.
 10 MS. AILTS WIEST: You talked about
 11 your wireless local loop service in your testimony,
 12 and I was just wondering could any customer in your
 13 current ETC areas, can they ask for wireless local
 14 loop service and receive it?
 15 THE WITNESS: Yes. I believe so,
 16 yes.
 17 MS. AILTS WIEST: What does that
 18 cost? Do they have to buy that telular unit?
 19 THE WITNESS: Yes. That's the 14.99
 20 plan with the wireless access unit. Yes, and the
 21 customer does purchase that unit.
 22 MS. AILTS WIEST: How much is that?
 23 THE WITNESS: I think it's
 24 approximately \$300.
 25 MS. AILTS WIEST: Okay. And does

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1 Western Wireless currently keep track of customers
 2 they're unable to serve in your current ETC areas?
 3 THE WITNESS: Currently unable to
 4 serve, do you mean --
 5 MS. AILTS WIEST: If someone in a
 6 current area that you've already been designated
 7 as, if they're unable to receive service, do you
 8 keep track of those people, those numbers?
 9 THE WITNESS: It's not something
 10 we're currently tracking or -- I don't think that
 11 we're currently able to track. It's kind of a
 12 system issue that I'm pretty sure we're not doing
 13 that today.
 14 MS. AILTS WIEST: And then just to
 15 clarify in my own mind that 85 percent, did you say
 16 when you were answering Mr. Smith's question that
 17 the 85 percent will be achieved after the proposed
 18 cell sites or is achieved today?
 19 THE WITNESS: In some areas it is
 20 achieved today on existing -- on the existing
 21 network. In other areas what we've done is we've
 22 said these are the areas -- these are the sites
 23 that we're going to build and these are the areas
 24 that they touch and, therefore, that additional
 25 coverage brings those areas up above that 85

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1 percent minimum and so we added those areas to the
 2 request as well.
 3 MS. AILTS WIEST: And then for the
 4 areas that you didn't request ETC status for, is it
 5 your testimony that's only the Cheyenne River study
 6 area or do you know?
 7 THE WITNESS: I thought it was only
 8 Cheyenne River but counsel mentioned another
 9 company in her opening, and I certainly don't have
 10 any -- I don't have a record of that, but I
 11 wouldn't dispute it either.
 12 MS. AILTS WIEST: I was just looking
 13 through the old orders, and I thought perhaps Faith
 14 Municipal Telephone was one of them that you didn't
 15 request it.
 16 THE WITNESS: Again, our analysis
 17 was the opposite. We looked at which ones we
 18 wanted to add. We weren't trying to get rid of any
 19 areas.
 20 MS. AILTS WIEST: And then in the
 21 Pine Ridge area, are you requesting ETC designation
 22 in that area?
 23 THE WITNESS: We are already
 24 designated as an ETC on the Pine Ridge Reservation.
 25 MS. AILTS WIEST: For tribal

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1 members. What about non-tribal members?
 2 THE WITNESS: Let's see. I believe
 3 the -- for instance, the Golden West designation
 4 would more than likely touch --
 5 MS. AILTS WIEST: And I'm just
 6 trying to clarify this for the record. Is it your
 7 understanding that even though Pine Ridge -- after
 8 I looked through the Order yesterday, it said that
 9 9 percent are non-tribal members, and I believe the
 10 FCC only granted you the ETC designation for tribal
 11 members.
 12 So it would be your position that within this
 13 current process you would also be seeking
 14 designation for the non-tribal members on the
 15 Pine Ridge?
 16 THE WITNESS: I believe the FCC's
 17 designation is geographic in scope. In other
 18 words, it designates Western Wireless as an ETC on
 19 the reservation. I'm not sure that it's limited to
 20 tribal members only. But we could certainly brief
 21 that, cover that in briefs.
 22 MS. AILTS WIEST: Okay. And then
 23 you also stated in your direct testimony, I
 24 believe, that Western Wireless's universal service
 25 offerings will be governed by federal law rather

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1 than state law.

2 Is Western Wireless subject to our state

3 service quality rules?

4 THE WITNESS: By their -- on their

5 face, no. Through the ETC, the original ETC

6 Designation Order, this Commission applied them

7 through the compliance process. So we have

8 essentially in our compliance filing we've complied

9 with those requirements. But, no, they are not --

10 they are not generally applicable to wireless

11 carriers, no.

12 MS. AILTS WIEST: And that's based

13 on Section 332?

14 THE WITNESS: No. I don't think by

15 their -- on their face that they apply. I think

16 the application excludes application to anyone

17 other than a local exchange carrier above 50,000

18 lines or something like that.

19 MR. AYOTTE: Ms. Wiest, I would note

20 just to confirm my recollection with yours that in

21 the service agreement that was included as part of

22 the compliance filing that was approved by the

23 Commission there is a specific provision in that

24 service agreement. I'm guessing it's like 3.1 or

25 Section 3.2, which specifically addresses the

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1 South Dakota service quality rules, those which are

2 applicable, some of which are written in wireline

3 technology and that is a specific provision within

4 the customer service agreement which makes those

5 applicable service quality rules applicable in part

6 of the customer service agreement.

7 MS. AILTS WIEST: Thank you. And

8 then in your rebuttal you mentioned -- I believe

9 it's on page 7. You mentioned several steps that

10 you can take to enhance a customer's ability to

11 send and receive wireless signals.

12 And I was just wondering for the first one the

13 company can make sure the customer's equipment is

14 properly working and it's the appropriate

15 equipment. Would one of those be the customer

16 would perhaps need to buy a more powerful phone?

17 THE WITNESS: That's definitely a

18 possibility. It might be suggested that a customer

19 would be happier with a 3 watt phone or a high gain

20 antenna at their home.

21 MS. AILTS WIEST: And enhancement

22 can be made and that's when you go to the high

23 powered antenna and that would be also purchased by

24 the customer?

25 THE WITNESS: Yes. Correct.

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1 MS. AILTS WIEST: And new

2 technologies available to add to the customer's

3 ability to boost the signal, would that also be

4 purchased by the customer?

5 THE WITNESS: Yes, it would.

6 MS. AILTS WIEST: And that would

7 perhaps be a signal amplifier. Would that be

8 correct?

9 THE WITNESS: Yes. The booster

10 technology, I believe it's called Signal Reach is

11 the product name, is essentially a signal

12 amplifier. And there are a couple of different

13 products. One is sort of a car mounted, and the

14 other is not. So a couple of different products

15 you can use.

16 MS. AILTS WIEST: Then the wireless

17 network can be enhanced by adjusting power levels,

18 signal strength, and directional transmission of

19 cell sites.

20 So that would be something that your company

21 would do; is that correct?

22 THE WITNESS: Correct.

23 MS. AILTS WIEST: Would that be

24 something that your people who work in your

25 offices -- if someone says they can't get any

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1 service, how would -- at what point does it

2 escalate to checking out whether the adjusting

3 power level signal strength and signal transmission

4 could be used to improve service?

5 THE WITNESS: There's a tight link

6 between our engineering department and both our

7 customer care representatives as well as

8 salespeople. Salespeople in the field have quite a

9 bit of contact with customers. If there's a

10 reported problem, you know, a need for service

11 enhancement, those are communicated constantly to

12 engineering.

13 And so in the same decision process about

14 expansion of the network through construction of

15 cell sites, it is also possible for the engineering

16 department to consider other network tweaks, if you

17 will, network changes that might enhance the

18 coverage of a particular location.

19 MS. AILTS WIEST: This is my last

20 question. Looking at just an internal map of our

21 areas you didn't request it for what we refer to it

22 as foreign exchange areas that come into

23 South Dakota; is that correct, ETC designation?

24 THE WITNESS: No. I believe we did.

25 By that you mean wire centers that straddle the

1 border?

2 MS. AILTS WIEST: Well, I'm talking
3 about exchanges that perhaps are based in
4 another -- for example, like Consolidated Telecom,
5 are those areas that you left out because they
6 didn't meet your 85 percent or you left out because
7 you didn't think you needed ETC designation for
8 those areas?

9 THE WITNESS: Any area that's left
10 out of this request would be left out because it
11 didn't meet that minimum 85 percent threshold.

12 We included -- if it met the threshold, we
13 included wire centers that straddle the border
14 with, you know, facilities both in North Dakota or
15 South Dakota or Nebraska, if that's the case. But
16 the fact that a switch is located in, let's say,
17 North Dakota and yet that wire center extends
18 across the boarder in South Dakota, this Commission
19 is the appropriate jurisdiction for designation of
20 the territory that resides within this state.

21 You certainly, I think, would probably object
22 if North Dakota tried to designate that territory
23 as an ETC --

24 MS. AILTS WIEST: Like Dickey Rural
25 Telephone Co-op, I mean, those are right on the

1 border, and you have ETC designation all around
2 that. I'm just wondering why those were left out.

3 THE WITNESS: I'm not sure what
4 you're looking at.

5 MS. AILTS WIEST: It's just an
6 internal map of ours. And I just went through the
7 list of all of our independent local exchange
8 companies against your list of the ones that you've
9 been designated and I was trying to see exactly
10 which ones you hadn't requested. And when you left
11 out the foreign exchange for the most part it
12 appeared I was wondering if that's what you see
13 because you had it in other states --

14 THE WITNESS: This Commission is the
15 only entity that has the authority to designate
16 territory within its borders. So we wouldn't have
17 excluded on that basis.

18 It's possible -- does your list include study
19 areas from the prior designation as well as this
20 application?

21 MS. AILTS WIEST: Yes.

22 THE WITNESS: Okay.

23 MS. AILTS WIEST: That's why I'm
24 asking the question. That's all I have. Do you
25 have any redirect?

1 MR. AYOTTE: Yes. Thank you.

2 REDIRECT EXAMINATION

3 BY MR. AYOTTE:

4 Q Mr. Blundell, I'm going to actually go in reverse just
5 because of my Attention Deficit Disorder. In response
6 to your questions from Ms. Wiest regarding various
7 steps that the company will take to enhance service as
8 described in your rebuttal testimony on page 7, can you
9 tell us are these the various steps that you've been
10 alluding to today that would enable the company to meet
11 the obligation to provide service to those customers
12 within a wire center who may be outside of that minimum
13 85 percent standard?

14 A Yes.

15 Q In response to a question from Commissioner Burg, you
16 alluded to service for existing customers in the
17 James Valley study area, and he asked you whether you
18 would provide service with no expenditures of moneys
19 for those customers.

20 Does it cost the company money to operate its
21 network on a going basis?

22 A Yes, it does.

23 Q I believe your answer was that it would not be
24 necessary to spend money to construct additional cell
25 sites, but would the company potentially need to

1 recover the costs of the debt associated with any
2 existing cell sites in the James Valley area?

3 A Yes. That would be an expense.

4 Q And if there were lease payments, you were otherwise
5 leasing the location where the tower is constructed,
6 would there be ongoing lease payments with respect to
7 the existing facilities?

8 A Yes, there would.

9 Q And would the company need to recover its cost of
10 providing the services within that area?

11 A Yes. Provisioning, providing, yeah.

12 Q What about the costs of maintaining the network on an
13 ongoing basis?

14 A Yes. That's a cost as well.

15 Q And providing service to low income consumers at a
16 discounted rate. Would that be a further cost which
17 you would recover through universal service support?

18 A Yes, it is.

19 Q And you made reference to the annual 254(e), the annual
20 certification process, and were you referring to the
21 Commission's Order that was issued in Docket TC03-158
22 issued on September 23 of 2003?

23 A Yes. That sounds like the Order that I was referring
24 to.

25 Q And as part of that certification process did the

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1 company undertake to submit information on a
 2 confidential basis to the Commission regarding the
 3 amount of federal universal service support it had
 4 received in those areas where it was designated an ETC?
 5 A Yes.
 6 Q And similarly did the company provide to the Commission
 7 its 2003 expenditures in the designated service areas
 8 for the provision, maintenance, and upgrading of
 9 facilities and services?
 10 A Yes. That's what we provided.
 11 Q Mr. Blundell, I'm going to show you a copy of what was
 12 filed with the Commission on a confidential basis but
 13 I'd ask you not to reveal the specific dollar amounts.
 14 It can be reviewed by the Commissioners or by their
 15 staff.
 16 But as part of the 2003 certification process
 17 if you look at the total amount of universal service
 18 support received and the total amount of the
 19 expenditures made before any return on investment, can
 20 you give us some sense of the magnitude, how much of
 21 the federal universal service dollars equate to what
 22 the expenditures were for the provision, maintenance,
 23 and upgrading of facilities?
 24 MR. CREMER: Excuse me. I have an
 25 objection at this point. Will we be able to see

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1 that exhibit so we can cross-examine the witness on
 2 it?
 3 MR. WIECZOREK: Just for the record
 4 it was produced as Confidential Exhibit No. 10 in
 5 discovery. So you should have copies of it within
 6 the discovery file.
 7 MR. CREMER: Thank you.
 8 MR. COIT: I'd like to make a
 9 request that the Commission take judicial notice
 10 and incorporate into the record in this process the
 11 filing and the Order from that Docket. There have
 12 been a lot of questions regarding, you know, the
 13 certification.
 14 I would just for the record like to request
 15 that the Commission take judicial notice and
 16 incorporate the filings made by Western Wireless on
 17 this annual certification. And then I think there
 18 was also one in 2002, and I'm not sure what Docket
 19 that would be. Just so we have them as part of the
 20 record in this process, particularly the filings
 21 and the Order, I would guess, to make it complete.
 22 MS. AILTS WIEST: Is there any
 23 objection to that?
 24 MR. AYOTTE: I think that's a swell
 25 idea.

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1 MS. AILTS WIEST: The Commission
 2 will take judicial notice of the filing and the
 3 Order in the Western Wireless certification
 4 dockets.
 5 Q Going back to my question, Mr. Blundell, what percentage
 6 of the total expenditures for the provision and
 7 maintenance and upgrading facilities in 2003 -- what
 8 was the relative percentage of universal service
 9 support received as compared to the expenditures?
 10 A A little less than 10 percent.
 11 Q You likewise had a question from Commissioner Burg
 12 regarding billing address for the customer which is
 13 used to report and receive support; correct?
 14 A Correct.
 15 Q And a question about what happens if a customer can't
 16 receive service at that billing address. Do you recall
 17 that question?
 18 A Yes.
 19 Q Those same steps that you alluded to in response to
 20 Ms. Wiest's questions, steps that can be taken short of
 21 putting up a new cell site, are those the same type of
 22 steps that the company can utilize to provide service
 23 to that customer at that billing address?
 24 A Yes. Most definitely.
 25 Q You had some questions from Commissioner Sahr as well

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1 as, I think, Mr. Smith regarding regulatory oversight
 2 and a specific reference to paragraph 43 of the
 3 Highland Cellular Decision.
 4 You were asked a couple of times sort of what
 5 sort of standards are you willing to commit to here.
 6 Although they didn't ask for it voluntarily, I'll
 7 suggest that they were looking for some sort of
 8 commitment on the part of the company as it relates to
 9 those types of regulatory oversight matters addressed
 10 in paragraph 43 of Virginia Cellular.
 11 Do you recall that?
 12 A Yes, I do.
 13 Q I'd like to ask you about specific standards that are
 14 addressed in paragraph 43. First, I would suggest that
 15 there's a requirement that Highland Cellular is
 16 obligated under Section 554(e) to use high-cost support
 17 only for the provision, maintenance, and upgrading of
 18 facilities and services for which the support is
 19 intended.
 20 Is Western Wireless willing to agree to that
 21 requirement?
 22 A Absolutely.
 23 Q And a requirement to have the Commission annually
 24 certify Western Wireless's compliance with the 254(e)
 25 standard, is Western Wireless willing to commit to

217

1 that?

2 A Yes.

3 Q Next it references a submission of records and

4 documentation on an annual basis detailing progress

5 toward meeting build-out plans.

6 Is Western Wireless willing to commit to such

7 a standard here in South Dakota, relating to the

8 submission of build-out plans and some further

9 follow-up and reporting of documentation on an annual

10 basis regarding such build-out plans?

11 A Western Wireless is more than willing to respond in

12 this way to, you know, the Commission's desire to see

13 progress. And so, yes, the company is willing to do

14 that.

15 Q The next requirement is the commitment to become a

16 signatory to the CTIA consumer code for wireless

17 service. Is that something which the company is

18 committed to?

19 A The company has already agreed to do so and is a

20 signatory on the CTIA consumer code.

21 Q What about providing to the Commission the number of

22 consumer complaints per 1,000 mobile handsets on an

23 annual basis? Is that something which the company is

24 willing to voluntarily commit to here in South Dakota?

25 A Whether or not that specific sort of report itself is

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1 something we can do today, this type of reporting to

2 the Commission is something definitely we would be

3 willing to do.

4 Q How about annually submitting information detailing

5 requests for service from potential customers that were

6 unfulfilled for the prior year?

7 A As I testified earlier, it's not something I believe we

8 track today so I'm not sure about that one.

9 Q Based upon your knowledge and familiarity with Western

10 Wireless's provisioning of service here in

11 South Dakota, do you believe that such a requirement is

12 even necessary?

13 A I don't think it's necessary at all.

14 Q Why not?

15 A Well, in part because this Commission already has

16 jurisdiction to hear consumer complaints, number one.

17 Number two, we have an existing relationship. We've, I

18 think, exhibited a dialogue and a responsiveness and, I

19 mean, it's working today without such a requirement.

20 Q You had a question from Commissioner Burg -- I guess

21 you perhaps answered it in a hypothetical, but I want

22 to make sure that it's clear. You talked about the

23 steps taken to serve. I think your hypothetical was

24 existing coverage to 90 percent of the population to

25 the wire center and what are we going to do with these

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1 other 10 percent.

2 Do you recall that?

3 A I do, yes.

4 Q If one of those customers within that 10 percent of the

5 population that's not currently receiving service but

6 if one of those customers submits to Western Wireless a

7 reasonable request for service -- so I want you to

8 assume that it's a reasonable request for service. Is

9 Western Wireless willing to provide service to that

10 customer?

11 A Absolutely.

12 Q Is Western Wireless committing to provide service to

13 that customer?

14 A Yes.

15 Q Is Western Wireless committing to meeting its

16 obligation throughout its requested designated service

17 areas to provide service to all who request -- who

18 submit a reasonable request for service?

19 A Yes.

20 Q You had a question from Mr. Coit regarding the

21 provisioning of equal access service. Do you recall

22 that?

23 A Yes, I do.

24 Q Do Western Wireless's customers have the ability to use

25 dial-around access if they wish to choose their long

220

1 distance carrier of choice?

2 A Yes, they do.

3 Q You had a series of -- I'm going to get this marked.

4 (Exhibit WW7 is marked for identification)

5 MR. AYOTTE: I would note for the

6 record that this is a Confidential Exhibit 7, but I

7 don't believe it necessary to clear the room based

8 on the questions I will ask.

9 Q Mr. Blundell, are you familiar with what has been

10 marked for the purposes of identification as Western

11 Wireless Exhibit 7?

12 A Yes.

13 Q And have you seen this before?

14 A Yes, I have.

15 Q Have these three maps been produced by Western Wireless

16 to the Interveners as part of their discovery request?

17 A Yes.

18 MR. AYOTTE: We would offer Western

19 Wireless Exhibit 7.

20 MS. AILTS WIEST: Any objection?

21 MR. COIT: No objection.

22 MS. AILTS WIEST: It's admitted.

23 CHAIRMAN SAHR: Do you know -- our

24 General Counsel for this matter doesn't have a

25 copy. Do you have an extra copy?

1 MR. AYOTTE: Sure.

2 Q Mr. Blundell, in your cross-examination -- I'll assume

3 it was by Mr. Coit. It was by Mr. Coit and others.

4 They had you look at a map, which is otherwise part of

5 the Houdek surrebuttal, Interveners' Exhibit 10, with

6 respect to Western Wireless's existing amps and CDMA

7 coverage; correct?

8 A Yes. Correct.

9 Q And that's the first page of Western Wireless

10 Exhibit 7.

11 A Right.

12 Q And that shows current signal coverage today; right?

13 A Correct.

14 Q On the second page of Western Wireless Exhibit No. 7

15 does that depict the existing amps and CDMA coverage

16 with the addition of the new 2004 cell sites that you

17 previously discussed?

18 A Yes.

19 Q And on the third page does that show Western Wireless's

20 signal coverage based upon existing amps, existing CDMA

21 coverage, the addition of the 2004 cell sites plus the

22 additional cell sites to be constructed conditioned

23 upon the receipt of ETC designation?

24 A Yes. That's correct.

25 Q And were these signal coverage maps, the second and

1 third pages of Western Wireless's Exhibit 7, were they

2 prepared using the same methodology as the map on the

3 first page?

4 A Yes.

5 Q You had a question from Mr. Coit regarding

6 affordability. You indicated you didn't believe it was

7 relevant, it was not a criteria for ETC designation,

8 254(b)(1) is a directive to the Joint Board, the FCC.

9 Do you recall that?

10 A Yes, I do.

11 Q You concluded your response by saying nevertheless our

12 services are affordable. Do you recall that?

13 A Yes, I do.

14 Q Can you explain why you believe that Western Wireless's

15 services are affordable?

16 A Yeah. I think -- first of all, I don't think it's an

17 easy comparison, wireline to wireless. It's somewhat

18 of an apples and oranges. However, the customer really

19 is the one who is in the best position to decide that

20 at all.

21 That's a decision that governments should not

22 decide. Consumers should decide, given the choices

23 that are available to them, and hopefully they have

24 lots of choices for services that the customer decides.

25 I mean, if a service is not affordable and if there are

1 other factors that contribute to that consumer's

2 decision not to take the service, then they won't and

3 that consumer decides whether it makes sense, not the

4 government.

5 And it should also be mentioned that if that

6 customer doesn't decide to take our service in the

7 designated areas, once designated we will not get a

8 dime of support. So the customer has really the

9 ultimate power here, and that's a good thing.

10 Q You also had a question from Mr. Coit regarding this

11 obligation to respond to reasonable requests over time

12 and what evidence you have as to what constitutes a

13 reasonable time. Do you recall that question?

14 A Yes.

15 Q With respect to Western Wireless's commitment and

16 ability to meet that standard, to provide service to

17 those who submit a reasonable request within the

18 designated service area, what do you rely upon to

19 demonstrate Western Wireless's ability to provide

20 service to those customers consistent with federal law?

21 A What do I rely upon?

22 Q Yes. I understand you've testified that Western

23 Wireless will commit and will meet that standard;

24 right?

25 A Correct.

1 Q What's the basis?

2 A The basis is Western Wireless's experience responding

3 to customers today and through the four or five or

4 six-step process that the company will use in

5 responding to those requests.

6 Whether that time frame is 30 days, 60 days,

7 90 days, I don't know. I don't know what a reasonable

8 time frame is. And it depends on the factors in each

9 individual case.

10 I do know that Western Wireless does respond

11 to requests in, you know, today most cases by

12 activating and turning up service to a customer in

13 24 hours and in many cases in quite a bit less than

14 that, in a couple of hours.

15 Q Are you aware of any complaints having been made to the

16 South Dakota Commission in those other areas of

17 South Dakota where Western has already been designated?

18 Are you aware of any complaints to suggest

19 that Western Wireless has not responded to any

20 reasonable requests for service?

21 A No. I'm not aware of any of those.

22 Q And if I understand correctly, based upon your minimum

23 85 percent coverage of the existing population of the

24 wire centers, does that give you confidence as to

25 Western Wireless's ability to provide service to the --

225

- 1 all of the customers within the wire center?
- 2 A Yes. I think the fact that Western Wireless is a
- 3 provider and is a substantial provider in those service
- 4 areas, gives me a substantial amount of confidence that
- 5 we can -- with the help of universal service support
- 6 can meet the demand to provide service to the remaining
- 7 uncovered populations.
- 8 Q Now this standard of responding to reasonable requests
- 9 for service, that's not a standard that the company is
- 10 subject to just in South Dakota, is it?
- 11 A No. It's a standard that applies in all of our ETC
- 12 designated areas.
- 13 Q And you have responsibility from a regulatory point of
- 14 view for overseeing the company's compliance with its
- 15 ETC obligations in the other states as well?
- 16 A Yes, I do.
- 17 Q Are you aware of any complaint ever having been made in
- 18 any other jurisdiction where Western has been
- 19 designated as an ETC suggesting it has not responded to
- 20 providing service to customers within the requested
- 21 areas?
- 22 A No.
- 23 Q Finally, Mr. Coit asked you a question regarding the
- 24 status of the company's provisioning of enhanced 911
- 25 service. Do you recall that?

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- 1 A Yes, I do.
- 2 Q Can you tell us now the company's current status, where
- 3 it's deployed, phase one, or where it has any pending
- 4 phase two requests?
- 5 A We've received -- excuse me. We have deployed phase
- 6 one E 911 service in seven counties in South Dakota.
- 7 And I don't have those county names off the top of my
- 8 head.
- 9 Q Would those perhaps include Brown?
- 10 A Yes, it would.
- 11 Q Davison?
- 12 A Yes.
- 13 Q Lawrence?
- 14 A Yes.
- 15 Q Meade?
- 16 A Yes.
- 17 Q Minnehaha?
- 18 A Yes.
- 19 Q Moody?
- 20 A Yes.
- 21 Q Pennington?
- 22 A Yes.
- 23 Q And do you have any pending phase one requests in
- 24 South Dakota?
- 25 A We do. We have two pending phase one requests.

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- 1 Q Might that be in Codington and Marshall Counties?
- 2 A Yes.
- 3 Q And finally with respect to any pending phase two
- 4 requests, any of those?
- 5 A We have received two phase two E 911 requests in
- 6 South Dakota.
- 7 Q And are those pending?
- 8 A Yes.
- 9 Q And would that be in Brown County?
- 10 A Yes.
- 11 Q You're on your own with the other one.
- 12 A I'm sorry. One county for phase two. Brown County we
- 13 received a phase two request, and both parties agreed
- 14 to an alternate implementation plan. The county is not
- 15 ready to receive phase two data. And so the parties --
- 16 we're able to provide it. We can provide it today. We
- 17 can provide it today anywhere.
- 18 But the PSAP is not ready to receive it, and
- 19 we've mutually agreed that until such time as they're
- 20 ready to receive it, we will not proceed with
- 21 implementation. But as soon as they do, we will
- 22 implement.
- 23 Q Is there a phase two request from Pennington County
- 24 even though phase one has been deployed? Was that the
- 25 other one?

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- 1 A Yeah. It may be.
- 2 Q But in any event does the company provide access to
- 3 emergency services throughout all the areas in which
- 4 it's requesting designation?
- 5 A Yes.
- 6 MR. AYOTTE: Okay. I have nothing
- 7 further. Thank you.
- 8 MS. AILTS WIEST: I believe we need
- 9 to recess. The Commissioners have an evening
- 10 appointment.
- 11 (Recessed at 5 o'clock p.m.)
- 12 (Resumed Wednesday, May 5, 2004 at 8:30 a.m.)
- 13 (WWC Exhibit 8 is marked for identification)
- 14 MS. AILTS WIEST: Mr. Ayotte.
- 15 MR. AYOTTE: Thank you, Ms. Wiest.
- 16 I mentioned to parties that in my haste to try to
- 17 complete the redirect yesterday I missed one of my
- 18 notes, and I would ask leave to resume redirect for
- 19 the purposes of introducing an exhibit. I don't
- 20 intend to have any further questions on the
- 21 exhibit.
- 22 MS. AILTS WIEST: Go ahead.
- 23 MR. AYOTTE: Thank you.
- 24 Q (BY MR. AYOTTE) Good morning, Mr. Blundell, you have
- 25 before you Western Wireless Exhibit 8. They are the

1 responses of Western Wireless to some Supplemental
2 Interrogatories and Discovery Requests from the
3 Interveners.

4 Do you recognize the document?

5 A Yes, I do.

6 Q And is that your signature which appears on actually
7 the 15th page of the document?

8 A Yes, it is.

9 Q Did you have an opportunity to review the responses to
10 the discovery requests prior to their submission to the
11 Interveners in this proceeding?

12 A Yes, I did.

13 MR. AYOTTE: We would offer what
14 has been marked as Western Wireless Exhibit 8.

15 MS. AILTS WIEST: Any objection?

16 MR. COIT: I guess my only comment
17 would be that I think if we're going to introduce
18 all of this -- all of the requests and answers
19 within this particular document, I would like to
20 see the attachments that were provided also
21 introduced.

22 MR. AYOTTE: It wasn't my intention
23 to offer the attachments. Several of the
24 attachments have already been marked and introduced
25 as exhibits. Others I didn't feel necessary so I

1 MR. AYOTTE: I have nothing
2 further. Thank you.

3 MS. AILTS WIEST: Is there any
4 further cross?

5 MR. COIT: I have a few questions
6 for recross. And I think I'm going to be throwing
7 up a confidential map. I can't recall what the
8 exhibit number is.

9 VICE CHAIR HANSON: 7.

10 MR. COIT: 7. That would be -- I
11 think it's actually in two places in the record.
12 It's Western Wireless Exhibit 7, and then it's also
13 attached to Mr. Houdek's testimony.

14 (Confidential proceedings)

1 don't intend to offer the attachments. It would
2 just be burdensome.

3 MR. COIT: Again, some of these
4 answers reference attachments. So in order to get,
5 I think, a clear picture of what all the answers
6 are, the attachments should be provided if this
7 document is going to be entered into the record in
8 its entirety here.

9 MS. AILTS WIEST: Can you provide
10 the attachments?

11 MR. AYOTTE: Sure. We'll be happy
12 to supplement the record with the attachments,
13 although I would note all the Interveners have all
14 the attachments.

15 MS. AILTS WIEST: And some of the
16 attachments are confidential?

17 MR. AYOTTE: That's correct.

18 MS. AILTS WIEST: We'll mark this as
19 a confidential exhibit with respect to any
20 attachments that are marked as confidential. And
21 with that, we'll admit Exhibit 8.

22 Q Mr. Blundell, to the best of your knowledge are the
23 responses set forth in Western Wireless Exhibit 8 true
24 and correct?

25 A Yes, they are.

233

1 MR. COIT: For the record, the
2 following questions don't relate to any
3 confidential material.
4 **Q** Mr. Blundell, are you aware of the fact that Rural
5 Cellular Corporation, another wireless carrier, has
6 filed for ETC status in the State of South Dakota?

7 MR. AYOTTE: Objection, beyond the
8 scope of redirect.

9 MR. COIT: Well, my response to that
10 would be that we discussed a lot of the public
11 interest standards -- the witness made some
12 comments regarding the application of the public
13 interest standard and potential harm to consumers,
14 and my questioning is intended to address the
15 application of the public interest standard.

16 MS. AILTS WIEST: Was that on
17 redirect where you talked about that?

18 MR. AYOTTE: No.

19 MR. COIT: I think he answered some
20 questions on cross so I guess I would be asking to
21 be able to follow up on some of the questions that
22 he provided in cross too to other examining
23 persons, Commissioners and so forth.

24 MS. AILTS WIEST: Generally we do
25 like to restrict recross to questions on redirect.

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1 MR. COIT: So --

2 MS. AILTS WIEST: Unless the
3 Commission wants to do a different policy.

4 COMMISSIONER BURG: I guess my only
5 feeling is if it's information we need to know, I'd
6 like to hear it. I'm not at all following the
7 legal proceeding.

8 CHAIRMAN SAHR: Do you know how man
9 questions you intend to ask? Is this a night of
10 preparation and 45 questions or --

11 MR. COIT: Four or five, yeah.

12 CHAIRMAN SAHR: I would move that we
13 go into executive session.

14 VICE CHAIR HANSON: Okay.

15 (Discussion off the record at which time the
16 Commission meets in executive session)

17 MS. AILTS WIEST: We'll go back on
18 the record. In this instance I would just note
19 that we did allow Mr. Ayotte to open up his
20 redirect after we closed last night so in this
21 limited instance we will allow a few questions, but
22 as a general rule we would like to keep any recross
23 associated with redirect.

24 **Q** (BY MR. COIT) Mr. Blundell, would you like me to
25 repeat the question?

235

1 **A** No. That's okay. I'm familiar with the fact that
2 RCC's filed an ETC application, but I haven't seen the
3 petition or any of the pleadings in the case.

4 **Q** And are you also aware of filings that have been made
5 in other states by other wireless carriers such as
6 Verizon Wireless and Nextel?

7 **A** Generally familiar, yes.

8 **Q** In your opinion, speaking to the public interest
9 standard do you feel that that standard or do you
10 believe that standard dictates any limit on the number
11 of ETCs that are designated within any rural service
12 area?

13 **A** No. And our other witness in this matter, Mr. Wood, is
14 fully prepared and has testified in his prefiled
15 testimony on these issues. I can certainly take a
16 crack at it, but our intent was that Mr. Wood would
17 field those questions.

18 **Q** Do you yourself feel or believe there should be a limit
19 on the number of ETCs in rural service area ever?

20 **A** No.

21 **Q** You understand that ultimately it's the consumers that
22 pay Universal Service Fund surcharges into the fund?

23 **A** In particular, wireless consumers.

24 **Q** And also landline customers; correct?

25 **A** To a far greater extent wireless carriers customers.

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1 **Q** What do you mean by to a greater extent --

2 **A** To a far greater extent than rural telephone company
3 customers. We've actually done the analysis, and
4 wireless customers pay a substantially greater
5 percentage into the Universal Service Fund than rural
6 telephone company customers.

7 **Q** That would be looking at it nationwide; correct?

8 **A** Yes.

9 **Q** Do you believe it's in the best interest of rural
10 consumers to fund multiple ETCs in all service areas
11 that are considered high-cost areas?

12 **A** As I said, our witness, Mr. Wood, is planning on
13 responding to those questions. I'll just say that I
14 think the benefits of competition on their face do not
15 subject themselves to that kind of limitation. I think
16 the more the better.

17 MR. COIT: I don't have anything
18 further. Thank you.

19 MS. AILTS WIEST: Any further
20 redirect? Mr. Ayotte? I'm sorry. Did you have a
21 question?

22 MS. ROGERS: I have a couple of
23 questions on cross, if I could.
24
25

1 CROSS-EXAMINATION 2 BY MS. ROGERS: 3 Q Mr. Blundell, my name is Darla Rogers. I have not had 4 the privilege of visiting with you previously. I have 5 just a couple of very brief questions. In your 6 surrebuttal testimony on page 8 in particular I'd like 7 to refer to you that, if I could. 8 My copy is not numbered, the lines, but I'm 9 looking at the first ending paragraph before the 10 question in the middle of the page. And there you 11 state, "Western Wireless is already able to provide the 12 supported services to substantially every potential 13 customer within its requested ETC service areas." 14 First of all, is that your position as you 15 sit here today? 16 A Yes. That's my testimony. 17 Q And are you referring to the requested ETC service 18 areas of the service areas within this Docket in which 19 you're applying for ETC status? 20 A Yes. The requested service areas that are the subject 21 of this application. 22 Q And this is your testimony as you sit here today? 23 A Absolutely. 24 Q Okay. I have another question with regard to the 25 Highland Decision. If you recall, yesterday pursuant	237 1 A Would you like me to finish or no? 2 Q You may finish, but I would remind you that I'm the one 3 that asks the questions. 4 A And I'm the one who's answering the questions. 5 Q I don't think you've answered my question. 6 A Would you like to allow me to answer your question? 7 Q Yes. Please do. 8 A Okay. I've forgotten where I was. 9 Q Do you want me to ask it again? 10 A Sure. 11 Q My question was yesterday in response to your 12 attorney's question he asked you if you on behalf -- if 13 Western Wireless was willing to commit to submitting 14 records and documentation, documentation on an annual 15 basis detailing progress toward meeting build-out 16 plans. 17 Do you recall the question from your 18 attorney? 19 A I do. 20 Q And did you not in your testimony yesterday late 21 afternoon agree that, yes, Western Wireless would 22 commit to that? 23 A No. 24 Q So you are not willing to commit to that? Is that your 25 testimony today? 239
238 1 to the skillful leading of your counsel you told the 2 Commission that you were willing to meet some of the -- 3 you were willing to commit to some of the conditions 4 that were imposed on the Highland Cellular company in 5 that case. 6 Do you recall that discussion with your 7 attorney? 8 A Yes, I do. 9 Q In particular your attorney asked you if you would be 10 willing to commit "to submit records and documentation 11 on an annual basis detailing your progress towards 12 meeting a build-out plan." 13 Do you recall that question? 14 A Yes, I do. 15 Q And is it your position that you, Western Wireless, are 16 willing to commit to that type of a condition? 17 A That was not my answer. My answer was we would be 18 willing to show the Commission our progress on, you 19 know, meeting our obligations under ETC requirements. 20 Q So you are not willing to commit to that condition? 21 A My willingness or unwillingness is irrelevant in this 22 case. The question is whether it's necessary whether 23 this Commission is going to impose that as a 24 requirement and whether -- 25 Q Well --	240 1 A No. That's not my testimony today. 2 Q You are willing to commit to this? 3 A That's the question I was answering before I was cut 4 off. Whether I am willing or not is not the question 5 in this case. First of all, it's an unnecessary 6 obligation that's not -- it wasn't a requirement of 7 Highland Cellular in the Highland Cellular case. 8 Highland Cellular put forward build-out plans because 9 it was not built out at all in the areas in question. 10 So a company's willingness or unwillingness 11 or a witness's willingness or unwillingness I think is 12 irrelevant. If the Commission imposes such a condition 13 on ETC designation in this case, you know, we'll have 14 to -- the company will have to decide, is it going to 15 meet that or not or object or not or comply, you know. 16 Q All right. Let's ask it that way. If this Commission 17 would impose on Western Wireless the condition that you 18 commit to submit records and documentation on an annual 19 basis detailing progress towards meeting a build-out 20 plan, if the Commission imposed that condition upon 21 Western Wireless, would you be willing to commit to 22 that? 23 MR. AYOTTE: I'm going to object as 24 vague and ambiguous. 25 MS. AILTS WIEST: Overruled.

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1 Q I believe, sir, you can answer that question with a yes
2 or no.
3 A I don't think I can.
4 Q Yes, you would be willing to commit or no, you would
5 not if the Commission imposed that condition? Yes or
6 no?
7 A I don't have the authority to answer that question.
8 Q So the answer is no; is that correct?
9 A The answer is I don't have the authority to answer that
10 question.
11 Q Thank you.

12 MS. ROGERS: That's a no. Excuse
13 me just a minute.

14 (Pause)

15 MS. ROGERS: That's all. Thank you.

16 MS. AILTS WIEST: Mr. Cremer, do you
17 have any questions?

18 MR. CREMER: No questions. Thank
19 you.

20 MS. AILTS WIEST: Mr. Smith, any
21 questions?

22 MR. SMITH: I have one, and I'm not
23 sure it's perfectly technically in response to
24 redirect.

25 MR. AYOTTE: I'm in my cage right

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1 now so go ahead.

2 RECROSS-EXAMINATION

3 BY MR. SMITH:

4 Q It's just a clarifying question and based on some of
5 the questions the Commission asked yesterday and it
6 regards the 85 percent threshold, and it wasn't totally
7 clear to me that maybe some of the Commissioners
8 whether they understood that 85 percent threshold is a
9 Western Wireless self-imposed decisional threshold, it
10 is not something that is set forth in any regulation or
11 law; is that correct?

12 A That's correct.

13 MR. SMITH: Thank you.

14 MS. AILTS WIEST: Commissioners?

15 COMMISSIONER BURG: Yeah. I have a
16 couple. Do you remember yesterday I asked several
17 questions about the fact that you are currently
18 serving numerous customers in the James Valley
19 area?

20 THE WITNESS: I do remember, yeah.

21 COMMISSIONER BURG: And then I
22 indicated that if we -- if you get ETC you will
23 immediately start collecting Universal Service
24 Funds for customers you do not now collect for;
25 correct?

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1 THE WITNESS: That's correct.

2 COMMISSIONER BURG: Then in the
3 series of questions from Mr. Ayotte he questioned
4 whether there's any cost involved with those
5 customers.

6 Do you recall that?

7 THE WITNESS: Yes.

8 COMMISSIONER BURG: Did I ever
9 insinuate there were no costs?

10 THE WITNESS: I'm not sure whether
11 you did or not.

12 COMMISSIONER BURG: Well, I wanted
13 to clarify you made a real big point of pointing
14 out, yes, we have tower costs, we have land costs,
15 we have operational costs. Of course, you have all
16 of those. I'm aware of that.

17 Evidently you're recovering adequate funds to
18 cover those now was the point I wanted to make and
19 there will be no additional costs involved by
20 serving those people if you do not put up more
21 towers in that area; is that correct, costs that
22 you don't have today?

23 THE WITNESS: There will be
24 additional costs.

25 COMMISSIONER BURG: Okay. What kind

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1 of additional costs?

2 THE WITNESS: The string of costs
3 that we went through yesterday, ongoing maintenance
4 of network today are --

5 COMMISSIONER BURG: Are those costs
6 you don't have today to serve the customers?

7 THE WITNESS: No.

8 COMMISSIONER BURG: That's the
9 additional I meant. The map that was put up a few
10 minutes ago really triggered something in me. Now
11 whose exhibits are these? I forgot. All of those
12 are Western's exhibits?

13 MR. CREMER: Yes. All prepared by
14 them.

15 COMMISSIONER BURG: All prepared by
16 them.

17 MR. CREMER: Yes.

18 COMMISSIONER BURG: Again, these are
19 confidential; correct? I would like that map put
20 back up for a second.

21 (Confidential proceedings)

1 those documents?

2 A I have no corrections to Exhibit 5. I do have one
3 correction to Exhibit 6. It's something that appears
4 in two places. On the table of contents page with the
5 little letter "i" at the bottom I guess about
6 three-fourths of the way down there's an entry that
7 says, SDTA Factual Error No. 7.

8 I was trying to state these in terms of my
9 understanding of the SDTA witness's testimony, and I
10 flipped this one around and actually stated it in the
11 way that was my position rather than my understanding
12 of Mr. Brown's.

13 So where it says the flawed BCM model cannot
14 be validated, it should read, can be validated.

15 Q So you'd strike the "not"?

16 A That's right. And that would be -- it would then say
17 can be validated, which is my understanding of
18 Mr. Brown's testimony. And then this indicates that
19 discussion is on page 15, and I would propose to make
20 the same change to the same heading on page 15 to
21 change the "cannot" to a "can".

22 Q In line 12?

23 A Yes, sir. That's right. That would be the only
24 correction I have.

25 Q Thank you, Mr. Wood.

1 MS. AILTS WIEST: Thank you,
2 Mr. Blundell.
3 THE WITNESS: Thank you.
4 MS. AILTS WIEST: You may call your
5 next witness.

6 MR. AYOTTE: Thank you. We'll call
7 Don Wood on behalf of Western Wireless.

8 DON WOOD,
9 called as a witness, being first duly sworn in the
10 above cause, testified under oath as follows:

11 DIRECT EXAMINATION

12 BY MR. AYOTTE:

13 Q Mr. Wood, would you please state your name.

14 A Yes. My name is Don J. Wood.

15 Q By whom are you employed?

16 A I'm a principal in the firm of Wood & Wood.

17 Q Have you been engaged by Western Wireless to provide
18 testimony in this proceeding on the company's behalf?

19 A Yes, sir, I have.

20 Q You have before you what has already been accepted into
21 evidence as Western Wireless Exhibit 5, which is a copy
22 of your rebuttal testimony and Western Wireless
23 Exhibit 6, which is a copy of the surrebuttal testimony
24 prefiled in this proceeding.

25 Do you have any corrections to either of

1 MR. AYOTTE: The witness is
2 available for cross-examination.

3 MS. AILTS WIEST: Mr. Dickens.

4 MR. DICKENS: Thank you.

5 CROSS-EXAMINATION

6 BY MR. DICKENS:

7 Q Good morning, Mr. Wood.

8 A Good morning, sir.

9 Q We haven't been introduced. I'm Ben Dickens,
10 co-counsel with Ms. Rogers for some of the Interveners.

11 A Good morning.

12 Q I'd like to talk to you today about your rebuttal
13 testimony that you filed. It carries the date of
14 April 5?

15 A Yes, sir.

16 Q Turning to page 7 of your testimony which is a
17 carryover from page 6 under a question about the focus
18 of ETC designation proceedings before other state
19 regulators.

20 At line 1 at the top of the page 7 you see a
21 sentence that says, put directly, "The purpose of this
22 proceeding is not as Mr. Brown and Ms. Vanicek
23 suggests, to answer the question is the introduction of
24 competition for basic telecommunications services in
25 rural areas in the public interest."

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1 Do you see that statement in your testimony?

2 A Yes, sir.

3 Q As I read that sentence and think about it, I am

4 prompted to ask you the question is that your

5 characterization of their testimony?

6 A Well, it's my understanding of their testimony.

7 Mr. Brown has an extended discussion of how he feels

8 costs change in rural areas as a result of competitive

9 entry, and that discussion really isn't specific to

10 Western Wireless. It's specific to the idea that there

11 shouldn't be additional entrance in those areas. So

12 that's my understanding of their testimony.

13 Q Okay. In other words, there's not a sentence that says

14 that.

15 A No, sir. I don't think I quoted anything there. I

16 said, as Mr. Brown and Ms. Vanicek suggest, that this

17 is somehow about is competition in the public interest

18 versus is this particular petition in the public

19 interest.

20 Q Okay. In fact, you've used that sentence almost

21 verbatim in other state proceedings, have you not in

22 prefiled testimony?

23 A Yes, sir, I have. Mr. Brown and I go way back, if you

24 will, and I have responded to his testimony other

25 places, and I believe I've probably used the same

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1 sentence because I have the same concern about his

2 testimony.

3 Q Would you accept subject to check that in prefiled

4 testimony in Idaho testifying for NPCR, d/b/a Nextel

5 Partners your testimony reads, put directly, "The

6 purpose of this proceeding is not, as many rural LECs

7 argue, to answer the question 'is the deduction of

8 competition for basic telecommunications services in

9 rural areas in the public interest'?"

10 A No. I suspect that's right. In that particular case

11 it was Citizens that was making that argument, Citizens

12 Telephone Company or Frontier. But it's the same

13 argument.

14 MR. DICKENS: Excuse me one moment.

15 (Pause)

16 Q Was Mr. Brown a witness in that case?

17 A He was not.

18 Q Thank you.

19 A I believe they had an in-house Frontier witness who was

20 making a lot of the same arguments that Mr. Brown makes

21 here.

22 Q On page 11 of the same rebuttal testimony that we were

23 just discussing on line 12 you say, "WWC is proposing

24 to offer a wide range of service offerings as an ETC."

25 Do you see that reference?

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1 A Yes, I do.

2 Q Are you referring to new services not offered today in

3 areas covered by the application?

4 A I'm referring to services on the list, I believe, that

5 were provided. I believe Ms. Vanicek refers to them in

6 an exhibit to her testimony. And it's not so much a

7 new service. It's new to the area that would be

8 served.

9 In other words, it's a service offering that

10 would be available to customers in an area that isn't

11 available today but would be if the network is built

12 out with these funds.

13 Q So if there are gaps in coverage and you extended the

14 network into that area with no coverage or poor

15 coverage today, that would represent additional

16 service? In that hypothetical is that what you mean?

17 A Well, it would be new to those people, and if they

18 can't subscribe to it today or subscribe to it today as

19 an added level of service quality but they will be able

20 to as a result of this build-out, that's a new service

21 opportunity for those customers to either purchase or

22 not purchase.

23 Q I just wanted to make sure I understood what you meant

24 there. Also on page 11 there is a heading, "Any

25 Commitments Regarding Quality of Telephone Service

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1 Provided by Competing Providers." And that discussion

2 runs on over to the next page on page 12. And

3 Mr. Blundell talked about this a little bit yesterday

4 on the record.

5 You state that it should also be noted that

6 WWC has committed to comply with the CTI code for

7 wireless service in order to ensure consumer protection

8 as more fully discussed by Mr. Blundell.

9 This Commission -- and I think this point was

10 made yesterday, but I just want to confirm it with you.

11 This Commission doesn't regulate compliance with the

12 CTIA consumer code for wireless service, does it?

13 A They don't regulate it directly. It's a voluntary

14 industry commitment, but, you know, this Commission

15 does make an annual recertification, and if they want

16 to look into those issues, look at service quality

17 issues specifically as they relate to CTIA, they would

18 obviously have the authority to do that.

19 Q So it's your testimony they could do it in the annual

20 certification process?

21 A Yes. And, in fact, that's where both the FCC and the

22 Joint Board in its recommendation recommend that that

23 be done. Because, as I'm sure you know, the Joint

24 Board recommended against adopting the ILEC service

25 quality requirements for other technologies but instead

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1 found that it's really the role in that annual
2 certification for this Commission to make its
3 examination as it sees fit.

4 **Q** On page 26 of your rebuttal testimony you are critical
5 of Mr. Brown's testimony that referred to a Salomon
6 Smith Barney report that characterized universal
7 service support as almost all margin. Do you see
8 that?

9 **A** I see that. And I don't know whether I recall it
10 critical of Mr. Brown. I certainly disagree with him.
11 I think this is, I guess, the technical accounting term
12 would be a silly argument. It's a play on words on
13 some accounting terms. But it in no way suggests that
14 there's anything inappropriate being done with funds.
15 It's a nonissue, and I think it's really silly to bring
16 it up in a case like this.

17 **Q** Well, the purpose of my question is you were rather
18 critical of Mr. Brown. In my judgment you say, "This
19 is an incredibly irresponsible suggestion by Mr. Brown
20 who either managed to receive an M.B.A. without gaining
21 or understanding basic finance or is willing to
22 knowingly make misleading statements to the
23 Commission." So I want to ask you about that.

24 **A** Sure.

25 **Q** I gather that on page 26, lines 17 to 19, whichever

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1 lines that precede the sentence I just read, you are
2 criticizing Mr. Brown's reference to the bottom line,
3 and then you go on page 27, the top going to the bottom
4 line of an income statement, "may and in this case does
5 mean that the funds then proceed on to the balance
6 sheet in an incremental investment."

7 Are you familiar with a recent NARUC speech
8 in the District of Columbia by Commission Abernathy who
9 said universal fund dollars should not be used to "pad
10 the bottom line"?

11 **A** I think I'm familiar with the speech you're talking
12 about, and I agree with her 100 percent they should not
13 be used to pad the bottom line. What I disagree with
14 here at 17 through 19, which is Mr. Brown's statement,
15 which is not pad the bottom line.

16 **Q** I didn't ask you to make a speech. Let me finish my
17 question.

18 MR. AYOTTE: I think the witness
19 should be allowed to answer the question and
20 explain his answer.

21 MR. DICKENS: I asked him if he was
22 familiar with the speech.

23 MS. AILTS WIEST: He did answer the
24 question. Go ahead, Mr. Dickens.

25 MR. DICKENS: Thank you.

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1 **Q** Mr. Wood, you would not accuse Commissioner Abernathy
2 of not knowing very much about basic finance, would
3 you?

4 **A** I would not. And, again, her statement and Mr. Brown's
5 statement are fundamentally different. If Brown had
6 said what Mr. Abernathy said, I wouldn't have taken
7 issue with it.

8 **Q** Well, in fact, it's common parlance these days for
9 people to say if it goes to the bottom line, it means
10 it's a common walking around term for profit. Does
11 that sound alien to you?

12 **A** Does that sound alien to me? I'm sure people use that
13 as a common walking around term. This issue I think is
14 much more serious than just a common walking around
15 term. I think this whole process, the importance of
16 this process, the people that are supposed to be
17 represented here in terms of presenting these funds and
18 that might receive these funds deserve something more
19 specific in terms of an actual accounting review of
20 what's happening with the funds, not a common walking
21 around term view of what's happening with these funds.
22 This is a more important issue than that.

23 **Q** Well, I agree with you that it's an important issue,
24 but when the Chairman of your client refers to money as
25 margin certainly that's something this Commission

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1 should be concerned about. You don't agree with that?

2 **A** In and of itself, no. That's exactly the answer I was
3 going to explain to you before. Margin on the income
4 statement very often means and in this case can be
5 demonstrated that it does mean funds that are treated
6 as internally generated capital that then flow on to
7 the balance sheet as an incremental investment.

8 And when you look at the information that
9 this company has filed with this Commission in terms of
10 its annual recertification last year, you see that the
11 amount -- not the expense treatment, which is an
12 equally valid use of the term, but just the capital
13 expenditures outweigh the funds received by over two to
14 one. If they weren't doing that and making those
15 investments, I wouldn't be here testifying for them.

16 This company is demonstrably not padding the
17 bottom line with these funds. To treat them as margin
18 in terms of the operation is not inappropriate. It's
19 internally generated capital. It goes to the balance
20 sheet as such and represents incremental investment.
21 In fact, in this case that incremental investment from
22 internally generated funds was more than matched one to
23 one by additional externally generated funds in terms
24 of the investment that was made in this state in 2003.
25 That's important consideration.

1 To simply say as Mr. Brown does that to treat
2 it as margin means that they're not investing the money
3 in a new facility, not true, factually not true, and
4 really kind of a sloppy thing I think for him to say.

5 **Q** Well, I notice that you didn't cite any professional
6 literature or text in the finance industry for your
7 statement.

8 **A** No. There are some things that are -- I don't know how
9 you'd cite to that other than the most basic accounting
10 text.

11 **Q** Well, basic accounting text then?

12 **A** Sure. We're arguing about the equivalent of proving
13 gravity. Internally generated capital is not a new
14 idea to anybody, and when you have a report to this
15 Commission that shows capital expenditures in this
16 state that more than double the funds received, this
17 kind of accusation is irresponsible.

18 **Q** Thank you, Mr. Wood. On page 34 of your rebuttal
19 testimony you were discussing the topic of growth in
20 the fund, and you at lines 5 through 9 refer to the
21 ILEC recovery of imbedded costs as a "dead weight loss"
22 and lines 8 and 9 refer to it as a "windfall."

23 Do you see that?

24 **A** Yes.

25 **Q** If imbedded cost recovery is a windfall, isn't Western

1 Wireless likewise the recipient of an even greater
2 windfall if it's revenue streams for Universal Service
3 Funds are based on imbedded cost of ILECs?

4 **A** No. The way this system is set up currently the per
5 line amount for the ILECs is the per line amount for
6 the CETCs. The proper treatment of this, which the FCC
7 said in -- what I was calling the 14th Report and
8 Orders, what some people call the Mag Order put the
9 ILECs on notice they were going to this economic cost
10 standard.

11 Properly doing that would probably reduce per
12 line for support both ILECs and CLECs. In order to
13 give ILECs really more than perhaps they should have
14 and the FCC said more than the market would actually
15 allow the ILECs to recover, they've increased the per
16 line support that goes to IETCs and CETCs but that can
17 be remedied certainly and should be remedied.

18 **Q** Well, I think in your testimony you -- I believe you
19 refer in your testimony, and I'll have to find a
20 reference for you if you need one, that wireless
21 carriers costs are perhaps lower than wireline costs?

22 **A** No. Actually I responded to Mr. Brown's assertion that
23 that was the case and explained that if that's true and
24 he talks about a windfall, then what he's saying is
25 that the carrier that now everyone agrees is more

1 efficient would be receiving funds on an accelerated
2 basis to build out its network.

3 **Q** I remember that.

4 **A** And there's not a public policy reason to want the more
5 efficient carrier not to build out. Because if in the
6 long-term we're only going to fund one carrier, which
7 is a possibility, we certainly ought to be funding the
8 most efficient provider. Mr. Brown says that's
9 wireless. If he's right, all we're doing is
10 accelerating that deployment.

11 **Q** You've far exceeded my question. Let me get back to
12 the original question. If wireless carriers' costs are
13 lower than wireline costs and wireline costs --
14 wireline carriers are receiving the windfall because
15 their embedded costs are higher than the
16 forward-looking costs that you think are economically
17 correct, then the wireless carriers would be receiving
18 an even greater amount in excess of their costs,
19 wouldn't they?

20 **A** That's inescapably true in the current mechanism. It
21 ought to be fixed in the mechanism for both kinds of
22 carriers, and the only clarification I need to make to
23 your question is it's not that I think the economic
24 cost is more important only, it's that the FCC said
25 very poignantly here it thinks the economic cost

1 recovery is more correct than the imbedded recovery.

2 **Q** Thank you. Also on the same page, lines -- page 38
3 lines 15 to 16.

4 **A** Yes.

5 **Q** You say that, "Under the current mechanism growth and
6 the support the CETCs is a measure of growth and new
7 investment in rural areas."

8 Do you see that?

9 **A** Yes, sir.

10 **Q** That's lines 15 and 16. Do you think that any of the
11 current lines that Western Wireless reports to USAC for
12 South Dakota which would relate to prior ETC
13 designation received here, may be supported by
14 investments that were made before Western Wireless
15 received that ETC designation?

16 **A** If I understand your question correctly, I think it's
17 really no different for a wireless or wireline network.
18 Part of the overall service being provided --

19 **Q** Excuse me. I think you can answer that yes or no, and
20 if you want to explain, that's fine.

21 **A** I guess I need to say I need to understand your
22 question better.

23 **Q** Thank you. Your statement is, "Under the current
24 mechanism growth in the support to CETCs is a measure
25 of growth in new investment in rural areas."

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1 A That's correct.

2 Q Okay. My question is for any of the amounts -- for any

3 of the lines that Western Wireless currently reports to

4 USAC which relate to its ETC designation already

5 received, would any of those lines be supported by

6 investments that were made before Western Wireless

7 received any of its initial ETC designation in

8 South Dakota?

9 A I don't want to -- I'm having trouble with this lines

10 supported by investment idea. It's not really how it

11 works.

12 Q Let me rephrase it.

13 A Okay.

14 Q Western Wireless's ETC designation was received when,

15 October of 2001 here?

16 A I believe there's a couple of different dates that

17 Mr. Blundell pointed out, support for their areas or

18 authority for different areas.

19 Q I believe that they applied in 1998 or '99 and the

20 Order granting them ETC designation was granted

21 October 18, dated October 18, 2001. Will you accept

22 that subject to check?

23 A Sure.

24 Q Western Wireless's existing network in South Dakota

25 predates October 18, 2001, does it not?

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1 A Parts do, parts don't.

2 Q Thank you. The next questions I'm going to ask you

3 relate to your surrebuttal testimony dated -- I have

4 April 16, but I think it's actually dated April 26,

5 isn't it?

6 A My copy is the stamped date is April 27, the typed date

7 is April 26.

8 Q All right. My mistake on the notes. On page 5,

9 Mr. Wood, of your surrebuttal testimony, lines 6

10 through 8 you say, "As Mr. Blundell explains in his

11 rebuttal testimony, WWC has limited its request for ETC

12 designation to those ILEC wire centers within which it

13 can serve a minimum of 85 percent of the customer

14 locations with its existing network."

15 Do you see that reference?

16 A Yes.

17 Q 85 percent -- well, let me strike that. Isn't the

18 correct legal standard set forth in Section 214 that

19 the ETC shall offer the supported services throughout

20 the service area?

21 A I think the proper legal standard that's been recited

22 by the FCC and by the Joint Board is that they have to

23 be able to respond to reasonable requests for service

24 throughout the service area, and the FCC has clarified

25 just about every time it's ever reviewed the issue that

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1 does not mean they have to be able to serve the entire

2 area at the time of designation, just as the ILECs

3 didn't serve the entire area when they started getting

4 funds either.

5 Q Well, and I guess the horse race in this proceeding is

6 at what point do you give the Commission the actual

7 proof that you either have or are going to within some

8 time certain provide the supported services throughout

9 the study area in these cases?

10 A. Well, and I guess part of the same response is that's

11 not the standard. If it were the standard, the ILECs

12 couldn't get support because the ILECs can't provide

13 service throughout the study area.

14 Q Well, it's a standard throughout Section 214, wouldn't

15 you agree with that?

16 A I do. That's how it's been applied in terms of

17 administrative law has more precision to it than that.

18 And that's what the Joint Board reiterated, reiterated

19 what the FCC said about covering the area, and actually

20 the Joint Board did not decline to recommend that there

21 be something like a formal build-out plan imposed.

22 What they said was that states need to look

23 and see if there's going to be the ability to do that.

24 It took the ILECs decades to build out to that level.

25 I don't think it's going to take these wireless

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1 companies nearly that long, but they're certainly not

2 going to do it in the first year.

3 Q And Mr. Blundell testified I believe at least in some

4 cases they would need additional towers to meet the

5 85 percent threshold that you talk about in your

6 testimony. Isn't that true?

7 A That's right. It's my understanding from his testimony

8 that his 85 percent threshold is based on projected

9 2004 investment.

10 Q On page 5 of your testimony you are rebutting a

11 statement by Mr. Brown about the production of a

12 detailed build-out plan. And on lines 19 through 21

13 you say, "In reality the FCC" -- talking about Virginia

14 Cellular?

15 A Yes.

16 Q "In reality the FCC accepted a build-out plan by

17 Virginia Cellular because Virginia Cellular did not

18 have network facilities and a lot large of the area for

19 which it sought designation," and you cite paragraphs

20 16 and 23?

21 A Yes, sir. That's right.

22 Q Do you have your copy of Virginia Cellular handy?

23 A Yes, sir.

24 Q Could you turn to those paragraphs you cite and read

25 into the record any language where the FCC

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1 characterized the area that didn't have network
 2 facilities as a large area -- or as a large portion?
 3 A I'm not sure I made that characterization. I have some
 4 personal experience and knowledge and involvement with
 5 both Virginia Cellular and Highland and Virginia
 6 Cellular --
 7 Q Excuse me.
 8 A I'm sorry.
 9 Q The answer to my question is you can't really find any
 10 language that says -- that characterizes this as a
 11 large portion?
 12 A No. I didn't suggest that the FCC put that in the
 13 Order. What I'm saying is factually that's what they
 14 were faced with.
 15 Q Well, you put a footnote in here with two paragraph
 16 numbers.
 17 A That's right. And those paragraphs are the discussion
 18 of the build-out plan that was required by the FCC for
 19 Virginia Cellular.
 20 Q Thank you.
 21 MR. DICKENS: Excuse me one second.
 22 I'm trying to eliminate some of these questions.
 23 Q In fact, I think paragraph 16, Mr. Wood, recounts that
 24 Virginia Cellular estimated it would construct 11 cell
 25 sites over the first year and a half.

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1 Do you see that?
 2 A That's correct.
 3 Q How many cell sites is Western Wireless committing to
 4 construct within the next year and a half in areas
 5 covered by this proceeding, if you know?
 6 A I can't commit for the company, but my understanding of
 7 Mr. Blundell's testimony is there were 17 on the plan
 8 pending receipt of the designation.
 9 Q Now, Mr. Wood, as part of Virginia Cellular's
 10 proceeding we talked about the cell sites that the
 11 Order indicates would be constructed. As part of that
 12 proceeding Virginia Cellular filed some supplements to
 13 the record, did they not?
 14 A They did.
 15 MR. DICKENS: Mr. Chairman, I'd
 16 like to have this marked. It's a letter from
 17 counsel to Virginia Cellular.
 18 (Intervener Exhibit 17 is marked for identification)
 19 Q Do you have a copy of this document I handed out,
 20 Mr. Wood?
 21 A Yes, sir.
 22 Q Okay. Mr. Wood, if you would turn to -- turn to the
 23 first attachment that follows the transmittal letter
 24 that's signed by counsel for Virginia Cellular,
 25 Mr. LaFuria. Do you see that?

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1 A I do.
 2 MR. AYOTTE: Mr. Dickens, can you
 3 lay some foundation here and maybe try to get it
 4 introduced before we ask questions about it?
 5 MR. DICKENS: I'll be glad to tell
 6 the Commission what I intend to do with it. It's a
 7 document in an official FCC proceeding that's
 8 quoted in the Order cited by the witness, and I
 9 intend to ask the Commission to take official
 10 notice of it and --
 11 MR. AYOTTE: And the relevancy would
 12 be what?
 13 MR. DICKENS: The relevancy is that
 14 this document shows the type of build-out plan that
 15 Virginia Cellular filed with the FCC and I think
 16 goes to the heart of what we're talking about in
 17 Mr. Woods' testimony as well as Mr. Blundell's.
 18 MR. AYOTTE: Thank you. I have no
 19 objection when he offers it.
 20 Q In any event, Mr. Wood, would you read the title at the
 21 top of the page that shows the chart?
 22 A If I'm looking at the right page, Virginia Cellular,
 23 LLC Proposed Sites Constructed With ETC Funds.
 24 Q Yes, sir. Thank you. Staying on the topic of your
 25 surrebuttal testimony.

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1 A Yes, sir.
 2 Q On pages 7 and 8 of your surrebuttal testimony you
 3 disagree with testimony filed by Mr. Groft and
 4 Mr. Houdek which discusses the existence of some gaps
 5 in your client's coverage, and you quote the Virginia
 6 Cellular case that talks about dead spots.
 7 Do you see that?
 8 A Yes.
 9 Q Mr. Wood, what part of the FCC's rules talk about dead
 10 spots?
 11 A You mean in terms of the ETC designation rules or just
 12 generally?
 13 Q Well, the ETC designation rules don't talk about dead
 14 spots at all, do they?
 15 A I don't believe they do. I think they talk about
 16 reasonable requests for service.
 17 Q And so what part of the FCC's rules talk about dead
 18 spots?
 19 A Subject to check, I believe part 22 has a reference to
 20 dead spots, but that's not related to ETC designation.
 21 That's related to licensing contours.
 22 Q Part 22 of FCC cellular licensing rules?
 23 A That's right. I believe the term appears in that
 24 section, but I'd have to look to see.
 25 Q Do you have any familiarity with part 22?

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1 A Some, yes.

2 Q Can you tell me how part 22 defines dead spots?

3 A I have part of it with me. I can look.

4 Q Well, rather than waste the Commission's time, would

5 you accept subject to check that dead spots are defined

6 as small areas within a service area where the field

7 strength is lower than the minimum level for reliable

8 service?

9 A That sounds right.

10 Q Does that sound about right?

11 A Yeah. I don't have any quibble with that at all.

12 Q Do you know what distinguishes a large area from a

13 small area?

14 A In terms of that particular FCC, I don't think it says.

15 Q Do you think it's subjective?

16 A The FCC's going to apply it. They didn't define the

17 terms I guess. It's inherently subjective for the

18 purposes of that rule.

19 Q It's used for licensing, isn't it?

20 A That's right, and just to be clear, I didn't cite to

21 any of those rules in my testimony. I cited to the

22 Virginia Cellular Order.

23 Q I saw that. Are you familiar with your client's

24 position in this case that mobility is a benefit that

25 should be recognized as part of the public interest?

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1 A I'm not sure what they've said on it. I certainly

2 think that mobility is a benefit that needs to be

3 recognized as part of the public interest.

4 Q Why wouldn't it be in the public interest to provide

5 all of the highways in South Dakota with urban quality

6 grade of service, whatever that is?

7 A I'm sorry. Why would it not?

8 Q Uh-huh. Why wouldn't it be in the public interest?

9 A Why would it not be in the public interest? I don't

10 have a reason why it wouldn't be in the public

11 interest. I think coverage in as many areas as

12 possible at urban quality levels and pricing levels is

13 in the public interest.

14 Q Who would make a reasonable request to have the

15 highways covered? Would that be the Public Utilities

16 Commission?

17 A The Commission can have input certainly as part of this

18 annual review process. The way this is set up in terms

19 of for universal service on customer location for both

20 ILECs and CLECs, it's based on customer locations in

21 terms of residences and business. But there is highway

22 coverage today by wireless. Of course, there is no

23 highway coverage by wireline.

24 Q If mobility is a benefit, though, and the Commission

25 thought that it was in the public interest to have

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1 greater coverage along the highways, do you think it

2 would be reasonable for the PUC to request your client

3 to provide greater coverage for the highways?

4 A In terms of request, absolutely. I think what you're

5 going to get are build-outs based on customer requests

6 for service at their residence, their business, and

7 their travel routes, because those are the areas where

8 people have said having these mobile services is a

9 benefit to them and they'll make those requests

10 accordingly.

11 So I think we get a lot of public feedback.

12 The company gets public feedback continuously.

13 Q Thank you. That answers my question. Thank you.

14 MR. DICKENS: Those are all the

15 questions I have, Mr. Chairman.

16 MS. AILTS WIEST: It's 10 o'clock.

17 I think we'll take a break.

18 (A short recess is taken)

19 MS. AILTS WIEST: I just had a

20 question, Mr. Dickens. Exhibit 17, did you want to

21 offer that?

22 MR. DICKENS: Yes.

23 MS. AILTS WIEST: And I believe

24 there was no objection.

25 MR. AYOTTE: That's correct.

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1 MS. AILTS WIEST: So Exhibit 17 has

2 been offered and admitted. Mr. Cremer, do you have

3 any questions?

4 MR. CREMER: No questions. Thank

5 you.

6 MS. AILTS WIEST: Mr. Coit?

7 MR. COIT: No questions.

8 MS. AILTS WIEST: Mr. Smith?

9 MR. SMITH: No questions.

10 MS. AILTS WIEST: Commissioners?

11 COMMISSIONER BURG: I guess I have

12 one. There was a little discussion between you and

13 Mr. Dickens about that you believe that the

14 Universal Support Fund should be based on

15 forward-looking costs; is that correct?

16 THE WITNESS: Yes, sir.

17 COMMISSIONER BURG: Do you feel the

18 same way for the wireless? Should their payment be

19 based on their forward-looking costs?

20 THE WITNESS: I think all of these

21 should be based on forward-looking costs. I think

22 the current mechanism with the wireline cost as the

23 bench is the right one for the following reasons.

24 I mean, they're there. If another carrier,

25 wireless, wireline, you know, dreamed of

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1 technology, whatever they are, that's the benchmark
 2 that they see and they can come in based on what
 3 they know about their costs, how many customers
 4 they think they can attract, and if they think they
 5 can beat that cost or meet it, they'll enter.
 6 If they don't think they can meet that
 7 benchmark cost based on the ILEC that they're
 8 higher costs, then they won't enter that market or
 9 geographic area. As it's set, it's probably
 10 sending the right signal to other carriers, should
 11 they enter or should they not. If they're more
 12 efficient or equally, they will. If they're not,
 13 they won't.
 14 Now the downside is if they're more efficient,
 15 if they're lower cost, then you've got a per line
 16 payment based on a different technology cost.
 17 Here's the downside. What's going to happen is
 18 wireless, whoever it is, is going to receive funds
 19 faster than they would otherwise, which is going to
 20 encourage the build-out of that network faster than
 21 it would happen otherwise until we get to the point
 22 where we've got complete coverage, equal service
 23 quality, and now you've got the more efficient
 24 provider serving the area.
 25 And when we talk about managing this high-cost

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1 fund long-term we ought to be funding the more
 2 efficient provider, not the less efficient
 3 provider.
 4 So the negative is that it's going to get us
 5 the more efficient network faster, if you consider
 6 that a negative. But I think it sends the right
 7 signal. That's the benchmark. The ILEC cost is
 8 the benchmark that sends the right signal to other
 9 carriers.
 10 COMMISSIONER BURG: But when should
 11 that be paid? You're saying by overpaying if
 12 they've got a lower cost and they receive the
 13 payment based on somebody's higher cost, they're
 14 actually getting overpaid per line based on their
 15 cost?
 16 THE WITNESS: That's right.
 17 COMMISSIONER BURG: At what point
 18 should that subsidy -- I mean, you're saying the
 19 good side is it allows them to pay out faster. I
 20 see that as sort of a challenge. We're the ones
 21 that have to stand here, make sure it's actually
 22 spent to build out faster rather than pocket the
 23 difference.
 24 And I'm not comfortable with that because I
 25 don't know that we have the ability to do that

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1 adequate review. I would rather be looking at a
 2 proof of their actual costs and recover costs.
 3 Then I also think it creates a level playing field
 4 for the different technologies.
 5 THE WITNESS: I'll try to respond to
 6 different pieces of that. Your concern has been
 7 raised. Obviously it's something the Joint Board
 8 looked at. It's something the FCC's going to be
 9 looking at as it receives comments on the
 10 recommendation over the next few months on how to
 11 grapple with it.
 12 You know, this is an evolving mechanism.
 13 Everybody has been very clear that it's evolving,
 14 and at some point we may move to something like
 15 this primary line proposal. I don't think we're
 16 going to do it this time around. And then it's
 17 going to be a choice of which network we're going
 18 to fund. We're not necessarily going to fund more
 19 than one in an area. And if we're going to fund
 20 one for an extended period of time, it ought to be
 21 the most efficient.
 22 Now once we get to that point you've got
 23 different options. The Joint Board and the FCC has
 24 looked at different options. You don't necessarily
 25 keep the same per line mechanism. You may want to

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1 put this out or the FCC may put it out on a bidding
 2 basis. Carriers can come in and say we'll serve
 3 it, you know, as an ETC and for X amount of support
 4 total, and whoever bids lowest serves the area with
 5 support and the others don't.
 6 COMMISSIONER BURG: What percentage
 7 of your lines of Western Wireless's lines do you
 8 feel is the only service or do you think most of
 9 them kept their landline?
 10 THE WITNESS: I have not looked at
 11 South Dakota specifically. I have looked at other
 12 rural areas, and right now there are not a lot of
 13 people that are making the substitution and cutting
 14 the cord as they say with the landline yet, and
 15 there are a couple of reasons for that.
 16 One is, frankly, the coverage and service
 17 quality in some of these high-cost areas for
 18 wireless isn't there yet. I think it can be, but
 19 right now it's not for a lot of these people. And
 20 the second one is number portability. I'll tell
 21 you the reason I haven't done it is I've had my
 22 phone number for a long time. It wasn't until the
 23 last fall that we had the FCC coming in with
 24 wireline to wireless number portability. Since
 25 they've done that we've started seeing a lot more

1 people substituting one for the other.
2 COMMISSIONER BURG: What about
3 broadband?

4 THE WITNESS: In terms of the
5 availability on wireless?

6 COMMISSIONER BURG: Yeah. When will
7 wireless have equal quality broadband as wireline?

8 THE WITNESS: Well, they're going to
9 catch it at some point, and they're going to vastly
10 surpass it at some point. Right now the standard
11 really is what I think Mr. Blundell referred to
12 yesterday. It's the 1X. That's what I've got on
13 my phone from Verizon. It's better than dial-up.
14 It's not as good as DSL.

15 There are a couple of technologies, bandwidth
16 compression technologies, you know, coming down the
17 pike that are out of the lab that are going to be
18 much, much better than that. What it will give
19 you -- the same way with broadband is the same way
20 with voice. It will give you actual coverage
21 everywhere. You don't have to find a place to plug
22 in. You'll have wireless broadband just as you
23 have wireless service.

24 You know, so you don't have to find a place to
25 plug in a phone or plug in a computer. You know,

1 once the speeds catch up then wireless I think is
2 much more beneficial because you've got some
3 mobility with it. They're working on it. They're
4 going to catch up. They're not there yet. 1X is
5 not as good as DSL.

6 COMMISSIONER BURG: The other
7 challenge I have with the way it's funded now is,
8 yes, you can show costs that are vastly above,
9 probably even above what the actual Universal
10 Service Fund that you're getting, not per line but
11 total costs that your expenditures. And I don't
12 know. I mean, do we have enough information, do we
13 have the ability to know what the amount that
14 you're receiving -- I mean, if you're just not
15 substituting that for an investment that you would
16 make that is a profitable investment without that?
17 That's the difficulties that I see that we have
18 down the road.

19 THE WITNESS: And I understand that
20 question. One thing I can say that might provide
21 some reassurance is if the company believes that
22 these areas are profitable to serve with support,
23 then there's really no reason for them to hold back
24 on the investment in terms of substituting
25 investment funds.

1 If they were going to spend X million and now
2 they have an incremental 2 million, say, whatever
3 it is, to spend, to substitute, it would mean that
4 they really don't see the investment opportunity
5 for that substituted 2 million. But if they see
6 the opportunities here for expanding this market,
7 they're going to add on to what they would have
8 spent otherwise to get the expansion in place.

9 Otherwise, they really wouldn't be expanding
10 any in the first place.

11 COMMISSIONER BURG: As you can
12 probably tell from my questions of Mr. Blundell,
13 one of my concerns is putting Universal Service
14 Funds into areas that are profitable without them
15 for this technology where they were not for another
16 technology.

17 THE WITNESS: No. And I understand
18 that. Part of it is we're -- you know, there is a
19 federal approach, and there's a federal approach
20 being re-looked at and will continue to be
21 re-looked at over the next 12 months and we're
22 stuck with some of the warts of that approach.

23 But in terms of serving that area, you know,
24 we look at the ILEC study areas as small, discrete
25 areas because that's how they're defined for the

1 ILECs. But if you look at, you know, the wireless
2 study area as a broader footprint around the state,
3 you know, when the ILECs get this money they have
4 within their study areas some areas that are higher
5 cost and lower cost and their hands aren't tied
6 about where in their study area they put that money
7 in. They put it in where consumers are telling
8 them they need it.

9 If you look at the wireless area across the
10 state not as these discrete ILEC areas but as their
11 footprint where they've got to respond to customer
12 demand, I think there's less concern about where
13 within that footprint they spend the money versus
14 another place. You know, we looked at a particular
15 ILEC area yesterday on the map, talked about one
16 cell site being there and nonplanned, but if you
17 look at it on the map, there's sites all around it.

18 You know, it gets misleading if you look at
19 investments within an invisible line on a map and
20 not a little broader in terms of investments that
21 are actually used to provide service to the people
22 within that invisible line.

23 You know, you don't want to fill up some ILEC
24 service area with cell sites if there are adjacent
25 sites that serve them. When you start looking at

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1 this network you have to back up a little bit
2 broader. But I understand your concern, and I
3 certainly believe as part of your annual
4 recertification those are the things that you can
5 look at and would look at.

6 COMMISSIONER BURG: Thank you.
7 That's all I have.

8 MS. AILTS WIEST: Any other
9 questions from Commissioners?

10 CHAIRMAN SAHR: Good morning. I was
11 wondering if you would, please, address the concept
12 of the effect that this designation might have on
13 the Universal Service Fund and kind of the -- and
14 certainly I doubt it would be your term of art but
15 the drain on the Universal Service Fund.

16 THE WITNESS: I don't mind talking
17 about drains as long as we're looking at all the
18 drains. You know, the FCC in Virginia Cellular
19 made, you know, the comment in terms of how they're
20 approaching this is in terms of the individual
21 carriers. Virginia Cellular and Highland, the
22 amount withdrawn from the fund by those companies
23 was very, very small and not likely to impact the
24 fund as a whole.

25 Now if you back up and say let's look at all

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1 of these designations, how is that affecting the
2 fund, the FCC's numbers were CETCs collectively,
3 that's wireless and wireline, we're getting about
4 3.7 percent of high-cost in 2003 or as of fourth
5 quarter 2003. When you analyze that it's a little
6 less than 150 million.

7 We back up to the Mag Order two and a half
8 years ago we remember that the FCC not only kept
9 the ILECs on embedded cost, but they gave them a
10 new -- modified embedded cost mechanism that they
11 asked for that the FCC projected turns out a little
12 bit low was going to add about 1.26 billion to the
13 fund over five years. That's over 250 million a
14 year.

15 If you want to put the "drain" caused by CETCs
16 on the fund in perspective, look at how it compares
17 in total. It's 850 million, to the annual amount
18 not received by the ILECs but the extra amount that
19 they asked for and got in the Mag Order, which is
20 over 250 million a year and it turns out the
21 1.26 billion was low. It's going to be more than
22 250 million a year.

23 So I have some problems -- I'm coming at this,
24 and I confess, from a consumer standpoint. I'm not
25 trying to favor one carrier over the other because

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1 I worked for wireline and wireless carriers, but
2 when one group comes in and, you know, having just
3 requested and gotten an extra 250 million a year to
4 come in and say you can't allow anymore carriers to
5 come in because they might get 150 million, that's
6 a little bit disingenuous.

7 The FCC and the Joint Board commented about
8 the amount of funds going to CETCs. The FCC also
9 commented explicitly in Virginia Cellular that the
10 amount in terms of percentage and an absolute
11 amount going to the ILECs was also growing
12 significantly. And that's part of this issue at
13 the same time.

14 Is it important? Absolutely it's important.
15 I mean, carriers, state regulators, federal
16 regulators, we've all got a role. Everybody's got
17 a role in this, and everybody's got to look at how
18 we're going to deal with this.

19 Joint Board's looking at it. Last year
20 Senators Burns and Dorgan had a series of round
21 table discussions. They weren't formal hearings,
22 but they got all of us in the room -- I was there
23 for both of those -- and they closed the door and
24 said, How are we going to work on this.

25 And, of course, one of the things they focused

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1 on was the funding side because the old definition
2 is very, very narrow of telecommunications
3 services. There's a lot of services that don't
4 have the assessment applied so there's a funding
5 solution to this. There's also a disbursement
6 solution. All of that's being looked at. It's
7 going to have to be looked at it, but it needs to
8 be looked at in a perspective where the drain is
9 because there are multiple drains on this fund.
10 Otherwise, it doesn't change in size.

11 But in terms of an individual ETC designation
12 in this context, I think you do what the FCC did,
13 which is to acknowledge that this individual
14 designation is not the problem. Acknowledge that
15 CETCs alone are not the problem and to the extent
16 there is a problem it's being addressed in the
17 proper forum, which is this one, which is the Joint
18 Board and the FCC. That's where it needs to be
19 done.

20 You know, to do this piecemeal one ETC
21 application at a time it's not going to fix the
22 fund. You're not going to address the real drain
23 on the fund by denying a CETC application because
24 the real money's going to this side of the room,
25 not this side of the room.

CHAIRMAN SAHR: Thank you. Now I've certainly heard the argument made that in a state like South Dakota where we have -- whether you're a wireline or a wireless company where there are some tremendous costs involved with infrastructure and the need to deliver state-of-the-art services, especially our rural areas, whether it be a phone line, broadband connection, wireless and realizing that USF can sometimes take care of these things and sometimes can't.

THE WITNESS: That's right.

CHAIRMAN SAHR: I have heard people make the argument that especially from the perspective of the South Dakota consumers that as much money as we can get into the state to help our consumers is a "good thing" which while it tends to be a bit of a pork barrel type mentality, it is something that certainly is discussed at commissions, at industry functions, and so on and so forth.

Do you have any thoughts on the impact, especially from the perspective of state whether, again, it's wireline or wireless has some tremendous costs involved in provisioning services due to our geography and relatively low population

counts?

THE WITNESS: Yes, sir. And I'm sure there's a pork element to it. I can tell you in the Senate round table discussions last year Senator Rockefeller from West Virginia came in and was not apologetic about saying exactly that, look, this mechanism provides X dollars to West Virginia today. I don't want to see a mechanism that's going to make that reduced because, frankly, that's important to my state, it's important to people, it's important to rural economic development, and he doesn't make any apology for saying that and I don't necessarily think he needed to.

You absolutely need to make sure these funds are being used appropriately. USAC also does that. The FCC also does that. But you're the first line in making sure that's done.

But if they are -- you know, I do a fair amount of rural economic development work, and I'm looking at these funds as funds that would be invested in one of these areas that wouldn't be invested otherwise because I'm convinced these are incremental investments. I've talked to these carriers. I see what they're spending. I think this is money that's going into these areas that

needs to go into these areas that wouldn't be available.

Is the mechanism going to change in the future? It might. It might make more or less money. But I would not dismiss that argument that we're talking about money flowing into the state, into the rural areas of the state, and in order to provide expanded telecommunications coverage.

I'd have a hard time sitting here figuring out an argument about why that's a bad thing right now.

CHAIRMAN SAHR: And we continue to hit upon the certification process. And I'd like to ask you a question or two about that, and if I get beyond the scope of your expertise, please let me know.

THE WITNESS: Yes, sir.

CHAIRMAN SAHR: And it may be something where this Commission needs to review and look at our rules and our processes as they apply to all carriers. And through that review or through what we can do under current law, and I know you don't know what the legal standards are here -- maybe you do.

But, in any event, what type of certification process would ensure that the money is adequately

being spent?

How do we ensure that it is being spent within our state borders when we look at the numbers that -- and, you know, we can argue about the numbers, but ultimately we'll be able to get the numbers from either you or USAC and look at what sort of dollars are coming into the state.

Do you know anything about how that sort of tracking process or how that certification process can work most effectively for the consumers of the state?

THE WITNESS: I've seen different states applying different ideas. And this is all fairly early on in the process because CETC designations are fairly new. The Alaska Commission adopted an approach in the last year where they look at this sort of thing -- I mean, clearly you look first at the amount of money coming in for a given carrier. You should receive from them, and it's my understanding at least with regard to Western Wireless you are receiving, you know, a reporting of operating expenses and capital expenditures within the state and it should be state-specific so that you can compare that to these funds and see how that compares.

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1 You know, I expect the relationship to vary
2 from year to year and partly because, you know,
3 some of these investments are kind of lumpy. And
4 as an example, I was looking at a state where a
5 carrier was putting in a new switch so they had a
6 very high investment in that state for that year,
7 and the next year the investment went down simply
8 because they weren't putting that big of investment
9 in place. But if you look at the baseline and the
10 towers and that kind of service expansion, they
11 were continuing to expend more money.

12 I think -- well, I can't commit my client but
13 I'll tell you what I think you ought to do and if
14 I'm in trouble with them later, I guess I'll find
15 out. You should come in each year -- and this is
16 true not just for CETCs and wireless carriers.
17 This should be true for all ETCs, incumbent LECs
18 included.

19 You should get an accounting to your
20 satisfaction of the money that's been spent,
21 expenses, capital expenditures for the state, find
22 out where they spend -- you know, where did you
23 spend the money? What did you spend it on? Did
24 you expand coverage into these particular areas?
25 Do you have any plans to expand coverage in these

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1 particular areas? I mean, you should be able to
2 get that information to your satisfaction that the
3 money is being spent appropriately, you know, and
4 if there's a time that you've got customer input
5 that the company doesn't have, that's probably a
6 good time to say, well, we're hearing from
7 customers in area X, what are you hearing from
8 them?

9 This company is pretty good in that regard,
10 and Mr. Blundell described it yesterday, they've
11 got a pretty direct channel between sales and
12 engineering some companies don't have. So when
13 sales offices are getting requests that they can't
14 implement for an area, that's getting back to
15 technical people pretty quickly to get that
16 feedback in place.

17 But, you know, frankly they owe you to your
18 satisfaction that annual certification that that's
19 what's being done, and that's true for all of these
20 carriers in the room.

21 CHAIRMAN SAHR: So that answers the
22 tracking part of the fund question. And I
23 appreciate your candor on that. When we get into
24 the question of reasonable requests for service and
25 realizing that this is a somewhat fluid standard

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1 and that certainly in an area where you're just
2 granted designation likely there is going to be
3 a -- I don't know if I want to use the word lower,
4 but there's going to be the acknowledgment that
5 putting up towers takes some time possibly and
6 those type of things.

7 THE WITNESS: Yes.

8 CHAIRMAN SAHR: At the certification
9 process is that when we should be looking at those
10 requests, or is that something that you look at on
11 an ongoing basis, or how do we handle that from the
12 consumer standpoint? Because that's when -- I
13 think what's going to happen is we will -- and we
14 want these contacts.

15 We want to hear from consumers. We want to
16 hear from communities. We will continue to receive
17 these contacts, and, you know, the question I have
18 in my mind is, is this something that we deal --
19 and obviously we forward that information and do
20 what we can to help resolve the problems and work
21 with the companies on trying to do that. But when
22 it gets into more the question about whether or not
23 reasonable requests are being met, is that
24 something that is going to be the key component of
25 the certification process, or is that something

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1 that's going to be handled on an on-going basis or
2 both or --

3 And if you're not comfortable answering that
4 part of the question, at the very least would you
5 talk about how a reasonable request for service
6 issue may or may not fit into the certification
7 process?

8 THE WITNESS: Okay. I think I can
9 respond to both. And I guess I'd back up and say
10 I'm doing some work for a chamber of commerce in a
11 rural area in Georgia right now, and it is
12 absolutely frustrating that all of these networks
13 can't be built out today. And I'm going to the
14 Georgia Commission, giving them my feedback saying
15 why can't this be built out now because, frankly,
16 in that area we need it built out right now.

17 But, you know, the reality is that, you know,
18 these are large construction plans, and they take
19 time. You know, there's a point of perspective
20 that I think gets lost in these cases a little bit
21 and that, you know, the ILECs to expand coverage to
22 where they've expanded it, you know, which in total
23 coverage terms is not a lot of area but in terms of
24 wireline coverage is most of the area, they didn't
25 do that in one year or two years. They did that

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1 over decades.

2 And even though the support was implicit

3 rather than explicit prior to '96, I mean, quite

4 frankly they built out while receiving support over

5 an extended period of time. Hopefully it won't

6 take new carriers as long, but there needs to be a

7 realistic expectation on that.

8 What the FCC has said pretty direct in all its

9 orders and most recently Virginia and Highland, you

10 know, it's not reasonable to expect that the point

11 of designation that there be complete coverage,

12 that it's going to take time, it's going to take

13 financial ability to make the investments.

14 It is something that I think you've absolutely

15 got to track and should track over time because it

16 is a dynamic measure. It's not a static measure.

17 In fact, if it is static and you find that a

18 carrier is coming back in year after year and they

19 still can't serve with the same number of

20 customers, I think you've got a question about

21 their designation.

22 The FCC has been real clear this is not a

23 certification issue, a designation issue. It's an

24 annual recertification issue.

25 You know, I think I heard Mr. Blundell agree

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1 yesterday that, you know, reporting number of

2 unserved customers or customer requests not met

3 that were received is something that they could do.

4 That's something that other commissions have looked

5 at. I think you want to look at it over time and I

6 guess less of an absolute number metric and more of

7 a where are the requests coming from metric.

8 Because, you know, the location of those requests

9 is going to change over time and, you know, one

10 thing you should be monitoring and, frankly, the

11 companies should be monitoring and they probably

12 are is how those customers' demands and requests

13 are changing geographically over time so that they

14 can factor that into their plans.

15 But that's something you ought to also be able

16 to get feedback on and get reporting on an annual

17 basis. You know, I agree with the FCC, it doesn't

18 have a whole lot of meaning up front, but it

19 certainly has meaning and it's certainly important

20 as part of the annual review.

21 CHAIRMAN SAHR: So we've been

22 talking about I guess I'll call it the tracking

23 issue, making sure the dollars are being used

24 appropriately. We've talked about the reasonable

25 request for service standard which really becomes

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1 kind of the check to see if the consumers are

2 receiving service that they would like to have.

3 THE WITNESS: Yes, sir.

4 CHAIRMAN SAHR: Kind of a check

5 on -- and I know you probably hate the term but on

6 how the build-out is going and realizing that this

7 is a relatively new area and we don't have a ton of

8 guidance from the FCC or from courts on what

9 exactly is a reasonable request or perhaps more

10 importantly what is the magic number for, you know,

11 how quickly this should happen and so on and so

12 forth, and that probably will hopefully evolve over

13 time so we can get a little more guidance on how to

14 interpret that. So we've hit on those two factors.

15 In the certification process what do you

16 think -- are there any other -- obviously there's

17 probably a lot of smaller issues that could be hit

18 upon.

19 THE WITNESS: Sure.

20 CHAIRMAN SAHR: What else are kind

21 of the main factors of the certification process?

22 THE WITNESS: You're talking about

23 the annual process or the up-front process?

24 CHAIRMAN SAHR: Certification as

25 opposed to designation.

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1 THE WITNESS: Okay. I wanted to

2 make sure we're using the terms. I would say one

3 thing in terms of looking for guidance from the FCC

4 and Joint Board on the specifics, they are not

5 likely to be much help in the short run. The best

6 the Joint Board did was say that they recommend

7 that the FCC adopt a guideline -- an unspecified

8 guideline -- they didn't say what it would be -- a

9 nonbinding guideline to encourage State Commissions

10 to consider the applicant's ability to serve.

11 But they didn't give any details at all. So I

12 don't think there's a lot of guidance forthcoming

13 at least from the federal level on that particular

14 issue. I think that's something that you're in the

15 best position -- I think the Joint Board has some

16 language here that you're in the best position to

17 do that.

18 CHAIRMAN SAHR: Along with the

19 tracking issue and checking to see how the

20 requests/build-out, which we won't really call

21 build-out; right?

22 THE WITNESS: I don't have a problem

23 with build-out as long as we're clear are we

24 talking about a build-out plan rather than

25 something that you're trying to carve into stone?

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1 Even in Virginia Cellular when you look at the way
 2 they use that plan there's a very clear caveat
 3 that, you know, this is the company's current plan
 4 based on current customer needs and it may change
 5 in terms of location, number of towers, all of
 6 those things.
 7 Because you don't want to be in a position of
 8 locking in the company so they can't respond to
 9 where customers are telling them they want service
 10 as that changes over the time.
 11 CHAIRMAN SAHR: Sure. And maybe
 12 I'll just say we've hit on those two main points.
 13 What other would you see as the key factors to look
 14 at during the certification process, or do you
 15 think those are pretty much the main factors that
 16 we should be looking at as a Commission?
 17 And I'm asking this because especially when I
 18 listen to James Valley I think we're really getting
 19 kind of the perspective, although it's coming from
 20 the company, perhaps the consumer's perspective of
 21 here's where we're at, where are we going to be and
 22 I'm just trying to understand how the -- I think
 23 it's --
 24 The designation process involves a little bit
 25 of consideration of figuring out which issues are

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1 designation issues and which issues are
 2 certification issues.
 3 THE WITNESS: Yes.
 4 CHAIRMAN SAHR: That's why I'm
 5 walking through this and if you, you know, don't
 6 have anything else to add, that's fine too, but
 7 that's kind of why I'm working through this process
 8 to make sure the Commission understands it. And,
 9 frankly, these are challenging issues. To have,
 10 you know, a room full of experts, which we have
 11 here, I think I would be remiss in not trying to
 12 take advantage of that as well.
 13 So if you can add anything else, that's great.
 14 And if not and if those are the two main issues you
 15 see for certification, I mean, that's fine too.
 16 THE WITNESS: Those are the main
 17 issues. I would say you're not the only one
 18 struggling with this. State regulators all around
 19 the country are struggling with this in the same
 20 way, particularly in figuring out what's
 21 designation, what's certification. You know,
 22 clearly the primary designation points are the ones
 23 laid out in the statute, the providing the nine
 24 supported service elements, the commitment to
 25 advertise.

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1 In terms of the certification, the primary
 2 points are the ones we've talked about, you know,
 3 where is the money going, how are you using it,
 4 what is your customer feedback, what are the
 5 requests for service you've gotten, where based on,
 6 you know, what you hear from the public are you
 7 going to -- do you plan to go next?
 8 And then obviously from the Commission, you
 9 know, we're hearing from the public in this
 10 additional area. You might want to look at that
 11 and factor that into your planning and if you're
 12 not going to factor it in, then when you come back
 13 next year tell us why you didn't and why these
 14 people -- you know, you didn't get to them.
 15 But those are the primary questions that most
 16 states have settled on that they're dealing with.
 17 The states that have tried to look at service -- I
 18 have one extra issue, and that is service quality.
 19 The Joint Board is real clear you don't want to
 20 adopt ILEC service quality for wireless carriers
 21 for what they call parity, for parity sake, that it
 22 should be simply what's required to ensure proper
 23 build-out of use of service and reasonable
 24 requests.
 25 There are some states that are looking at

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1 developing in a generic type proceeding, not in a
 2 designation proceeding, a way to address those
 3 issues to the extent that they've got that concern
 4 on their radar screen. But beyond that, that's
 5 really the list of what I'm seeing states address
 6 around the country.
 7 CHAIRMAN SAHR: Thank you.
 8 MS. AILTS WIEST: Commissioner
 9 Hanson.
 10 VICE CHAIR HANSON: Thank you. Good
 11 afternoon, Mr. Wood.
 12 THE WITNESS: Good afternoon, sir.
 13 VICE CHAIR HANSON: In his opening
 14 statements Mr. Ayotte spoke of public service
 15 criteria and we should be examining, balancing the
 16 benefits versus the harm, and you heard me ask the
 17 question yesterday what harm do you see, what
 18 challenges do you see.
 19 THE WITNESS: Well, first of all,
 20 I'm going to let Mr. Ayotte stand on his own on his
 21 opening statement and we've talked a lot about the
 22 benefits and I won't repeat them for the sake of
 23 repeating them.
 24 VICE CHAIR HANSON: The question was
 25 pertaining to harm.

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1 THE WITNESS: I think the primary
2 harm question you've heard raised is the impact on
3 the fund, and I think the FCC has addressed it in
4 exactly this same context in a pretty reasonable
5 way and that's by saying two things. One is this
6 designation is not going to drain the fund.
7 Now in a larger sense do we need to address
8 the level of the fund? And that's why I responded
9 to Commissioner Sahr, I mean, yes, absolutely we do
10 and, in fact, we are. You know, the Joint Board is
11 looking at it, the FCC is looking at it, and
12 Congress is looking at it to the extent there's a
13 legislative solution needed.
14 So I get some assurance from the fact that
15 it's being fully addressed at those three levels
16 that there's nothing we are going to do here today
17 or you're going to do in this room that's going to
18 bankrupt the fund. That's the only negative I've
19 heard. You know, I gave the caveat before and I'm
20 pretty sincere about it, you know, I can't really
21 apologize, I'm coming from this from a rural
22 economic development position because that's where
23 I do a lot of my work. I see a lot of positives
24 from this money flowing into these areas. I don't
25 see a lot of negatives.

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1 But there is that one that's been raised in
2 the case and the FCC has considered it also and, I
3 think, treated it in a reasonable way.
4 VICE CHAIR HANSON: You also spoke
5 of billions of dollars, and, of course, we're not
6 talking about billions here in South Dakota. I
7 wish we were speaking of billions.
8 THE WITNESS: We are talking about,
9 though, hundreds of millions above and beyond what
10 the ILECs would have gotten that they're now going
11 to get, and that still overshadows what CETCs are
12 going to get. So the suggestion that CETC
13 designations or eliminating those is a way to fix
14 this problem is -- I won't say it's disingenuous
15 from their point, but mathematically it's not the
16 way it's going to work.
17 VICE CHAIR HANSON: You speak of
18 bankrupting the fund and emptying the fund. My
19 concern is with the dilution of the fund. And in
20 some of your testimony on page 16 of your
21 surrebuttal you stated that, "By limiting entry by
22 carriers as an ETC, the size of the fund may be
23 kept small over the short run, but it will be
24 larger than necessary over the long run."
25 Isn't that a good thing?

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1 THE WITNESS: To make it --
2 VICE CHAIR HANSON: Larger than
3 necessary.
4 THE WITNESS: Larger than necessary
5 over the long run? If concerns about the size of
6 the fund are the issue.
7 VICE CHAIR HANSON: Isn't it a good
8 thing for the ILECs to have a fund that is bigger
9 than necessary?
10 THE WITNESS: I have to say no for a
11 couple of reasons. And part of what I'm addressing
12 here is the testimony from the ILEC witnesses that
13 the problem to be addressed here is the fund is too
14 large and being made too large by CETC
15 designations. That's clearly not the cause of the
16 increase.
17 And if the concern as they've expressed it is
18 how do we manage the fund size over the long-term
19 and keep it no larger than necessary, then I think
20 we've got to take a long-term view, and that's what
21 I'm describing here.
22 Now in terms of what the Senate's looking at
23 in terms of possible legislative solution and in
24 terms of looking at the funding side of this, they
25 may have a public policy goal in mind that includes

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1 a larger fund than we have today to the extent
2 they've got the funding mechanism worked out to
3 expand the scope of how it's going to be collected.
4 But that's their decision that they'll make
5 over time. They're not going to make it in this
6 Congress. But within the framework that we've got
7 what I'm suggesting here is you don't manage a
8 business quarter by quarter. You manage it
9 long-term. And you don't maximize the results of
10 this quarter at the risk of what your results are
11 going to be over time.
12 So we can, you know, be penny wise and pound
13 foolish, if you will, by denying CETC designations,
14 but that's not going to solve the problem with the
15 size of the fund.
16 VICE CHAIR HANSON: Well, I
17 understand your argument that the more folks that
18 are paying into the fund the more money there will
19 be. But at the same time, if each ETC is building
20 a similar product, then the consumers are not
21 necessarily getting more coverage, are they?
22 THE WITNESS: Well, that's actually
23 a very good question, and let's back up to the
24 example of a wireline and one wireless carrier. If
25 you have a wireless overbuild, I think consumers

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1 are getting something different. They're
 2 getting -- over time once this is fully built
 3 out -- it won't happen in a year. It will happen
 4 in fewer than the decades it took for wireline.
 5 You're getting an opportunity in a rural area for
 6 complete telephone coverage, not just where there's
 7 a phone jack to plug in but complete coverage.
 8 And then you get into the health and safety
 9 issues. And I grew up in one of these areas. I
 10 grew up on a farm. I'm perhaps overly sensitive to
 11 some of these issues. I've also got a wife and
 12 three daughters. They break down on the side of
 13 the road I want them to have coverage. They're not
 14 going to have a wireline phone there, but if a
 15 wireless service is available, they can call.
 16 Wireline is not going to help you with a farming
 17 accident. Wireless coverage will. There's an
 18 opportunity here for something far beyond the
 19 current capability to be fully built out, and I
 20 think that's a good thing.
 21 Now you've got the question that's been raised
 22 by the ILECs of, well, we're going to get more and
 23 more carriers in here and, you know, 10 is not any
 24 incremental benefit and we're going to have this
 25 endless number and the fund's going to go up, no

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1 incremental benefit.
 2 I think you'd only have that if you had
 3 carriers trying to commit financial suicide. And
 4 my experience is that's not what's going on. These
 5 are pretty reasonable financially astute folks.
 6 They look at going into an area they've got to look
 7 at customer base, what the market will bear in
 8 terms of prices, what people see as a fair price
 9 for the value they get, the revenues available.
 10 But they've also got to look at the cost side
 11 because they've got some big fixed costs, wireless
 12 or wireline. And you've got to look at the market.
 13 You've got to see what share you think you can get,
 14 how many people that represents, and how that
 15 translates then into your per customer cost, and
 16 see whether you can do this or not, whether it
 17 makes sense.
 18 The first carrier in is going to see a much
 19 bigger market potential, more customers for giving
 20 market share lower unit cost. It may make sense.
 21 The second carrier in is going to see something
 22 very different. They're going to see their
 23 opportunity for smaller number of customers on
 24 higher unit cost might make sense, might not make
 25 sense for them. The next carrier in is probably

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1 going to see it's probably not going to make sense
 2 for them.
 3 So the way this thing is set up now it's a
 4 self-governing or self-limiting mechanism that
 5 you're not going to have inefficient carrier entry
 6 because universal service support is not going to
 7 make up for the fact they can't get their cost low
 8 enough to do business in the area. You're going to
 9 get entry to the extent it's rational and
 10 competitors can make a business case to do it.
 11 So I think what you end up with is in terms of
 12 the wireless overbuild something that is an
 13 incremental new capability that's more than -- in
 14 terms of the number of carriers coming in that's
 15 going to regulate itself, and when we look around
 16 the country, you know, you hear claims of
 17 carriers -- multiple carriers coming in, but when
 18 you look they're not really coming into the same
 19 area, the same footprint. There may be a little
 20 overlap.
 21 This mechanism does reasonably limit the
 22 number of carriers that are being funded in the
 23 area. So in that sense it works out pretty well
 24 the way it's being designed.
 25 VICE CHAIR HANSON: Thank you. You

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1 have a very good argument when you talk about your
 2 daughters along the side of the road and breakdown
 3 of the car, whether, you know, 30 below weather is
 4 what we picture and a huge challenge to take care
 5 of that.
 6 But that begs another question, another
 7 challenge that's associated with that. I think we
 8 all want to have that capability, however, when
 9 we're talking about overbuilding and we're talking
 10 about that area that the cell coverage is not going
 11 to cover, and we look at wireline phones and the
 12 challenge that they will then have if carriers
 13 are -- if folks are dropping their wireline and the
 14 overbuild does not include 15 percent of the
 15 population, there's going to be extremely
 16 difficult, if not impossible, challenge for those
 17 wireline carriers to be able to service those
 18 people who are in remote areas because they have
 19 lost substantial revenues from the other areas.
 20 Now if the fund is not providing, in that case
 21 it's a loss and a gain, there are people who are no
 22 longer paying the USF from the wireline that
 23 they've dropped and, yes, they are paying more from
 24 the wire side so it's a balance. You know, it's
 25 being taken from one side and going into the pocket

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1 of the other. But at the same time the USF funds
2 are not necessarily growing in that particular
3 instance. So there is a law of diminishing return.

4 And how do we then provide service to those
5 areas when the business is losing revenue and yet
6 its costs are going to be to an extent increased in
7 relationship to the administration that's necessary
8 for O&M for a business?

9 THE WITNESS: Right. Your question
10 is one that I've actually been grappling with for
11 the last few months and tried to grapple with some
12 in my comments to the Joint Board in terms of their
13 investigation.

14 Because really the question as I see it is if
15 we're moving -- if we're transitioning, how do we
16 deal with the transition period because we've got a
17 period of time where a new network does not have
18 full coverage? Is there a risk that the old
19 network can't continue?

20 Because ultimately what we want is an equal
21 footing so that we decide which is the best network
22 for the area, what's the most efficient way to
23 provide the service.

24 VICE CHAIR HANSON: Excuse me for
25 interrupting. I'll let you finish your answer.

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1 Not only that but it is the challenge of whether or
2 not the new provider is willing to ultimately
3 provide service to the -- 100 percent service and
4 if that commitment is not there, then by our
5 actions we are guaranteeing that there is going to
6 be a certain number of people who are not going to
7 be served.

8 THE WITNESS: I understand your
9 concern exactly. And to a degree I share it. But
10 I don't think it's something that can't be dealt
11 with. Because, you know, first of all, quite
12 frankly, there are a number of customers that are
13 not served today by either technology, and for
14 wireline purposes it can't be done or it's vastly
15 too expensive. Same thing for wireless.

16 You know, wireless company with an ETC
17 designation and those obligations is going to have
18 to extend -- you know, continue to extend coverage,
19 meet all the reasonable requests, same standard
20 that the ILEC is on in terms of building out over
21 time.

22 I am somewhat less concerned, and I guess I'm
23 going to have -- I'm looking at this more
24 practically and less theoretically perhaps than the
25 ILEC witnesses are, but I'm less concerned about

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1 this inability of the ILEC to compete and recover
2 its costs during the transition for a couple of
3 reasons. One is under the current mechanism if you
4 have customers that leave wireline and go to
5 wireless, the ILEC continues to receive the same
6 amount of universal service support.

7 The support doesn't go -- it's not truly
8 portable. It doesn't go with the line. Now there
9 is a proposal --

10 VICE CHAIR HANSON: However, you
11 understand that revenues decrease.

12 THE WITNESS: Their revenues do
13 decrease, and so do their costs. You will hear the
14 representation -- and that's part of why I spent a
15 lot of my rebuttal responding to Mr. Brown on this
16 idea that somehow ILEC costs are fixed at the level
17 of the entire network and if you lose a customer,
18 now you've just got the same total pot of costs and
19 one fewer customer to allocate it over and --

20 VICE CHAIR HANSON: To an extent --
21 I've run a number of businesses. I've owned a
22 number of businesses. I understand there is a
23 certain overhead you have to have to serve that one
24 customer.

25 THE WITNESS: That's correct.

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1 VICE CHAIR HANSON: And if that one
2 customer is 50 miles over here and that other
3 customer is 50 miles over the other direction and
4 you've got another one 70 miles in the other
5 direction, you have significant costs.

6 THE WITNESS: That's right. That's
7 not the business you want to be in. I agree.
8 Having spent the last 12 years having the
9 misfortune early on as being pegged as the cost
10 guy, I've spent the last 12 years looking at ILEC
11 cost studies over and over, literally hundreds of
12 them at this point, good ones, bad ones, all over
13 the map. There are certainly some costs that are
14 fixed at that total level, those type of
15 administrative costs.

16 When you look at the total costs of these
17 companies, though, and the kind of costs they're
18 reporting to receive their funding, that sort of
19 thing in terms of network investment, it's the
20 network costs that represent by far and away the
21 largest amount.

22 There's been the suggestion that the network
23 costs vary at the whole level of the entire
24 network. And in my experience I can tell you it
25 just does not work that way. There are specific

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1 discrete facilities that used to provide service,
2 and some of those are fixed at some level.

3 You've got a wire that's going from point A to
4 point B. You're multiplexing a certain number of
5 amount of traffic on it, and you have less traffic,
6 you can't have less than one cable to do that. A
7 lot of the current systems are modular where you
8 have plug-in cards by channel and your cards are
9 portable throughout the network so you truly can
10 move capacity around from one place to the other.

11 So network costs are not as fixed as the ILECs
12 would like you to believe. And they are more
13 portable in terms of the capability than they'd
14 like you to believe, which puts the ILECs in a much
15 better position of managing this transition than
16 simply sitting on X total dollars and fewer and
17 fewer customers and revenues to spread it over.
18 Because they can scale their networks technically
19 for different customer sizes.

20 Now, of course, they've got equal opportunity
21 to compete and not lose these customers. You know,
22 it puts -- in a lot of sense *their destiny becomes*
23 *in their hand.* You know, we've got a primary line
24 proposal that would make the support truly
25 portable. The possibility of that being adopted is

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1 zero. The ILECs -- very, very good political
2 contacts in Washington. They've already been to
3 Capitol Hill saying you cannot possibly do this,
4 don't do it, it's not going to be adopted.

5 I actually think it's a bad idea for a
6 different reason than they think, but we are in
7 agreement primary line isn't sensible here. It's a
8 bad idea. I don't think anybody supports it. It's
9 not going to happen. Even if it did, their fate is
10 in their hands. If they don't lose the customer,
11 they don't lose the funding.

12 VICE CHAIR HANSON: Isn't that sort
13 of like saying the word "never," never say never?

14 THE WITNESS: Well, never say never
15 in this industry because --

16 VICE CHAIR HANSON: There is such a
17 thing as 110 percent.

18 THE WITNESS: That's right. As a
19 political reality, this particular proposal has no
20 support anywhere and, you know, I have learned one
21 thing about Washington and that is if it doesn't
22 have political support, it may be a brilliant idea
23 but it ain't going anywhere. And I think that's
24 where we are practically on this.

25 Now, you know, the ILECs may have less

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1 confidence in their lobbying ability, and they may
2 come tell you it may happen.

3 VICE CHAIR HANSON: You and I could
4 get into a nice conversation about the dynamics of
5 this world and how it continues to change, but I
6 choose to believe not to bet the farm on what the
7 federal government is going to ever do.

8 THE WITNESS: I don't disagree with
9 that. But I actually think your statement is
10 actually well-focused. I mean, the challenge here
11 is managing change. Because we're going from an
12 era of only one technology, only one provider of
13 service. We're moving into an area of multiple
14 technologies, multiple providers.

15 You know, Congress in the '96 Act said this is
16 our goal. We want to have all of these services --
17 comparable services in these rural areas. We want
18 to have comparable prices. They didn't say it was
19 going to be pain-free to get there. And it's not,
20 but I think we can.

21 VICE CHAIR HANSON: Do you believe
22 it's important to minimize the fund in the long run
23 for political reasons? You made some interesting
24 statements, the one I just read to you, "By
25 limiting entry by carriers as an ETC, the size of

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1 the fund may be kept small over the short run, but
2 it will be larger than necessary over the long
3 run."

4 And then in your rebuttal testimony of April 5
5 on page 37 you said that, "Prudent management of
6 the high-cost fund" -- this is on line 19,
7 "including an effort to minimize the size of the
8 fund over the long run is not inconsistent with a
9 mechanism that results in a short-term increase."

10 And then you go on to talk about making it
11 sound as if that's prudent that it's good
12 business -- well, you said prudent management. Why
13 would you want to minimize the size of the fund
14 over the long run?

15 THE WITNESS: I was responding fully
16 to the ILECs in the way I said that, but I probably
17 should have added the other element, and that is if
18 you can meet the same objectives with the fund,
19 then obviously spending less money is better than
20 spending more money, assuming you can do that. In
21 other words, we don't want to waste anything.

22 The argument as I understand it from the ILECs
23 in this case is that there's some imminent peril to
24 the federal fund. I don't believe there is. And
25 that somehow this designation in this state for

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1 this carrier is where we should somehow draw the
2 line or make the statement that's somehow going to
3 save that fund and that's not what's going to
4 happen and that's not what the FCC has done in its
5 orders.

6 If the objective is to meet, you know, all the
7 objectives of the '96 Act in terms of bringing
8 comparable services at comparable prices into rural
9 areas for the least amount of money possible, then
10 that's what I'm addressing here in terms of
11 managing the fund. There are certainly scenarios
12 where if the funding is available, there could be
13 public interest mechanisms that would favor a
14 larger fund. And that's why I said before I'm
15 going to lead that to the Senate to craft their
16 legislation to the extent they are on what they
17 want to accomplish.

18 Given what Congress has said it wanted to
19 accomplish in '96, can we do that with as little
20 money as possible I guess is the objective, and
21 what I'm saying here is that, you know, it's a
22 penny wise pound foolish thing, don't try to save a
23 dollar this quarter and end up doing something
24 that's going to cause us to support carriers for a
25 larger amount of funding and make the fund larger

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1 over the long-term to achieve this very same
2 objective that we could have achieved with less
3 amount of money.

4 So it's smaller if you're trying to achieve
5 the same objective for less money than more money.
6 If Congress decides the objective is larger than
7 what they set forth in '96, then I would agree that
8 it's not necessarily better to have a smaller fund
9 because it may take more money to do that
10 objective. But we don't have that directive from
11 Congress at this point to do that.

12 VICE CHAIR HANSON: Sometimes I
13 don't expect to receive a complete answer.
14 Sometimes I don't expect to understand the answer.
15 On your testimony of your surrebuttal testimony on
16 April 26, page 8, line 18 you stated that,
17 "Wireline networks are capable of serving only a
18 tiny fraction of the ILECs' actual service area,
19 typically less than 5 percent."

20 THE WITNESS: Yes, sir.

21 VICE CHAIR HANSON: You said it so
22 I'm going to assume you meant it.

23 THE WITNESS: Yes.

24 VICE CHAIR HANSON: That's hard for
25 me to believe. How do you support that statement?

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1 THE WITNESS: Well, it all comes
2 down to what you mean by serving and what standard
3 you're going to put them on versus the standard
4 they're trying to now put Western Wireless on in
5 their testimony. If by serve you mean the ability
6 to connect a telephone to the network and make a
7 telephone call or receive a telephone call, their
8 service coverage is only, A, where they have a wire
9 and, B, where they have terminated that wire into a
10 jack where you can plug in a phone.

11 VICE CHAIR HANSON: But it has to be
12 more than semantics when you're talking about what
13 you can --

14 THE WITNESS: That's correct. It is
15 more than semantics. It is the ability to make a
16 call is very limited geographically on wireline,
17 great quality very limited in scope. Now when the
18 ILECs then talk about Western Wireless's coverage
19 today now they're not talking about discrete
20 locations because wireless isn't a discrete
21 location type service.

22 Now they're describing it in terms of the
23 total area that's being served. And that's
24 something that's fundamentally different, and it's
25 being presented in this case as a play on semantics

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1 or kind of hiding the ball type issue. And what
2 I'm saying is we've got to back up and be a little
3 more explicit than that. If service means ability
4 to make a call, the ILEC networks are very limited.

5 Western Wireless says it's currently limited
6 for a lot of potential area, but it has the
7 potential to build out -- to provide total service
8 coverage. A wireline network doesn't have that
9 potential at any point in the future.

10 VICE CHAIR HANSON: However, when --
11 let's see. I'm trying to remember what you said at
12 the very beginning. When you're looking at it from
13 that particular frame of reference, the ILECs don't
14 have really any other measure to go by, and they
15 certainly aren't going to attempt to put a dot in
16 every household and say can you serve this
17 household, can you not serve this household. So
18 they don't have any other barometer really to use.

19 THE WITNESS: Well, they can use
20 that barometer, and I welcome it, but we need to
21 keep some perspective when they say we serve our
22 entire area, these people don't, they must be
23 somehow not capable -- you know, you should decide
24 that they're not currently capable and willing to
25 respond to reasonable requests for service, we've

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1 got to pack up and look at what they mean by that.
 2 I mean, it's not a play on words to say --
 3 VICE CHAIR HANSON: In that frame of
 4 reference, exactly what you're saying there, isn't
 5 that incumbent upon us as Commissioners to try to
 6 ascertain what you are willing to do to serve that
 7 customer?

8 Doesn't that come right back to the crucial
 9 question that we have been told that we have to
 10 answer, and that is public service criteria? If
 11 you are not willing to state, yes, we will serve
 12 all citizens, all locations as the ILECs are
 13 willing to serve, then aren't we doing a disservice
 14 to those citizens?

15 THE WITNESS: The answer is yes if
 16 you mean as the ILECs are willing to serve.
 17 Because, I mean, I'm very genuine about that.

18 VICE CHAIR HANSON: Anyone in the
 19 borders of the State of South Dakota if they
 20 request to have an opportunity to have a wireline,
 21 they can have telephone service?

22 THE WITNESS: That's correct. And
 23 their obligation is the same to respond to
 24 reasonable requests for service from anybody in any
 25 of those areas. That same obligation is the one

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1 that if you grant this designation request would be
 2 placed on Western Wireless they've got to make the
 3 same response. Now what the FCC has said is we've
 4 got to have a little perspective here. We've
 5 funded one of these networks for decades. We
 6 haven't started funding the other one yet. There
 7 has to be a transition period.

8 And that's just the reality. Like I was
 9 saying before, it's frustrating from the customer
 10 standpoint because I'm in that role part of the
 11 time that we can't have it expanded much quicker.
 12 And that is part of your annual process to see
 13 what's being done and to relay what you're finding
 14 from consumers.

15 VICE CHAIR HANSON: We all find
 16 ourselves in that role, and that's a challenge. As
 17 Commissioners we also want to provide the best
 18 quality service we can for our citizens. We don't
 19 want some to go without it.

20 THE WITNESS: That's right.

21 VICE CHAIR HANSON: And we all have
 22 families who may be along the side of the road some
 23 day.

24 THE WITNESS: That's right. That's
 25 right. And you've got a transition period, and

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1 it's a tough one to balance. But, you know, I
 2 think if there's a possibility to move out to
 3 complete wireless coverage so that you have that
 4 side of the road coverage, those health and safety
 5 benefits, the quality coverage for people, to use
 6 it instead of wireline service, if you can get
 7 there and you don't see a very large cost
 8 impediment in your way, I think it's in the public
 9 interest to try to do it because I think people
 10 benefit in the long run from doing it.

11 VICE CHAIR HANSON: You use the word
 12 efficiency, talked about efficiency. How would you
 13 define efficiency as it relates to Western
 14 Wireless?

15 THE WITNESS: Two measures. One
 16 would be efficiency associated with given
 17 technology, and one would be associated with the
 18 firm's operations. It may be -- and Commissioner
 19 Abernathy, her name's been brought up in vein in
 20 this proceeding already. She and I have actually
 21 had this conversation a couple of times.

22 If you were looking at some of these rural
 23 areas today and we had no network in place,
 24 wireline, wireless, nothing, and you were going to
 25 build one, it's not a forgone conclusion that you

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1 conclude the wireline would be the most efficient
 2 way to cover that area. A lot of these places you
 3 may decide the most efficient way starting from
 4 scratch would be a wireless solution.

5 So we've got -- there's a technology
 6 efficiency question. If we're going to fund the
 7 network long-term, what's the most efficient
 8 technology to fund? Now the separate question of
 9 are there additional benefits such as mobility and
 10 complete coverage to that technology is part of the
 11 equation, but that's separate from this.

12 The next question is operational efficiency
 13 for each one of these companies, and what the FCC
 14 has said and I agree with is that having
 15 competitive entry into these areas increases the
 16 incentives for both the ILEC and the new entrant to
 17 increase their operational efficiency, lower their
 18 costs to the extent possible and respond to that
 19 competitive response to each other.

20 So I think, you know, the way we get
 21 operational efficiency is to get these firms
 22 competing with each other because as much as I like
 23 regulation, it's ultimately no substitute for those
 24 forces.

25 Technology, efficiency, that goes back to this

1 baseline, you know, setting the support equal to
2 this per line amount for the wireline carrier. If
3 a wireless carrier can't be more efficient in
4 serving the area, that amount of per line support's
5 not going to do it for them, and they won't enter.

6 So we've got a mechanism to ensure technology
7 efficiency. Getting the carriers in there will
8 ensure operational efficiency. Both are worthy
9 goals.

10 VICE CHAIR HANSON: Would carrier of
11 last resort 100 percent coverage affect customer
12 cost as we've discussed here, and how would that
13 affect efficiency as you describe it?

14 THE WITNESS: If I understand your
15 question right, because the Joint Board
16 contemplated a situation where you could have a new
17 entrant fully built out and the incumbent
18 relinquishing its carrier of last resort and ETC
19 designation which would then mean the new entrant
20 would have to take on carrier of last resort --

21 VICE CHAIR HANSON: I'll allow you
22 to answer your answer, but are you saying we should
23 rely upon the Joint Board on their recommendations?

24 THE WITNESS: No. In fact, they've
25 made almost no concrete recommendations.

1 VICE CHAIR HANSON: It's interesting
2 that you refer to them as something that we should
3 apparently look to for information.

4 THE WITNESS: No. They have made
5 some observations that are astute ones. They have
6 made some conclusions. They collected a lot of
7 information. They got comments from a lot of
8 different carriers, a lot of different
9 organizations, and they compiled it into one place.

10 My concern about treat this as if it's the
11 current law is they didn't make any concrete
12 recommendations. You know, they made
13 recommendations like the FCC should adopt a
14 nonbinding guideline regarding service coverage.
15 Well, there's nothing to apply. There's nothing
16 there. But that doesn't say that they didn't take
17 the information they got and reach some good
18 conclusions.

19 One of them they discussed was a situation
20 where you have a substitution of one carrier as
21 carrier of last resort for the other. And that's
22 the case where once you have a complete build-out,
23 I agree with the Joint Board observation, you need
24 to make sure that new built-out carrier can take on
25 carrier of last resort if the incumbent decides to

1 relinquish it.

2 If that happens, what you've done is you've
3 created a more efficient carrier in place as
4 carrier of last resort and lowered costs for
5 consumers and potentially greater capability in
6 terms of coverage and mobility that's not
7 necessarily a bad outcome either for consumers.

8 I don't think it's a short-term reality, but I
9 think it's something that could happen at some
10 point down the road. Never say never.

11 VICE CHAIR HANSON: Thank you,
12 Mr. Wood.

13 THE WITNESS: Thank you.

14 CHAIRMAN SAHR: I think Commissioner
15 Hanson and also Commissioner Burg have raised some
16 interesting questions, and one of the things I
17 grapple with in this case is when we talk about,
18 frankly, the challenges of providing service in
19 rural areas and a lot of it relating to a wireline
20 company and dealing with Universal Service Funds
21 issues, dealing with some of the challenges they
22 face and perhaps from Commissioner Burg's questions
23 some policy decisions that have been made on the
24 federal level that maybe no one even in this room
25 agrees with, but more so kind of the business type

1 aspects.

2 And I know I'd have to check but maybe one of
3 my first meetings I had when I came on as
4 Commissioner was with Mr. Coit and Mr. Dean and
5 they talked about some of the challenges and
6 certainly I met with the general managers in this
7 room and people all around the state about really
8 how challenging it can be to provide the services.
9 And, frankly, a lot of those services, though, are
10 just absolutely essential, especially when you
11 think about things like broadband, you know, and
12 then even in a reliable line that people know is
13 going to work in their home and even potentially
14 services that are more a consumer convenience as
15 opposed to necessary when you get into things like
16 cable television and those type of things.

17 So I definitely am aware of that, and I think
18 it's an important issue. The challenge, though, I
19 face is in a proceeding like this -- and I realize
20 I'm asking you as an advocate for your client, but
21 what weight do we give that? How do we evaluate
22 that? And is that although certainly a relevant
23 policy factor, does that come into play in this
24 proceeding?

25 Because I think they're all in the back of our

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1 mind, but that's one of the things I grapple with
 2 as I look to the factors and try to understand what
 3 test that we are mandated to apply. And I know
 4 there's some wiggle room within those, but what
 5 about those kind of the business type arguments and
 6 at least --
 7 And I would invite the Interveners to have
 8 their witnesses testify to this as well. I mean,
 9 how does that fit into our scheme especially if we
 10 get beyond just a Universal Service Fund potential
 11 impact on those type of things? Is it something
 12 that you think we should be considering, or is it
 13 something that we are limited in considering?
 14 THE WITNESS: Well, you didn't get a
 15 lot of direction on this public interest thing so,
 16 you know, I won't sit here and tell you you can't
 17 consider certain things.
 18 You know, I have a similar interest in terms
 19 of at least over this intermediate transition
 20 period wireline availability, you know, I -- look
 21 at the Virginia Cellular case where the FCC looked
 22 at that and look at all of those independent little
 23 telephone companies in the Shenandoah Valley. I
 24 actually have close ties with several of them.
 25 I can say here definitely that I don't think

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1 Virginia Cellular entry ought to put New Hope
 2 Telephone Cooperative out of business, all 400
 3 lines. I hope it doesn't. That's important to
 4 those people.
 5 I don't believe in the period of time that
 6 we're talking about that that threat exists. And I
 7 guess to put a very fine point on it, what you've
 8 got to ask yourself is you've got the record in
 9 this case, you've had a discussion of the benefits,
 10 you've got an argument from the ILECs that maybe
 11 what might happen with the change in the federal
 12 standard with the Joint Board and what might happen
 13 over time then in terms of dilution of support and
 14 what might happen then eventually in terms of the
 15 impact on the fund and whether it's sustainable
 16 might ultimately have an impact on their ability to
 17 provide service.
 18 And, again, this is a fairly fine point, but
 19 you have to decide whether there's an immediate
 20 threat here to that chain of events happening. I
 21 think at every step of the way there's good reason
 22 to believe that that chain of events does not
 23 happen, that it is being fully addressed, there are
 24 mechanisms in place to keep it from happening.
 25 And even if we go with primary line, there are

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1 specific provisions in this recommendation that
 2 would preserve the ILECs. You know, in terms of
 3 what's the downside to this, if you truly believe
 4 that end of the world scenario over the short-term,
 5 then you would have something to consider in this
 6 case. I genuinely don't think you do.
 7 Long-term could there be a substitution of
 8 technology and we end up with one network instead
 9 of two? It's possible but that's a long-term
 10 consideration and that's not with current wireless
 11 coverage and service quality. That's with
 12 something fundamentally different in the future.
 13 I mean, that's as a practical matter what
 14 you're facing. You've got, I think, a new entrant
 15 with very specific plans, specific current
 16 benefits. What's in opposition to that at this
 17 point is long-term speculative harm that is
 18 honestly being addressed on numerous fronts to make
 19 sure it doesn't happen. That's the question in
 20 front of you at this point.
 21 CHAIRMAN SAHR: Thank you.
 22 MS. AILTS WIEST: Do you have any
 23 redirect, Mr. Ayotte?
 24 MR. AYOTTE: Yes.
 25 (Discussion off the record)

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REDIRECT EXAMINATION

1 BY MR. AYOTTE:
 2 Q Mr. Wood, just a few questions on redirect. In your
 3 discussions with Mr. Dickens he asked you a question
 4 regarding Western Wireless's prior designation as an
 5 ETC in South Dakota in October of 2001 and asked
 6 whether Western Wireless would be receiving support
 7 related to that prior designation, with respect to some
 8 network investment that it made prior to the date of
 9 their Decision. Do you recall that question?
 10 A Yes, sir, I do.
 11 Q Do you see any problem with Western Wireless receiving
 12 support for its prior network investments?
 13 A No. It's kind of an odd notion because when you look
 14 at the ILEC networks that were built over time and how
 15 they've made investments over time and how the support
 16 has come into place, I mean, if you look at when this
 17 fund was created in '96, the ILECs immediately began to
 18 get all of their funding for network investments
 19 already made.
 20 So, you know, there's not a distinction there
 21 that makes any sense. And, of course, then this is
 22 also for operation and maintenance as well as
 23 provisioning new facilities. Certainly the funding to
 24 the ILECs is not limited to incremental new investment,
 25

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1 but, in fact, is predominantly operation and
 2 maintenance recovery and then depreciation capital
 3 recovery of existing facilities and equipment.
 4 I'm not suggesting there's anything wrong
 5 with that for them. I don't think there's anything
 6 wrong with that for Western Wireless either. That's
 7 just the reality of how this works.
 8 **Q** You also had some questions from Mr. Dickens relating
 9 to the build-out plans with reference to the Virginia
 10 Cellular Decision and his introduction of Intervener
 11 Exhibit No. 17.
 12 **A** Yes, sir.
 13 **Q** Were you personally involved in the Virginia Cellular
 14 proceeding at the FCC?
 15 **A** Yes, sir.
 16 **Q** Are you familiar with the Virginia Cellular application
 17 as supplemented and specifically as it relates to the
 18 build-out plans that were discussed?
 19 **A** Yes, sir.
 20 **Q** Could you explain to us your understanding of the
 21 Virginia Cellular build-out plans?
 22 **A** Sure. I think we can look at -- the pages are not
 23 numbered, but I guess what I would call page 4. It's
 24 the backside of the second sheet of paper. There's a
 25 section on construction plans. Oh, they are numbered.

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1 It is numbered page 4. It's up in the upper left.
 2 **Q** You're referring to Intervener Exhibit 17?
 3 **A** That is correct. And then there is a chart that's
 4 attached following the letter. The situation there was
 5 a little different because Virginia Cellular had not
 6 built out capability in most of the area that is the
 7 subject of its application.
 8 Their current coverage was not the 85 percent
 9 type objective that Western Wireless self-imposed. I
 10 think on a comparable basis it was well less than
 11 50 percent. What the company agreed to do is give the
 12 FCC its current plans for how it would build out and
 13 serve that area. And it created a list of 11 or 12 --
 14 I guess it's 12 cell site locations and some budgeted
 15 amounts to say, you know -- and basically they said,
 16 look, based on what customer response we're getting
 17 today, this is the way we plan to move forward.
 18 Now I guess it's also probably necessary to
 19 talk about what they didn't do or what this isn't. It
 20 is a plan. It is not a specific commitment for exactly
 21 these locations in exactly this order. Because if you
 22 look on page 4, what they say is they're pleased to
 23 provide the information with the understanding that in
 24 the essence of a specific request for service, general
 25 consumer demand often shifts, which can cause a planned

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1 cell site to be relocated and as part of its annual
 2 certification Virginia Cellular will also provide the
 3 Commission with information on how high-cost support
 4 funds are used so that any changes in construction
 5 plans can be explained.
 6 It's a very reasonable approach. The FCC
 7 said what are your current plans. Virginia Cellular
 8 gave them those. But there's a clear understanding
 9 among Virginia Cellular and the FCC that customer
 10 demand in terms of geographic location and, frankly, in
 11 terms of intensity that might change the Order.
 12 Construction does change over time, and this
 13 is presented as exactly that. You know, it's a
 14 forward-looking plan based on current expectations, and
 15 then, of course, as part of the annual recertification
 16 there would be information on why, you know, shifts in
 17 customer expectations may have caused this plan, actual
 18 construction deviation from the plan.
 19 I would also note that, you know, when you
 20 look at the attachment they do list the sites and they
 21 do list a budget number but it's purely a projected
 22 even 250,000 per site and clearly all of these sites
 23 will have different costs associated with them. You
 24 know, the FCC did not request that Virginia Cellular go
 25 out and do a, you know, formal site design and, you

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1 know, specific budget for each individual site to
 2 capture site-specific costs or anything of that nature.
 3 It is simply, you know, this is a good-faith estimate
 4 of where the plans and construction plans are currently
 5 going.
 6 I don't know that there's a whole lot of
 7 difference between what this is and what Western has
 8 produced in terms of its 17 proposed site locations.
 9 You know, it's a plan that's subject to revision based
 10 on customer requests.
 11 **Q** With respect to the FCC's Decision in Highland
 12 Cellular, did the FCC treat build-out plans any
 13 differently in the areas where Highland Cellular was
 14 designated?
 15 **A** A little bit, yes. When you look at the facts
 16 associated with Highland, their current coverage was
 17 not as high as the 85 percent that Western has used
 18 internally here but much more than Virginia Cellular
 19 had. They had more coverage existing in place. And I
 20 think the Highland Order refers to a build-out plan and
 21 some language that looks like it got copied over from
 22 one Order to the other but there wasn't that kind of
 23 proposal from Highland that was requested or required
 24 by the FCC.
 25 You know, the FCC was very clear that each

1 year as part of the annual certification they want to
2 know how the funds have been used and how they've been
3 used to expand coverage but they weren't looking for
4 kind of the up-front proposal that they did from
5 Virginia Cellular because Highland's coverage was
6 fundamentally different.

7 **Q** Finally, in response to a question from Chair Sahr he
8 was asking you about the reasonable request for service
9 and when is that best looked at, either at the time of
10 annual certification or as part of an ongoing process,
11 ongoing obligation.

12 And I understood your answer to be that that
13 should be looked at at the time of the annual
14 certification.

15 **A** That's correct. I'm not sure and I think the FCC said
16 it didn't really have much meaning upfront before
17 support is received for an area. It's part of an
18 ongoing monitoring process.

19 **Q** And that's what I wanted to make sure I understand is
20 the obligation of a designated ETC to respond to and
21 provide service to those submitting a reasonable
22 request for service within their designated area, do
23 you understand that to be an obligation of a designated
24 ETC?

25 **A** It is an obligation. It's a forward-looking

1 obligation. It's things that happen prospectively, and
2 it's an ongoing obligation.

3 **Q** And is it fair to say then that this -- when should the
4 Commission look at a designated ETC's fulfillment or
5 responding to reasonable requests for service? Is it
6 fair to say that that is not only an ongoing process,
7 365 days out of the year, but also something that
8 should be looked at annually at the time of the
9 certification?

10 **A** Yes, sir, it should.

11 MR. AYOTTE: Thank you. I have
12 nothing further.

13 MS. AILTS WIEST: Any recross,
14 Mr. Dickens?

15 MR. DICKENS: Give me just a moment.

16 (Pause)

17 MR. DICKENS: No further questions.

18 MS. AILTS WIEST: Thank you.

19 Mr. Smith? Commissioners?

20 Thank you, Mr. Wood.

21 THE WITNESS: Thank you.

22 (A lunch recess is taken)

23 MS. AILTS WIEST: I believe we'll
24 begin with Interveners' first witness.

25 MR. DICKENS: We have called

1 Mr. Brown to the witness stand.

2 GLENN BROWN,

3 called as a witness, being first duly sworn in the
4 above cause, testified under oath as follows:

5 DIRECT EXAMINATION

6 BY MR. DICKENS:

7 **Q** Mr. Brown, would you state your name and address for
8 the record, please, sir.

9 **A** My name is Glenn Brown. My address is 9011 East Cedar
10 Wax Wing Drive, Chandler, Arizona.

11 **Q** On whose behalf are you appearing today?

12 **A** I am appearing on behalf of the South Dakota Telephone
13 Association and specifically on behalf of Golden West
14 Telecommunications Cooperative, Inc, James Valley
15 Cooperative Telephone Company, Venture Communications
16 Cooperative, Inc., Tri-County Telecom, Inc., Vivian
17 Telephone Company, and those are the companies that I'm
18 testifying on behalf of.

19 MR. DICKENS: For the record,
20 Mr. Chairman, Mr. Brown's direct prefiled testimony
21 dated March 15 has been admitted as Interveners'
22 Exhibit 1 with associated exhibits. His
23 surrebuttal testimony dated April 16 with
24 associated exhibits has been numbered Interveners'
25 Exhibit 2 and admitted.

1 **Q** Mr. Brown, do you have any additions or corrections to
2 either of the sets of testimony?

3 **A** I have just one correction. It's in the surrebuttal
4 testimony which is Exhibit 2, and it's on page 9 of
5 that testimony, line 5 where it says, "Wireless
6 carriers must serve throughout the service area and" --
7 that word "and" should be "or," "that the carrier must
8 provide a build-out plan."

9 And if I can have the official copy, I'll
10 correct it on that.

11 **Q** Mr. Brown, could you provide a brief summary of your
12 direct and surrebuttal testimony?

13 MR. AYOTTE: I'm going to object.
14 I wasn't aware that the Commission procedure called
15 for witnesses's summaries prior to their testimony.

16 MS. AILTS WIEST: Actually it's up
17 to the individual parties whether they want to have
18 their witness provide a summary or not at the
19 beginning of their testimony.

20 MR. AYOTTE: Okay. Thank you.

21 **A** Okay. I'll keep my summary brief, and I'd like to make
22 four points. The first is that the 1996 Act has a
23 standard that a prospective ETC must serve throughout
24 the service territory of the area they seek to serve.

25 And I have two concerns with the standard

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1 that Western Wireless has articulated in this case.
 2 First is they are measuring themselves by covering
 3 85 percent of the population. I think as the
 4 discussion this morning indicated, that that leaves a
 5 question about what about the other 15 percent, which
 6 may indeed be the most rural and high-cost.

7 The second is the standard of service
 8 provided. And the propagation analysis that
 9 Mr. Blundell presented showed a negative 104 dB
 10 propagation profile as the perimeter of the service
 11 area. When you get out to that level, as I state in my
 12 testimony, you need to have roof top mounted antennas.
 13 You need to have high power equipment.

14 And for the most part that's not what rural
 15 consumers want. They want to be able to use a handheld
 16 cellular unit just like an urban customer and indeed
 17 the purpose of universal service is that consumers in
 18 all parts of the country can have service comparable to
 19 urban areas. So that's the first issue is just
 20 generally the standard.

21 The second issue is the fact that this is not
 22 the first time that Western Wireless has applied for
 23 ETC status. In 2001 they were granted ETC status for a
 24 large number of rural companies in South Dakota. And
 25 since that time they've received in excess of

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1 10 million dollars of high-cost support that is
 2 intended to bring urban quality services to rural areas
 3 of South Dakota.

4 And I presented an exhibit that shows that
 5 since that time they have added few, if any, new towers
 6 in rural parts of South Dakota. And if you look at
 7 that 10 million dollars and you look at the 200,000 to
 8 300,000 estimates that have been used in this hearing
 9 as to the cost of a tower, that could be 33 to 50
 10 towers, and they weren't put there. When asked
 11 directly where the 10 million dollars went I did not
 12 hear Mr. Blundell give a direct answer to that.

13 Third, the Joint Board in their Recommended
 14 Decision and the FCC and the Virginia Cellular and
 15 Highland Cellular cases I think have given the
 16 Commission a tool kit to be able to create a vision of
 17 what they want to create in their state with high-cost
 18 support and to have carriers submit build-out plans as
 19 part of their application so that your goals for the
 20 rural consumers in South Dakota can be achieved.

21 Finally, the subject of harms has been
 22 discussed. And I happen to see two harms that I have
 23 not heard much discussion of so far. One is that this
 24 money comes from consumers. Consumers pay into the
 25 fund that goes to support high-cost areas. And to the

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1 extent that 10 million or 20 million or whatever -- and
 2 20 million, by the way, if this case is granted, will
 3 be the run rate that Western Wireless will be at. That
 4 comes from somewhere. They ought to get benefits
 5 commensurate with that. And the build-out plan ought
 6 to achieve benefits commensurate with that 20 million
 7 dollars per year.

8 The secondary of potential harm is that the
 9 Joint Board and the FCC have clearly signaled that the
 10 Universal Service Fund is not going to grow
 11 indefinitely. In fact, in all likelihood there will be
 12 some constraint on how large it can grow. This
 13 Commission could well have a budget, if you will, of
 14 high-cost funding that they would have to choose how do
 15 they best spend that to meet the needs of rural
 16 South Dakota consumers.

17 And I think something to keep in mind is
 18 that -- and I put some quotations in my testimony from
 19 consumers representatives and from the NASUCA that are
 20 concerned that above a certain support level it may be
 21 that only -- you cannot economically support two
 22 carriers to compete in those areas.

23 And what we need to avoid is if, indeed,
 24 there is some constraint on the amount of support, that
 25 at least one carrier has the opportunity to continue to

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1 function as a carrier of last resort.

2 And I think that says if an alternative
 3 carrier is granted ETC status, they better be able
 4 to -- they better have a build-out plan that some day
 5 if they had to, they could take over. But I think the
 6 Commission must take great care particularly in the
 7 higher cost study areas in granting additional ETCs and
 8 make sure that rural South Dakota consumers get
 9 reasonable value for their money that's being spent to
 10 support universal service in high-cost areas. That
 11 would be my summary.

12 Q Thank you. Mr. Brown, I want to just bring up one
 13 matter that was related to a late filed exhibit I guess
 14 as a procedural question as much as anything.

15 Yesterday Commissioner Burg asked
 16 Mr. Blundell for a map showing where 111 towers were
 17 mentioned, a map of the 111 towers that were mentioned
 18 in Mr. Blundell's testimony. If you were to undertake
 19 to produce such a map, how would you do it?

20 A What we -- in response to discovery Western Wireless
 21 provided us with the location and certain parameters of
 22 those towers. And I think in my testimony I've
 23 mentioned that I use that information -- I geocoded
 24 those locations, used it to validate the ULS data that
 25 I used on several of my exhibits, and last night I was

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1 able to recreate one of those exhibits, actually using
 2 the actual data as provided by Western Wireless.
 3 MR. DICKENS: Mr. Chairman, I don't
 4 want to --
 5 MR. AYOTTE: You're going to.
 6 MR. DICKENS: I don't want to offer
 7 to introduce an exhibit and then argue about it.
 8 I'd just rather raise it now, as I said, as a
 9 procedural matter. We're not going to have an
 10 opportunity to cross-examine Western Wireless's
 11 late-filed exhibit.
 12 Last night Mr. Brown did, as he indicated,
 13 produce a map of his own based on latitude and
 14 longitude coordinates that we got from Western
 15 Wireless. I'd like to include this in the record
 16 either as our own late-filed exhibit per the
 17 request of the Commission, or I can just offer it.
 18 But that would be my intent.
 19 CHAIRMAN SAHR: And it may be a bit
 20 of semantics. Technically Ms. Wiest is acting as
 21 the Hearing Officer and the three Commissioners can
 22 overrule her or change her rulings. So that --
 23 MR. DICKENS: My apologies to
 24 Ms. Wiest.
 25 CHAIRMAN SAHR: Again, I don't want

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1 to get into semantics, but you should probably be
 2 directing your comments on legal issues and those
 3 type of things to Ms. Wiest, and the Commission can
 4 always have the right to discuss or overrule her
 5 decisions.
 6 MS. AILTS WIEST: Do you have an
 7 objection, Mr. Ayotte?
 8 MR. AYOTTE: Absolutely. The
 9 information that Mr. Brown relies upon was provided
 10 long ago in discovery, prior to his filing of at
 11 least his surrebuttal testimony. He does address
 12 his analysis that he sponsored in his prefiled
 13 testimony.
 14 We have no way at this point of conducting any
 15 further discovery, analysis, or even reviewing and
 16 understanding the apparent map that he proposes to
 17 offer. To that extent I think we're prejudiced,
 18 and it's untimely.
 19 I think he had an opportunity to provide this
 20 as part of his testimony and he didn't and he ought
 21 not to be able to do it at this late date.
 22 MR. DICKENS: I'll provide a brief
 23 response and live with your ruling. They have
 24 criticized Mr. Brown's map data earlier in the
 25 case. This is only meant to show that the

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1 information we got yesterday or the information
 2 that he plugged in last night from the discovery is
 3 consistent.
 4 And the other reason we offer it is we're not
 5 going to have a -- Mr. Ayotte says they're
 6 prejudiced by an inability to cross-examine. We
 7 suffer the same infirmity with regard to the
 8 late-filed exhibit.
 9 CHAIRMAN SAHR: Thank you. I would
 10 move that we go into executive session to discuss
 11 the matter with the Hearing Officer and our chief
 12 analyst.
 13 VICE CHAIR HANSON: Do we need to
 14 pass a motion on that?
 15 CHAIRMAN SAHR: Do we need a motion
 16 and a second?
 17 MS. AILTS WIEST: No. That's fine.
 18 (A short recess is taken at which time the
 19 Commission meets in executive session)
 20 MS. AILTS WIEST: First I would just
 21 like to ask -- I was looking at some of the
 22 exhibits that were already filed, GHB 3, GHB 6.
 23 Aren't the tower locations already on those maps?
 24 THE WITNESS: If I may answer, your
 25 Honor.

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1 MS. AILTS WIEST: Uh-huh.
 2 THE WITNESS: The tower locations
 3 that are on that map that you're looking at in
 4 GHB 3 were taken from the ULS database that's
 5 maintained by the FCC. In my testimony I state
 6 that I compared that with the actual coordinates
 7 provided by Western Wireless, and they were almost
 8 exactly the same.
 9 Mr. Blundell made a comment yesterday that the
 10 ULS database was inaccurate, and Commissioner Burg
 11 asked if Western Wireless could provide the actual
 12 coordinates. So having both sets of data I took
 13 the liberty of creating that same exhibit, the
 14 company boundaries and everything, except
 15 substituting the actual coordinates that
 16 Commissioner Burg had asked for for the ULS
 17 coordinates and, as I testified previously, they
 18 are virtually identical.
 19 MS. AILTS WIEST: Given the fact
 20 that the Commission has requested the actual sites
 21 from Western Wireless, I believe we will allow this
 22 one in also since there would not be an opportunity
 23 for cross-examination on that other late-filed
 24 exhibit.
 25 And I believe this one needs to be marked as

1 confidential. We'll mark that as Confidential
2 Exhibit 18, and that will be admitted.
3 CHAIRMAN SAHR: When we get to the
4 substance of the discussion we may have to ask our
5 guest to leave.

6 (Discussion off the record)
7 (Intervener Exhibit 18 is marked for
8 identification)

9 MR. DICKENS: During the break for
10 executive session we did discover one minor
11 housekeeping item in the additions and corrections
12 that we should have picked up earlier.

13 MS. AILTS WIEST: Go ahead.

14 Q If you want to make that correction.

15 A Yes. I in response to Mr. Dickens' question indicated
16 the companies that I was testifying on behalf of. My
17 prefiled direct testimony of March 15 had two
18 additional companies listed who since are no longer
19 participating.

20 That would be Split Rock and West River. So
21 on lines 16 and 17 I would like to strike the names of
22 Split Rock and West River from the official copy.

23 MR. DICKENS: With that we'd tender
24 the witness for cross-examination.

25 MS. AILTS WIEST: Mr. Ayotte.

1 party to conduct oral examination of his own
2 witness.

3 MS. AILTS WIEST: I would say that,
4 no, we don't allow that. The purpose of the
5 prefiled is to put the testimony in. We do allow
6 the witnesses to give summaries, but then it's
7 testimony that's already been put into the record
8 but not then to examine them directly.

9 Mr. Ayotte.

10 MR. AYOTTE: Thank you.

11 CROSS-EXAMINATION

12 BY MR. AYOTTE:

13 Q Good afternoon, Mr. Brown.

14 A Good afternoon, Mr. Ayotte.

15 Q Looking at your background, you're not a lawyer;
16 correct?

17 A No, sir.

18 Q I take it you don't intend to express any legal
19 opinions in your testimony?

20 A I will try not to.

21 Q Now I understand the purpose of your testimony is to
22 present an analysis of Western Wireless's request to be
23 designated as a federal ETC in this proceeding;
24 correct?

25 A Yes.

1 MR. CREMER: I do have some
2 examination.

3 MR. DICKENS: Pardon me. I messed
4 up the order.

5 MS. AILTS WIEST: Isn't he your
6 witness?

7 MR. CREMER: He is appearing for all
8 of us, including James Valley.

9 MR. AYOTTE: You can't
10 cross-examine.

11 MR. CREMER: I'm not going to
12 cross-examine. I'm going to ask him questions on
13 direct.

14 MR. AYOTTE: It has been admitted
15 and received.

16 MR. CREMER: On behalf of the
17 companies Mr. Dickens represents.

18 MR. AYOTTE: The witness testified
19 he's testifying on behalf of SDTA and five specific
20 companies, which included James Valley.

21 MR. CREMER: That is correct, but I
22 still have an opportunity to examine my own expert
23 because I'm appearing separately.

24 MR. AYOTTE: Well, Ms. Wiest, I
25 would object to this type of procedure, allowing a

1 Q And particularly your prefiled testimony focuses in on
2 the public interest factor and a response to
3 Mr. Blundell and Mr. Woods' testimony; right?

4 A The primary focus is the public interest test, yes,
5 sir.

6 Q I take it you're familiar with the requirements under
7 Section 214(e) in the FCC's rules and the South Dakota
8 code for designation as a federal ETC by a State
9 Commission.

10 A Yes. And if you'd like, I could give you my
11 recollection of those requirements.

12 Q No. We'll get to that. I take it then you would agree
13 to be designated as an ETC a telecommunications carrier
14 has to be a common carrier?

15 A That's correct.

16 Q And they have to offer the supported services that are
17 set forth in FCC Rule 54.101(A)?

18 A Throughout the service territory, which is where I do
19 take a bit of exception.

20 Q I understand. Don't get ahead of me.

21 A Okay.

22 Q The third requirement is they have to advertise the
23 availability of the supported services using media of
24 general distribution; correct?

25 A Correct.

1 Q And they have to make the services available throughout
2 the designated service areas.
3 A That is correct. That's the requirement.
4 Q Correct. Now the rural LECs on whose behalf you're
5 testifying, they've already been designated by the
6 Commission as an ETC in all of the exchanges for which
7 they're certificated to provide service in
8 South Dakota; correct?
9 A That's my understanding, yes, sir.
10 Q And each has been designated an ETC for the purposes of
11 receiving federal universal service support?
12 A Yes.
13 Q You agree with me that each of the rural LEC clients --
14 I don't want to name them all but each of the companies
15 that you're testifying for, each is the only designated
16 ETC throughout their respective areas today.
17 A I believe that's the case. However, I think that the
18 Pine Ridge Indian Reservation is technically within the
19 Golden West territory. So Western Wireless has been
20 through I believe the FCC's Order designated there.
21 Q Fair clarification. But Western is not seeking
22 designation in this proceeding in that portion of the
23 Pine Ridge Reservation served by Golden West. They've
24 already been designated there?
25 A I just tried to answer your question accurately.

1 Q I appreciate that. Did you review any of the
2 Commission's -- the State Commission's prior orders or
3 the FCC Order designating Western Wireless on the
4 Pine Ridge Reservation? Did you review any of those
5 orders as part of your analysis in this proceeding?
6 A As part of my analysis in this proceeding I reviewed
7 very carefully the Commission's Order of October of
8 2001. I did not specifically within the past few
9 months look at the Pine Ridge Order, although I was
10 familiar with it as it was being litigated and when it
11 was released.
12 Q Let's now review the basic ETC requirements. Do you
13 agree Western Wireless is a common carrier for the
14 purposes of being designated an ETC; correct?
15 A Yes.
16 Q And there's nothing in your testimony to suggest
17 otherwise?
18 A No, sir.
19 Q With respect to the supported services I take it you're
20 generally familiar with the FCC's orders on federal
21 universal service and USF matters?
22 A Yes, sir.
23 Q And you're familiar with the FCC's First Report and
24 Order released May 8, 1997 in the USF proceeding?
25 A Yes, I am.

1 Q Do you agree with me that the FCC discussed at length
2 the core services to be supported by the federal
3 universal service funds?
4 A In the First Report and Order, yes, sir.
5 Q And they discussed the different types of carriers that
6 would be eligible to receive universal service support
7 if designated an ETC.
8 A I'm sure they did. I don't recall the specific
9 sections.
10 Q And I'm not trying to drill you down to the paragraph
11 cites.
12 A It's just been awhile since I've read that part of the
13 Order.
14 Q Would you agree with me the FCC has determined wireless
15 providers such as Western Wireless may be designated an
16 ETC?
17 A They may be providing the requirements including the
18 public interesting finding in the rural telephone
19 company area, of course.
20 Q Correct. But the FCC has said that any
21 telecommunications carrier using any technology
22 including wireless technology is eligible to receive
23 universal service support if it meets the criteria
24 under Section 214(e); correct?
25 A Under 214(e), yes, including, of course, the public

1 interest.
2 Q We're going to get to the public interest, I assure
3 you.
4 A Good.
5 Q In fact, are you aware the FCC has actually promulgated
6 a rule that essentially states a State Commission shall
7 designate a common carrier that meets the eligibility
8 requirements irrespective of the technology used by
9 such carrier?
10 A It's been awhile since I looked at that rule, but I
11 know that technological neutrality is part of the Act
12 so that would make sense.
13 Q In fact, you understand Western Wireless has already
14 been designated an ETC not only in South Dakota but 13
15 other states?
16 A I'm aware of that, yes, sir.
17 Q And I take it you're also aware given your background
18 and familiarity with universal service matters that
19 numerous other wireless carriers have been designated
20 as competitive ETCs either by the State Commission or
21 by the FCC in other states?
22 A Yes. And some have been denied.
23 Q But you're not suggesting that a wireless carrier
24 should be precluded from being designated an ETC, are
25 you?

1 A Oh, no. Not at all.
 2 Q Now with respect to the supported services you're
 3 familiar with the FCC's regulation, 54.101(a), 1
 4 through 9 that sets forth the supported services and
 5 functionalities to be supported by federal universal
 6 service support mechanisms?
 7 A Yes, sir.
 8 Q You agree with me that Western Wireless meets the
 9 requirements of providing each of those supported
 10 services as specified by the FCC rules?
 11 A Does your question include throughout the service area
 12 or just throughout the functionality they provide the
 13 functionality?
 14 Q We're just talking the services and the functionality.
 15 A I understand that.
 16 Q Those are set forth in Western Wireless's application
 17 and Mr. Blundell's testimony; right?
 18 A Yes, sir.
 19 Q And you reviewed that?
 20 A I reviewed that.
 21 Q And you don't dispute Western Wireless's ability and
 22 commitment to provide those supported services as
 23 required by the FCC rule?
 24 A No, sir.
 25 Q And, in fact, there's no specific service or issue on

1 supported services raised in your testimony, is there?
 2 A There is not.
 3 Q Now the third requirement dealing with the advertising
 4 the availability of the services and charges using
 5 media of general distribution, the SDTA and the
 6 Intervener companies, they don't challenge Western
 7 Wireless's plans to meet that advertising requirement,
 8 do you?
 9 A I personally have no knowledge that they have not met
 10 it, although I can't specifically say they have. That
 11 was not something I looked at.
 12 Q It's explained in the testimony of Mr. Blundell; right?
 13 A Mr. Blundell's testimony stands on its own, yes, sir.
 14 Q And its satisfaction of this advertising requirement,
 15 that's not addressed anywhere in your testimony?
 16 A No, sir. As I mentioned, I did not look into it.
 17 Q Was it fair to say that the SDTA and the Intervener
 18 companies they don't challenge Western Wireless's plan
 19 to meet the requirement to advertise the availability
 20 of services and charges using media of general
 21 distribution?
 22 A Not that I'm aware of, sir.
 23 Q We're now up to the throughout the service area.
 24 A Oh, good.
 25 Q Now you agree that Western Wireless must be designated

1 throughout the study area of the rural LECs as the
 2 appropriate service area.
 3 A That is what Section 214(e) says. You know, absent
 4 something else, that's the service area is the same as
 5 the study area.
 6 Q And the study area represents a rural LEC's
 7 certificated areas within the state?
 8 A Yes. Generally, that's the case.
 9 Q And you understand and agree that Western Wireless is
 10 seeking designation as a competitive ETC throughout the
 11 South Dakota study areas of these seven rural LECs as
 12 identified by Mr. Blundell?
 13 A That was what the application requested, yes, sir.
 14 Q And you understand that Western Wireless has committed
 15 to respond to reasonable requests for service within a
 16 reasonable time throughout each of those study areas;
 17 right?
 18 A I know that that's what their testimony says. Yes,
 19 sir.
 20 Q Now you don't challenge Western Wireless's current
 21 ability to provide any of the supported services
 22 throughout its requested designated service areas, do
 23 you?
 24 A Well, this is where I start to differ with you.
 25 Because you say throughout, and I think the 85 percent

1 is, in my opinion, less than throughout. The fact that
 2 universal service is to have rural consumers have
 3 comparable services to urban areas says that in my
 4 opinion unless it is comparable to an urban area, it is
 5 not throughout.
 6 Q In your surrebuttal testimony, Interveners' Exhibit 2
 7 on page 4 you agree that Western Wireless meets the
 8 technical requirements of providing the nine supported
 9 services; correct?
 10 A No. I said that what they're trying to do -- and I
 11 could look at the specific language.
 12 Q On page 4.
 13 A But what they're trying to do is meet the technical
 14 requirements by using high-powered CPE, roof mounted
 15 antennas, and the like as opposed to, as I just
 16 described, providing the services throughout.
 17 Q Are you suggesting to this Commission that an applicant
 18 for ETC designation has to demonstrate it is providing
 19 the services ubiquitously throughout an entire study
 20 area as a prerequisite to designation?
 21 A No. However, what the Joint Board has clarified and
 22 what the FCC has clarified is that if they don't at the
 23 time of the application, that they ought to have to
 24 submit a build-out plan to show the Commission how they
 25 propose to do that and then accept measurement under

1 that plan of their progress towards completing it.
 2 **Q** So is it fair to say that an applicant for ETC
 3 designation must make the commitment and demonstrate
 4 its ability to provide the supported services at the
 5 time of application?
 6 **A** It must make a commitment to meet the statutory
 7 obligation to provide the services throughout.
 8 **Q** And that the actual obligation to provide the services
 9 throughout the service area, in this case the study
 10 area, is an obligation flowing from the designation,
 11 not a prerequisite to designation?
 12 **A** I disagree with that, sir.
 13 **Q** Okay. In your direct testimony, Interveners' 1,
 14 page 12 you reference Western Wireless's -- pages 11
 15 and 12.
 16 **A** Okay.
 17 **Q** You reference Western Wireless's response to the SDTA's
 18 Interrogatory No. 15.
 19 **A** Yes, sir.
 20 **Q** And you agree with me that in that response Western
 21 Wireless has committed to meeting reasonable requests
 22 for service and providing the service to all customers
 23 in the requested designated areas; right?
 24 **A** I see that it says to at least 85 percent of the
 25 population in each wire center within the study area.

1 **Q** You understand that based on their discovery response
 2 that Western Wireless currently provides the services
 3 to a minimum of 85 percent of the population of each
 4 wire center?
 5 **A** As I go on in my testimony to show I do not believe
 6 they meet the 85 percent in many of the wire centers.
 7 **Q** I understand that, but do you understand that to be the
 8 company's testimony, that they currently provide
 9 service to a minimum of 85 percent of the population of
 10 each wire center for each of the study areas?
 11 **A** I believe that that is what Western Wireless has
 12 testified to. I have presented facts and data that I
 13 believe indicate that is not totally the case.
 14 **Q** And whether or not you believe that is totally the
 15 case, you also don't think that's sufficient for the
 16 purposes of designation; correct?
 17 **A** No, sir. I think the 85 percent is 100 percent.
 18 That's how I interpret "throughout."
 19 **Q** I'm sorry. You lost me on the math. I usually don't
 20 do math in public, but I heard you say you believe the
 21 85 percent is 100 percent?
 22 **A** That to serve throughout, you must serve 100 percent,
 23 not 85 percent as Western Wireless -- I'm sorry.
 24 **Q** No. Then it's clear. And my question was you don't
 25 think that the 85 percent is sufficient to meet the

1 standard. You would agree with that?
 2 **A** Yes.
 3 **Q** Now you devote several pages of your direct testimony,
 4 Interveners' Exhibit 1, to a discussion of Western
 5 Wireless's signal coverage in the areas in which it's
 6 seeking designation; right?
 7 **A** Yes, sir.
 8 **Q** And, again, in your direct testimony you submitted
 9 Exhibit GHB 4. So this would be Exhibit GHB 4 to
 10 Intervener Exhibit 1?
 11 **A** Yes.
 12 **Q** And on that Exhibit GHB 4 you purport to show the
 13 results of your analysis of the percentage of
 14 households and land area that is within 5, 10, and
 15 25-mile radius of certain Western Wireless towers;
 16 right?
 17 **A** Yes, sir.
 18 **Q** At the time of your direct testimony you had not
 19 performed any independent analysis of Western
 20 Wireless's signal coverage in the South Dakota rural
 21 telephone company study areas; right?
 22 **A** That's correct.
 23 **Q** And so you prepared a -- I think you called it a rule
 24 of thumb proximity study based on your experience in
 25 examining propagation studies for other networks?

1 **A** Yes, I did.
 2 **Q** And you agree that your rule of thumb study doesn't
 3 exactly predict actual coverage levels for Western
 4 Wireless's network; right?
 5 **A** And I caveated it in the testimony to really look at it
 6 you would have to do a propagation analysis that had
 7 many other variables in it.
 8 **Q** And I think you described it in your direct as just a
 9 rough approximation; right?
 10 **A** Well, the proximity analysis is correct in that it does
 11 indicate what percentage of the land area and housing
 12 units are within given distances of the towers. And I
 13 might add that I did when I did this analysis add in --
 14 there were, oh, I think about 10 or 11 towers that
 15 showed up in the 111 that weren't in the ULS database
 16 that I started with. And I did include them in the
 17 proximity analysis. I could not include them on any
 18 pictures because of the confidential nature.
 19 But those facts are what they are. That's
 20 where the people are located.
 21 **Q** Sure. It's a proximity analysis, it's not an RF signal
 22 propagation analysis?
 23 **A** I did not represent it as such.
 24 **Q** And I didn't ask you to agree otherwise. What I asked
 25 you to agree was this rule of thumb proximity analysis

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1 does not exactly predict actual coverage levels, signal
 2 coverage levels for the Western Wireless network. You
 3 agree with that?

4 A I would agree it does not exactly predict signal
 5 coverage.

6 Q Rather it's just a rough approximation?

7 A It's useful information, but it doesn't tell the whole
 8 story.

9 Q And you yourself describe it as a rough approximation
 10 that needs further validation.

11 A Yes, sir.

12 Q And I think we'd be in agreement to properly analyze
 13 signal coverage, a propagation analysis should be
 14 undertaken.

15 A I agree, and, in fact, I did exactly that.

16 Q In your surrebuttal testimony, Interveners Exhibit 2;
 17 right?

18 A GHB 8 or Exhibit 2.

19 Q You submitted the new map, GHB 8, and you believe that
 20 Exhibit GHB 8 provides a more realistic picture of
 21 Western Wireless's signal coverage in South Dakota over
 22 Western Wireless's propagation analysis that
 23 Mr. Blundell sponsored, Exhibit GHB 1?

24 A JHB.

25 Q JHB, GHB.

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1 A There's a big difference, Mr. Ayotte.

2 Q There are too many acronyms in this business. I
 3 apologize. I'd be happy to rephrase the question.

4 A I knew what you meant. Yes, I do.

5 Q Do I understand you want the Commission to rely on your
 6 new map, GHB 8, rather than the Western Wireless
 7 propagation analysis in JHB 1 to assess Western
 8 Wireless's signal coverage?

9 A Yes. I think it comes closer to what it is consumers
 10 really want, which is the ability to use a wireless
 11 phone much the same way their more urban neighbors do.

12 Q Is it fair to say you would want the Commission to
 13 accept your new map, GHB 8, rather than the rule of
 14 thumb proximity analysis discussed in your direct
 15 testimony?

16 A I think they're both useful for different things, but I
 17 think GHB 8 does provide from the consumer's
 18 perspective a better representation of how they would
 19 view Western Wireless's network.

20 Q Better than the rule of thumb proximity analysis that
 21 will just tell you how many towers are within what
 22 population?

23 A Well, like I say, both pieces of data are useful. When
 24 I'm driving and look around and I see a tower I'll open
 25 my phone. Proximity has an effect. It's one of the

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1 variables in a propagation analysis.

2 Q But for the purposes of assessing Western Wireless's
 3 signal coverage in South Dakota you're sponsoring them
 4 both. Are you asking the Commission to rely on Exhibit
 5 GHB 8 for the purposes of assessing Western Wireless's
 6 signal coverage rather than the rule of thumb proximity
 7 analysis --

8 A I think it's a more accurate reflection and, of course,
 9 we can and probably will talk about the different
 10 signal strengths used in here.

11 Q Well, let's talk about your propagation analysis in
 12 Exhibit GHB 8. In your preparation of Exhibit GHB 8 I
 13 understand that you relied on tower information from
 14 the FCC's ULS database to construct the map.

15 A Yes, sir.

16 Q And that tower information included the latitude and
 17 longitude of the tower.

18 A Yes.

19 Q The height of the tower.

20 A Yes.

21 Q And the effective radiated power, the ERP?

22 A Correct.

23 Q And you also used topographic data from a U.S.
 24 Geological Survey in preparing this map; correct?

25 A Yes. They provide topographical data that let's you

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1 see where the hills and valleys are and the model uses
 2 that as part of its calculations.

3 Q What version of topographical data was used from the
 4 USGS?

5 A Give me a second. NED, National Elevation Data Center
 6 I believe it's called.

7 Q What year was that prepared?

8 A I obtained it earlier this year.

9 Q Not when did you obtain it. What version, what year,
 10 what release was the data sampled?

11 A It was the most current that the USGS has available.

12 Q But you don't know what the year is that it was
 13 released?

14 A I know I got it this year, and I could certainly if
 15 it's meaningful when I get back to my office submit
 16 what release it is but it's the one that if you were to
 17 order it today they'd send you.

18 Q Then with the tower information from the FCC's ULS
 19 database and the topographic data you prepared Exhibit
 20 GHB 8; correct?

21 A Yes.

22 Q And in preparing Exhibit GHB 8 I understand that you
 23 only compared the publicly available data from the
 24 FCC's ULS database with some of the actual data that
 25 was provided to you by Western Wireless; isn't that

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1 true?

2 A Well, the word "some" probably was ill chosen in that

3 sentence. I compared it with a data -- a lot of data

4 was provided. Some of it had to do with towers. A lot

5 of it had to do with other things. So I specifically

6 looked at the data that was provided related to towers,

7 and I compared that.

8 Q Okay. And the data that was provided to you at the

9 time you prepared GHB 8 was the Western Wireless tower

10 data for the 111 towers and extenders that we provided

11 in discovery?

12 A Yes. There were two rounds of discovery. The first

13 round only had latitude, longitude, and heights. The

14 second round had more information, but there were

15 things in the power that didn't look quite right that

16 didn't -- that caused me to as a fallback -- and also,

17 photographically so that this could be a public exhibit

18 because it's built from public data to use the power

19 data that is contained in the ULS database.

20 Q You mentioned that my use of the word "some" in my

21 sentence may have been ill chosen?

22 A It was ill chosen by me.

23 Q Because that's your testimony from exhibit Interveners

24 Exhibit 2 on page 15 that you had the opportunity to

25 compare the ULS information and you compared that with

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1 "some of the actual data provided by Western Wireless."

2 A Yes. I compared it to the data that related to the

3 towers, not that related to their services or their

4 affordability. The discovery --

5 Q The affordability of the towers?

6 A I did not -- what I said was, you know, the data

7 requests were a quite of pile of paper. I took out of

8 that the data relating to the towers. That would be

9 some of the data that was provided. That was what I

10 meant. If it came across poorly, I apologize. But I

11 did compare it --

12 Particularly I compared the latitude and

13 longitude. I wanted to see that I had a representative

14 base of towers and I concluded as I testified in my

15 surrebuttal testimony that it is reasonable and I also

16 testified that what I put in my direct testimony was

17 reasonable.

18 Q But you only utilized the publicly available tower

19 information from the ULS database in preparing your

20 exhibit.

21 A That's correct.

22 Q Isn't it true that the FCC's ULS database is only a

23 partial representation of Western Wireless's actual

24 facilities?

25 A Well, what I find particularly in the rural areas is it

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1 lines up almost one for one. There was some testimony

2 yesterday that when you fill in an area you don't have

3 to file that in the base and what I found were the

4 towers that were missing for the most part were in

5 Rapid City and Pierre and Sioux Falls.

6 Q But do you understand that a wireless carrier is only

7 required to file cell site data with the FCC that

8 defines the exterior boundaries of its CGSA?

9 A Right. But empirically I was able through my

10 examination and comparison of the data to satisfy

11 myself, and I testified as such that this picks up the

12 towers in the areas we're talking about.

13 Q But if a cell site doesn't impact the outer boundary of

14 the CGSA, it isn't filed with the FCC; right?

15 A Well, all I know is what my analysis told me, showed

16 me, which is when I take your 111 towers and geocode

17 those and I take the ULS towers and put one over the

18 other they line up exactly in the rural areas. There

19 are no major gaps there.

20 Q You didn't prepare Exhibit GHB 8 from the actual tower

21 information that Western Wireless provided to you, did

22 you?

23 A No. I prepared the -- the data that I put into the

24 propagation model was, as I testified --

25 Q Right.

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1 A -- from the ULS.

2 Q And the ULS database is only -- includes tower

3 information that defines the exterior boundaries of a

4 CGSA; correct?

5 A I disagree with that.

6 Q Well, you agreed with me a few minutes ago on that.

7 A No. No, I didn't. I said that I compared the two, and

8 even within the --

9 Q Mr. Brown, I'm not asking you yet about your comparison

10 of the two.

11 A Okay.

12 Q We're talking about the FCC's ULS database. If a cell

13 site doesn't impact the outer boundary of a CGSA, it

14 isn't filed with the FCC and, therefore, not part of

15 the ULS database, is it?

16 A Well, I disagree, sir, because I found towers that are

17 within the CGSA outer perimeter that were in the ULS

18 base. So, therefore, the answer is no.

19 Q Isn't it true that the ULS database is limited to

20 analog or amps technology?

21 A Well, I believe it is. And in that respect I've given

22 Western Wireless the benefit of the doubt on GHB 8. It

23 is a larger profile than if I had tried to construct a

24 CDMA number.

25 Q But information relating to antenna height and ERP

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1 would not include Western Wireless's CDMA or digital
 2 capability, would it?
 3 A I don't believe that's in the ULS, and again I think
 4 this gives the benefit of the doubt to Western
 5 Wireless.
 6 Q Would you agree with me that there's more cell site
 7 sectorization and antenna gain in a CDMA network?
 8 A As well as lower handset power. There are lots of
 9 differences.
 10 Q So that was a yes to my question, that it's fair to say
 11 that there's more cell site sectorization and antenna
 12 gain in a CDMA network?
 13 A Looking at the ERP numbers that you gave me in the
 14 second data request, I'm not sure if I would agree.
 15 MR. AYOTTE: I'd move to strike as
 16 nonresponsive to my question.
 17 MR. DICKENS: I'd like to hear the
 18 question again.
 19 Q For the first time, Mr. Brown, is it fair to say there
 20 is more cell site sectorization and antenna gain in a
 21 CDMA network?
 22 A Yes to cell site sectorization. I'm not sure I agree
 23 with you on antenna gain.
 24 Q With the additional cell site sectorization, that would
 25 result in greater ERP and result in signal coverage,

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1 wouldn't it?
 2 A Well --
 3 Q If you know.
 4 A I don't know.
 5 Q I take it in your analysis of the FCC's ULS database
 6 information you only looked at the cell sites that were
 7 physically located in South Dakota?
 8 A For this particular analysis, yes.
 9 Q This particular analysis being GHB 3?
 10 A Yeah. And the reason I say that, sir, is I believe the
 11 GHB 3 and 6 have towers that are in the other states
 12 but the only ones I actually used in this as in the
 13 data requests -- the material that was given to me were
 14 those that were physically within South Dakota.
 15 Q Do you understand that Western Wireless also owns and
 16 operates cell sites in Nebraska and North Dakota that
 17 overlap signal coverage into South Dakota?
 18 A Yes, sir. And those are not in here, and so they would
 19 probably at the periphery of the state have some
 20 impact.
 21 Q Now in your analysis and preparation of Exhibit GHB 8 I
 22 take it you also did not include the 17 additional cell
 23 sites to be constructed by Western Wireless as
 24 identified by Mr. Blundell.
 25 A No. I did not know their exact location or any of the

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1 other parameters.
 2 Q I take it that you did not drive test the results of
 3 your map on Exhibit GHB 8?
 4 A Actually, I did.
 5 Q Throughout the entire State of South Dakota?
 6 A No. But from Rapid City to Pierre I drove and was a
 7 little frustrated at the inability to check back with
 8 my office and my home, and it didn't work for much of
 9 the trip.
 10 Q Other than driving from Rapid City to Pierre -- was
 11 that on your flight in here?
 12 A Yes, sir.
 13 Q I take it you didn't field test your results.
 14 A I took a subset on that drive, but, no, I did not drive
 15 around the state.
 16 Q And it's true that the actual service that a particular
 17 customer might experience may be affected by
 18 environmental factors?
 19 A Yes.
 20 Q Natural obstacles?
 21 A Yes.
 22 Q Person-made obstacles. I'm not sure if man-made is
 23 politically correct anymore. Buildings and other --
 24 A Absolutely. They all affect propagation.
 25 Q You'd agree with me that an RF propagation analysis

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1 should be validated by a field test that takes these
 2 real world factors into consideration.
 3 A If I were designing a network, I certainly would want
 4 to do that.
 5 Q But you didn't do that for the purposes of --
 6 A I did not have the opportunity and I ran the
 7 propagation study and I at least validated one radial
 8 on that.
 9 Q I just got a bad look from our court reporter. I'll
 10 try to allow you to answer your question if you allow
 11 me to finish asking my question so we don't talk on one
 12 another.
 13 A Deal.
 14 Q Public interest, that's the focus of your testimony,
 15 isn't it?
 16 A Yes, sir.
 17 Q And you conclude that you do not believe Western
 18 Wireless's designation as an additional ETC in the
 19 rural LEC areas is in the public interest?
 20 A Not based upon what I've seen so far. No, I don't.
 21 Q But you'd agree that if the Commission applies a public
 22 interest standard in this proceeding, that the
 23 framework for such an analysis should balance the
 24 benefits of designation against any demonstrated harms
 25 resulting from the designation.

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1 A Yes. I think in my testimony rather than harms I used
 2 costs, but I think we mean the same thing.
 3 Q Would you agree that in the context of an ETC
 4 designation that the proper focus then would be on the
 5 benefits or harms/costs to the consumer?
 6 A Yes.
 7 Q You agree with me that it's in the public interest to
 8 encourage competition and consumer benefits through the
 9 designation of multiple ETCs in areas served by rural
 10 telephone companies?
 11 A I think there already is significant competition in the
 12 areas served by rural telephone companies. Western
 13 Wireless serves 22,000 customers in --
 14 MR. AYOTTE: Could we have that
 15 subscriber number despite its possible lack of
 16 accuracy noted as confidential?
 17 MS. AILTS WIEST: Yes.
 18 A It's a number, Mr. Ayotte from GHB 1.
 19 CHAIRMAN SAHR: We do have somebody
 20 in the room that hasn't signed the confidentiality
 21 agreement.
 22 MR. AYOTTE: That's fine.
 23 CHAIRMAN SAHR: If we're going to
 24 spend a lot of time talking about this and throwing
 25 numbers back and forth, do you want to them --

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1 Q I'm not intending to get into anything confidential,
 2 Mr. Brown, but if you believe any of my questions
 3 require you to disclose confidential information,
 4 please note it.
 5 A I'll do that, and if I could explain, GHB 1 --
 6 Q There's not a question pending.
 7 A I thought there was a question of confidentiality.
 8 MR. COIT: Excuse me. I think
 9 there's a question as to the confidentiality of
 10 that number, and I think he deserves an opportunity
 11 to explain it is not confidential because it comes
 12 from an exhibit based on FCC data.
 13 MS. AILTS WIEST: For the record,
 14 would you agree, Mr. Ayotte, that that number was
 15 not confidential because I believe I did say it was
 16 and she needs to know what to redact from this.
 17 MR. AYOTTE: I would agree that the
 18 number listed on Exhibit GHB 1 is publicly
 19 available information, but it does not necessarily
 20 represent the number of subscribers that Western
 21 Wireless has. It's a publicly -- we talked about
 22 it yesterday. It comes from the USAC reports.
 23 It's a listing of eligible lines. I viewed that as
 24 something different than a subscriber number and
 25 the witness's response related to subscribers. So

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1 sensitive about subscriber information, you want to
 2 rely on publicly available USAC information, I
 3 don't regard that as confidential.
 4 MS. AILTS WIEST: Okay.
 5 Q Mr. Brown, would you agree with me that the
 6 competitiveness of the local exchange market would be
 7 significantly improved by including multiple carriers
 8 in the market?
 9 A I think there already are multiple carriers in the
 10 market, and I have not seen anything in Western
 11 Wireless's build-out plans that would indicate there
 12 would be anymore competition.
 13 Q Do you agree with me that alternatives need to exist to
 14 the incumbent local exchange carrier for competition to
 15 work for South Dakota consumers?
 16 A Yes. And I believe there are multiple media used to
 17 compete for communications services in South Dakota.
 18 Q Can you point me to any part of your testimony that
 19 demonstrates or explains why any of the areas served by
 20 the rural LECs where Western Wireless is seeking
 21 designation, why any of those areas cannot support
 22 another competitive provider?
 23 A I could point to several places in my testimony. I
 24 quote from Billy Jack Gregg, who is a member of the
 25 Federal State Joint Board or Universal Service and the

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1 West Virginia consumer advocate.
 2 Q Did Mr. Gregg speak to the competitiveness of the areas
 3 served by any of the seven rural LECs here in
 4 South Dakota, which is the focus of this proceeding and
 5 my question?
 6 A He spoke to the criteria that State Commissions like
 7 the South Dakota Commission should use in determining
 8 when multiple supported carriers should be in a rural
 9 area. Now there's a difference between competition,
 10 which goes on and which competitors do and don't get
 11 support to serve areas that wouldn't have service but
 12 for that support.
 13 Q Okay. My question focuses in on South Dakota, and it
 14 focuses in on the area served by the seven rural
 15 telephone companies where Western is seeking
 16 designation, okay?
 17 A Yes.
 18 Q Is there anything in your testimony that demonstrates
 19 or explains why any of those specific areas where
 20 Western is seeking designation cannot support another
 21 provider?
 22 A Yes. I have a series of charts and numerical analysis
 23 that show as the density of a particular area
 24 decreases, the cost of serving that area increases
 25 geometrically.

1 Q But you haven't provided any specific population
2 densities with respect to these seven rural LECs?
3 A I have, sir. It's on Exhibit GHB 7. I have -- would
4 you like me to describe GHB 7?
5 Q No. Thank you. But if Western Wireless is designated
6 in these areas, the rural LECs are going to continue to
7 receive the same amount of universal service support;
8 correct?
9 A Not necessarily. We don't know that. That was
10 certainly the presumption when the Commission made its
11 2001 Decision. I think we have signals from the Joint
12 Board recommendation that that's not a good expectation
13 going forward.
14 Q But the Joint Board's recommendations have not yet been
15 adopted by the FCC, have they?
16 A Commissioner Abernathy said at NARUC that these are
17 guidelines that there's nothing that stops the
18 Commission from using now.
19 Q Okay. You were making -- I understood you to be making
20 an indirect reference to the Joint Board's
21 recommendation regarding primary connection support?
22 A That's one area, but throughout that recommendation
23 there's a realization that business as usual wasn't
24 working and there must be change.
25 Q Well, let me try to be a little more specific on my

1 question.
2 A Okay.
3 Q There are existing rules that the FCC has established
4 regarding the distribution of universal service
5 support; correct?
6 A Yes.
7 Q Okay. The Joint Board's recommendations don't affect
8 any change in those existing rules regarding the
9 distribution of universal service support, do they?
10 A They suggest change, but they do not make change.
11 Q And unless or until those rules are changed, under the
12 current support rules or distribution of support rules
13 the rural LECs will continue to receive the same
14 amounts of universal service support even if Western
15 Wireless is designated in this proceeding, won't they?
16 A Well, I think we need to take a longer term horizon in
17 thinking about the important decision the Commission's
18 going to make here, and I don't think that's realistic
19 for the reasonable planning horizon we ought to be
20 talking about.
21 Q So the answer to my question is that's correct,
22 Mr. Ayotte, isn't it?
23 A The answer is today yes, tomorrow probably not.
24 Q Or tomorrow is it more accurate to say you don't know?
25 A I think it's more accurate to say probably not.

1 Q You're certain on that?
2 A Yes, sir.
3 Q Would you bet the farm on it like Commissioner Hanson
4 said?
5 A I said probably.
6 Q But you don't know for sure?
7 A Nobody knows.
8 Q With respect to benefits to consumers, would you agree
9 with me that providing customers with a choice of
10 service providers is a benefit?
11 A Sure.
12 Q Would you agree that the effects of establishing a more
13 competitive market will result in benefits to
14 consumers?
15 A More competitive than what?
16 Q More competitive than it is today.
17 A I might agree, but I don't think that this ETC
18 designation is going to make it anymore competitive
19 than it is today. That's what I testified to.
20 Q But in a more competitive market consumers would be
21 expected to realize lower rates?
22 A I'm not aware of any proposed rate decreases with the
23 USF that Western Wireless will get.
24 Q In a competitive market might consumers expect to
25 realize new services?

1 A Certainly. And they are today.
2 Q And in a more competitive market customers might be
3 benefited by improved customer service by the service
4 providers, wouldn't they?
5 A Sure.
6 Q Would you agree with me that a broader local calling
7 scope to be offered by Western Wireless is advantageous
8 to consumers?
9 A Well, it comes at a price, and I think the fact that
10 regulated carriers have been constrained to a smaller
11 calling scope, perhaps they would like a bigger scope
12 too.
13 Q Kind of like what West River Telecommunications did?
14 A I'm not familiar with what they did, but consumers
15 always want to get more for their money.
16 Q In terms of local calling because then they could avoid
17 long distance charges.
18 A I think in general consumers want to get more for their
19 money.
20 Q Would you agree with me that the ability to use a
21 telecommunications service from other than a fixed
22 location is a benefit to consumers?
23 A You're speaking of mobility? Absolutely.
24 Q And mobility for 911 calling in rural areas, beneficial
25 to consumers?

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1 A If you can get a signal.

2 Q Would you agree with me that the deployment of new

3 telecommunications services or new state-of-the-art

4 technologies is a benefit to consumers?

5 A Certainly.

6 Q Would you agree that better service for South Dakota

7 rural consumers is a good thing?

8 A Of course.

9 Q And having more people hooked up to the public switch

10 telephone network and use telecommunications services

11 to communicate with one another, that's a good thing?

12 A Good thing.

13 Q Giving consumers in rural South Dakota

14 telecommunications services comparable to those enjoyed

15 by consumers in urban areas, that's a benefit.

16 A That's a benefit, sure. South Dakota rural consumers

17 want that.

18 Q And that these benefits we're just discussing,

19 Mr. Brown, that doesn't matter if you're a customer of

20 Western Wireless or some other incumbent LEC, these are

21 good things for the consumers, aren't they?

22 A Yes.

23 Q Mr. Brown, you haven't introduced any evidence in your

24 prefiled testimony regarding any inability by any of

25 the rural telephone companies to compete with Western

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1 Wireless, have you?

2 A No.

3 Q Is it fair to say that you've -- you have no empirical

4 evidence that Western Wireless's designation would harm

5 consumers in any one of these areas?

6 A Well, now there we're going to start to disagree.

7 Q We were on a roll there.

8 A I know. That had to end.

9 Q You allege harm to consumers based on costs imposed

10 upon consumers.

11 A That's one.

12 Q And but isn't it true that wireless customers, they

13 contribute into the Federal Universal Service Funds,

14 don't they?

15 A They do.

16 Q And without any ETC designation to a wireless carrier,

17 then that support would only go to the wireline or

18 landline networks; right?

19 A Yes.

20 Q Would you agree with me that the annual percentage rate

21 of assessment -- I think it's quarterly but you'll

22 correct me but the percentage rate of assessment that's

23 set by the FCC, it's been going down over the last

24 several years, hasn't it?

25 A Well, it's been going down for a couple of reasons,

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1 many of them accounting in nature and moving of money

2 out of the schools and libraries funds, currently at

3 8.7 percent.

4 Q But you're not suggesting that that assessment rate

5 paid by consumers is going to increase at all as a

6 result of Western Wireless's designation, are you?

7 A Quite possibly it could.

8 Q Do you know what the current assessment rate is?

9 A It's 8.7 percent of interstate end user revenues or --

10 and Mr. Blundell talked about this yesterday that

11 there's a safe harbor for carriers that can't measure.

12 And sometimes, you know, with bundled buckets of

13 minutes it's hard to measure at 28.5 percent. So it

14 would be 8.7 percent of 28.5.

15 Q I don't do math in public.

16 A I'm sorry.

17 Q Have you calculated what this possible change in the

18 assessment rate might be for consumers if Western

19 Wireless is designated?

20 A I've calculated that if all CMRS providers

21 nationwide --

22 Q I'm just asking about Western Wireless here in

23 South Dakota.

24 A Well, I don't think you can look at it in a vacuum,

25 Mr. Ayotte.

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1 Q Well, I'm going to ask you to look at it with respect

2 to Western Wireless in South Dakota because this

3 assessment rate is established nationally, isn't it?

4 A Right. But what happens here affects what happens in

5 other places. If everyone were to designate every

6 cellular carrier, that would add over \$2 billion to the

7 fund. It would go up by 70 percent.

8 Q But, Mr. Brown, we're not asking this Commission to

9 designate every wireless carrier everywhere, are we?

10 A We're asking them to make one of the first decisions

11 after the Joint Board recommendation that has set a new

12 framework, specifically to address the growth in the

13 fund, and if that decision is just the same business as

14 usual without a very fact-specific inquiry, then I

15 think that could affect other parts of the country.

16 Q So let's do the fact-specific inquiry.

17 A Okay.

18 Q I'm going to ask the question again. With respect to

19 Western Wireless and its request to be designated in

20 the seven rural LEC study areas here in South Dakota,

21 you're not suggesting that this national assessment

22 rate paid by consumers is going to increase at all as a

23 result of that, are you?

24 A I said that it could for the reasons that I gave you.

25 Q Okay. And my question is you haven't undertaken to

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1 calculate any projected change in that assessment rate.
 2 A I gave you one scenario.
 3 Q Again, with respect to Western Wireless here in
 4 South Dakota, you haven't undertaken to calculate any
 5 change in that assessment rate that you suggest could
 6 possibly result from Western Wireless's designation,
 7 have you?
 8 A It could be one straw that breaks the camel's back or
 9 that kicks it up one-tenth of a percent, which is what
 10 it goes up in. I do not know.
 11 Q Thank you.
 12 A I know it's the cumulative effect throughout the
 13 country that will affect the rate.
 14 Q Now is it your position the only permissible use of
 15 federal universal service support is the build-out of
 16 new facilities, the construction of more towers?
 17 A I think given the Virginia Cellular and the Joint Board
 18 recommendation if a carrier does not currently serve
 19 throughout the area, that that ought to be the first
 20 applications of funds until such time as they do.
 21 Q But that's what you think. That's not what the
 22 requirements are today.
 23 A That's what I read the intent of the Joint Board and
 24 the FCC as being.
 25 Q And so 254(e), that requires universal service support

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1 to be received for the provision, maintenance, and
 2 upgrading of facilities and services for which it's
 3 intended, we can just sort of skip over all of that
 4 stuff and just deal with facilities?
 5 A No. I think the purposes for which it's intended is to
 6 get urban grade service out to areas that wouldn't be
 7 but for the farm.
 8 Q Is it your position that is the only permissible use of
 9 federal universal service support?
 10 A I think to do otherwise would be to shortchange the
 11 public interest.
 12 Q So the answer to my question is, yes, Mr. Ayotte that's
 13 my position?
 14 A That's my opinion. I believe that's what you asked.
 15 Q Thank you. And you would require a build-out to
 16 provide service throughout the entire study area?
 17 A I think the Commission has, you know, a one-shot
 18 opportunity to define what it wants service to be. And
 19 I would think they would want to do that to get to the
 20 kind of consumers in South Dakota, get them -- they've
 21 been asking for it. That's what I'm hearing.
 22 Q And if there are no consumers in an area of a study
 23 area or any portion of a study area, you'd still
 24 require a build-out in that area, wouldn't you?
 25 A Well, if there's a highway and if we care about our

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1 families when they travel, yeah, maybe.
 2 Q And if there's no request for service from a customer
 3 in a portion of a study area, you'd still want to see
 4 build-out to that area, wouldn't you?
 5 A If there was a highway and people wanted highways to be
 6 covered with mobile service, I don't know who makes
 7 that request, but --
 8 Q How about excluding the highway scenario? If there's a
 9 portion of a study area which is not along the highway
 10 where there are no people, you'd still want to see a
 11 plan of build-out to that area?
 12 A If there's a public interest reason for it to be built,
 13 then it should. If there's not, then it shouldn't.
 14 Q And would you agree with me that the public interest
 15 reason to do so would be to respond to reasonable
 16 requests for service in that area?
 17 A I'm not sure in all cases, highways being an example,
 18 that someone raises their hand and says, please, sir, I
 19 want you to put it there.
 20 Q But if somebody calls the service provider and
 21 registers a complaint about the signal quality coverage
 22 along the highway, then the company can be responsive
 23 to that, couldn't they?
 24 A They could be.
 25 Q Or if a customer filed a complaint with the

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1 South Dakota Public Utilities Commission with respect
 2 to any perceived inadequacies of service along the
 3 highway, the Commission could get involved in that,
 4 couldn't they?
 5 A Or they could do it up front at the time of
 6 designation, say this is our expectation of how rural
 7 consumers in South Dakota should be served.
 8 Q Now in your direct testimony you claim that Western
 9 Wireless will receive \$6.9 million per year of federal
 10 high-cost support if it's designated an ETC as a result
 11 of this proceeding; right?
 12 A Yes, sir. GHB 1, that's the product of multiplying the
 13 lines shown on the USAC reports by the monthly support
 14 on the USAC reports.
 15 Q Mr. Brown, would you just take a look at Exhibit GHB 1.
 16 A Yes, sir.
 17 Q I think there's an error here that I'd like to give you
 18 an opportunity to correct.
 19 A Okay.
 20 Q Your first column you list the companies, the second
 21 column you list lines, and your source is USAC HCL1.
 22 A Yes, sir.
 23 Q HC01 doesn't report the number of lines reported by
 24 Western Wireless, does it?
 25 A Actually now it's HC05, but when the USAC reports come

1 out I merge HC05 and HC01.
 2 **Q** That information is actually on HC18, isn't it? I'm
 3 just wondering if your second column shouldn't have the
 4 footnote to your source of footnote 1. Otherwise, you
 5 have --
 6 **A** Oh, HC18. I stand corrected. That was an error. I
 7 apologize.
 8 **Q** That just confused me. Okay. Now as long as we're on
 9 Exhibit GHB 1, that estimates the support amount for
 10 the seven rural LECs; right? That's in your third
 11 column?
 12 **A** Yes, sir.
 13 **Q** And the source of this information where USAC
 14 projections for second quarter 2004?
 15 **A** That is correct.
 16 **Q** Isn't it fair to say that that's simply an
 17 approximation of the amount of support?
 18 **A** It's as good as the input date that that went in and I
 19 presume Western Wireless periodically updates its
 20 estimates to USAC and this is the most current publicly
 21 available.
 22 **Q** But in order for you to accurately estimate the amount
 23 of Western Wireless's support, you'd need to know
 24 Western Wireless's actual line counts, wouldn't you?
 25 **A** I'm assuming that that's what Western Wireless gives

1 USAC. I can't see why they would do other than that.
 2 **Q** Well, but those line counts that you're reflecting here
 3 that USAC has -- you don't know when those lines were
 4 reported, do you?
 5 **A** I know when USAC published them. That's all I know.
 6 That's the best I can get publicly.
 7 **Q** And you'd understand those lines would have been
 8 reported by -- those lines for the seven rural LECs
 9 would have been reported by Western Wireless as
 10 currently ineligible for support?
 11 **A** And they appear that way in the reports with a big N in
 12 the eligible column.
 13 **Q** And in your projection amounts here for the rural LECs
 14 you've not included any disaggregated support amounts
 15 in the Sully Buttes area, have you?
 16 **A** No. I have done it based upon the study area average.
 17 **Q** And I take it you'd agree with me that these projected
 18 support amounts, the 6.8, 6.9 million that you're
 19 forecasting here, that would change pretty dramatically
 20 if the FCC were to adopt the Joint Board's proposed
 21 primary line restriction, wouldn't it?
 22 **A** It would.
 23 **Q** So is it fair to say at this point we really can't be
 24 sure the amount of support that Western Wireless would
 25 receive if it were designated in this proceeding?

1 **A** I think that's accurate. As I quantify or say here
 2 it's estimating.
 3 **Q** Now in your surrebuttal testimony, Interveners'
 4 Exhibit 2, you claim that Western Wireless has received
 5 over \$16 million in federal high-cost support since
 6 October 1 of 2001 through the second quarter of 2004.
 7 **A** I could go in and look at the exact language, and
 8 perhaps you have it for me.
 9 **Q** On page 3.
 10 **A** That is what I pulled off of some USAC --
 11 **Q** Projections.
 12 **A** Yes. Can you direct me to the line? I see it.
 13 **Q** On page 3 of Intervener Exhibit 2, line 1 through 4.
 14 **A** Through the second quarter of 2004 USAC reports
 15 indicate Western Wireless will have received over
 16 16 million in federal high-cost support, yes.
 17 **Q** From October 1, 2001 through second quarter 2004;
 18 correct?
 19 **A** Correct. Per the USAC reports.
 20 **Q** And that was your source information; correct?
 21 **A** Yes, sir.
 22 **Q** It's not intended to reflect the actual amounts
 23 received by Western Wireless; right?
 24 **A** It is what it says it is.
 25 **Q** Which is?

1 **A** From the USAC reports.
 2 **Q** USAC projections from the various quarters from the
 3 first quarter 2002 to the second quarter of 2004. It's
 4 GHB 5. I'm not going to trick you.
 5 **A** Yeah. GHB 5?
 6 **Q** Yes. Excuse me. Let me correct that. USAC
 7 projections for each quarter from third quarter 2002
 8 through the second quarter of 2004.
 9 **A** Yes. Third quarter 2002 was the first time Western
 10 Wireless South Dakota showed up on the USAC or the --
 11 **Q** Again those are the USAC projection numbers you're
 12 identifying to get to the 16 million, not a listing of
 13 the actual amounts received by Western Wireless.
 14 **A** That's correct. That I did not know.
 15 **Q** And you've reviewed Mr. Blundell's confidential
 16 exhibit, JHB 6 to his surrebuttal testimony, Western
 17 Wireless Exhibit 4?
 18 **A** In quite a bit of detail, yes, sir.
 19 **Q** And, again, I'm not looking for you to disclose any
 20 specific dollar amounts, but if you feel compelled to
 21 shout them out, please let us know.
 22 But in your projections of the \$16 million
 23 you didn't separate any amounts for the two separate
 24 study area codes that Western Wireless has in
 25 South Dakota, one for Pine Ridge and the other for the

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1 other areas in the state, did you?
 2 A I believe I did, yes, sir.
 3 Q You did separate them out?
 4 A Yes.
 5 Q So these projections reflect which?
 6 A They would not reflect the Pine Ridge.
 7 Q Okay. No Pine Ridge?
 8 A No Pine Ridge.
 9 Q But in your projection here you didn't consider that
 10 Western Wireless's designation in the rural LEC
 11 areas --
 12 A Sir, could I correct myself?
 13 Q Please.
 14 A I think I misspoke --
 15 Q You agree it is in the public interest? No.
 16 A No. I apologize. The line counts did not include
 17 Pine Ridge and the Golden West. These support numbers
 18 do include Pine Ridge because starting third quarter
 19 2002 it could only be Pine Ridge. So I apologize for
 20 that. We were shifting between -- we both have
 21 confessed to some numerical issues.
 22 Q That's why you don't do math in public. And I thought
 23 they included Pine Ridge, and that's why I was
 24 surprised by your answer.
 25 A Yeah. And I was wrong, and I apologize.

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1 Q Okay. But in your projection of the 16 million you did
 2 not consider that Western Wireless's designation in the
 3 rural LEC areas from Western Wireless one, the first
 4 Western Wireless proceeding, that was not effective
 5 until January 6 of 2003.
 6 A Well, and I think that's what you see on the GHB 5. It
 7 ramps up from about 22,000 per month to almost 500,000
 8 a month. And some of that is the initial designation
 9 coming online. The other is the going from only
 10 reporting the fixed wireless to reporting all of the
 11 wireless, including the fixed wireless and handhelds
 12 that I testified to.
 13 Q Okay. So maybe the difference here, Mr. Brown, is the
 14 fact that your Exhibit GHB 5 uses USAC's projected
 15 amount, and Mr. Blundell's Exhibit JHB 6 uses actual
 16 amounts received.
 17 A Right. And I've done some work to try to correlate the
 18 two.
 19 Q Because there's a time lag between the reporting of
 20 lines and the actual receipt.
 21 A Precisely, and I think there's about a one quarter time
 22 lag is the best I can find.
 23 Q And in looking at Mr. Blundell's Exhibit JHB 6, in
 24 reality you would agree that Western Wireless actually
 25 received no support amounts in the third quarter of

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1 2002, fourth quarter 2002, or first quarter 2003
 2 contrary to the USAC projections on your exhibit?
 3 A I know that's what his exhibit says. I cannot
 4 independently corroborate that they did not perhaps a
 5 quarter later. I'm seeing in here about a one quarter
 6 time lag, and I think there's maybe one quarter in
 7 between and the amount of support is fairly low.
 8 Q You can't corroborate. You can't dispute it, though?
 9 A I got the best publicly available data. Obviously
 10 Mr. Blundell has access to numerical research that I
 11 don't.
 12 Q But, for example, in the second quarter of 2003, again
 13 without disclosing actual receipts and assuming the
 14 accuracy of Mr. Blundell's exhibit, you'd agree with me
 15 it's nowhere near the 2.3 million that's projected on
 16 your report?
 17 A No. But in the third quarter of 2003 he's projecting
 18 3.8 million, which is significantly more than I
 19 projected. I think there was some ramping up there,
 20 and USAC sometimes does shifting between quarters. So
 21 each is accurate for what it represents.
 22 Q Fair enough.
 23 A That's the best I can say.
 24 Q Fair enough.
 25 A One is as USAC reports it. The other is as it's paid.

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1 There are timing differences and I, as I said, devoted
 2 quite a bit of time to try to understand the
 3 differences and I think we're similar with maybe a one
 4 quarter time lag.
 5 Q But you would agree that your claim of over \$16 million
 6 of projected universal service support since October 1
 7 of 2001 is a significant overstatement of the actual
 8 amounts received by Western Wireless.
 9 A Well, not exactly. Because it is accurate for what I
 10 said. The USAC reports show through the second
 11 quarter. If you look at the year 2003 and you adjust
 12 for the timing differences, he's actually showing more
 13 supported. And that's why I used in my summary over
 14 10 million -- as of today Western Wireless has received
 15 over 10 million from the fund.
 16 Q Again, in each report looks at something different.
 17 Yours looks at projected amounts based on USAC reports?
 18 A Yes.
 19 Q And Mr. Blundell's Exhibit JHB 6 shows actual amounts
 20 received.
 21 A Absolutely.
 22 Q Okay. And all I'm saying is looking at those two
 23 different reports, because they're looking at two
 24 different things, your projected amount of \$16 million
 25 is a significant overstatement as compared to the

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1 figures on Mr. Blundell's report in total.
 2 (Confidential proceedings)
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1 Q Now in your direct testimony, Mr. Brown, you discuss
 2 certain standards for ETC designation based on the
 3 Joint Board's Recommended Decision; right?
 4 A Yes.
 5 Q And you identified six factors as "minimum
 6 qualifications" for ETC status, don't you?
 7 A Yes, sir.
 8 Q Those would be adequate financial resources? Page 8.
 9 A Thank you. Yes, sir.
 10 Q You identify adequate financial resources?
 11 A Yes.
 12 Q Commitment to provide the supported services?
 13 A Yes.
 14 Q Build-out plans for areas not yet built?
 15 A Yes.
 16 Q The ability to remain functional in the event of
 17 emergencies?
 18 A Yes.
 19 Q Consumer protection requirements?
 20 A Yes.
 21 Q And an amount of local usage.
 22 A Yes.
 23 Q Now following your direct testimony the SDTA sent
 24 supplemental Interrogatories to Western Wireless asking
 25 them questions on each of those six factors, didn't

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1 they?
 2 A Yes, we did.
 3 Q And Western Wireless provided responses to that
 4 supplemental discovery on March 31 of 2002, which is
 5 Western Wireless Confidential Exhibit No. 8.
 6 A I don't have Exhibit 8 in front of me.
 7 Q I left it right out in front of you there.
 8 A Oh, that was kind of you. Thank you.
 9 Q Anything to help.
 10 MR. COIT: For the record, that's
 11 the document that doesn't include the attachments
 12 correct?
 13 MR. AYOTTE: That's correct.
 14 Q And, Mr. Brown, had you reviewed Western Wireless's
 15 responses to the supplemental Interrogatories before
 16 you prepared your surrebuttal testimony on April 16 of
 17 2004?
 18 A I had read through them, and if they came in before --
 19 you said they came in March --
 20 Q 31 of 2002.
 21 A 2002?
 22 Q Excuse me.
 23 A I'll watch the numbers.
 24 Q March 31 of 2004.
 25 A Yes. I would have seen them.

1 Q You would have seen them before you prepared your
 2 surrebuttal testimony?
 3 A I would have, yes.
 4 Q And I take it you don't have any basis to dispute the
 5 accuracy of Western Wireless's responses in
 6 confidential exhibit Western Wireless Exhibit 8 because
 7 you don't discuss it in your surrebuttal testimony.
 8 A Well, it's not my burden to make, Mr. Ayotte.
 9 Q I understand.
 10 A Of proof. And it's been awhile since I've read this.
 11 If you like, I could read through it, but, no, I didn't
 12 discuss it in my testimony.
 13 Q Your surrebuttal testimony?
 14 A My surrebuttal testimony.
 15 Q And as you sit here today you don't have any basis to
 16 dispute the accuracy of Western Wireless's responses in
 17 Western Wireless Exhibit 8, do you?
 18 A I'd have to read through them to answer that question,
 19 sir.
 20 MS. AILTS WIEST: Mr. Ayotte, I
 21 think our court reporter needs a break.
 22 MR. AYOTTE: Okay.
 23 (A short recess is taken)
 24 MS. AILTS WIEST: Go ahead,
 25 Mr. Ayotte.

1 MR. AYOTTE: Thank you.
 2 Q Mr. Brown, I appreciate your patience and cooperation
 3 and responsiveness. I'll try to wrap things up.
 4 Before the break I had asked you about your direct
 5 testimony where you identified six factors that were
 6 set forth in the Joint Board's Recommended Decision as
 7 minimum qualifications for ETC status.
 8 Do you recall that?
 9 A Yes.
 10 Q Now isn't it true that Mr. Blundell also addressed each
 11 of those Joint Board recommended factors in his
 12 rebuttal testimony, Western Wireless Exhibit 3 in
 13 response to your direct testimony?
 14 A I do believe he has testimony giving his opinion of
 15 each of those, yes, sir.
 16 Q And I didn't see anything in your surrebuttal
 17 testimony, Intervener Exhibit 2, that contained any
 18 further discussion of the Joint Board's six factors
 19 that were identified in your direct testimony.
 20 Did I miss anything, or is it just not in
 21 your surrebuttal?
 22 A Well, I'd have to look quickly, but I picked up on
 23 several areas that I thought needed to be surrebutted
 24 and --
 25 Q But I didn't see anything in your surrebuttal that was

1 responding to Mr. Blundell's rebuttal testimony on the
 2 six Joint Board factors, recommended factors.
 3 A Well, I do think I noted that there's no formal
 4 build-out plan. And I have commented on my belief that
 5 I don't think they serve throughout the service area.
 6 Q But that wasn't in response to Mr. Blundell in his
 7 rebuttal testimony on those six factors, that was just
 8 a reiteration of what you said in direct.
 9 A Well, in that case my direct testimony stands as my
 10 opinion.
 11 Q Thank you. Mr. Brown, let me draw your attention to
 12 Intervener Exhibit 18, this new map.
 13 A Yes, sir.
 14 Q And if you could compare that -- or at least have
 15 available to you your Exhibit GHB 3 that was part of
 16 your direct testimony?
 17 A Yes, sir.
 18 Q Now just so that I understand it, Exhibit GHB 3 was the
 19 rule of thumb proximity analysis based upon towers --
 20 A 3 or 4, sir?
 21 Q The map.
 22 A The map. Okay.
 23 Q The towers that you're showing on Exhibit GHB 3 were
 24 towers that you identified from the FCC's ULS database
 25 for Western Wireless?

1 A The towers on the 3 are from ULS, that is correct.
 2 Q And with respect to confidential Exhibit No. 18, that
 3 purports to show the 111 actual Western Wireless towers
 4 that you geocoded and ginned up last night; correct?
 5 That's a technical term, ginned.
 6 MR. CREMER: I was reaching for my
 7 button.
 8 A I assure you there was no gin last night.
 9 Q There will be tonight.
 10 A Perhaps.
 11 Q Too casual. Intervener Exhibit 18 purports to show a
 12 map with the 111 actual Western Wireless towers.
 13 A Yes. And I did not produce the data in here last
 14 night. I produced this data when I satisfied myself
 15 that the ULS towers were a reasonable representation.
 16 I also -- any towers that are on 18 that were not on
 17 GHB 3 I included in the proximity analysis that was in
 18 my direct testimony.
 19 Q Right. But my question -- and, of course, because you
 20 just presented this today, I've only had a few moments
 21 to look at it. As I look at Exhibit GHB 3, there are
 22 towers noted on Exhibit GHB 3 which are not noted on
 23 exhibit Intervener Exhibit 18.
 24 A There are several particularly up in the northwest
 25 corner of the state.

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1 Q Up in the northwest corner and along the eastern
2 border.
3 A The reason the eastern border wouldn't be there is the
4 towers that were provided in response to the data
5 requests were only those that are physically located in
6 South Dakota.
7 Q Which is what you are purporting to show on Exhibit GHB
8 3 based on the ULS database?
9 A Well, the ULS database I have one file that's Western
10 Wireless for the whole US of A and I zoom down to
11 South Dakota and you will pick up some of the
12 peripheral ones in that. The 18 that we just did, I
13 took your data.
14 Q Right.
15 A You only gave me your geocodes for those that were in
16 the State of South Dakota.
17 Q But why wouldn't towers that show up in the FCC's ULS
18 database not show up on Intervener Exhibit 18?
19 A Because that was built off of data that you gave to me.
20 Q I see.
21 A They are not on there because you did not give me those
22 tower geocode locations.
23 Q I see. And so Intervener Exhibit 18 is really not
24 reflective of all of Western Wireless's towers in
25 South Dakota, only reflective of the 111 that we gave

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1 to you?
2 A Right. Had you given me the others, I certainly would
3 have put them in, but you didn't so I couldn't.
4 Q But you knew based on your prior review of the ULS
5 database there were other towers?
6 A Oh, yes.
7 Q But you did not include those on Exhibit 18?
8 MR. CREMER: Excuse me. I have an
9 objection. I believe you're misstating the record.
10 You have testified and Mr. Blundell testified
11 there's only 111 sites, and he did, in fact,
12 geocode 111 sites in 18.
13 MR. AYOTTE: He made that clear.
14 Thank you.
15 MR. CREMER: If he didn't, I tried
16 to.
17 MR. AYOTTE: Well, it's crystal.
18 Q But my question, Mr. Brown, is that with respect to
19 Intervener Exhibit 18 you are aware of other Western
20 Wireless towers based on your review of the ULS
21 database which are not reflected on Intervener Exhibit
22 18; right?
23 A Let me try one more time.
24 Q Right. That's the question.
25 A Of course, I'm aware of the towers.

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1 Q Thank you.
2 A You did not give them to me, and they were not in
3 Mr. Blundell's 111.
4 Q Understood. Thank you.
5 A Okay.
6 Q Now, Mr. Brown, the SDTA, it's not opposed for the
7 designation of additional ETCs, is it generally?
8 A I can only speak for myself, and I'm not opposed if the
9 designation serves the public interest.
10 Q But you're testifying here today on behalf of the SDTA
11 and the member companies.
12 A And my analysis is that this designation with the
13 record that we have before us now does not support the
14 finding that it's in the public interest. You have not
15 met your proof burden.
16 Q Does SDTA support the principles of competition
17 underlying the Telecommunications Act of 1996?
18 A I can speak for SDTA in my responsibility for this job
19 they've hired me for. I cannot speak for them as a
20 policy matter.
21 Q You don't know?
22 A I just -- they've hired me to help them with this, and,
23 you know, that's what I'm here to talk about, but I
24 cannot as a policy beyond this proceeding tell you what
25 SDTA's position would be. It's beyond my scope.

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1 Q For the purposes of this proceeding does the SDTA agree
2 that competition is in the public interest?
3 A Well, there already is competition. We had that
4 discussion before. We just don't think that money
5 ought to go to someone -- that scarce universal support
6 dollars ought to go to someone who does not demonstrate
7 the capability, commitment, and build-out plan to serve
8 throughout the area.
9 Q Does the SDTA agree that competition is in the public
10 interest?
11 A Again, beyond this particular proceeding, it is not my
12 job to speak for SDTA.
13 Q Well, the whole purpose of your testimony here was to
14 provide testimony to the Commission on the public
15 interest factor on behalf of SDTA.
16 A This particular ETC designation and this designation
17 based upon my analysis of the facts and data in this
18 case.
19 Q For the purposes of addressing the public interest
20 determination that the Commission needs to make?
21 A Now I've testified before there's competition
22 throughout rural South Dakota today. And to the best
23 of my knowledge SDTA has never, you know, opposed that.
24 And many of the SDTA members do have, you know,
25 competitive ventures and it's a wonderful industry to

1 be in. So I don't see how they could be against
2 competition.

3 MR. AYOTTE: Thank you. Nothing
4 further.

5 MS. AILTS WIEST: Mr. Smith, do you
6 have any questions?

7 MR. SMITH: I do.

8 CROSS-EXAMINATION

9 BY MR. SMITH:

10 Q Mr. Brown, do you have before you Western Wireless's
11 Confidential Exhibit 7, I think it is, which is the
12 packet of three maps?

13 A I may.

14 MR. COIT: I'll get them here.

15 A I have them, Mr. Smith.

16 Q And then I'd like you to pull up your exhibit -- I
17 guess it's GHB 2, which is your map, one of the maps or
18 GHB 3 maybe. Either one.

19 A Okay.

20 Q Would each of the sites that are shown on your GHB 2 be
21 expected to result in either green or blue on Western
22 Wireless Confidential 7?

23 A I will answer in general, yes, although since the
24 Exhibit 18 was actually built from Western Wireless's
25 data, it would probably be more accurate to say that

1 those two would be the best correlation.

2 MS. AILTS WIEST: Mr. Smith, does
3 this need to be considered confidential by our
4 court reporter?

5 MR. SMITH: I'm not showing
6 anyone -- I'm not going to put it up there unless
7 the Commission wants me to go up on the easel.

8 MS. AILTS WIEST: I was just
9 checking.

10 MR. SMITH: Otherwise, no, I don't
11 think anything I'm going to ask will deal with the
12 confidential information.

13 Q I think the question I really want to ask you then is
14 is it possible that the way in which Mr. Ayotte asked
15 you the question was did you leave off sites that you
16 know to be Western Wireless sites when you prepared
17 Exhibit Confidential 18.

18 And I guess I might rephrase that. Isn't it
19 a fact that Western Wireless's own exhibit,
20 Confidential Western Wireless 7, also appears at least
21 to contain no propagation information which would
22 indicate the existence of towers at those locations
23 based upon your comparison of those two in the
24 northwest corner of the state?

25 A I don't know if I have enough information, Mr. Smith,

1 to answer that question.

2 Q Well, let me show you the big white spot where you see
3 the intersection of the red line in the northwest
4 corner of the state, the red line, north-south line.

5 A Yes.

6 Q With the North Dakota border.

7 A Yes.

8 Q And on your TC3 in what appears to be just to the west
9 of that line, that line appears to correspond roughly
10 with the line that's on your map. There are two cell
11 tower locations. And is that area not quite on exhibit
12 Confidential WW7, Western Wireless 7?

13 A It is not on Western Wireless 7, and it also is not on
14 Confidential 18, which presumably -- my explanation for
15 that would be that perhaps at one point these towers
16 were planned and somehow got into the FCC database but
17 never got built.

18 Q So rather than your Confidential 18 excluding towers
19 that Western Wireless has from that, would you conclude
20 that, in fact, GHB 2 and 3 perhaps included some towers
21 that don't, in fact, exist?

22 A That would be possible for the reason I just gave.

23 Q Thank you. Do you recall Mr. Ayotte asking you about
24 Mr. Blundell's testimony that Western Wireless is
25 presently serving at least 85 percent of the customer

1 locations in the service areas? Do you remember him
2 asking you about that?

3 A I remember him asking me about that, yes, sir.

4 Q And if I recall right, you testified that that's what
5 Mr. Blundell testified?

6 A Actually I've heard a couple of things. And I'm not
7 sure whether the 85 percent is the current towers or if
8 it's the current plus the 2004 plus the -- that was
9 unclear, but his representation is that they
10 currently -- he selected the exchanges. I recall that
11 part of his testimony, he selected them based upon the
12 85 percent standard.

13 Q Okay. And that was based upon your recollection of
14 what he testified to both yesterday and in his written
15 testimony?

16 A Yes.

17 Q Okay. And if the record were to show that that's not
18 what Mr. Blundell testified to yesterday, would your
19 recollection of what he testified to be adjusted
20 accordingly? In other words, would your testimony
21 concerning his 85 percent testimony reflect what he
22 actually said if that's what the record so shows?

23 You're not testifying that 85 percent of the population
24 areas are currently covered.

25 A Oh, and quite to the contrary. In my testimony and in

1 my exhibits I provide data that I think shows that
2 85 percent is not current. It was his testimony I
3 think has to speak for itself.
4 **Q** And what he testified to is what he testified to?
5 **A** Yes, sir.
6 **Q** Okay. Thank you. When we look at GHB 8 and
7 Confidential 18, I think we had considerable discussion
8 about that.

9 When you prepared this exhibit you used a --
10 was that using a computer program?

11 **A** Yes, sir.

12 **Q** And does that computer program produce absolutely
13 precisely accurate results, or does it produce
14 estimations of what reality might be?

15 **A** It's estimations. And as I have learned the art of
16 propagation, creation, that people that have coached me
17 along the way have said it is an art. Mr. Ayotte and I
18 had a discussion that you run it and then you go out
19 and drive test it and then you tweak it and you adjust
20 it.

21 It is only that. It's an approximation.
22 There are, you know, many variables that go into it and
23 some of it, you know, is just -- people have tried to
24 capture in mathematical equations how radio waves are
25 going to behave but they're imperfect in how they do

1 that so it's an approximation.

2 **Q** And it's based on the assumptions you've used here
3 about 75 dBm and 100 dBm being appropriate standards to
4 use for two types of equipment at a five bar level; is
5 that right?

6 **A** Yes. My 75 is an approximation of what I think would
7 be reasonable urban service. I did testify, you know,
8 there's no set standard for that, but I thought that
9 was a reasonable approximation.

10 **Q** And when we look at GHB 8 and Confidential 18, although
11 I think you testified that there may be some
12 disparities in the tower locations there because of
13 perhaps a different data set being used to locate those
14 tower locations, are those locations correct or similar
15 in all material respects?

16 **A** The tower locations in GHB 8 with the towers in GHB 18?

17 **Q** Correct.

18 **A** They are similar in almost all respects. Are they
19 identical? No.

20 **Q** Given the fact that GHB 8 is, at any rate, a computer
21 generated approximation, in your opinion does GHB 8
22 reflect a materially accurate presentation, given your
23 assumptions of 75 and 1 dBm?

24 **A** Yes.

25 **Q** Thank you.

1 MR. SMITH: Thank you. That's all
2 I have.

3 MS. AILTS WIEST: Commissioners.

4 COMMISSIONER BURG: I have just two
5 quick ones. Your testimony is for public interest;
6 is that correct?

7 THE WITNESS: Is for?

8 COMMISSIONER BURG: Basically for
9 determining public interest.

10 THE WITNESS: Primarily, yes.

11 COMMISSIONER BURG: And when I think
12 of what public is -- I don't think the people that
13 I'm aware of in South Dakota care as much about
14 having competition, but they do want wireless.
15 They want wireless service, period, whether it's
16 the second one or first one or third or tenth one.

17 How would you assure wireless service in the
18 rural areas of South Dakota without ETC approval to
19 a competitive carrier? That's the one I
20 continually struggle with.

21 THE WITNESS: Okay. And I think
22 you're right. And I think I had this in my direct
23 testimony that to many consumers they're
24 complimentary services, they're not substantive.
25 Each of them are valuable for different reasons.

1 And, you know, I can understand the desire of rural
2 South Dakota consumers to have wireless service.

3 I think, first of all, the Commission has to
4 decide -- particularly if you're dealing, as I
5 believe you are now going forward, with a fixed
6 amount of support, how do you assure that everybody
7 at least has basic communications? Okay. I think
8 that's job number one.

9 Then to the extent that there are areas where
10 it might make sense in your estimation to use
11 public money to drive that infrastructure into
12 areas it wouldn't go absent the support, then I
13 think you use the tools that the Joint Board and
14 the Virginia Cellular Decision have given you of
15 making upfront commitments in return for this,
16 we're expecting that you are going to deliver this
17 amount of service in these areas.

18 I think that's the best way to assure that you
19 get what I think you're asking for. I think to
20 grant an ETC designation without some commitment as
21 to what you're going to get for your consumer's
22 money, I think there, you know, you don't know what
23 you're going to get. So I think part of the
24 message the Joint Board and the FCC are sending is,
25 you know, make sure up front it's understood how

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1 people are going to use the money and then track
 2 them to that.
 3 COMMISSIONER BURG: How big a part
 4 of our decision should be based on creating
 5 competition?
 6 THE WITNESS: I think competition
 7 already exists, Commissioner Burg, throughout
 8 South Dakota. The fact that Western Wireless has
 9 the customers they do indicate that. And there are
 10 people who live in areas and I've lived for
 11 times -- or at homes where I couldn't use my cell
 12 phone, but it was valuable to me because when I was
 13 on the road or traveling on business it's valuable.
 14 It's one of those things that to drive it, you
 15 know, all the way so everybody's got -- that's
 16 expensive. And that's a judgment, I think, a call
 17 you guys have to make.
 18 COMMISSIONER BURG: Could you ever
 19 imagine if we went to a ETC high-cost support for
 20 only one provider that the FCC or Joint Board would
 21 recommend that that had to make wireless service --
 22 include wireless service?
 23 THE WITNESS: I'm not sure I
 24 understand your question. One competitive ETC or
 25 only one ETC?

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1 COMMISSIONER BURG: If you were only
 2 going to get high-cost support for one service,
 3 could you ever imagine that would have to include
 4 wireless? Do you think that people see that as
 5 essential to get equal service to urban enough that
 6 that would be a requirement as part of the --
 7 THE WITNESS: That they would be the
 8 one and only ETC?
 9 COMMISSIONER BURG: Well, I mean, if
 10 they're only going to give high-cost support to one
 11 which I think you testified was a possibility at
 12 least if not a likelihood.
 13 THE WITNESS: You mean on a customer
 14 by customer basis, right. I'm sorry.
 15 COMMISSIONER BURG: If you said we
 16 get to a point that only one high-cost support so
 17 going per customer.
 18 THE WITNESS: I'm with you now.
 19 COMMISSIONER BURG: Could you see
 20 the time in order to get high-cost support you had
 21 to offer wireless as well as fixed, or whatever the
 22 customer requests?
 23 THE WITNESS: Well, obviously when
 24 you go to a primary line customer concept it's the
 25 customer that chooses which carrier it's --

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1 COMMISSIONER BURG: I'm saying
 2 could you see a time when they would require both?
 3 THE WITNESS: Well, that choice
 4 under a primary line concept, the customer chooses
 5 who's going to get their high-cost dollars. The
 6 problem is the Joint Board has indicated that in a
 7 very high-cost area if each of the -- and
 8 particularly if the Joint Board recommended you
 9 freeze support at the level the incumbent's
 10 currently getting, you've got a fund that's
 11 perfectly sized for one wireline company.
 12 Now if you say -- and that's 30, 40, 25, \$30
 13 per line, per month, and now you say we're going to
 14 have two and a primary line is implemented. And I
 15 don't know whether they're going to implement it.
 16 COMMISSIONER BURG: Well, I'm not
 17 sure you're still seeing it quite perfectly.
 18 Because we're also in an argument right now when
 19 you -- whether a current ETC should only get
 20 service for one or service for more than one line,
 21 the broadband issue.
 22 So what my question is, I'm not saying two
 23 providers. I'm saying that in order to get costs
 24 as a single provider, high-cost fund, could you see
 25 a time when it was required as part of that

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1 provider's responsibility to get mobile service
 2 along with fixed service?
 3 THE WITNESS: Are you saying that a
 4 current provider of wireline service would get a
 5 license to spectrum to be able to also offer a
 6 mobile?
 7 COMMISSIONER BURG: If that's what
 8 it took. Because I'm coming from my original
 9 premise. I'm not aware of that many people that in
 10 the high-cost rural areas that are determined that
 11 we have competitive service. They're determined
 12 that we have good fixed line service and they have
 13 been up until now and they're determined to get the
 14 same kind of wireless service that urban people
 15 get. Whether there's competition or not I think is
 16 totally secondary.
 17 THE WITNESS: Okay.
 18 COMMISSIONER BURG: So I'm trying to
 19 see how do we get to that for our consumers in
 20 South Dakota, how do we get the service that's
 21 equal to urban areas, both fixed and mobile?
 22 THE WITNESS: You spend your
 23 universal service dollars wisely. In some parts of
 24 the state or in some study areas where the costs
 25 are particularly high you might not be able to

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1 achieve both for all customers. You just might
2 not. If money was not an issue, if there was an
3 unlimited amount of funding, then that could be
4 done.

5 I think what we're seeing, though, is because
6 of push-back for some of the people that actually
7 had to pay into the fund we've got to find the
8 balance. And I don't envy your job of finding the
9 balance. It's a difficult process.

10 COMMISSIONER BURG: The other
11 question I have again refers to GHB 8, and you just
12 had quite a fairly detailed discussion with
13 Mr. Smith about how you arrived, whether it was
14 approximations or whatever. Even if you drove it
15 completely and determined exactly where they're at,
16 it would still be an estimate because it's mobile.
17 Is that an accurate statement?

18 THE WITNESS: Yes. And there are
19 many variables that affect how an electrical signal
20 travels.

21 COMMISSIONER BURG: Because the
22 thing I'm also confused about is it appears to me
23 high-cost funds support is based on a fixed
24 location of where that bill goes as to whether you
25 get it or not. And yet that's secondary to how I

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1 may want to use it.

2 THE WITNESS: Correct.

3 COMMISSIONER BURG: Because I heard
4 Mr. Ayotte talk about if there's nobody out here,
5 should we still have to offer service? Well, if I
6 owned a 10,000 acre ranch and I'm cowboying my
7 cattle, I wouldn't mind having a signal -- if you
8 go to the ultimate extreme, I wouldn't mind having
9 a signal when I'm out there in that remote ranch
10 tending my cattle.

11 And so, you know, it gets really fuzzy as to
12 what the total service means, there's no doubt
13 about it. And we see advertisements showing the
14 guy riding his horse and whips out his cell phone
15 and gets immediate signal. Now I don't know a lot
16 of places that couldn't happen in South Dakota, but
17 that's part of the advertisements of the offering
18 of the service. That's all I have.

19 MS. AILTS WIEST: Any other
20 questions, Commissioners?

21 CHAIRMAN SAHR: Mr. Brown, I want to
22 thank you for appearing today and the prefilled
23 testimony, all of the work you put into this
24 matter. And I do have a question, and it really
25 doesn't matter which map we're looking at.

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1 This may be proprietary, I don't think it
2 is -- maybe we could ask our guest to step out,
3 please.

4 CHAIRMAN SAHR: This is such a quick
5 question. The density map is up in the northwest
6 corner. There are some towers or at least one
7 tower that I know of in that area.

8 Are you covering up any towers up there? I
9 think that might have been asked earlier.

10 THE WITNESS: You're talking about
11 the legend that gives the density coding? The
12 reason I put that up there was because none of the
13 companies that are the subject of this hearing
14 happen to operate up there.

15 CHAIRMAN SAHR: Okay.

16 THE WITNESS: There could be
17 something under there.

18 CHAIRMAN SAHR: I think in Harding
19 County there is a tower up there, and I believe
20 it's what they refer to as a super site or one of
21 their larger towers so you're not saying by --
22 you're not saying there isn't a tower up there
23 because we can't see it. Is it covered up by
24 the --

25 THE WITNESS: Perhaps, Commissioner,

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1 this is the tower here on 8 which does not have
2 that same legend because I didn't overlay it on the
3 density coding.

4 CHAIRMAN SAHR: Thank you. You can
5 go ahead and open up the door.

6 MR. AYOTTE: We have no objection to
7 that portion of the transcript being made public.
8 Particularly if it's a super tower, I'm guessing
9 it's obvious.

10 CHAIRMAN SAHR: I think the
11 discussion certainly from a personal informational
12 standpoint about the towers and the competing maps
13 and so on and so forth to me has been very
14 interesting, and it's something that I've had a
15 keen interest in trying to learn about more how
16 these systems work and where towers are and
17 evaluate how we are doing at serving consumers.

18 And certainly Mr. Wegman in our office has
19 gone to some publicly available sites and pulled
20 tower locations and done some mapping as well. So
21 I definitely have a lot of interest in this.

22 But I am wondering especially after hearing
23 this for a couple of days, and I'm not particularly
24 pointing to your testimony at all, but here's a
25 question I had, and I suppose I could have asked it

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1 to Mr. Blundell or the other witness for Western
2 Wireless, but if we are looking at ETC designation,
3 to a certain extent wouldn't the provider be better
4 off coming in saying, well, we don't have that good
5 of network out here, we don't have that many hours
6 but if you give us ETC designation, we'll go out
7 there and put it up and we need the help here and
8 to a certain extent especially since the guidance
9 that we get from the federal level appears to make
10 it pretty clear you have to be careful about
11 prospectively saying you can't have designation
12 because you don't currently have towers up, I mean,
13 we've talked a lot about competing maps.

14 But I guess my question is at what point --
15 you know, what weight should we give to it? It's
16 interesting from -- maybe they feel like they're
17 showing commitment, maybe you feel like they're
18 showing lack of commitment, but at the same time
19 when we're looking at this from the legal federal
20 standard that someone who gets ETC designation gets
21 a chance to go out there and prove it by putting up
22 towers or by serving customers, I mean, what weight
23 do you think we should give the coverage maps
24 whether they're yours or theirs?

25 THE WITNESS: I think you should do

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1 a couple of things. One, use the coverage maps to
2 identify where service is needed. And you probably
3 get calls and visits from consumers saying we need
4 it here, here, here. Then I would look at the
5 coverage the carrier currently provides and the
6 signal quality of that coverage, and I'd say, okay,
7 where are my gaps. And then before the ETC
8 designation, and it's critical it be before, you
9 have them commit to a plan that meets your
10 satisfaction of what best serves the public
11 interest of rural South Dakota consumers, and you
12 strike a bargain.

13 And as long as they keep their part of the
14 bargain, you know, they get their funding. If they
15 don't keep their part of the bargain, then the
16 funding goes away. That's the clearest way, I
17 think, for you to be sure you get what you want for
18 South Dakota consumers.

19 CHAIRMAN SAHR: And I completely
20 agree with every single one of those statements
21 with maybe some very minor caveats, but I think
22 that that is all true but when it comes to the
23 issue of designation, and I'm just talking about
24 designation because you're getting at what I think
25 I was getting at earlier today and yesterday and

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1 looking at certification and seeing how well
2 they're actually doing if they get designation, but
3 when it comes down to the particular question of
4 designation, and forget certification, forget the
5 other consumer things that obviously all three
6 Commissioners keep in mind, forget, you know,
7 having that barometer in place, then is it I
8 shouldn't say relevant but again, what weight,
9 taking out these certification type factors and
10 setting aside the consumer stuff, which does come
11 into public interest, I realize, but what weight
12 whether or not they have a tower in a particular
13 area or not should we give that? Because you're
14 not supposed to base a designation on whether or
15 not they currently have towers.

16 THE WITNESS: Right. The weight I
17 would give, Chairman Sahr, is what commitment have
18 they made to you in the form of a build-out plan.
19 Because if it's not set up up front what the deal
20 is, how do you know what to measure each year at
21 the certification? You have to have some
22 yardstick.

23 And I think the tool that the Joint Board and
24 the FCC have given you is that it's okay to
25 designate somebody who doesn't serve the whole

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1 area. But what they've got to do as a quid pro quo
2 for that designation is to say here's how we are
3 and serve it in a reasonable period of time.

4 And it doesn't define that period of time. I
5 think it gives you some latitude there. But unless
6 you up front agree what it is and how you're going
7 to measure it, how do you know as you reach each
8 anniversary whether they're doing what you expected
9 them to do? I think it's -- you need to know what
10 the expectations are so you can know what to do.
11 And without that -- if you don't have that clear up
12 front, then when you wind up a year or two down the
13 road you might not be where you thought you'd be.

14 But getting that squared up up front, I think,
15 is essential to create I think what you're trying
16 to do.

17 CHAIRMAN SAHR: And I appreciate
18 your input, and I think I can see where you're
19 coming from on that. Do you have a copy of the
20 Joint Board Decision that we're referring to? It's
21 the February 27, 2004 Decision.

22 THE WITNESS: That is the one I
23 don't have with me. I have the two FCC Decisions,
24 and I was hunting before I came up for my -- I've
25 got it and it's well worn, but if someone could

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1 lend me one.

2 CHAIRMAN SAHR: You might be able to
3 answer this off the top of your head if you're
4 familiar with the paragraphs or what they said. On
5 page 9, paragraph 20 it states after the
6 introductory clause to the first sentence, "The
7 Commission has determined that this does not
8 require a competitive carrier to actually provide
9 the supported services throughout the designated
10 service area before designation as an ETC."

11 And certainly the next sentence is instructive
12 and the last sentence of that paragraph and pretty
13 much everything in between. Is that what we're
14 talking about right now, the question of
15 prospective and prerequisite versus what may happen
16 in the future?

17 THE WITNESS: Well, here's how I see
18 what changed. The South Dakota declaratory ruling
19 said you couldn't say you had to serve everybody
20 before you to get ETC status. They concluded that
21 would not be a barrier to entry, but they probably
22 went too far in the other direction and said you
23 have to show capability and commitment. Okay.
24 That was the standard.

25 I think what the Joint Board and FCC did was

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1 toughen up that standard. Okay, you have to have
2 capability, you have to have commitment, and you
3 have to have a plan. You have to have a measurable
4 plan. And it's like running any business. When
5 you give someone a job to do you set expectations
6 to do and I'm going to measure you to these
7 expectations.

8 And we're talking about a lot of money here.
9 We're talking in this case 20 million a year or
10 higher. And, you know, that could do a lot of good
11 for South Dakota consumers if you set in place,
12 boom, boom, boom, boom. But if there's not a clear
13 commitment up front, who knows what's going to
14 happen. You know, my testimony there's already
15 been \$10 million spent somewhere, but it's not
16 showing up in rural South Dakota.

17 CHAIRMAN SAHR: Well, and -- I'm
18 sure someone might disagree with that. But I
19 will -- and we did certify that it was being spent
20 in South Dakota so I hope we were correct when we
21 said that.

22 THE WITNESS: Well, I said rural
23 South Dakota. In other words, I didn't see any new
24 towers come in in areas where I know that customers
25 were asking for, you know, good cellular coverage.

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1 CHAIRMAN SAHR: Well, I think that's
2 always a very good question, but I think if you
3 look at the discussion of what the money has to be
4 spent upon, it is not just new towers. And
5 certainly I don't want to argue those semantics.
6 You know the law.

7 THE WITNESS: I understand that,
8 sir.

9 CHAIRMAN SAHR: I was just thinking
10 of a question. Give me just a second here. This
11 might be a bit of a softball Mr. Blundell wishes he
12 would have gotten yesterday, but I'm interested in
13 getting your input on this. You know, you talk
14 about the plan and focus primarily on commitment to
15 build-outs.

16 We are in a particular time frame where we
17 have Decisions that are very recent, and we're not
18 in a situation where there is a lot of guidance on
19 what may be expected out of the FCC Decision or out
20 of the Joint Board's recommendations. And is there
21 anything other than saying we should have a plan in
22 place that you would look to as far as beyond this
23 build-out plan and those type of commitments, is
24 there anything else you would look to as something
25 this Commission, meaning this Commission, should

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1 use its guidance to figure out where this -- how
2 this gray area's going to shake out?

3 THE WITNESS: I think there's one
4 other thing you've got to keep in focus, and that
5 is every consumer everywhere in South Dakota ought
6 to have, you know, at least one connection to the
7 network.

8 The risk that I see, and it's what makes your
9 job so difficult, is if indeed you are dealing with
10 a constraint problem, there's not enough money to
11 support everybody so you have to make the best
12 decision you can, the best judgment for
13 South Dakota consumers. If an area is so high-cost
14 that it can't support two -- and here's what I mean
15 by that.

16 If you take the amount of money you've got
17 going into an area and it gets split between two
18 carriers -- and there was some discussion earlier
19 about, you know, there's a lot of fixed costs on a
20 network. If you dilute the support so nobody can
21 serve the whole area anymore, then I think that
22 creates a serious public interest problem, probably
23 for the most rural of the consumers, the ones that
24 live way at the end of the road.

25 You know what I mean. That's what universal

1 service is about. And those are also the customers
2 who probably also are clamoring for the wireless as
3 well. And so you've got a judgment to make. In
4 what areas does it make sense to have both a
5 wireline or a -- or one or two or however you want
6 to look at it.

7 And where it does and where you're going to
8 take some of that budget of support you've got and
9 put it there, make sure you get the best bang for
10 the buck.

11 CHAIRMAN SAHR: Just to cut it off
12 at zero wireless carriers being designated ETC
13 versus 8? I mean, I can see if we're here with
14 Sprint, Nextel, Verizon coming on down the line.
15 Doesn't at that point your dilution argument
16 perhaps get stronger if you can show as a pattern
17 that is what is, in fact, going on across the
18 country?

19 THE WITNESS: Yeah. And what you
20 just mentioned brings up another thing. If
21 economically you can only support one wireline and
22 one wireless, who should be the wireless, who
23 should be the wireline?

24 But looking on the wireless side in this case
25 is a good example. You've already got another

1 carrier, RCC, that has applied for ETC status.
2 What are they willing to commit to? What's their
3 proposition in return for funding? Verizon?

4 Clearly we know, and this is the signal that
5 came out, that the fund will not grow indefinitely
6 so it becomes how do you find that balance point.
7 And it's not an easy process. I don't envy the job
8 you have.

9 CHAIRMAN SAHR: If our consumers
10 want this technology, which I think clearly they
11 do, if we follow your -- and I'll paraphrase and
12 it's probably very unfair to do this but if we draw
13 the line in the sand here, aren't we just hurting
14 our people?

15 I mean, we've heard testimony 17 new towers
16 could be at jeopardy and don't we have to consider
17 the direct effect on South Dakota consumers and
18 balance that against while certainly ominous and
19 perhaps even looming effect that the fund may have
20 if things do, in fact, get out of hand, but also
21 realizing that may or may not happen, don't we have
22 to balance those two considerations?

23 THE WITNESS: Well, if I were
24 looking at spending \$20 million and 17 towers was
25 all I was going to get for it, I'm not sure I would

1 call that a good value proposition.

2 The other thing you have to keep in mind, and
3 it's getting a lot of play lately, is broadband
4 service. And Commissioner Adelstein had a comment
5 in one of his recent speeches where he said, you
6 know, regulators may be forced to make a choice
7 that Congress never envisioned and that's do we
8 drive wireless service out farther or do we drive
9 broadband service out farther.

10 COMMISSIONER BURG: Or we can do
11 both in the same system.

12 THE WITNESS: Maybe you can do both,
13 but there might be some areas in the most rural and
14 highest cost parts of South Dakota where you've got
15 a tough call to make.

16 CHAIRMAN SAHR: Who should choose
17 the technology, the Commission or the federal
18 Commission or the State Commission, or should the
19 consumers choose the technology that they want?

20 THE WITNESS: I think ultimately
21 consumers choose the technology they want. That's
22 what a competitive market's about. And we do have
23 multiple technologies working in South Dakota.
24 You've got landline telephone. You've got I
25 presume some cable companies that are getting in.

1 VOIP if it's not here is probably just over the
2 horizon. Wireless as we know it, WIFY, WIMAX. I
3 mean, this is a very exciting time, and it's a
4 scary time too.

5 CHAIRMAN SAHR: Would it surprise
6 you if I would echo -- I should rephrase that.
7 Strike that.

8 I'll echo Commissioner Burg's comment about --
9 and my apologies if I misstate your comment, but
10 the individual consumer, I think would like to
11 have -- and I think in most parts of the state they
12 already have this -- topnotch wireline service plus
13 topnotch wireless service.

14 THE WITNESS: Right.

15 CHAIRMAN SAHR: If we can do that
16 and if ETC designation can help us do that, why
17 should we not pursue that type of public policy?

18 THE WITNESS: You know, you can do
19 it in the areas where the people are clustered
20 together. That's where the cost is low for both
21 technologies. The farther out you go -- and the
22 same, you know, geometric growth in cost occurs in
23 growth technologies.

24 At some point if you are indeed constrained in
25 terms of the amount of money you have to support,

1 you're going to have to make a choice. You might
2 not be able to have everything to everybody.

3 I think the thing you need to keep in mind,
4 though, is everybody has to have at least one
5 provider that can get to everybody, or else I think
6 if people start falling off the network, then
7 that's going to be a real problem.

8 CHAIRMAN SAHR: And then looking at
9 the Virginia Cellular case, do you have a copy of
10 that?

11 THE WITNESS: I do.

12 CHAIRMAN SAHR: Again, you may not
13 even need to reference it. I'm going to ask you
14 about a phrase from that case that you're probably
15 intimately familiar with.

16 Paragraph 4, paragraph 28 and probably in
17 other spots of the opinion they talk about the
18 ETC's ability to provide the supported services
19 throughout the designated service area within a
20 reasonable time frame.

21 THE WITNESS: Right.

22 CHAIRMAN SAHR: And I was trying to
23 follow kind of the semantics when you were
24 discussing this with Western Wireless's counsel,
25 but you were kind of making the -- we were getting

1 into some semantics about prospective designation
2 or what's going to happen prospectively.

3 How do you think a Commission should interpret
4 that within a reasonable time frame? Because
5 clearly if the law of the land is going to be --
6 whether we agree or disagree, is going to be you
7 can't say, no, you can't have service simply
8 because you don't serve it now, then it certainly
9 pushes or certainly ups the anti on, well, when is
10 a reasonable expectation for a provider to be out
11 there and offering a product that meets the
12 expectations of universal service.

13 And I'll give the opportunity for you to
14 comment on that phrase and how you think it should
15 work and to not -- if you can fit it into the
16 designation part of this, great. If not, I'm
17 certainly interested in terms of the certification
18 process.

19 THE WITNESS: Well, I think the
20 reasonable time frame is something that ought to be
21 decided at the designation point because, as I said
22 before, how do you know what to measure annually at
23 the certification? How long -- I think that's
24 going to depend on a lot of factors, how much area
25 is not served, what is it going to cost, what

1 amount of support is available.

2 I think one of the problems we have as, you
3 know, an industry and the public policy community
4 is we're currently stuck that somebody either gets
5 exactly what the wireline gets or they don't get
6 anything. And, you know, maybe we'll get to a
7 point where as somebody builds out, they get
8 support for what they have built.

9 That was how the wireline industry built its
10 network. It didn't get the support up front. As
11 it invested -- in other words, as it demonstrated
12 commitment by building the plan, after it was built
13 then the support came. And part of our dilemma
14 here is the rules we're dealing with, and these are
15 federal rules that you probably can have some input
16 as the FCC thinks its way through them.

17 But, you know, the fact that somebody who
18 might only be serving the downtown area and says,
19 you know, I really want to serve out in this area
20 on day one they get support if that's what they do.
21 And if they don't do anything more, then they've
22 got more than they need. So I would say it's a
23 budgeting problem, probably not unlike a lot of
24 budgeting problems that the South Dakota government
25 faces.

1 We've got a lot of things that people want us
2 to do. We've got a finite amount of money to do it
3 with. And you find the best balance. If doing it
4 in a year would be too much, maybe two or three and
5 then maybe if you get to four and five, well,
6 that's too long and it's a question of priorities
7 and not unlike I think a lot of just tough
8 decisions that government officials have to make.

9 CHAIRMAN SAHR: Then I asked
10 Mr. Wood this question, and I'll ask it of you.
11 What factors do you think we should consider in the
12 certification process?

13 THE WITNESS: Whether they've met
14 the commitment that they made at the get-go.

15 CHAIRMAN SAHR: But isn't it based
16 on whether or not they're meeting --

17 THE WITNESS: Okay.

18 CHAIRMAN SAHR: Give me some slack
19 if I don't state the right term of art, but isn't
20 it based on reasonable request for service? I
21 mean, if they're getting all the requests from a
22 certain town and it's not within the build-out area
23 they're promised, shouldn't they just blindly go
24 down the road and say we're going to stick to our
25 plan because the Commission has said we have to, or

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1 should they be able to shift and adjust to those
2 sort of demands?
3 Some days you're in Ipswich, South Dakota and
4 your cell phone works, and some days it doesn't.
5 And especially in a dynamic industry where
6 enhancements are made, adjustments are made. We
7 worked on one of these sites you'll see they're
8 proposing to put up a tower in Arlington,
9 South Dakota. There's three sites right around
10 there, and our office worked for many weeks trying
11 to work with Western Wireless and Verizon to see if
12 they could change the tower dynamics and pick up
13 that area.

14 So I guess the question is we're putting in
15 these plans, and do we not need a little bit of
16 flexibility and do we not need to analyze the real
17 question, are you serving the customers in a way
18 that's appropriate and spending the money wisely to
19 do that versus just saying you're going to stick to
20 this plan like some sort of Soviet system or
21 whatever, we're going to stick to putting up these
22 towers here and no matter what happens we're going
23 to do that even if the technology will improve?

24 THE WITNESS: Here's how I think you
25 might want to look at it. You know what's served.

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1 You know what's not. And you ought to be able to
2 figure out what it's going to take to achieve
3 service throughout the territory. And maybe you
4 need 20 towers and you negotiate that it's going to
5 be four years. So that's five towers a year. And
6 you set your initial plan, and as time goes on you
7 say rather than here, we have more demand over
8 here.

9 Okay, but that counts towards maybe the five
10 in that year so that you still are on the pace.
11 There's a certain amount of money that comes with a
12 designation and an expectation that that will be
13 spent for the purposes it was intended, which is to
14 get the facilities out there. If you begin -- this
15 is --

16 CHAIRMAN SAHR: Sorry to interrupt,
17 but are you saying we should designate specific
18 sites, or we should designate numbers? What would
19 your targets be? Would they be site-specific or
20 number-specific?

21 THE WITNESS: I think initially
22 number-specific. I was thinking of, you know,
23 Steven Covey's principle, you begin with the end in
24 mind, you know where you want to get to, and you
25 set a reasonable path to get there and probably the

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1 first year or so -- because I think your consumers
2 are going to wonder when am I going to get service.
3 And maybe a year planning horizon, beyond that
4 it's less -- but, obviously, if there's a good
5 reason to change the plan, well, then somebody
6 could come to you and say, here, we changed it and
7 here's why and you look at that and go that makes
8 sense.

9 CHAIRMAN SAHR: Do you know, have
10 you analyzed and based on your maps, your
11 understanding of their system, have you analyzed
12 how many towers it would take to build out a system
13 that would be, in your mind, serving the consumers
14 of South Dakota in a way that would be anticipated
15 by the Universal Service Fund requirements for ETC
16 designated areas?

17 THE WITNESS: I have not.

18 MR. AYOTTE: Commissioner Sahr, I
19 was just wondering if you could clarify if your
20 question related specifically to Western Wireless
21 in the requested areas or whether you were
22 speaking --

23 CHAIRMAN SAHR: It would be related
24 to Western Wireless and that sort of analysis.

25 THE WITNESS: I think the way you

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1 ought to do it -- I certainly am not the one you
2 would want to hire to do that, but what you need to
3 set is here are our expectations, here's the level
4 of service we expect people to receive. And you
5 come to us with your plan to do this, and it would
6 be probably a negotiating type process. But that
7 would have to occur before the designation.
8 Otherwise, as I have said before, you don't know
9 what you're measuring.

10 CHAIRMAN SAHR: Well, I think you
11 still could review it at the certification process.
12 I think what you have is a harder time measuring --
13 you'd have a harder time looking at benchmarks
14 other than probably the most important benchmark,
15 which is are the consumers happy with the results.

16 THE WITNESS: Absolutely.

17 CHAIRMAN SAHR: And if they're happy
18 with the results without necessarily having, you
19 know, every single site mapped out and planned out
20 for the next five years, I think that's really from
21 a policy standpoint and not too far from a legal
22 requirement standpoint what we're supposed to be
23 looking at.

24 Let me just check and see if I have any other
25 questions.

1 (Pause)
 2 CHAIRMAN SAHR: That's all I have.
 3 Thank you very much. I appreciate the input.
 4 THE WITNESS: Thank you,
 5 Mr. Chairman.
 6 (Discussion off the record)
 7 MS. AILTS WIEST: Commissioner
 8 Hanson.
 9 VICE CHAIR HANSON: Thank you.
 10 Mr. Brown, you made some interesting statements in
 11 answering questions that were asked of you. There
 12 was some discussion pertaining to examples of how
 13 areas could be built out, so to speak, in order to
 14 provide better service to citizens who were
 15 having -- consumers who were having challenges.
 16 One of the examples was an antenna on a house,
 17 and you had stated that's not what citizens want.
 18 Citizens want mobility, the opportunity to -- I
 19 believe you said to have a handheld device that
 20 they can move around with.
 21 There were also some other statements you mad
 22 about people are clamoring for wireless today and
 23 that was in discussion of rural South Dakota. Do
 24 you mean to argue that we need to expand wireless
 25 in South Dakota?

1 THE WITNESS: I think -- well, we
 2 have, you know -- before I came up here I spent a
 3 Saturday morning going through Google. I went
 4 through all the South Dakota newspapers because I
 5 wanted to get a feel for, you know, what's going on
 6 here, what consumers are saying.
 7 And I'm getting the sense that consumers in
 8 some of the more remote areas want wireless
 9 service. I think there are resources that in the
 10 way of high-cost support that could be channeled to
 11 satisfy some of those needs, subject to the type of
 12 balancing that I talked about.
 13 I think your first and foremost goal ought to
 14 be to make sure everybody stays connected to the
 15 network, that in every part of South Dakota someone
 16 is there to connect the customer to the network.
 17 That's going to take a certain amount of funding.
 18 Then to the extent that you have additional
 19 resources that you can use to begin to satisfy some
 20 of the pen-up demand that might exist. In more
 21 rural areas where just the normal functioning of
 22 the marketplace is not a viable venture, but if we
 23 put some universal service money, we could get it
 24 out to there.
 25 And there's no fixed answer. I think it's a

1 balancing process, you know, beginning with
 2 everybody's got to be connected, and once we got
 3 that, if we've got additional resources, how can we
 4 use those to get the best value, the best services
 5 to South Dakota consumers would be how I would
 6 visualize it.
 7 VICE CHAIR HANSON: Let me ask you
 8 this then. In your statements you said that you
 9 believe there were multiple providers in
 10 South Dakota and you said, yes. And you also said
 11 that there's competition throughout South Dakota
 12 today. And yet we do have underserved areas. We
 13 do have areas where from the standpoint of saying
 14 it's underserved people do not have the ability to
 15 have wireless in some parts of the state.
 16 THE WITNESS: Right.
 17 VICE CHAIR HANSON: So how do we
 18 expand to that area?
 19 THE WITNESS: By deploying the
 20 resources that you have in the most prudent way to
 21 get the best service to the most people. And I
 22 understand that's a 50,000 foot answer. And, you
 23 know, wherever there's big clusters of people and
 24 the costs are low you've got lots of -- lots of
 25 people want the low hanging fruit. It's the one I

1 described earlier. That's way out at the end of
 2 the road that's always going to be the toughest.
 3 VICE CHAIR HANSON: Your direct
 4 testimony I think you called it cream skimming,
 5 something of that nature.
 6 THE WITNESS: Well, it's cream
 7 skimming if you only serve the low hanging fruit
 8 but get money as if you were serving the guy out at
 9 the end of the rope. I call that cream skimming,
 10 if you never venture out there. You just stay at
 11 the low cost footprint but you get money as if you
 12 were serving the high-cost.
 13 VICE CHAIR HANSON: You heard me ask
 14 the previous witness a question because of
 15 Mr. Ayotte's opening statement pertaining to
 16 balancing the benefits versus the harm. And I'm
 17 going to ask you the question I asked them. As
 18 much as you'd like to tell me the harm, I'll ask
 19 you to tell me what are the benefits of providing
 20 Universal Service Funds to Western Wireless?
 21 THE WITNESS: If you can keep your
 22 objective of everybody connected and you've got
 23 additional resources that can be deployed so that
 24 you achieve some defined public good of an area
 25 that isn't being served, if you can find that

1 balance, then that might be in the public interest.
2 But that would take some commitment to a plan, as I
3 was discussing with Chairman Sahr. And I haven't
4 heard that this week.

5 VICE CHAIR HANSON: Do you believe
6 that Universal Service Funds should be -- the
7 requirements for the expenditure of USF should be
8 consistent between wireless and wireline?

9 THE WITNESS: The requirements?

10 VICE CHAIR HANSON: Yes.

11 THE WITNESS: That they be --

12 VICE CHAIR HANSON: Believe it or
13 not, you and Mr. Wood differed on some positions
14 during your testimony.

15 THE WITNESS: Really?

16 VICE CHAIR HANSON: And it seemed
17 that the two of you disagreed on that particular
18 point, on the consistency of how it should be
19 spent, that he believed that you were imposing
20 certain requirements on wireless that were not
21 imposed on wireline.

22 THE WITNESS: I certainly --

23 VICE CHAIR HANSON: Such as new
24 capital assets.

25 THE WITNESS: Okay. Okay. In terms

1 of taking the money and having to put it into
2 expanding? Here's how I look at that,
3 Commissioner. If you don't have a car, you've
4 first got to buy the car. Once you bought the car,
5 you've got to make the payments on the car.

6 So if you are in a low cost footprint and you
7 want ETC status for a large area, the first thing
8 you've got to do is the first place you put that
9 money is in building your facilities out into that
10 area.

11 Once you have built them out into that area,
12 then the funds get used to keeping up the payments,
13 if you will, on that. The reason that any area
14 gets the support it does today is because the
15 incumbent carrier made the investment well before
16 it got any support but with the understanding that
17 if you make that investment you will get support to
18 keep the rate at an affordable level, okay?

19 So the incumbent has essentially built out and
20 the amount of support is set because of what it
21 costs them to maintain that footprint which serves
22 the whole area.

23 If somebody wants to -- and under the current
24 rules -- and I think this is one of the problems,
25 that it's the equal support per line. And I hope

1 the FCC fixes that. And in the dissent that
2 several of the Joint Board members filed they said
3 this is the key, we've got to get off of that
4 concept because what you're doing is you're paying
5 somebody as though they were serving this whole
6 area when they might start out serving this.

7 And if they're going to justify getting that
8 much support, they better take the money so they do
9 build out to serve that area. Does that make
10 sense?

11 VICE CHAIR HANSON: That wasn't
12 exactly what I asked, but that's fine. Answers
13 seldom are exactly what you request around here
14 anyway.

15 I asked a question of Mr. Wood, and I'll give
16 you an opportunity to -- it appears as a softball
17 so we'll see if you can hit it out of the park, but
18 I have a follow-up question to it.

19 He stated in his testimony wireline networks
20 are capable of serving only a tiny fraction of the
21 ILEC's actual service area, typically less than
22 5 percent. Would you agree to that?

23 THE WITNESS: No.

24 VICE CHAIR HANSON: Why not? Is
25 there a percentage that you would think would be

1 more accurate?

2 THE WITNESS: Well, the wireline
3 will go in that area wherever somebody orders it.
4 And the wireline gives you things that the wireless
5 network doesn't. It gives you broadband
6 capability, it gives you a lot of other things.
7 The benefit that the Western Wireless -- both
8 Mr. Blundell and Mr. Wood have said is mobility.
9 That's their big thing. That's why people for the
10 most part want the wireless is to be mobile.

11 So, you know, to say that, you know, if you
12 take the dots where people have ordered landlines
13 and you look at that area and you say how much is
14 it, well, no matter whether someone says I want it
15 here, it will be there in the landline.

16 In the wireless if mobility is to be a factor
17 and a value, then you've got to have the signal
18 coverage. You're also talking a totally different
19 technology. You know, one is a broadcast over an
20 area. The other is a wire.

21 VICE CHAIR HANSON: Is there a
22 percentage that you would be comfortable using?

23 THE WITNESS: 100 percent.

24 VICE CHAIR HANSON: All right. I
25 didn't expect you to use that one. Wouldn't you

1 agree, though, that wireless has the capability
2 certainly of greater coverage than wireline, more
3 extensive coverage than wireline?

4 THE WITNESS: Well, it's the
5 mobility component, and that's why people buy it.
6 I have both and I use both for different purposes
7 and I value both.

8 VICE CHAIR HANSON: We spoke earlier
9 about -- I'm not sure which witness it was. It
10 might have been Mr. Wood I believe brought it up.
11 He was talking about daughters stranded by the side
12 of the road example.

13 THE WITNESS: Yeah.

14 VICE CHAIR HANSON: Having two
15 daughters and a daughter-in-law who are all
16 pregnant right now, that's something that's of
17 concern to me. But I'm not concerned about them
18 being stranded -- the concern, though, for me is
19 not being stranded alongside the road in Pierre,
20 South Dakota or Sioux Falls or Tulare or wherever.
21 It is 14 or 20 miles away from a community
22 somewhere.

23 THE WITNESS: Yeah.

24 VICE CHAIR HANSON: And the ability
25 to call for help and assistance in some way. So

1 doesn't that necessarily mean we have to assist in
2 the build-out, we have to get the -- in order to
3 get the type of coverage that we're talking about
4 since we can't have a plug in on every fence post,
5 don't we need to do something to be able to provide
6 that service?

7 THE WITNESS: I've done a lot of
8 writing on the area of -- in the area of universal
9 service, and one of the things I've kind of thought
10 about or written about is wouldn't it be better if
11 we could get the wireless network where we need it
12 with a rifle rather than a shotgun and give --

13 You know, Western Wireless wants to serve in
14 the Golden West area. And what that means at the
15 get-go is for all 6,000, however many customers are
16 there, they get \$28 and some cents. And then the
17 expectation is that they're going to use that to
18 make sure the roads are --

19 We ought to find a way -- and I don't think we
20 can do it in the context of this proceeding but to
21 say, you know what, Highway 14 from 90 up to 34 and
22 into Pierre where I was driving and I couldn't get
23 cell coverage, who wants to serve that? Give us
24 some bids. What will it cost? And you find an
25 efficient way to get the services that the public

needs. That's competitive.

But the current paradigm we're working with
doesn't allow us to do that. So the next best
thing is to say, you know, let's look at the
resources in terms of universal service funding we
have. Let's look at our priorities, and let's
never forget priority number one, which is
everybody has at least one connection and then
figure out how we get as many other things done as
we can.

And maybe part of the commitment that a
carrier makes is we'll cover all the roads. We're
not going to cover every square inch but, by golly,
we're going to cover the roads. That's a
possibility.

VICE CHAIR HANSON: Isn't the
purpose of the Universal Service Fund, though, to
service the consumer as opposed to the company, the
business?

THE WITNESS: I think at the end of
the day absolutely.

VICE CHAIR HANSON: So if consumers
are paying for Universal Service Funds and they're
paying it through wireless as well as wireline,
shouldn't wireless be able to participate in that?

THE WITNESS: In answer to
Mr. Ayotte, yes. And the question is how do you
maximize the service you get for the limited
funding resources you have?

VICE CHAIR HANSON: So in the
situation where government entities have the
opportunity to look after the health, safety,
security, not only the quality of life, but
specifically health, safety, security of citizenry,
isn't it incumbent upon us to assist that? I mean,
doesn't A and B follow right to C?

THE WITNESS: Well, again, it's a
balancing. If there was enough money to have
everything we wanted, we wouldn't have a problem
and government wouldn't have as tough a job as it
sometimes has of making sure that, you know, we
take, you know, the public's money and we spend the
public's money wisely to get the most benefits,
most services to the most people. It's not easy.

VICE CHAIR HANSON: Do you think
the -- let's see. The Joint Board -- I don't want
to ask the question by giving the answer. Do you
think the Joint Board's recommendations should be
viewed as recommendations or law?

THE WITNESS: I would look at it the

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1 way Commissioner Abernathy put it at the NARUC
2 meeting I was at. She says this is the best
3 thinking of some of the best regulatory minds in
4 the country, and there's nothing to prevent you,
5 the states, from adopting it now.

6 VICE CHAIR HANSON: Thank you.

7 CHAIRMAN SAHR: I have a couple more
8 questions. I keep hearing the phrase something
9 about everyone having one connection and I know you
10 mean that probably more so in the future but
11 doesn't everybody have one connection today?

12 THE WITNESS: Yes. And let's hope
13 we don't lose that.

14 CHAIRMAN SAHR: But you do
15 acknowledge that that one connection is out there.

16 THE WITNESS: Yes.

17 CHAIRMAN SAHR: And thanks to the
18 co-ops and people like them in this room; right?

19 THE WITNESS: Yes.

20 CHAIRMAN SAHR: But there's nothing
21 that you can say that would indicate by extending
22 it into a wireless carrier that it's necessarily
23 going to make the system go bankrupt in and of
24 itself.

25 THE WITNESS: I think if we stayed

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1 on the course we're on, I won't say rubber
2 stamping, but without the real thorough
3 fact-finding that the Joint Board says ought to be
4 done and as I described it today, balancing, you
5 know, of how do you get the most service out of a
6 given amount of resources, I think it was spinning
7 out of control and we're now trying to get back
8 under control and I don't think anybody has all of
9 the answers but I think the Joint Board gave you
10 some tools that will help you navigate that path.

11 CHAIRMAN SAHR: Probably after a day
12 and a half on the stand Mr. Blundell's not going to
13 tell his wife tonight that we're just going to
14 rubber stamp it. So I think we are trying to and I
15 think the Commission in the past has tried to
16 engage in a thorough analysis.

17 Are you familiar with the concept of a line
18 extension fee?

19 THE WITNESS: I am.

20 CHAIRMAN SAHR: Could you explain
21 what that means?

22 THE WITNESS: It differs between
23 companies, and I know the -- like the bell
24 companies have some pretty rigid policies where if
25 you want to go beyond a certain area, you know, you

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1 pay so much. Western Wireless asked on discovery
2 for each of the companies in this proceeding to
3 give their line extension charges.

4 And I'll caveat this by saying my first job in
5 the rate and tariff department in Mountain Bell in
6 1971 was writing the line extension policy. And
7 with that background and reading what they put in I
8 went, wow, I guess that's why a rural company is
9 different because several of them said we want a
10 line, we put it there, that's our job.

11 I forget -- and pardon me. We can go into it,
12 but I think one said we required a deposit and over
13 time we write that deposit down. So it's a very
14 different thing like between what Qwest does today
15 and what the rural co-ops do.

16 CHAIRMAN SAHR: If a line extension
17 fee exists, who pays for that?

18 THE WITNESS: Well --

19 CHAIRMAN SAHR: And I don't mean --
20 obviously the company shares in that and may even,
21 in fact, pay a large amount of it, but the consumer
22 does pay something in that case; is that correct?

23 THE WITNESS: That's my
24 understanding, sir.

25 CHAIRMAN SAHR: And I'm just curious

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1 and there may be many ways to distinguish it but is
2 there some similarities to the comment about people
3 shouldn't have to buy boosters or have analog phone
4 or put antennas up or do these sort of things to
5 get service because you're in a really remote area,
6 isn't this some similarities to the line extension
7 fee, which is an acknowledgment if you get so far
8 out there, that maybe you as the customer have to
9 chip in a little bit to ensure financial viability
10 of the underlying carrier?

11 THE WITNESS: That's part of the
12 balancing job you have to do. If you can't have
13 public money to do everything, then you figure out
14 the next best solution.

15 (Discussion off the record)

16 (Recessed at 5 o'clock p.m.)

17 (Resumed on Thursday, May 6, 2004 at 8:30 a.m.)

18 MS. AILTS WIEST: Mr. Dickens.

19 MR. DICKENS: Thank you.

20 REDIRECT EXAMINATION

21 BY MR. DICKENS:

22 Q Mr. Brown.

23 A Good morning.

24 Q Good morning again. Since yesterday, Mr. Brown, have
25 you had occasion to discover any further corrections

1 that need to be made to your prefiled exhibits?
 2 A Yes, I did. And Mr. Best of the staff brought it to my
 3 attention. On Exhibit GHB 1 I have a West River listed
 4 there, and apparently in the State of South Dakota
 5 there are two West Rivers, one which is listed on the
 6 USAC report and the other as I have subsequently
 7 learned is imbedded in a study area that for USAC
 8 purposes is considered to be in North Dakota.

9 And I now know this, but at the time I put
 10 this report together I did not. So what I
 11 inadvertently pulled was the other West River that was
 12 in the group that has already been designated.

13 Because the other one exchange that's in
 14 South Dakota is part of another study area, there's no
 15 simple way for me to break that out. I'm told by
 16 people familiar with this particular company that, you
 17 know, what I've shown here on West River is a little
 18 over \$400,000 of annual support. That could change
 19 somewhat when we get the right exchange plugged in for
 20 West River.

21 As Mr. Ayotte and I discussed yesterday, this
 22 is an estimate from the USAC. But I wanted the record
 23 to be clear that I had inadvertently picked the wrong
 24 West River.

25 Q Thank you. Mr. Ayotte yesterday asked you about the

1 publicly available ULS data that you had used in
 2 several of your exhibits and in your propagation
 3 analysis, which I believe is on the easel behind me.

4 A Yes.

5 Q And whether it excluded towers that were not at the
 6 edge of the CGSA contour. Can you explain how you
 7 validated the ULS data?

8 A Well, this is in my testimony. I took the actual data
 9 that had been supplied in response to the discovery
 10 request, and actually in the mapping software you can
 11 make two layers. You make that the bottom layer. You
 12 make the top layer the data from the ULS. You put one
 13 on top of another. And you'll see the ones that aren't
 14 in there.

15 And particularly in the areas that are
 16 outlined in black on there, which are the subject study
 17 areas of this proceeding, the correlation was just
 18 about one for one. Maybe there was one tower that was
 19 missing, and that was about it.

20 Q Okay. And later at one point yesterday Mr. Smith was
 21 questioning you about Interveners' Exhibit Confidential
 22 18, and specifically he was asking you about some
 23 towers in the northwest part of the state and maybe
 24 speculating that they showed up behind this legend box.
 25 And I wanted to ask you to talk a little bit about why

1 those towers didn't show up.

2 A I think the ones he was talking about are a little
 3 further east of that legend box, and they do show up in
 4 the ULS data when you ask for the Western Wireless
 5 towers. But they weren't on the data requests. And
 6 then when I went into the -- when I went down a couple
 7 of layers in the ULS database to get the tower height
 8 and the power there was nothing for them in there,
 9 which led me, as I explained to Mr. Smith, to
 10 conclude that they perhaps at one point were planned
 11 but never were constructed. That's my best explanation
 12 for that.

13 Q Several of the Commissioners yesterday asked you your
 14 thoughts on how the Commission should manage the use of
 15 high-cost funds in South Dakota to facilitate the
 16 delivery of urban quality service, and you spent some
 17 time talking about build-out plans and the tool kit
 18 that the Commission had to try to realize its vision.

19 Can you describe -- can you kind of put that
 20 discussion into the public interest context?

21 A Okay. Well, and, of course, the public interest is the
 22 foundation of this whole proceeding. And I at several
 23 times tried to point out that, at least as I view it,
 24 the fundamental public interest requirement is that
 25 everybody have a connection to the network. And that's

1 a goal that it took the industry decades to get.

2 A large amount of universal service supports
 3 that ubiquity of the network and the highest cost parts
 4 of South Dakota and throughout the state. And I think
 5 one of the things that we have to be careful of and it
 6 has to be in the back of the mind as you evaluate is in
 7 the highest cost areas you don't want to dilute the
 8 fund to where you might begin to lose that ubiquity.
 9 If people start falling off the network at the edge, I
 10 think that's something you need to keep in mind.

11 But the key to the public interest test, and
 12 the FCC and the Joint Board, you know, kind of hit this
 13 same note, and we've talked a lot about it in the last
 14 few days, the balancing of benefits and costs.

15 First, you know, and this is an Act
 16 requirement, does the carrier serve throughout the
 17 service area? And I also think that means serve
 18 throughout with an urban quality of service. And then,
 19 you know, once that is satisfied, then there's a test
 20 as to what are going to be the benefits that are going
 21 to come from that and what are going to be the costs?

22 And the costs, of course, are any additional
 23 funding that might be required and then, you know,
 24 costs if -- dilution type costs that I talked about
 25 previously.

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1 But another thing that the Joint Board
2 observed and a number of the Joint Board members have
3 since gone on to comment further on is there may be
4 some parts of the country that are just so high-cost to
5 serve that it doesn't make sense to fund to people to
6 build into those areas.

7 And I think that's another factor that you
8 need to put in this balancing as I tried to describe it
9 yesterday. And it's a difficult process. There are no
10 easy answers to this. I understand that.

11 Q I think at one point yesterday you mentioned,
12 Mr. Brown, a proposal by Billy Jack Gregg?

13 A Yes.

14 Q And I'd like you to explain more who he is and what his
15 proposal is about.

16 A Billy Jack Gregg is the West Virginia consumer
17 advocate. He's a member of the Joint Board and I've
18 known him for many years and he's quite an interesting
19 fellow, a very deep thinker. And he came up with an
20 idea, and I remember he tried it on me at the Joint --
21 or at the NARUC meeting in Denver last summer and then
22 he began to champion this.

23 His plan says pick a number. He had some
24 analytical reasons how he got where he got. But he
25 said anything over \$30 per line per month presumptively

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1 is -- support above that should only go to one ETC.
2 Between \$20 per month and \$30 per month, perhaps if the
3 public interest test can be satisfied, one additional
4 ETC. And below 20 as many as the market would
5 tolerate.

6 It's interesting that that was his idea.
7 I've noticed NASUCA frequently files comments in the
8 proceedings where the FCC has to adjudicate an ETC
9 designation. And I've seen, you know, that hierarchy
10 show up there.

11 And the other thing that Billy Jack has been
12 emphatic on since the Joint Board Decision was
13 released, and I heard him speak just last week, is that
14 the time to make that determination is an area at that
15 point where you begin to worry about the dilution, the
16 time to make that is at the designation point.

17 Q And finally, Mr. Brown, given all of this discussion
18 about the public interest, we focused on it quite a bit
19 yesterday, can you place the application of Western
20 Wireless in perspective, kind of a so-what question?

21 A Well, to begin with, in all but one of the study areas
22 we're talking about here the per line support is in
23 that 20 to \$30 range where Billy Jack said you need to
24 think carefully and, you know, if there is to be one,
25 maybe only one.

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1 The second thing is that as I've tried to
2 illustrate several ways through the propagation
3 analysis, through the proximity analysis, to get full
4 coverage throughout the service area that Western
5 Wireless is requesting is going to take a number of
6 towers and probably a lot more than 17. So that's
7 something that you have to consider.

8 I think it's also important that when Western
9 Wireless's witness was asked a direct question of will
10 you commit to at least those 17 towers and be measured
11 under the standards in the Highland Cellular Order, he
12 could not answer that question in the affirmative. And
13 I think you have to take that into consideration.

14 I think also when you look at the Virginia
15 Cellular, the Highland Cellular, both of them say that
16 the burden of proof of public interest is upon the
17 applicant. And in terms of serving throughout the
18 area, that's one plank, and in terms of the
19 fact-specific balancing of benefits and costs.

20 Because, you know, you're only going to get
21 the benefit if the signal is there. You'll only get
22 the public health and safety benefit if the signal is
23 there. You only get the additional competition if the
24 signal is there. And I just think based upon the
25 record you have before you, you have to deny the

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1 application. They have not met their burden of proof.

2 MR. DICKENS: Thank you, Mr. Brown.

3 MS. AILTS WIEST: Mr. Cremer.

4 MR. CREMER: Thank you.

5 MR. AYOTTE: I'll object. He's
6 testifying on behalf of James Valley, and
7 Mr. Dickens just conducted the redirect.

8 MS. AILTS WIEST: But I believe in
9 this case they are three different parties. They
10 just have the same witness.

11 MR. CREMER: Thank you.

12 MR. AYOTTE: So are they all going
13 to get to conduct redirect of this witness?

14 MS. AILTS WIEST: Yes.

15 MR. AYOTTE: Well, I'll state a
16 continuing objection. Is this more redirect? Is
17 this recross?

18 MS. AILTS WIEST: This would be
19 redirect.

20 MR. AYOTTE: Mr. Dickens just
21 conducted the redirect.

22 MR. COIT: I don't know of anything
23 on the record that specifically said we ever agreed
24 as attorneys that only one of us was going to ask
25 all the questions.

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1 MR. AYOTTE: Well, I never suggested
2 that. Mr. Brown is testifying on behalf of James
3 Valley. He identified that at the beginning of his
4 testimony. That's why Mr. Cremer was not allowed
5 to conduct further direct examination of this
6 witness yesterday.

7 CHAIRMAN SAHR: I would think as
8 long as Mr. Cremer kept to the scope of the
9 cross-examination and didn't engage in direct, then
10 I think we'd be okay proceeding. Because they are
11 making I think a pretty decent argument that he's
12 the witness for each of these parties that are
13 individually here at the table.

14 And, again, as long as -- I think the problem
15 yesterday, and correct me if I'm wrong, Ms. Wiest,
16 was that you were trying to put more direct in
17 beyond what was the prefiled testimony; is that
18 correct?

19 MS. AILTS WIEST: That's correct.

20 CHAIRMAN SAHR: And once you do your
21 cross-examination, then he should have the
22 opportunity too, as well as Mr. Coit, to follow up
23 on those questions that came out in the
24 cross-examination, shouldn't he?

25 MR. AYOTTE: No. Then they're

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1 cross-examining their own witness.

2 MS. AILTS WIEST: No. This is still
3 redirect.

4 CHAIRMAN SAHR: This is redirect.

5 MR. CREMER: Thank you.

6 REDIRECT EXAMINATION

7 BY MR. CREMER:

8 Q Mr. Brown, I want to take you back to your propagation
9 analysis, which is GBH 8 (sic), which is up on the
10 board up here. Can you explain what the gold area
11 represents?

12 A That's what I described in my testimony as urban
13 quality service.

14 Q And what does the gray area represent?

15 A That represents at its periphery, the farthest that a
16 signal could be received by a wireless device.

17 Q What does the white area represent?

18 A Where no signal would be present.

19 Q In the gray area -- well, let's go back to the gold
20 area. Does the gold area represent what we would
21 commonly refer to as five bar service?

22 A Pretty close to that. I think consumers would
23 experience a service like they would in or near a major
24 urban area.

25 Q In the gray area what kind of service would you expect?

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1 A Well, it would degrade, and it would be, you know --
2 you might have calls dropped. You might not be able to
3 get a signal. You might still be in the gray but
4 unable to get a signal. You might be able to get it
5 but not maintain it for long. It would be an inferior
6 quality of service.

7 Q Thank you. Now, Mr. Brown, there was some discussion
8 yesterday about Confidential Exhibit 18 and your GBH 3?

9 A GHB.

10 Q Excuse me. Your Exhibit 3. In both of those or on
11 both of those maps how many towers, Western Wireless
12 towers, appear in the James Valley service area?

13 A On Exhibit 18 there is one, and on GHB 3 there was one.

14 Q Okay. Now you were here when Mr. Blundell testified
15 and described in his Exhibit 1 the number of -- the 17
16 towers that were going to be on the 2004 construction
17 plan; is that correct?

18 A Yes. I was here.

19 Q Was there any new towers to be constructed in the
20 James Valley service area?

21 A No.

22 Q So, Mr. Brown, what benefit would the James Valley
23 customers get from the \$868,000 that Western Wireless
24 seeks in this ETC designation?

25 A None that I'm aware of now.

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1 Q What benefit would there be to other mobile cell phone
2 owners, users, traveling through the James Valley area
3 if another tower is not constructed?

4 A None.

5 MR. CREMER: Thank you. That's all
6 I have.

7 MS. AILTS WIEST: Mr. Coit?

8 MR. COIT: Nothing.

9 MS. ROGERS: Rolayne, could I ask a
10 couple of questions, please.

11 MS. AILTS WIEST: Well, no. You
12 guys are co-counsel.

13 MS. ROGERS: That's fine.

14 MS. AILTS WIEST: Mr. Ayotte, do you
15 have any cross?

16 MR. AYOTTE: Just a few. Thank you.

17 CHAIRMAN SAHR: Mr. Ayotte, excuse
18 me. I have just a couple of quick questions.

19 MS. AILTS WIEST: I was going to get
20 to you guys.

21 CHAIRMAN SAHR: That's fine. Why
22 don't you go ahead. I didn't know if he was
23 going --

24 MS. AILTS WIEST: I just assumed
25 we'd go to them and everybody else.

1 CHAIRMAN SAHR: That's fine. That
2 sounds good.
3 MS. AILTS WIEST: Go ahead.
4 MR. AYOTTE: Thank you.
5 RECROSS-EXAMINATION
6 BY MR. AYOTTE:
7 Q Mr. Brown, with respect to your clarifying remarks this
8 morning relative to GHB 1 --
9 A Yes.
10 Q -- and West River, you haven't changed any of the
11 numbers on that exhibit; correct?
12 A Right. And as I explained to Mr. Dickens --
13 Q It's still an estimate of the USAC projections?
14 A That plus we don't have enough data to be able to say
15 exactly what the right number is so, you know, it is an
16 estimate. You and I discussed that yesterday and the
17 error was inadvertent but I wanted the record to be
18 clear.
19 Q Thank you. With respect to your remarks, comments,
20 based on this Billy Jack Gregg fellow, his idea, the
21 \$30 per line presumptively and that deal, his idea
22 hasn't been adopted by any State Commission, has it,
23 that you're aware of?
24 A Not that I'm aware of, no, sir.
25 Q And it's not been adopted by the FCC?

1 A No.
2 Q And it's not even recommended by the Joint Board's most
3 recent Recommended Decision.
4 A I believe that in the Joint Board Recommended Decision
5 they note his idea, and there is language to the effect
6 that the Commission might want to look at establishing
7 some kind of benchmarks that might help states to think
8 this through.
9 Q Okay. But other than it being noted in the Recommended
10 Decision, it's not a part of the Joint Board's
11 recommendation for adoption?
12 A No, sir.
13 Q You had some questions this morning relative to
14 Confidential Exhibit Interveners' 18, and just so that
15 I understand it correctly, the towers that you're
16 showing on this map, you did not include the 17
17 additional towers that were identified by Western
18 Wireless; correct?
19 A No. I did not have the latitude and longitude
20 coordinates to do that.
21 Q Right. And, likewise, Confidential Exhibit
22 Intervener 18, that just shows tower locations, it
23 doesn't show any signal coverage?
24 A No, sir.
25 Q And with respect to your questions on the re-redirect

1 by Mr. Cremer this morning on Exhibit GHB 8, this
2 signal coverage document that you prepared, you didn't
3 field test any of the results on this, did you?
4 A Only on my drive from Rapid City, but the record should
5 be clear I use Verizon as my wireless provider. So,
6 no, I did not field test the state.
7 Q And in your descriptions and explanations in response
8 to Mr. Cremer regarding the gray areas and the yellow
9 areas, again so that it's clear, the true actual
10 service that a customer might experience in those areas
11 would be affected by where the phone is located.
12 A Yes.
13 Q Other environmental factors?
14 A Yes.
15 Q Natural obstacles such as foliage and terrain.
16 A Yes.
17 Q Or the man-made obstacles such as buildings and the
18 like?
19 A And the person-made obstacles.
20 Q Person-made.
21 MR. AYOTTE: Thank you, Mr. Brown.
22 MS. AILTS WIEST: Mr. Smith, do you
23 have any questions?
24 MR. SMITH: I do not.
25 MS. AILTS WIEST: Commissioners?

1 COMMISSIONER BURG: That brings up a
2 question to me. When you said you were using a
3 Verizon phone, can you get a roaming signal on
4 Western Wireless?
5 THE WITNESS: I do not know that.
6 Even if I could, I had trouble holding the signal
7 on the drive up here.
8 COMMISSIONER BURG: Something else
9 occurred to me last night. Can a wireline company
10 receive more than one USF support payment for a
11 single address?
12 THE WITNESS: Yes.
13 COMMISSIONER BURG: How many? Is
14 there a limit?
15 THE WITNESS: Let me qualify that.
16 That's an interesting question because the way a
17 wireline company gets its support is it submits a
18 cost study to NECA, the National Exchange Carrier
19 Association. They do the math on how that cost
20 compares to the nationwide average, and if their
21 cost is above a certain benchmark -- which I think
22 it was initially frozen at \$240 a line, I think
23 it's now up to 280 or something like that -- they
24 receive support for the amount of cost above that
25 by a formula that's in the FCC rules. They get the

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1 support for the whole study area. They do not get
2 per line support.

3 Now a mathematical exercise occurs. They
4 divide that support for the whole area by the
5 number of lines in that area, and that is the
6 support that becomes portable to wireless carriers
7 like Western Wireless. And they do get support on
8 a per line basis because it's tied back to the
9 incumbent.

10 COMMISSIONER BURG: But you're
11 getting a little ahead. But how many payments
12 could they get at a single address?

13 THE WITNESS: Well, they get one
14 payment for the whole study area.

15 COMMISSIONER BURG: One payment for
16 the entire study area. And then that determines
17 what the payment would be to the wireless ETC?

18 THE WITNESS: Correct.

19 COMMISSIONER BURG: Now can the
20 wireless ETC get more than one payment per address?

21 THE WITNESS: Under the current
22 rules, yes.

23 COMMISSIONER BURG: How many?

24 THE WITNESS: As many handsets as
25 that customer has.

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1 COMMISSIONER BURG: So they could
2 virtually get way more money than the wireline
3 company for the same single address?

4 THE WITNESS: Well, again, because
5 of the way the math works -- now if you go the next
6 step -- let's just assume that the FCC adopts the
7 primary line principle. You know, I think all
8 carriers don't like it, but, you know, the Joint
9 Board said they didn't like it either but it's the
10 best they could think of.

11 Let's say we go to that. Then you do have a
12 situation. I'm speculating, but under what has
13 been proposed they say there's only one, you know,
14 allocation of support to each address. And
15 presumably the customer would pick. If they have
16 both wireless phone and a wireline phone, they
17 would have to choose which got the support.
18 Presumably people would compete for the right to
19 get the support.

20 And one of the problems with that, of course,
21 is that then, you know, nobody knows exactly how
22 much support they're going to get because it
23 depends upon things in the marketplace. And so
24 there are reasons that a lot of people would say
25 don't go there but, you know, they're looking

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1 for --

2 COMMISSIONER BURG: That's a little
3 beyond what I was looking for. I want to ask it in
4 a different way. So you just told me that a
5 wireline company determines, you know, what their
6 costs are above what the standard set by the FCC.
7 And then they get paid that difference.

8 THE WITNESS: On a study area wide
9 basis?

10 COMMISSIONER BURG: On a study area
11 wide basis.

12 THE WITNESS: Yes.

13 COMMISSIONER BURG: And that's the
14 limit to what they can get.

15 THE WITNESS: Yes.

16 COMMISSIONER BURG: Could a wireless
17 carrier get more than that? In other words, if
18 they got every customer to also buy a wireline
19 phone, I'm saying as a second -- and they also buy
20 a wireline phone and they had multiple handsets
21 within a household, within an address, could they
22 end up with more money than what the wireline did?

23 THE WITNESS: I'm aware of at least
24 one study area happens to be in the state of
25 Washington where there are more wireless lines

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1 reported than wireline lines. And they are indeed
2 getting --

3 COMMISSIONER BURG: But you told me
4 the wireline lines are not dependant on the number
5 of lines, it's dependent on the cost above what
6 that was.

7 THE WITNESS: Right.

8 COMMISSIONER BURG: That transfers
9 into the cost per line, and that's multiplied times
10 the number of handsets for the wireless company; is
11 that correct?

12 THE WITNESS: Right.

13 COMMISSIONER BURG: Am I tracking it
14 right?

15 THE WITNESS: Let me finish the
16 equation. So if you have the per lines computed on
17 the number of lines the wireline has and you then
18 take that per line and multiply it by a number of
19 lines that's greater than the wireline carrier has,
20 then that result will be more total support.

21 COMMISSIONER BURG: There isn't any
22 real limit what that can be in the law?

23 THE WITNESS: Not under the current
24 rules.

25 COMMISSIONER BURG: Let me ask one

1 other thing. I'm impressed with your knowledge of
2 the whole thing. And you were talking about Billy
3 Jack's proposal. Greg Rislov and I, our Commission
4 adviser, were visiting last night, and I was
5 following up on the question I asked you yesterday.
6 What people really want, they want three things to
7 get urban grade service. They want a good
8 wireline, they want wireless, and they want
9 broadband.

10 They don't care how they get it in any
11 estimation. I mean, that's my opinion. They don't
12 care whether it's competitively, but they just want
13 to have those kinds of service.

14 Could you visualize a case where -- that it
15 says that is the standard, there will be one
16 payment, but the standard to get that payment is to
17 offer all three of those services either with one
18 or more providers? Is that a -- give me your
19 opinion on that logic.

20 THE WITNESS: Okay. I know that
21 Chairman Powell has been talking about how can we
22 get more spectrum available in rural areas. I
23 don't track that as closely as I do some of the
24 universal service issues but I'm aware there's
25 dialogue on that and how can we make more spectrum

1 available so people can bundle and package.

2 And under the current, you know, companies'
3 smoke stacks that we have, if you will, and the way
4 spectrum, you know, is made available, you know, in
5 some companies -- and there are some companies and
6 probably some -- in fact, I know because I was
7 talking to one of them the other day, SDTA members
8 that still have their wireless licenses. And so
9 they provide wireless, wireline, broadband.

10 But that's not uniform. Not all wireline
11 companies have wireless licenses. But, you know,
12 as things move forward, I think public policymakers
13 will, you know, hopefully, you know, put into place
14 things that will allow the market to work because
15 what we're all trying to do is satisfy what the
16 consumer wants.

17 And, you know, I think did a pretty good job
18 of describing what they're saying they want.

19 COMMISSIONER BURG: Okay. Thank
20 you.

21 CHAIRMAN SAHR: Mr. Brown, you live
22 in Chandler, Arizona; is that right?

23 THE WITNESS: I live in Chandler,
24 Arizona. I'm in the process of moving to Sedona,
25 Arizona.

1 CHAIRMAN SAHR: Well, Sedona's nice,
2 kind of a pretty spot, some interesting people up
3 there. Chandler is kind of rapidly becoming a
4 suburb of Phoenix or maybe you would even say it
5 has if you're moving out of there.

6 THE WITNESS: That's one of the
7 reasons I'm moving, sir.

8 CHAIRMAN SAHR: Do you know what the
9 largest community that Western Wireless serves with
10 towers that the company itself builds?

11 THE WITNESS: The largest community
12 in South Dakota?

13 CHAIRMAN SAHR: No. In the nation.

14 THE WITNESS: I don't.

15 CHAIRMAN SAHR: In terms of
16 population.

17 THE WITNESS: I don't.

18 CHAIRMAN SAHR: I haven't verified
19 this but I've been told it's Lubbock, Texas and
20 maybe one of those other Texas cities which in
21 South Dakota would be kind of big but in Texas
22 where everything's big, it's kind of small.

23 COMMISSIONER BURG: Or exaggerated.

24 CHAIRMAN SAHR: That message brought
25 to you by the John Kerry campaign. The point that

1 I guess I'm getting at is Western Wireless also
2 serves a lot of small towns and rural areas, do
3 they not?

4 THE WITNESS: Yes, sir.

5 CHAIRMAN SAHR: Just like a wireline
6 company would face, they face a lot of cost
7 challenges bringing state-of-the-art services out
8 to those communities, would you not acknowledge
9 that?

10 THE WITNESS: I'm sure they do.

11 CHAIRMAN SAHR: And we keep talking
12 about this phrase "urban quality." Do you recall
13 from the testimony of Western Wireless, what
14 percentage of the State of South Dakota towers have
15 been upgraded to digital signal?

16 THE WITNESS: It might be all of
17 them. I don't recall a precise number. I know
18 that on some of the exhibits we were looking at
19 where there was the blue and the green it seemed
20 that most of the tower locations had the blue,
21 which I interpreted to be CDMA.

22 CHAIRMAN SAHR: My recollection is
23 the number is 99 percent, and I've also heard all
24 so I think we're in the ballpark there.

25 THE WITNESS: Okay.

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1 CHAIRMAN SAHR: If not all, just
2 about all the towers have been upgraded to digital
3 service. Do you think that that is urban quality
4 as far as I'm only asking -- not the coverage. I'm
5 only asking the signal strength on that particular
6 tower and the type of signal people are receiving.

7 THE WITNESS: Yeah. Right. And
8 whenever you're close to the tower --

9 CHAIRMAN SAHR: That's not the
10 question I asked so please answer the question.

11 THE WITNESS: I didn't understand.
12 Repeat it, please.

13 CHAIRMAN SAHR: Yes, I will, and
14 this isn't a coverage question. That will be the
15 next question. The question is with these towers
16 being upgraded to digital service and that type
17 of -- with your knowledge of towers and with your
18 knowledge of what sort of signal is being offered
19 by Western Wireless off of those 117 or --

20 THE WITNESS: 111.

21 CHAIRMAN SAHR: Whatever we're at
22 today, towers, is that not urban quality or even
23 better than sometimes what's offered in urban
24 quality?

25 THE WITNESS: Okay. And here's

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1 perhaps where I misunderstood your question. If
2 this is the tower and you're standing, you know,
3 very near it, you've got --

4 CHAIRMAN SAHR: Let me rephrase it.
5 If you've got four or five bars, is that not urban
6 quality?

7 THE WITNESS: Yes, sir.

8 CHAIRMAN SAHR: Thank you. Now if
9 we're looking at trying to bring urban quality out
10 to the people in these smaller towns from a public
11 interest policy standpoint, and you can talk
12 about -- well, you've already talked about other
13 factors that weigh against it, but at least on the
14 pro side of things is it not a good thing to use a
15 very lay term but I think an accurate term but it
16 is not a good thing if via this ETC designation
17 this could involve more of these towers being put
18 up which you have acknowledged would bring urban
19 quality type service to these towns?

20 THE WITNESS: Oh, absolutely. And
21 that's what universal service funding going to a
22 wireless carrier ought to do.

23 CHAIRMAN SAHR: Right. And you and
24 I talked a lot yesterday about what you think would
25 be good checks and balances within that so I do

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1 realize you have some thoughts on what would be on
2 the other side of the equation and how we should
3 follow up on that. I do appreciate that.

4 But it also kind of comes to the James Valley
5 question, and I certainly don't know the history of
6 the tower there. It appears to me there's towers,
7 though, that are right outside that service area
8 that very likely could reach into that service
9 area, does it not?

10 THE WITNESS: Well, they do. And I
11 guess GHB 8 is up there. The James Valley outline
12 is there in the northeast quadrant of the state,
13 and you can see, yes, that if you look at the gold
14 areas, some of that radiates into particularly that
15 lower -- and I'm not sure if you're familiar with
16 which one is James Valley on that.

17 CHAIRMAN SAHR: I am.

18 THE WITNESS: Okay. I think that
19 pretty graphically shows you that there's some
20 spill-over and that's just natural. The radio
21 propagation doesn't follow any -- doesn't follow
22 state boundaries as we were discussing yesterday.

23 CHAIRMAN SAHR: And I drive through
24 the area a fair amount on business so I'm not
25 arguing that there's perfect signal everywhere in

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1 the area.

2 THE WITNESS: Right.

3 CHAIRMAN SAHR: But we keep talking
4 about one tower and actually some of the ones I
5 think that are just on the outside reach --

6 THE WITNESS: They provide coverage,
7 no doubt.

8 CHAIRMAN SAHR: If the company --
9 again, focusing kind of on the one tower issue --
10 and I don't know if this is the case in James
11 Valley or not, but if a company takes an analog
12 tower, upgrades it to digital service, is that not
13 under current standards an appropriate use of
14 universal service money?

15 THE WITNESS: I think that's -- you
16 could probably have a debate about that.

17 CHAIRMAN SAHR: Let me rephrase it.
18 And not to put -- I think we've got this in the
19 record already, but the universal service money
20 doesn't just have to be used for new towers, does
21 it?

22 THE WITNESS: No. It's for the
23 provision, maintenance, and upgrading of
24 facilities.

25 CHAIRMAN SAHR: So when you said in

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1 redirect that you made some sort of comment about
2 all of this money that would be flowing into James
3 Valley and it wouldn't mean a thing without getting
4 new towers put up, I mean, it could be used for the
5 provisioning type standards, and that would be a
6 permissible use even without a new tower; is that
7 correct?

8 THE WITNESS: Possibly, yes.

9 CHAIRMAN SAHR: And certainly I
10 think you can tell the three Commissioners would
11 like to see new towers go up as well so I'm not
12 disagreeing with that part, but I just wanted it
13 clear on the record and to the Commission that the
14 money does not necessarily have to be spent
15 directly on new towers.

16 THE WITNESS: Right. Now you would
17 be improving the quality in some areas. Now
18 there's an irony when you convert from analog to
19 digital in that the footprint gets a little
20 smaller, but you can offer other services with the
21 digital.

22 But I think what I've been trying to say in my
23 testimony is if you want to get the signal where it
24 isn't today, you know, the communities that are
25 saying we want to have service, you either have to

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1 put a tower or you have to do something to get a
2 signal there.

3 CHAIRMAN SAHR: And I appreciate
4 that, and I think the overwhelming majority of
5 people in underserved areas are focusing on getting
6 new towers. I mean, that's by far and away the
7 number one context. Again, I didn't mean to be
8 disagreeing with you on that, but I wanted to
9 clarify the universal service angle.

10 And it is a bit of a double whammy when you
11 convert to digital, which I think in general is a
12 good thing from analog and then people move from
13 bag phones to handheld phones, which generally all
14 things being equal if you have decent tower
15 strength, people would rather have the smaller
16 phone. But you do have the signal strength that
17 oftentimes does decrease and may have, in fact,
18 shrunk down coverage maps.

19 I appreciate the comments on that. Thank you.

20 MS. AILTS WIEST: Commissioner
21 Hanson?

22 VICE CHAIR HANSON: No, thank you.

23 MS. AILTS WIEST: Any further

24 redirect?

25 MR. DICKENS: I have, I think, just

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1 one question.

2 REDIRECT EXAMINATION

3 BY MR. DICKENS:

4 Q When Mr. Ayotte was questioning you he asked if you had
5 included the 17 planned cell sites on your coverage
6 map, and you indicated you had not.

7 Are you aware whether the Interveners
8 requested in discovery a listing of the cellular towers
9 that Western Wireless planned to construct within the
10 next two years?

11 A Yes. That was part of our initial discovery request.

12 Q Do you recollect what the response was?

13 A My recollection was that they said that that was not
14 relevant.

15 MR. DICKENS: Thank you.

16 MS. AILTS WIEST: Anything further?

17 MR. CREMER: I have nothing further.

18 MS. AILTS WIEST: Anything further,

19 Mr. Ayotte?

20 MR. AYOTTE: No. Thank you.

21 MS. AILTS WIEST: Thank you.

22 THE WITNESS: Thank you.

23 MS. AILTS WIEST: You may call your

24 next witness.

25 MR. CREMER: Next witness will be

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1 James Groft for James Valley.

2 JAMES GROFT,

3 called as a witness, being first duly sworn in the
4 above cause, testified under oath as follows:

5 DIRECT EXAMINATION

6 BY MR. CREMER:

7 Q Would you state your name, address, and occupation,
8 please.

9 A My name is James Groft. I'm the general manager at
10 James Valley Telephone, Groton, South Dakota. The
11 address there is 235 East First Avenue.

12 Q James did you previously file testimony in this matter?

13 A Yes, I did.

14 MR. CREMER: And, for the record,
15 that would be Interveners' Exhibits 5 and 6 that
16 was previously received.

17 Q James, are you prepared to give a summary of your
18 testimony?

19 A Yes, I am.

20 Q And, James, would it be helpful in providing your
21 summary to be referring to GHB 8, the exhibit on the
22 board there?

23 A Yes, it would.

24 MR. CREMER: With the permission of
25 the Commission, I would ask that you go up to the

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1 board and give your summary. Would that be all
2 right?

3 MS. AILTS WIEST: Go ahead.

4 A In my testimony I spoke about the James Valley territory
5 is basically in this area. And probably the biggest
6 point of my testimony were the fact that in my personal
7 experience I live -- this is the James Valley's
8 Mellette exchange, and I live in the Mellette area.
9 And on a daily basis I drive either one or two ways.
10 Our office is in Groton, and we also have a
11 subsidiary office in Aberdeen so I drive either
12 directly across the Mellette exchange, or I drive
13 through the Mellette exchange through Conde and up to
14 Groton. And I mentioned -- in my testimony I mentioned
15 four different areas where the service coverage is
16 very, very, very, poor with static, dropped calls, or
17 does not work at all. And I also have some other
18 experiences that it was brought up yesterday about wife
19 and kids being stranded. I can share some more on
20 that, which was not in my testimony if you have
21 questions about that.

22 But on a daily basis I drive across the
23 Mellette exchange here, and this is the most common
24 route I drive. And the service there is very, very
25 poor. Frequent dropped calls, frequent static, if it

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1 works at all.

2 Then the other way that I drive I mentioned
3 in my testimony is I drive basically this route here
4 through several of our exchanges. This basically whole
5 route is very poor until you get to the Groton area.

6 Then I also mentioned last summer some of our
7 outside plant personnel did a major pipe project up in
8 the northern parts of our territory and this area is
9 notorious for having no coverage and basically the
10 whole time -- this project took a couple of weeks while
11 our outside plant personnel were there -- they
12 virtually had no coverage. So if we would have had any
13 accident of any kind, they would not have been able to
14 contact emergency personnel because there was no
15 coverage.

16 Then I also mentioned I occasionally drive
17 from Aberdeen to Groton. And there is kind of a dead
18 spot right here at the end of the James Valley service
19 territory, which is adjacent to our Columbia exchange.

20 Q James are you a Western Wireless customer?

21 A Yes, I am. I should mention, I am personally at home
22 family-wise, my wife and I have Western Wireless
23 phones, and for our company we have Western Wireless
24 phones.

25 And I should also mention there's been a lot

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1 of talk yesterday -- the last couple of days about the
2 85/15 question. This Mellette exchange, which
3 virtually in my experience the entire exchange has poor
4 coverage, that has 14 percent of our line in just that
5 one exchange is our second biggest exchange.

6 MR. CREMER: Thank you, James. I
7 would tender him for cross-examination.

8 MS. AILTS WIEST: Mr. Ayotte.

9 MR. AYOTTE: Thank you.

10 CROSS-EXAMINATION

11 BY MR. AYOTTE:

12 Q Good morning, Mr. Groft.

13 A Good morning.

14 Q I'm delighted to hear you're a customer of my client.

15 You are the general manager of James Valley Cooperative
16 Telephone?

17 A Yes.

18 Q And are you authorized to testify here today on behalf
19 of James Valley?

20 A Yes.

21 Q I take it that you're not employed by nor do you have
22 any financial interest in any of the other rural LEC
23 Interveners?

24 A No.

25 Q I take it you're not authorized to testify on behalf of

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1 any of the other rural telephone companies?

2 A No.

3 Q And you're not purporting to represent or testify on
4 behalf of any of the other companies?

5 A No, sir, I'm not.

6 Q Are you familiar with the prefiled direct and
7 surrebuttal testimony of Mr. Strandell and Mr. Houdek
8 in this proceeding?

9 A I have not read it, no.

10 Q Who wrote your prefiled direct and surrebuttal
11 testimony?

12 A I worked on that with Ms. Vanicek.

13 Q Who wrote the first draft?

14 A I worked on it with her and gave her direction on it.

15 Q So she wrote it, and you reviewed it?

16 A Yes. I worked on it with her.

17 Q Did she write it and then you reviewed it, or did you
18 write it and have her review it?

19 A She wrote it, and I reviewed it.

20 Q And I take it you provided to her some of the
21 company-specific information that's referenced in the
22 testimony?

23 A Yes.

24 Q Is it fair to say, Mr. Groft, that your direct
25 testimony really provides some basic company-specific

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1 information to provide the foundation for Ms. Vanicek's
 2 testimony?
 3 A I guess, I don't know -- to me that's a legal question.
 4 Q Well, the factual information in your testimony relates
 5 to the area served by James Valley.
 6 A Yes.
 7 Q And the average local service rates for business and
 8 residential for James Valley?
 9 A Correct.
 10 Q And the 2003 total federal universal service support
 11 for James Valley?
 12 A Yes.
 13 Q And some company-specific revenue and expense
 14 information.
 15 A Yes.
 16 Q And, as a result, you are providing the basis, the
 17 factual basis, to support her testimony.
 18 A I guess, yes, I did provide facts. Beyond that was the
 19 interpretation.
 20 Q Okay. Now you claim that Western Wireless's
 21 designation as a competitive ETC in the James Valley
 22 areas could have, "a potential impact on the amount of
 23 federal universal service support" that James Valley
 24 receives; right?
 25 A Yes.

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1 Q And you reference the Federal State Joint Board
 2 recommendations for that statement.
 3 A Yes.
 4 Q Have you even read the Joint Board's Recommended
 5 Decision that was released on February 27 of 2004?
 6 A Yes. As a matter of fact, I read every page.
 7 Q So you're familiar with it?
 8 A Yes. I'm not an expert, but I did read it.
 9 Q Would you agree that the Joint Board's
 10 recommendation -- I'm not asking you for a legal
 11 opinion. I'll tell you that now.
 12 MR. CREMER: If you do, I would
 13 object.
 14 Q Would you agree with me, Mr. Groat, that the Joint
 15 Board's recommendations have no immediate effect on the
 16 amount of federal universal service support received by
 17 James Valley?
 18 A I guess my interpretation of that would be I'm not an
 19 expert so I don't know what effect it will have.
 20 Q But your testimony suggests that it could have a
 21 potential impact on the amount of federal universal
 22 service.
 23 A Yes. My understanding of it was if they adopted a
 24 primary line, that it could impact the amount of
 25 support we would receive. What I mean to say by I'm

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1 not an expert, that I don't know what effect their
 2 recommendation will have on the FCC.
 3 Q So when you talk about the potential loss of support
 4 you're really referring to the proposed primary line
 5 restriction?
 6 A Yes.
 7 Q And I think you said it earlier, that the key point is
 8 if they adopt the primary line restriction; right?
 9 A Right.
 10 Q And do you understand that any exchange in the funding
 11 mechanisms to limit support to a primary connection --
 12 do you understand that still needs to be considered by
 13 the FCC?
 14 A Yes.
 15 Q And that it may have to go through a rule-making
 16 process of some sort before it's ever implemented?
 17 A Yes.
 18 Q Now your direct testimony which references the Joint
 19 Board's primary line proposal based on the Recommended
 20 Decision which you've read, you don't tell the whole
 21 story about what the Joint Board has recommended, do
 22 you?
 23 A No. I basically just mentioned the primary line.
 24 Q Because the Joint Board's Recommended Decision devotes
 25 an entire section of its report discussing its further

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1 recommendations to the FCC on how to avoid or mitigate
 2 any reductions in the amount of high-cost support
 3 flowing to rural carriers if a primary line proposal
 4 were implemented; right?
 5 A I'll take your word. I read it a long time ago. I
 6 don't remember all the specifics.
 7 Q Do you remember the section entitled, "Maintaining
 8 Sufficient Support For Rural Areas"?
 9 A No. I don't remember it at this time.
 10 Q It appears right after the primary connection proposal.
 11 A Okay.
 12 Q You're not disagreeing with me, are you?
 13 A No.
 14 Q And do you recall the Joint Board's Recommended
 15 Decision also proposing that the FCC consider restating
 16 the total current support amounts paid to a rural
 17 carrier in terms of first lines?
 18 A No. I don't recall that either.
 19 Q Do you recall the Joint Board proposing a second
 20 alternative to the FCC about providing or considering
 21 providing supplemental lump sum payments to rural
 22 carriers to avoid any effect resulting from any
 23 limitation of support from a primary connection
 24 proposal?
 25

MR. CREMER: Excuse me, Mr. Ayotte.

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1 I would object at this point. I don't see the
2 relevancy of what Mr. Groft recalls about the Joint
3 Board Decision. Those are legal matters that could
4 be addressed in briefs.

5 MR. AYOTTE: Well, I suspect we'll
6 fully address them in brief, but this witness has
7 identified that he's read the Joint Board's
8 Recommended Decision. His direct testimony
9 specifically says there will be a potential loss of
10 support.

11 He's testified that that's based upon his
12 review of the Joint Board's Recommended Decision,
13 specifically the primary line connection, and he's
14 also admitted he didn't tell the whole story. So
15 I'm just asking him for his understanding and
16 recollections for the rest of the story.

17 MS. AILTS WIEST: Objection
18 overruled.

19 Q Go back to my question, Mr. Groft. The Joint Board
20 also set forth a second alternative proposal to the FCC
21 relating to supplemental lump sum payments to rural
22 carriers to avoid any effect resulting from any
23 limitation of support from the primary line connection
24 proposal. Do you recall that?

25 A I recall that the lump sum payments were mentioned, but

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1 specifics beyond that, no.

2 Q And a third alternative proposal from the Joint Board
3 in the Recommended Decision was the hold harmless
4 proposal. Do you recall that?

5 A I recall that it was mentioned, but again no more
6 specifics beyond that.

7 Q But you would agree that the Joint Board has made its
8 views clear that if the FCC implements a primary line
9 restriction, that it must adopt some means of
10 preventing or mitigating reductions in the support
11 available to rural carriers?

12 A I guess my recollection is, as I testified, I remember
13 those things but specifics beyond that I don't have an
14 opinion, I guess.

15 Q But you're not disagreeing with me that that's what the
16 Joint Board also recommended?

17 A No.

18 Q And none of those additional Joint Board proposals are
19 discussed or referenced in your testimony. Would you
20 suggest there could be a loss of universal service
21 support to James Valley if Western Wireless were
22 designated?

23 A Correct.

24 Q Correct? Is it fair to say, Mr. Groft, that your point
25 regarding the potential loss of support if Western

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1 Wireless were designated, that that would only be true
2 if the FCC adopts the Joint Board's primary line
3 proposal and the FCC fails to adopt any of the other
4 Joint Board's recommendations designed to prevent or
5 mitigate any reduction in support to rural carriers?

6 A It's fair to say that I don't know the specifics of how
7 those different items you mentioned would work out. I
8 was primarily concerned with the fact that we could
9 lose support.

10 Q And at this point, Mr. Groft, is it fair to say that we
11 really don't know whether, when, or what the FCC might
12 do?

13 A I certainly don't. I'm not an expert.

14 Q Do you know anyone who does know for certain what the
15 FCC might do in response to the Joint Board's
16 Recommended Decision?

17 A No, I don't.

18 Q Now regardless of the outcome of further FCC action on
19 the Joint Board's recommendation, if Western Wireless
20 were designated as an additional ETC in this
21 proceeding, James Valley Telephone Company is in
22 business today; right?

23 A Yes.

24 Q And making a profit?

25 A Yes.

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1 Q And your company will continue to receive the same
2 amount of universal service support if Western is
3 designated; right?

4 A Under the current rules.

5 Q Yes. And James Valley doesn't have any plans to
6 relinquish its ETC designation if Western Wireless is
7 designated, do you?

8 A No.

9 Q Because if you relinquish your ETC status, you'd be
10 simply foregoing your chance to receive universal
11 service support; correct?

12 A Correct.

13 Q You'd still have a Certificate of Authority and an
14 obligation to serve customers under state law; right?

15 A Yes.

16 Q So if Western Wireless is designated as an additional
17 ETC in this proceeding, James Valley's not going to go
18 out of business, are they?

19 A Not under the current rules.

20 Q And I take it you will -- when I say you, I mean James
21 Valley Telephone Company. You'll compete with Western
22 Wireless, won't you?

23 A We don't have -- I would perceive we don't have any
24 choice but to continue to try to stay in business.

25 Q Is it fair to say that you're prepared to compete hard

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- 1 with Western Wireless?
- 2 A Well, we are owned -- we are cooperative owned by
- 3 members, and I would assume they would want us to
- 4 continue to operate their phone company, yes.
- 5 Q And I take it in continuing to operate the phone
- 6 company you'll try to attract new customers?
- 7 A We will try. Very hard in our areas.
- 8 Q And you'll try real hard to retain your existing
- 9 customers, won't you?
- 10 A Yes.
- 11 Q Is it fair to say that if Western Wireless is
- 12 designated as an additional ETC in this proceeding,
- 13 that James Valley will continue to try to reduce its
- 14 expenses and operate more efficiently?
- 15 A Yes.
- 16 Q And James Valley will try to develop new services or
- 17 new revenue streams?
- 18 A Yes.
- 19 Q And you'll try to improve your customer service and
- 20 your responsiveness to attract customers and to remain
- 21 competitive, won't you?
- 22 A Yes.
- 23 Q And you might need to lower your rates or expand your
- 24 local calling areas to respond to competition from
- 25 Western Wireless, maybe?

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- 1 A Maybe.
- 2 Q Are you aware of West River Telecom and their
- 3 recently -- where they recently expanded their local
- 4 calling areas to eliminate long distance fees across
- 5 their 9,750 service miles in South Dakota?
- 6 A I read about it in the Aberdeen paper.
- 7 Q James Valley could consider doing something like that
- 8 maybe?
- 9 A We could. We have not.
- 10 Q Now, unfortunately, your testimony provides some
- 11 criticisms of Western Wireless's coverage, and I have
- 12 to ask you about that. And you reference some of your
- 13 personal experience and indicated that you are a
- 14 Western Wireless subscriber.
- 15 How long have you been a Western Wireless
- 16 subscriber?
- 17 A Probably nine or 10 years.
- 18 Q And with respect to the James Valley Company account,
- 19 about the same time, nine or 10 years?
- 20 A Approximately. I would not be able to give you an
- 21 exact date.
- 22 Q Now have you reported to Western Wireless any of the
- 23 claimed examples of substandard coverage?
- 24 A Yes, we have.
- 25 Q And how was Western Wireless responsive to that?

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- 1 A Not very. It took many, many months to get anything
- 2 figured out. They gave us some different handsets.
- 3 Q Did that help improve the coverage?
- 4 A Eventually. We had some phones that I would say
- 5 virtually gave us no service for many months. We were
- 6 very upset. We thought they could have provided better
- 7 service in a more timely manner.
- 8 Q But that was resolved through the use of different
- 9 handsets?
- 10 A Yes.
- 11 Q Now in your surrebuttal testimony -- yes, in your
- 12 surrebuttal testimony, Interveners' Exhibit 6,
- 13 Mr. Groft, on page 4 you have a direct quote that
- 14 Western Wireless's service, "does not work very well
- 15 and cannot be counted on when needed." Do you see
- 16 that?
- 17 A Which page are you on?
- 18 Q Page 4.
- 19 A Okay.
- 20 Q Lines 4 through 7.
- 21 A Okay.
- 22 Q The service, "does not work very well and cannot be
- 23 counted on when needed," and you also indicate that
- 24 there's discussion on a daily basis --
- 25 A Yes.

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- 1 Q -- about the service. If Western Wireless's service
- 2 does not work very well and cannot be counted on when
- 3 needed and if this is a daily discussion, is it fair to
- 4 say then that James Valley must not be too concerned
- 5 about Western Wireless as a competitor in its areas?
- 6 A No. I wouldn't say that's true.
- 7 MR. AYOTTE: Thank you, Mr. Groft.
- 8 Nothing further.
- 9 MS. AILTS WIEST: Mr. Smith?
- 10 MR. SMITH: Nothing.
- 11 MS. AILTS WIEST: Commissioners?
- 12 CHAIRMAN SAHR: Mr. Groft, I just
- 13 wanted to say thank you for coming in today and I
- 14 appreciate your input and personal experiences, and
- 15 I think what we've seen is especially in the last
- 16 year and a half or so we've heard a lot from the
- 17 public and that is very, very useful in trying to
- 18 go forward and figure out where we need to do more.
- 19 And I really appreciate the comments, and I'd
- 20 be happy to talk to you about your personal
- 21 experiences and maybe come up with some ways and
- 22 some suggestions on how to facilitate build-outs
- 23 and do more to serve your area. And I appreciate
- 24 your prefiled testimony and coming here today.
- 25 Thank you.

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1 COMMISSIONER BURG: I have one, and
2 I'm going to probably ask each ILEC the same thing.
3 I've been pretty emphatic about what people want is
4 basically the three, they want wireless, they want
5 a good landline, and they want broadband.

6 And this is one way that they may be able to
7 get at least one of those, the mobile. If we would
8 deny this, how would you -- would you have any
9 recommendations as to how you're going to get the
10 consumers in your area?

11 And I'm not saying they're actually going to
12 get it with or without our approval, but if we deny
13 this, do you have any idea how you can get that
14 mobile service to your consumers?

15 THE WITNESS: You know, I guess as a
16 company we are always looking to provide our
17 members what they want. So, of course, you're
18 aware of all the different wireless spectrum
19 options that come up. We are continuously
20 monitoring those options to see if there is
21 something that makes sense for us.

22 COMMISSIONER BURG: So you actually
23 have talked about providing wireless service for
24 your co-op members.

25 THE WITNESS: For our members, yes,

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1 because, you know, we continually hear that the
2 wireless coverage is not sufficient.

3 COMMISSIONER BURG: Thank you.
4 Because I think that's the thing that we're going
5 to wrestle with, how do we get what people want out
6 to them for service in the State of South Dakota.
7 And I think that the ILECs have done a very good
8 job getting broadband even into rural areas. I
9 know on our farm we got DSL, and it's a real
10 benefit.

11 But the other thing people want is mobile, and
12 that's what we're here to talk about today. Thank
13 you.

14 VICE CHAIR HANSON: Good morning,
15 Mr. Groft.

16 THE WITNESS: Good morning.

17 VICE CHAIR HANSON: Thank you for
18 coming in. I appreciate your testimony and
19 information. I don't think I'm going to ask any
20 questions that are confidential. And I noticed the
21 information that you provided us was not
22 confidential, except for a map item. So if I do,
23 just don't answer me.

24 THE WITNESS: Okay.

25 VICE CHAIR HANSON: In looking at

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1 your testimony, it shows that you received -- and,
2 again, when I say you I'm referring to James
3 Valley. It shows that James Valley received
4 \$1.2 million in Universal Service Funds and that
5 you spent \$1.3 million for capital expenses last
6 year.

7 THE WITNESS: Yes.

8 VICE CHAIR HANSON: Your testimony
9 infers that you spent the \$1.2 million for
10 Universal Service Funds in different fashions, that
11 not all of it went to capital. Is that true, some
12 of it went to other areas?

13 THE WITNESS: Yeah. My testimony
14 mentioned the 1.3 of capital expenditures and
15 3.6 million in operating expenses. So I think it
16 would be fair to say that the universal service
17 accounted for about one-fourth of either both
18 capital and the expenses that we put in in 2003.

19 VICE CHAIR HANSON: Okay. The
20 testimony also shows that approximately 94 percent
21 of the consumers served by James Valley currently
22 have access to broadband services through the
23 provisioning of digital loop equipment.

24 THE WITNESS: Yes.

25 VICE CHAIR HANSON: Do you have an

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1 idea of what it would cost to provide the same
2 service to those other 6 percent?

3 THE WITNESS: I don't know a total
4 amount, no. It involves the placing of additional
5 digital loop carrier equipment and additional fiber
6 and copper.

7 VICE CHAIR HANSON: But you haven't
8 cost that out or estimate --

9 THE WITNESS: We do have a plan
10 for -- many years ago before I was manager,
11 probably five or six years ago, the company did lay
12 out our entire service territory. We did do a
13 plan, a build-out plan, of we need a digital loop
14 carrier here, here, here and the cost of that was
15 not something we could do in one year. We've been
16 doing it over three or four years.

17 And then the cost continuously changed. So we
18 did identify where we needed to put them, and we
19 have on a year-to-year basis been putting those in.

20 VICE CHAIR HANSON: I suspect the
21 higher density are the areas that were covered
22 first and you have the higher cost areas now left,
23 or is that accurate to assume?

24 THE WITNESS: Yes and no. Some of
25 it depends on density. Some of it depended on the

1 quality of the cable. If we have a very high-cost
2 area with very few customers and the cable's
3 35 years old, we can't wait five years to do it.
4 We've got to do it right now.

5 VICE CHAIR HANSON: Sure. But I
6 understand that you do not have an estimate now for
7 expanding that service to the last 6 percent.

8 THE WITNESS: Not the full
9 6 percent. We do have an estimate, which I don't
10 have the exact numbers with me, what we're going to
11 do this year and that's going to get us another --
12 I don't have the exact number, but it will get us
13 another 1 or 2 percent of that 6.

14 VICE CHAIR HANSON: What does that
15 cost?

16 THE WITNESS: I don't know the exact
17 number. It would be -- we're going to have a
18 similar capital plan to what we had in 2003 so it's
19 going to be approximately that 1.3 million again.

20 VICE CHAIR HANSON: Okay. Thank
21 you.

22 CHAIRMAN SAHR: We're sitting here
23 and it's -- although I need to change my watch,
24 it's May 6, 2004 by my recollection and, do you
25 know, I'm just kind of curious, if -- and you've

1 seen what we won't call a build-out plan but the
2 plans that are proposed for 2004 for Western
3 Wireless and it doesn't appear that they're going
4 to be at this point in time proposing any new
5 towers in the area but, of course, we don't know
6 what other provisioning they might do in the area.

7 And from Commissioner Hanson's question it's
8 pretty clear a lot of times things don't go
9 directly into capital type investment. If we ended
10 up seeing some new towers up in 2005 in the
11 James Valley area, do you think the consumers would
12 be happy about that?

13 THE WITNESS: Yes, I do.

14 CHAIRMAN SAHR: You have obviously a
15 tremendous amount of experience on the landline
16 side of things. Would that be, in your mind,
17 knowing business plans, the way things have to run
18 through boards and through management and proper
19 channels and so on and so forth, if you started to
20 see some movement towards new towers in 2005, do
21 you think that would show reasonable effort on
22 behalf of the company to meet the USF requirements?

23 THE WITNESS: I guess I hesitate to
24 give an opinion on that because to me it's kind of
25 a policy regulatory question. You know, our

1 customers would like to see more towers. I would
2 like to see a plan. But as far as does that meet
3 USF requirements, I hesitate to give an opinion on
4 that.

5 CHAIRMAN SAHR: Well, what I'm
6 asking is if some new towers went up in 2005 in
7 that area and coverage improved in some of those
8 spots, knowing what you know about capital
9 expenditure and capital outlay and again how
10 planning takes place in the real world, which is
11 you probably don't just run out and spend
12 1.3 million in capital without at least talking it
13 through with somebody, do you think that would
14 be -- you know, show a descent effort on behalf of
15 the company to try to serve more of the people in
16 that particular area?

17 THE WITNESS: Yes. If they did
18 commit a build-out plan and were -- you know, they
19 were obliged to stick to it, yes.

20 CHAIRMAN SAHR: Okay. Thank you.

21 MS. AILTS WIEST: Mr. Groff, can you
22 explain your company's line extension policy?

23 THE WITNESS: No, I really can't, I
24 guess. We have one. It's so seldom brought up
25 that I am not overly familiar with it, no.

1 MS. AILTS WIEST: Okay. Thank you.
2 Any further questions?

3 COMMISSIONER BURG: No. Off the
4 record.

5 (Discussion off the record)

6 MS. AILTS WIEST: Do you have any
7 redirect?

8 MR. CREMER: I have no redirect.
9 Thank you.

10 MS. AILTS WIEST: Thank you,
11 Mr. Groff.

12 (A short recess is taken)

13 CHAIRMAN SAHR: Commissioner Hanson
14 is on a call that he needs to complete this
15 morning, but he can always review the record.

16 MS. ROGERS: The Interveners call
17 George Strandell.

18 GEORGE STRANDELL,
19 called as a witness, being first duly sworn in the
20 above cause, testified under oath as follows:

21 DIRECT EXAMINATION

22 BY MS. ROGERS:

23 Q Would you please state your name and business address
24 for the record.

25 A George Strandell, 415 Crown Street, Wall, South Dakota.

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1 **Q** What is your professional occupation?

2 **A** I am the general manager of Golden West Companies.

3 **Q** And what does Golden West Companies include?

4 **A** It includes Golden West Telecom Cooperative. It

5 includes Vivian Telephone Company, and several

6 subsidiaries, some of which provide traditional ILEC

7 dial tone and some which provide some other services

8 like cable television.

9 **Q** For the purposes of this proceeding the two companies

10 that you manage that are appearing today are which

11 ones?

12 **A** Golden West Telecommunications Cooperative, Inc. and

13 Vivian Telephone Company.

14 **Q** George, before we get into your prefiled, just for the

15 purposes of clarification, could you step over to the

16 map and roughly identify where your areas are,

17 Golden West and Vivian?

18 **A** Sure. Outlined here somewhat. The Golden West Telecom

19 area includes this rural area east of Sturgis,

20 South Dakota over to the Missouri River and down in

21 approximately this area, including parts of the

22 Pine Ridge Indian Reservation.

23 Vivian Telephone Company includes most of the

24 south central area of South Dakota and some exchanges

25 over in the Springfield, Scotland area, and Vivian also

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1 includes the Custer exchange in the Southern Black

2 Hills.

3 **Q** Thank you, George. And I note especially in the

4 Western part of your companies those are a lot of the

5 ones that have white in their area; is that right?

6 **A** On that map, yes.

7 **Q** George, did you prefile testimony in this case?

8 **A** Yes, I did.

9 **Q** You filed direct testimony and also surrebuttal; is

10 that correct?

11 **A** Yes, I did.

12 **Q** And these would be what have been marked as

13 Interveners' Exhibit 7 and 8; is that correct?

14 **A** I think.

15 **Q** Before I ask you to summarize your testimony, I would

16 ask you if you have additions or corrections to that

17 testimony?

18 **A** Not at this time.

19 **Q** Thank you. Would you please summarize your testimony

20 in this case?

21 **A** I'll try to summarize it quickly. My testimony which

22 was compiled with my oversight by my legal team was

23 filed and kind of states my company's concern about the

24 impact of several ETC providers in our area and the

25 impact that it might have on USF as it relates to our

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1 compensation and our support for the services that we

2 provide.

3 Now in my testimony it was my intention to

4 direct the attention to the extreme rural nature of our

5 company. We do serve almost a third of the geographic

6 land mass of South Dakota. However, Hot Springs,

7 South Dakota, which has a local population of about

8 somewhere just under 4,500 population is the largest

9 community that we serve.

10 And the wire centers that we do serve drop

11 off in population drastically thereafter. Just to give

12 you an extreme example, we do have a wire center south

13 of Hot Springs and it's on the edge of the

14 Nebraska-South Dakota border, it's in South Dakota,

15 that's the Ardmore exchange. That total -- -- the

16 total number of access lines in that exchange is 42.

17 We're looking at an upgrade in the future,

18 and in order to further modernize that we're looking at

19 about an 88 mile build in that area. It was schedule

20 for 2004, but work plans and some question about future

21 technology kind of put those plans on hold for this

22 year, but it's still on the block.

23 23,000 plus square miles in the two

24 companies. USF is important to us, very important to

25 us. Collectively we did collect nearly 10 million

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1 dollars in support from USF last year. We used that

2 support for investing in upgrades. We use it to

3 maintain and provision our services. And we've

4 depended upon it for many years to continue to provide

5 the latest state-of-the-art telecommunications services

6 to our rural customers. And we're proud of our record

7 in that regard.

8 My testimony makes reference to the primary

9 line issue, which has some real concern to me. And if

10 the primary line issue becomes -- does become one of

11 the rules, I can see some immediate dissolution of

12 those funds, whether or not Western Wireless is in the

13 pool or not.

14 Today we have some instances where businesses

15 have multi lines. At least the average would be

16 affected for sure. That's kind of my summary.

17 MS. ROGERS: Thank you. I would

18 tender him for cross.

19 MS. AILTS WIEST: Mr. Ayotte.

20 MR. AYOTTE: Thank you.

21 CROSS-EXAMINATION

22 BY MR. AYOTTE:

23 **Q** Good morning, Mr. Strandell.

24 **A** Good morning, Mr. Ayotte.

25 **Q** You're testifying today as the general manager on

1 behalf of Golden West Telecommunications Cooperative
 2 and Vivian Telephone; correct?
 3 A Correct.
 4 Q And even though there are two companies, can we agree
 5 when I refer to Golden West we're really referring to
 6 Golden West Telecommunications Cooperative and Vivian?
 7 A There are some minor differences in the two companies,
 8 but for reasons of today, yes, you can refer to both
 9 companies.
 10 Q If you feel it necessary to differentiate your
 11 responses on behalf of either of the two companies,
 12 feel free to do so, okay?
 13 A Sure.
 14 Q I take it as the general manager you are authorized to
 15 testify on behalf of Golden West in this proceeding?
 16 A I hope so.
 17 Q And am I correct in assuming you're not employed by or
 18 have any financial interest in any of the other
 19 intervening telephone companies?
 20 A That's correct. Both of my companies are members of
 21 SDTA.
 22 Q But you're not authorized to testify on behalf of any
 23 of the other --
 24 A No.
 25 Q -- companies? And you're not purporting to represent

1 or testify on their behalf?
 2 A No, sir.
 3 Q Are you familiar with the prefiled direct and
 4 surrebuttal testimony of Mr. Groff and Mr. Houdek in
 5 this proceeding?
 6 A Only in conversation. I have not read their direct
 7 reports.
 8 Q Do you understand that the basic text of your testimony
 9 is verbatim to the questions and answers of the other
 10 two witnesses?
 11 A I understand that that is probably the case, yes.
 12 Q And did Ms. Vanicek undertake to draft your direct and
 13 surrebuttal testimony with your oversight?
 14 A Actually, I think Mrs. Vanicek was part of the legal
 15 team that worked on this. That's my understanding.
 16 Q Is it fair to say then that you provided to that team
 17 the company-specific information so they could draft
 18 your testimony?
 19 A Yes. That's in general terms that's fair to say that.
 20 Q And the company-specific information that you provided
 21 related to the area served by Golden West?
 22 A Yes.
 23 Q And the average local service rates for businesses and
 24 residential?
 25 A Yes.

1 Q And the 2003 federal universal service support received
 2 by the two companies?
 3 A Yes.
 4 Q And the company-specific revenue and expense
 5 information?
 6 A Yes, sir.
 7 Q And is it your understanding that on the basis of that
 8 factual information on those items then Ms. Vanicek
 9 used that in her testimony?
 10 A I will stipulate to that, yes.
 11 Q Now in your direct testimony you claim that Western
 12 Wireless's designation as a competitive ETC in the
 13 areas served by Golden West and Vivian could have a
 14 potential impact on the amount of federal universal
 15 service support that's received; right?
 16 A That's our -- yes, sir. That's what I testified to.
 17 Q And the basis for that statement relates to this
 18 primary line connection proposal of the Joint Board?
 19 A In today's -- yes. That's our major basis for that,
 20 yes.
 21 Q And your testimony references the Joint Board's
 22 Recommended Decision.
 23 A Uh-huh.
 24 Q Have you read the Joint Board's Recommended Decision?
 25 A Not a word. I rely on my consultants to advise me on

1 some of those decisions. Usually the length of those
 2 proceedings is extremely lengthy and long, and I do not
 3 seem to find time to read a lot of that stuff.
 4 Q Is it fair to say then, Mr. Strandell, that you're not
 5 particularly familiar with the Joint Board's
 6 Recommended Decision?
 7 A I think that it might be fair to say that I'm familiar
 8 with some of the provisions that do relate to us,
 9 especially the primary line part of that that has been
 10 pointed out to me and has created some concern on our
 11 part, yes.
 12 Q Do you understand that the Joint Board's
 13 recommendations have no immediate effect on the amount
 14 of federal universal service support received by your
 15 companies?
 16 A Yes. I understand that until something is done, that
 17 we're on a status quo situation, yes.
 18 Q Has your team of advisers and consultants -- and I'm
 19 not interested for privileged information here, but
 20 the people whom you rely upon to create your
 21 understanding of the Joint Board's proposals, have they
 22 also explained to you the Joint Board's further
 23 recommendations that I discussed with Mr. Groff
 24 regarding additional recommendations to maintain
 25 support in rural areas if the primary line connection

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1 were to be adopted?

2 A We have discussed that but I will qualify that, that

3 the discussion has been very, very brief and I do not

4 have full knowledge of all of those points that you did

5 bring up to Mr. Grott's attention.

6 Q But you're generally aware there's something else?

7 A Yes. I'm somewhat heartened by that.

8 Q And none of those other items is identified in your

9 testimony; correct?

10 A No. Right.

11 Q Do you agree with me, Mr. Strandell, at this point we

12 really don't know what or when the FCC might do in

13 response to the Joint Board's recommendations?

14 A In general terms I agree with you. However, I have had

15 occasion to visit with Commissioner Adelstien and he

16 has expressed his concern over some of the items to me

17 that came out of the Joint Board. He was on the Joint

18 Board.

19 Q But nobody really knows --

20 A Nobody really knows. I certainly agree with you there.

21 Q But, again, now setting aside sort of regardless of the

22 outcome of any further FCC action on the Joint Board's

23 recommendations, let's talk about Western Wireless's

24 application and its request to be designated in the

25 areas of Golden West and Vivian in this proceeding.

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1 Your companies are in business today?

2 A Yes.

3 Q And they're making a profit?

4 A In most cases they are, yes.

5 Q And if Western Wireless is designated, your companies

6 will continue to receive the same amounts of universal

7 service support?

8 A I certainly hope so.

9 Q And you don't have any plans for either of your

10 companies to relinquish ETC designation if Western is

11 designated?

12 A That is a true statement.

13 Q You don't believe that your companies will go out of

14 business if Western is designated, do you?

15 A I don't believe that our companies will go out of

16 business if Western Wireless is so designated, yes.

17 Q And you're prepared to compete with Western Wireless?

18 A Yes, we are.

19 Q And compete very hard?

20 A Well, we hope so.

21 Q And you'll try to attract new customers and retain

22 existing customers?

23 A We do that already.

24 Q And you'll try to reduce your expenses and operate more

25 efficiently if Western is designated?

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1 A Again, we're a rural company. Our resources are

2 limited, and we do that already. We do our best to

3 keep our expenses as low as we can and to perform as

4 efficiently as we can, yes.

5 Q And if Western is designated, you'll continue to do

6 that?

7 A Yes.

8 Q And you mentioned -- you didn't identify but you

9 mentioned some subsidiaries of the Golden West

10 Companies.

11 A Uh-huh.

12 Q They're in some alternative lines of business, I take

13 it?

14 A Actually a couple of them are in some alternative lines

15 of generally related business, and some of them are

16 also ILECs.

17 Q And that's an effort to try to develop new services or

18 some new revenue streams?

19 A You mean, our owning those subsidiaries?

20 Q Yes.

21 A Yes. Plus we have recently acquired some of those

22 within the last 12 months, and part of our thought

23 process in doing that was an attempt to lower our

24 overall expenses, increase operating efficiency by

25 some -- enlarging the scale and we're working to do

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1 that. We think we're starting to see some real

2 positive things in that area, yes.

3 Q And if Western Wireless is designated in this

4 proceeding, you'll continue to pursue those types of

5 efforts?

6 A Of course.

7 Q And I take it if Western is designated, your companies

8 will strive to still improve customer service and

9 responsiveness?

10 A Still improve, yes.

11 Q You may need to lower your rates or expand your local

12 calling areas to respond to competition from Western,

13 might you?

14 A That's your statement.

15 Q Well, do you foresee that or maybe not?

16 A I will tell you that our local calling scope for all of

17 our companies is under study at this point in time,

18 yes.

19 Q Your direct testimony also sets forth a calculation of

20 the amount of universal service support received on a

21 per line, per month basis; right?

22 A Right.

23 Q And I think Mr. Brown clarified some of this.

24 A He did.

25 Q The support for your companies is actually based on

545

1 your costs, not on a per line amount; correct?

2 A The support for our company is based on our overall

3 costs, yes.

4 Q And you were simply performing a calculation to divide

5 the amount of your total support by the number of

6 access lines.

7 A That's fairly common in the industry. In fact, it's

8 the basis for the new ETC status, per line cost, is my

9 understanding.

10 Q But under the current USF funding mechanisms, your

11 companies' loss of an access line does not mean a loss

12 in any total amount of USF support, does it?

13 A That's correct.

14 Q And if you have a customer that has two lines going

15 into his or her home, you still receive the same amount

16 of universal service support if they only have one

17 line.

18 A We are able to include the investment in both lines and

19 our overall calculations of our cost.

20 Q I appreciate that clarifying answer. Because your

21 support is based upon cost.

22 A Correct. That methodology, however, has been discussed

23 at length at the commissions, and there's some

24 discussion whether that will continue under the new

25 primary line proposal.

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1 Q Now in your surrebuttal testimony unlike Mr. Groft and

2 Mr. Houdek your testimony does not contain any

3 observations or comments regarding the quality of

4 Western Wireless's service in the service areas of

5 Golden West and Vivian, does it?

6 A No.

7 Q And that's true even though you indicated on your

8 summary that most of the areas served -- based on

9 GHB 8, most of the areas show up on that exhibit as a

10 white area.

11 A Yes. It doesn't mean that the service is wonderful.

12 Q There's nothing in your testimony that addresses it;

13 correct?

14 A You asked. No. There's nothing.

15 MR. AYOTTE: Thank you. Nothing

16 further.

17 MS. AILTS WIEST: Mr. Smith?

18 MR. SMITH: No questions.

19 MS. AILTS WIEST: Commissioners?

20 COMMISSIONER BURG: I have the same

21 one, Mr. Strandell, that I asked before. We want

22 to see the three basically bags of service, the

23 broadband, the wireline, and the wireless. And

24 this is one way that it can be proposed to us to

25 get wireless.

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1 If that doesn't occur, if there should be a

2 denial based on your testimony of the effects, have

3 you looked at any way to get wireless to your

4 customers?

5 THE WITNESS: Commissioner Burg, we

6 have looked at various different ways that wireless

7 service could be provided or provisions in

8 Golden West Companies' territories. In fact, we,

9 have -- when the early auctions for PCS licenses

10 we're up, we were successful in purchasing

11 Rapid City BTA. I believe it's the C block license

12 for PCS.

13 Since that time our company has in the last

14 five years done at least four I would call them

15 rather major studies to see if we could provide a

16 wireless mobile product in the territories that we

17 serve. In each one of those cases -- and we tried

18 to make the best use of data and suppositions as we

19 went forward.

20 Each one of those cases we determined that the

21 best scenario that we could come up with showed

22 that those cases of serving at least in the areas

23 that we were looking at, and they did spill over a

24 little bit maybe into Rapid City where the numbers

25 are better, competition is higher too, but the best

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1 we could see was that in a nine or 10-year time

2 frame that's how long it was going to take for this

3 product that we were looking at to at least cash

4 flow.

5 And with what I have seen in the industry,

6 technology of the wireless industry and 10 years

7 from now, it's pretty hard to invest some major

8 dollars in a technology that in 10 years from now

9 will be probably extremely obsolete.

10 So we continue to search for that in our own

11 right. We've been unsuccessful to see anything

12 that really makes a lot of good sense to us. But

13 in the same regard, we do have some spectrum, and

14 we also have some MMDS spectrum that we are looking

15 at to possibly provide some wireless Internet and

16 broadband possibilities in some of our areas.

17 COMMISSIONER BURG: If you decided

18 to do a wireless -- go out with wireless, do you

19 get additional USF money for that?

20 THE WITNESS: We'd probably have to

21 go through the same process Western Wireless is

22 doing here.

23 COMMISSIONER BURG: There's nothing

24 to prohibit you from doing what they've done?

25 THE WITNESS: I don't think there's

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1 anything that prohibits us.

2 COMMISSIONER BURG: Would you have
3 to apply for an additional ETC?

4 THE WITNESS: We'd have to apply for
5 an additional ETC -- that would be my
6 understanding -- if we wanted USF.

7 COMMISSIONER BURG: Just one other
8 little question that was triggered by the
9 discussion that you just had. If you actually lost
10 customers in your area, could you actually see your
11 USF support increase?

12 THE WITNESS: Actually I don't think
13 you can -- this is kind of an accounting question,
14 but I don't think you would see it increase. You'd
15 see the per line cost over time increase.

16 I see that there would be a relatively small
17 decrease in expenses and also some decrease in
18 local service funding for the portion of local
19 service rates that --

20 COMMISSIONER BURG: That's what I
21 was wondering. Would your local service income
22 decrease more than your expenses would increase
23 with?

24 THE WITNESS: Oh, absolutely.

25 COMMISSIONER BURG: If that

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1 occurred, would that actually make you eligible for
2 more dollars because you're --

3 THE WITNESS: Possibly. It's
4 possible.

5 COMMISSIONER BURG: That's all I
6 have.

7 MS. AILTS WIEST: Any other
8 questions from the Commissioners?

9 Mr. Strandell, can you explain your line
10 extension policy?

11 THE WITNESS: Yeah. I can explain
12 it in pretty much general terms. In a previous
13 life I was pretty familiar with it, but it has
14 changed somewhat. Our line extension policy
15 relates to reasonable requests for service that
16 come our way where -- and I'll give an example.

17 A customer in a fairly remote area comes into
18 our office and says, I'm building a house or I'm
19 going to move to this area and I would like to have
20 phone service.

21 If they're within -- and this is only my
22 recollection. It's not exact. But I believe it's
23 within a mile and a half of an existing facility we
24 charge them nothing to provide that and we forego
25 the expense of going to that location and

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1 installing a new service to that.

2 If it's more than that, we calculate
3 approximately the cost to provide that service
4 beyond that mile and a half and ask them to pay us
5 a deposit in approximately that amount, and we keep
6 that as a deposit. And the reason we do that is to
7 guarantee at least some return on investment for
8 providing the service to that customer.

9 Now after they have been a customer in good
10 standing for a year, then we begin to credit their
11 monthly bill from that deposit until they have
12 completely zeroed out that. So it's not our
13 intention to take their deposit and not return it.
14 It's more of an effort for us to get some return on
15 investment and a long-term -- it's kind of like
16 signing up for a cell phone and signing a two-year
17 contract for getting that low cost handset.

18 So that's the theory of your line extension
19 policy. It's more of a guarantee of service type
20 policy than aid to construction.

21 MS. AILTS WIEST: Okay. Thank you.

22 MR. AYOTTE: Ms. Wiest, I'm sorry.

23 Could I just ask you to clarify your question to
24 the witness to determine whether it's the same
25 policy for both of the companies or whether there's

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1 any difference between the two?

2 MS. AILTS WIEST: Is it the same
3 policy?

4 THE WITNESS: Same.

5 MR. AYOTTE: Thank you.

6 MS. AILTS WIEST: Do you have any
7 redirect?

8 MS. ROGERS: Just a couple of things
9 on redirect and maybe just one.

10 REDIRECT EXAMINATION

11 BY MS. ROGERS:

12 Q In response to a question asked to you by Mr. Ayotte
13 concerning your consideration as a company of making
14 the changes in local calling areas or local rates, I
15 would ask you this, George. If you are concerned about
16 your current revenue streams, would that be the reason
17 that you would consider possibly scaling back or doing
18 something different with your local calling areas or
19 your local rates?

20 A Yes. That would be one of the reasons. In many cases
21 we see instances of ILECs who have extended area
22 calling plans that are not necessarily a function or a
23 feature of their local service offering. Kind of a
24 cafeteria plan.

25 We've heard a lot I think in the last few

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1 days about what the customer wants. We're looking at a
2 possibility of offering for a small incremental fee on
3 their local service a toll-free call to an adjoining
4 exchange or any other exchange in our serving area.

5 **Q** And those are considerations that you undergo as you
6 look at your revenue streams and how things are going
7 in your company generally?

8 **A** That is probably at least 50 percent of the
9 consideration. The other reason that we look at that
10 is, again, to try and respond to customers' wants and
11 needs.

12 MS. ROGERS: That's all. Thank
13 you.

14 MS. AILTS WIEST: Any further cross?

15 MR. AYOTTE: No. Thank you.

16 MS. AILTS WIEST: Thank you,
17 Mr. Strandell. You may call your next witness.

18 MS. ROGERS: Randy Houdek.

19 RANDY HOUDEK,
20 called as a witness, being first duly sworn in the
21 above cause, testified under oath as follows:

22 DIRECT EXAMINATION

23 BY MS. ROGERS:

24 **Q** For the record, would you please state your name and
25 your business address.

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1 **A** Randy Houdek from Highmore, South Dakota.

2 **Q** What is your occupation, Randy?

3 **A** General manager of Venture Communications.

4 **Q** And in the documents before this Commission and
5 particularly in the Petition that was filed I think
6 that your company was referred to as Sully Buttes. Is
7 that the same company as Venture?

8 **A** Yeah. We changed our name.

9 **Q** And as I did with the previous witness, for the
10 purposes of clarification, could you step to the map
11 that's up on the board here and identify exactly where
12 Venture's service area is or approximately where
13 Venture's office area is?

14 **A** We operate east of the river, this area from
15 Wessington Springs all the way up through the Selby
16 exchange east. Also the Britton, Roslyn, Pierpont,
17 Langford, Sisseton.

18 **Q** Mr. Houdek, did you file direct and surrebuttal
19 testimony in this case?

20 **A** Yes.

21 **Q** And would those be Interveners Exhibits 9 and 10?

22 **A** I think so.

23 **Q** And I believe you also attached a map to one of those
24 exhibits; is that correct?

25 **A** Right.

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1 **Q** Mr. Houdek, I would ask you before I ask for a summary
2 of your testimony if you have any corrections or
3 additions to the prefiled testimony that was filed?

4 **A** Yeah. Unfortunately, I do. The square miles that we
5 serve was understated in here. It's actually closer to
6 7,300 square miles. And the access lines are closer to
7 13,500 roughly.

8 MR. AYOTTE: Could we get perhaps a
9 more specific reference? Page 2 of the direct
10 serves an area of about 6,900 square miles? Are we
11 changing that?

12 THE WITNESS: Yeah. Closer to
13 7,300.

14 MS. AILTS WIEST: What are the
15 access lines?

16 THE WITNESS: About 13,500.

17 **Q** Do you know where in your testimony that appears?

18 **A** I don't know that the total count, access count line,
19 appears in my testimony, but when you do the per line
20 calculation it might. Someone might try to do the
21 math.

22 **Q** So approximately how many access lines does your
23 company serve?

24 **A** About 13,500.

25 **Q** Okay. Are there any other additions or corrections to

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1 your testimony?

2 **A** Again, they're going to be math-related because of the
3 square miles of the density will probably change a
4 little bit.

5 **Q** Okay. But other than that --

6 **A** Right.

7 **Q** -- your testimony is correct as it is? And I would ask
8 you at this time, Randy, to provide us with a summary
9 of your prefiled testimony.

10 **A** Very briefly I just want to, again, say how important
11 the Universal Service Fund is to our company. We use
12 it for the provision and maintenance of the services we
13 offer. Like the other Interveners, we're very proud of
14 the service that we provide to our customers and the
15 things that we offer and the prices we charge and the
16 relationship and care that we give to our customers.

17 Again, like I said, we use this to build a
18 network that not only provides voice but gives us the
19 capabilities of providing other services as they come
20 down. Also in my testimony, and I'm sure you'll get to
21 it, I have had a little experience with some of the
22 Western Wireless service in our area and my opinion of
23 that.

24 That's basically my summary.

25 MS. AILTS WIEST: Mr. Ayotte.

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MR. AYOTTE: Thank you.

CROSS-EXAMINATIONBY MR. AYOTTE:**Q** Good morning, Mr. Houdek?**A** Very good.**Q** With a last name like Ayotte, I try to be sensitive.

You're testifying here today on behalf of Venture Communications?

A Correct.**Q** And I take it then that you're not testifying on behalf of any of the other six rural telephone companies where Western Wireless is seeking designation?**A** Correct.**Q** And are you familiar with the prefiled direct and surrebuttal testimony of Mr. Strandell and Mr. Groft in this proceeding?**A** Just conversationally, but your next question is, yes, we use some of the same consultants and attorneys to help prepare in order to be more efficient.**Q** It's the same basic testimony; right?**A** Yeah. Very similar.**Q** Almost like if I were to ask you the same questions here today that I asked of the other two witnesses, would your answers be the same?**A** In a lot of cases, yes.

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MR. CREMER: Does that get us to page 2?

MR. AYOTTE: Pretty close.

A There's some benefit of being third.**Q** Is it sort of fair to say that your direct testimony you're really kind of a set-up person for Ms. Vanicek's testimony by giving the factual information for Venture?**A** I wouldn't go that far. No. It's my testimony. We just hired people to help us prepare it.**Q** But I'm just saying the factual information relating to the area served, Venture's local rates, 2003 USF support, and the company-specific revenue and expense information, you're providing that information so that Ms. Vanicek can use it in her testimony; right? That's all I meant.**A** Yeah. She's got her own testimony, but, yeah, this is my testimony.**Q** Correct. And have you read the Joint Board's Recommended Decision?**A** Parts of it. I won't say that I've read it all.**Q** And just to move things along, are we in agreement that the Joint Board's recommendations have no immediate affect on the amount of federal universal service support that Venture will receive?

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A The Joint Board's Recommended Decision?**Q** Yes.**A** No. They won't have any direct impact immediately.**Q** And there's nothing in your direct testimony like Mr. Groft and Mr. Strandell that talks about some of these other Joint Board recommendations about -- for the FCC to consider to avoid or mitigate any reduction in the amount of high-cost support that flows to rural carriers relating to this primary line proposal; right?**A** Yeah. But the other two Interveners testified that their main concern was the primary line. And I'm very concerned about that as well. But another thing I think we should mention is the capping of the fund, and that could happen at any time that the FCC does cap the fund, we see an immediate reduction in universal service support.**Q** Sure. But they haven't capped the fund.**A** Not today.**Q** Right. My question had to do with the other aspects of the Joint Board's Recommended Decision, that section of their report where they discuss further recommendations to the FCC to avoid or mitigate any reductions in the amount of high-cost support flowing to rural carriers if a primary line proposal were to be implemented.

MS. ROGERS: Excuse me, just a

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minute. What's your question to him about that?

Q My question now is are you aware of those aspects of the Joint Board's Recommended Decision?**A** In general terms.**Q** And I don't intend to ask you anything specific about them. My question is there's nothing in your direct testimony that discusses any of those further recommendations of the Joint Board.**A** No. I don't think they've got a great chance of seeing the light of day, to be honest with you.**Q** See, that wasn't my question. My question is there's nothing in your testimony that discusses those further recommendations; isn't that correct?**A** Yes.**Q** Thank you. Would you agree with me the point that is in your testimony about a potential loss of federal universal service support if Western Wireless were designated, would you agree with me that that's only true if the FCC adopts the Joint Board's primary line proposal and fails to adopt any of the other Joint Board's recommendations that are designed to prevent or mitigate any reduction in support to rural carriers?**A** Not entirely. Again, the cap I think will kind of affect -- I'm confident that the fund will be capped sooner rather than later.

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1 Q Okay. But at this point, Mr. Houdek, nobody really
2 knows for sure, do they, whether, when, or what the FCC
3 might do?
4 A That's fair.
5 Q My series of questions on page 3 of my outline that I
6 asked of Mr. Strandell and Mr. Graft about your
7 company's in business today, you're making a profit,
8 et cetera, would your answers be the same as those
9 witnesses, or do you want me to run the list?
10 A I don't want you to run the list if you allow me to
11 editorialize a little. I'll keep it short. I had the
12 thought listening to you ask those questions about will
13 we continue to stay in businesses, improve services,
14 lower prices, et cetera.
15 Q And you will, won't you?
16 A No. I wouldn't say that.
17 Q Okay. If Western Wireless is designated as an ETC, is
18 Venture going to go out of business? Is that your
19 plan?
20 A That's not my plan.
21 Q Okay. If Western is designated as an ETC, is Venture
22 going to relinquish its ETC designation?
23 A Again, not our plan.
24 Q If Western is designated as an ETC, are you not going
25 to compete with Western Wireless?

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1 A We are today.
2 Q Okay. And if they are designated, you're going to
3 continue to compete with them, aren't you?
4 A As long as I can.
5 Q And you're going to compete as hard as you can too,
6 aren't you?
7 A Sure.
8 Q And you're going to try to attract new customers and
9 retain your existing customers, aren't you?
10 A We can all try.
11 Q And you'll try to reduce expenses and operate more
12 efficiently, won't you?
13 A Like Mr. Strandell, we're pretty efficient now.
14 Q And you'll continue to be if Western Wireless is
15 designated, won't you?
16 A To the extent we don't lose the scale that comes with
17 having the number of customers we have.
18 Q If Western is designated, you're also going to try to
19 improve customer service and responsiveness so that you
20 can retain customers, won't you?
21 A Again, we provide really good service today. If we
22 lose enough customers, we might have to cut back on
23 staff, but we're going to provide the best service we
24 can.
25 Q And the company's making a profit today, isn't it?

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1 A Today.
2 Q And historically it's made profit, hasn't it?
3 A We've had years where we've lost money.
4 Q But more years that you've made money; right?
5 A I wouldn't -- I haven't been there that long. Since
6 I've been general manager there's more years that we've
7 made money.
8 Q You don't plan to step down as general manager any time
9 soon, do you?
10 A Unfortunately, I don't get to make that decision.
11 Q But under today's current USF rules if Western Wireless
12 is designated, you're going to continue to receive the
13 same amount of USF support, won't you?
14 A Until they cap the fund.
15 Q If they cap the fund.
16 A I say until.
17 Q Now in your surrebuttal testimony you use a bunch of
18 terms in describing Western Wireless's services like
19 "significant areas without reliable cellular coverage"
20 and "poor service."
21 Would you agree with me that those kind of
22 terms are pretty vague, pretty relative terms?
23 A They're common terms.
24 Q But they're subjective terms?
25 A Sure.

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1 Q And they're not based on any particular facts that are
2 set forth in your surrebuttal testimony, are they?
3 A I guess that depends what you define as a fact. You
4 know, I've experienced poor qualities.
5 Q You've described the service as in areas without
6 reliable coverage and you described it as poor but you
7 haven't set forth any facts in your testimony to
8 support those descriptions, have you?
9 A Like a propagation study or something like that, no.
10 Q And you also claim to have been a party to many
11 conversations with friends and business associates who
12 use Western Wireless's mobile wireless service; right?
13 A Yes.
14 Q Now do you mean talking to them while using Western
15 Wireless's service or simply talking to them about
16 Western Wireless's service?
17 A Both.
18 Q Some of this is all based on secondhand information,
19 what people have told you about their experience;
20 right?
21 A Well, that's part of it.
22 Q And you haven't told us who these people are or when
23 the conversations took place or what you were told;
24 right?
25 A Not as part of my testimony.

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- 1 Q Okay. And you don't know what type of equipment those
2 people were using, do you?
3 A Not in all cases.
4 Q And you don't know if their handset was fully charged
5 at the time of their conversation?
6 A Well, in one particular case I know that it was fully
7 charged because I borrowed their phone.
8 Q But that was based on your experience, not what you
9 were told from others?
10 A Right. Like I said, both.
11 Q Okay. I'm focusing right now not on your personal
12 experience but what you've been told by these other
13 unidentified people.
14 A Okay. Yeah.
15 Q For those people you don't know if their handsets were
16 fully charged?
17 A I didn't ask them.
18 Q Okay. And you didn't know what time of day it was?
19 A Not from the experiences they told me. When I had the
20 conversations I remember what time it was.
21 Q And you don't know what season these people were using
22 the service, season meaning, you know, spring, winter,
23 fall?
24 A That's a fair statement.
25 Q And you don't know what the weather conditions were at

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- 1 the time?
2 A That's fair.
3 Q And you don't know where they were when they tried to
4 use the service?
5 A Well, in some cases I do.
6 Q But you don't know where they were relative to the --
7 Mr. Brown described how the individual experience of a
8 customer can be affected by environmental and a
9 person-made factors and so forth. You don't know
10 exactly where these people were; right?
11 A I couldn't give you a GPS location, but probably I
12 could point to an area on the map.
13 Q Okay. You're not afraid to compete with Western
14 Wireless, are you?
15 A I don't have any choice.
16 Q Well, you claim in your testimony it is "the rule
17 rather than the exception" that calls are dropped along
18 many of the routes in Venture's service area; right?
19 A Yes.
20 Q So if that's true, Mr. Houdek, then you wouldn't expect
21 Western Wireless to be very successful in attracting
22 many customers, would you?
23 A Well, you've got quite a few customers, you know, we
24 cover a large part of the state so, you know, in some
25 geographic areas if service doesn't improve, I don't

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- 1 expect you'll get a lot more.
2 Q We might even lose some?
3 A Perhaps.
4 Q And if those customers are lost, Western isn't going to
5 receive universal service support assuming they're
6 designated; right?
7 A Yeah.
8 Q Would it be fair to say that for those customers of
9 Western Wireless that are in Venture's service area, is
10 it fair to assume that they subscribe to that service
11 and they're generally satisfied with the quality of
12 that service?
13 A I missed one of the words in there. Could you ask the
14 question again? The customers of your product that
15 live within my service area?
16 Q Yeah.
17 A Are they generally satisfied?
18 Q If they weren't satisfied with the quality of the
19 service, they'd drop the product, wouldn't they?
20 A You know, not just your product, but a lot of cell
21 coverage is poor. I'm a good example. I've got a
22 phone. I've got a phone, and I'll always use a phone.
23 And a lot of area of my service area it's poor, but I
24 use it when I come to town, I travel to Sioux Falls,
25 when I go to meetings outside the state. So even

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- 1 though my service in my area is poor, I'll still have a
2 phone, and you'll still get support on that.
3 Q But if the customers didn't perceive a value for the
4 service of what they're spending based on their use, if
5 they didn't perceive a value, if they didn't perceive
6 that there's quality there, they'd drop it, wouldn't
7 they?
8 A Sure.
9 MR. AYOTTE: Thank you. Appreciate
10 it. Nothing further.
11 MS. AILTS WIEST: Mr. Smith?
12 MR. SMITH: No questions.
13 MS. AILTS WIEST: Commissioners?
14 COMMISSIONER BURG: The only one I
15 have is the same one, Randy. Have you looked at
16 providing any type of wireless service in your
17 service territory?
18 THE WITNESS: Many times. In the
19 studies that we've performed they don't cash flow.
20 We didn't include universal service funding in
21 those studies, more out of fear because Universal
22 Service Fund is so important to our landline
23 business and the services we provide that we didn't
24 want to jeopardize it.
25 COMMISSIONER BURG: Same argument

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1 you're making in opposition to someone else getting
 2 Universal Service Fund for that purpose.
 3 THE WITNESS: Right.
 4 COMMISSIONER BURG: Okay. That's
 5 all I have.
 6 MS. AILTS WIEST: Any other
 7 questions from the Commissioners?
 8 VICE CHAIR HANSON: Mr. Houdek, on
 9 page 4 you also stated about 94 percent of the
 10 consumers served by Venture have access to
 11 broadband services. Curious. Do you have a plan
 12 and do you know approximately how much longer and
 13 how much it will cost to provide that to the other
 14 6 percent?
 15 THE WITNESS: I'm sorry. I don't
 16 have the information in front of me but we did do
 17 kind of a high-level overview and that's probably
 18 been four or five years ago and it was over
 19 \$100 million at that point.
 20 VICE CHAIR HANSON: For the entire
 21 project?
 22 THE WITNESS: For the entire service
 23 area. We do projects every year, and similar to
 24 the numbers that I've listed in my testimony,
 25 that's just about all we can do in terms of

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1 manpower and our current debt load.
 2 VICE CHAIR HANSON: Okay. Thank you
 3 very much.
 4 COMMISSIONER BURG: I do have one
 5 other one. I wasn't sure of your answer. I didn't
 6 think it was real clear to Mr. Ayotte's question of
 7 if people keep Western Wireless instruments, phone,
 8 are they necessarily satisfied with the service
 9 they're getting?
 10 THE WITNESS: What I tried to say
 11 there is perhaps not satisfied with the service
 12 that they're providing within my area, but they
 13 have the phone so when they travel to the urban
 14 areas they've got a cell phone.
 15 COMMISSIONER BURG: Okay.
 16 CHAIRMAN SAHR: When we get to the
 17 annual certification process and start evaluating
 18 use of USF by wireless and wireline companies do
 19 you think -- it sounds like you've done some
 20 analysis on this. Should it be a requirement of
 21 every company to have detailed build-out plans as
 22 far as bringing any service supported by USF to
 23 those customers at no cost?
 24 THE WITNESS: Explain that no cost
 25 again. I didn't --

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1 CHAIRMAN SAHR: Without -- for
 2 instance, when I say at no cost I would include a
 3 fee paid by the consumer, a deposit paid in advance
 4 that would be refunded to the consumer over a
 5 period of time and anything that would involve any
 6 participation by the consumer to receive this
 7 service.
 8 THE WITNESS: Similar to the line
 9 extension?
 10 CHAIRMAN SAHR: Yes. And I don't
 11 know how your line extension program works, but
 12 that's what I mean by any sort of cost by the
 13 consumers.
 14 THE WITNESS: I think it would be
 15 fair -- you know, that's assuming that they get
 16 designation if there is a recertification process.
 17 Yeah. I think it should be a very detailed
 18 analysis and, you know, speaking for our company,
 19 I'd be happy to provide the same detailed analysis
 20 to you folks that anybody else is required.
 21 CHAIRMAN SAHR: And should the
 22 standard to receive USF be 100 percent of coverage
 23 in a particular territory so that everyone in
 24 Venture that wanted DSL could have it? Shouldn't
 25 that be a condition of receiving USF money?

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1 MS. ROGERS: I'm --
 2 CHAIRMAN SAHR: Maybe that's a bad
 3 example. Thank you. Let me rephrase that. For
 4 USF -- for service that USF funds are received
 5 should the standard be that 100 percent of
 6 customers should be able to receive those services
 7 without having to make any sort of financial
 8 commitment on their behalf?
 9 THE WITNESS: I'm comfortable with
 10 that.
 11 CHAIRMAN SAHR: Thank you.
 12 MS. AILTS WIEST: Can you explain
 13 your line extension policy?
 14 THE WITNESS: In general terms it's
 15 very similar to Golden West, after we get to a
 16 certain distance of facilities that we have to
 17 provide we will require a deposit. That may vary,
 18 but it's based on the months of local service, say,
 19 12 months of local service or maybe even three
 20 years of local service and then we start crediting
 21 it back as long as they maintain service.
 22 MS. AILTS WIEST: So are there
 23 instances when people can't afford the deposit and
 24 you do not provide service to them?
 25 THE WITNESS: You know, we implement

1 our line extension policy so rarely I'd hate to say
2 with any certainty. Maybe it's happened, but I
3 can't recall.

4 MS. AILTS WIEST: Thank you.

5 (Discussion off the record)

6 MS. AILTS WIEST: Any redirect?

7 MS. ROGERS: I have just a couple of
8 things.

9 REDIRECT EXAMINATION

10 BY MS. ROGERS:

11 Q Randy, Mr. Ayotte asked you about some things that you
12 did not include in your testimony, and while he didn't
13 necessarily name them, I think he was talking about a
14 hold harm -- possibly the hold harmless or something
15 along those lines from the FCC -- or from the Joint
16 Board recommendation.

17 Why did you not include them?

18 A Because I don't think that any of them will be
19 implemented. I think they're politically unsound.

20 Q Okay. Mr. Ayotte also asked you about some of the
21 things that you stated in your rebuttal testimony
22 concerning your conversations with friends and business
23 associates who use Western Wireless as mobile wireless
24 service.

25 In addition to that, though, you have had

1 some personal experience in using -- trying to use
2 Western Wireless's service; is that correct?

3 A Yes.

4 Q And can you describe those experiences? And if you
5 want to -- I'm referring to page 3 of your surrebuttal
6 testimony as a starting point, if that helps you. Line
7 17. Excuse me.

8 MR. AYOTTE: Would you like to just
9 answer for him, or have you set him up enough?

10 MS. ROGERS: I think I was following
11 your excellent example from earlier. Thank you.

12 MR. AYOTTE: Thank you.

13 A Actually in anticipation of this question I borrowed a
14 Western Wireless phone and took kind of a long road
15 home Monday night after our meeting, and in many cases
16 I had staticky service. Calls were dropped. I
17 couldn't get -- couldn't complete the call. So, yeah,
18 I've had very -- I've got good experience about the
19 quality of service in some of the areas.

20 Q And the areas that you've described in your testimony
21 that would be consistent with what you're saying here
22 today?

23 A Yes.

24 Q In response to one of the other questions I believe
25 that was whether you are able and willing to provide

1 the services that you provide throughout your service
2 area, is that a fair statement?

3 A Yes.

4 MS. ROGERS: Okay. Thank you.

5 MS. AILTS WIEST: Any further

6 cross?

7 RECROSS-EXAMINATION

8 BY MR. AYOTTE:

9 Q Mr. Houdek, I get one more shot. You indicated you
10 didn't include the Joint Board's recommendation on
11 mitigating impacts and hold harmless and so forth in
12 your testimony because you don't think they're going to
13 be adopted; that is right?

14 A Yeah.

15 Q But you don't know for certain whether, when, or if any
16 such proposals would be adopted by the FCC; fair?

17 A Yeah.

18 Q And do I understand also then that your personal
19 experience with Western Wireless's service is limited
20 to one time, last Monday night on your drive home?

21 A No. That's not fair.

22 Q Well, not fair. I wanted to know if that was accurate.
23 That's what I understood your testimony to be.

24 A No. That was just to reassure myself that you hadn't
25 put a tower up in the last couple of weeks.

1 Q And had we?

2 A Evidently not.

3 MR. AYOTTE: Thank you.

4 CHAIRMAN SAHR: I do have a

5 follow-up question to both that question and one of
6 Ms. Rogers' questions, though. Let's say Western
7 Wireless put up a cell site let's say up by the
8 Onida-Blunt junction or somewhere in that area that
9 would be a typical cell site. So we'll assume
10 300 foot tower type thing.

11 Do you think that would improve coverage on
12 your drive back home?

13 THE WITNESS: Probably. I mean, I
14 drove somewhat in that area so I would have to
15 assume that it would help.

16 CHAIRMAN SAHR: And, unfortunately,
17 we see a lot of bad accidents, don't we, along the
18 highway to Onida and Highmore. It seems like at
19 least over the last few years we've had a lot of
20 pretty serious accidents out that way.

21 THE WITNESS: Yes. In fact, I
22 served on the fire department and ambulance crew
23 and have been involved in some of those so it's
24 tragic.

25 CHAIRMAN SAHR: And certainly

1 improved cell phone coverage in this particular
2 part of the state just like any other highway might
3 help us respond to those type of emergencies.

4 THE WITNESS: Very much so.

5 CHAIRMAN SAHR: Thank you.

6 MS. ROGERS: No. Thank you.

7 MS. AILTS WIEST: Thank you,
8 Mr. Houdek. You may call your next witness.

9 MS. ROGERS: We would call
10 Sue Vanicek to the stand.

11 SUE VANICEK,
12 called as a witness, being first duly sworn in the
13 above cause, testified under oath as follows:

14 DIRECT EXAMINATION

15 BY MS. ROGERS:

16 Q Good morning. You've been here a long time, haven't
17 you, waiting for this opportunity? Could you please
18 state your name and address for the record.

19 A My name is Sue Vanicek. My business address is
20 233 South 13th Street, Suite 1225, Lincoln, Nebraska
21 68508.

22 Q That's a long address, isn't it? Just briefly can you
23 tell us what you do in your professional background?

24 A I am currently a senior consultant for TELEC Consulting
25 Resources and in that capacity I represent rural ILECs

1 on a number of regulatory issues. I've been heavily
2 involved in regulatory issues relating to universal
3 service particularly.

4 Q Have you been involved in any -- what's your
5 educational background?

6 A I have a master's degree in economics from the
7 University of Nebraska at Lincoln.

8 Q And who are you appearing on behalf of today?

9 A Today I am appearing on behalf of Golden West, Vivian,
10 Venture, James Valley, and Tri-County.

11 Q And also SDTA?

12 A Yes.

13 Q And have you filed prefiled testimony in this case?

14 A Yes, I have.

15 Q Are there any additions or corrections that you would
16 like to make to that prefiled testimony?

17 A Yes. I would like to make one correction to the
18 surrebuttal testimony. And that's on page 13, footnote
19 13. That should read, "Section 254(b)(1)."

20 MS. ROGERS: Is that clear to
21 everyone?

22 Q Any other corrections or additions?

23 A Yes. In terms of an addition, I would like to explain
24 that in page 7 of my surrebuttal I referenced the Fifth
25 Circuit Court of Appeals Decision. That is the Texas

1 Office of Public Utility Council vs. FCC case, and that
2 case basically stated that nothing under the statute
3 prevented the FCC -- or, excuse me, allowed the FCC to
4 prevent State Commissions from imposing additional
5 criteria -- I'm sorry. Let me start over here.

6 Nothing in the statute allowed the FCC to
7 prevent State Commissions from imposing additional
8 criteria on eligible telecommunications carriers.

9 Q And that would be an addition to line 17 of page 7?

10 A Yes. That's correct.

11 Q Any other additions or corrections?

12 A No.

13 Q And can you please summarize your testimony for the
14 Commission?

15 A Yes. My testimony dealt basically with the public
16 interest test. And in summary there's been a big
17 change in the circumstances regarding, you know, where
18 the Commission was when the first public interest test
19 happened on Western Wireless's designation as opposed
20 to now.

21 Back in 2001 -- I believe it was when you
22 granted designation -- you were limited to the record
23 that you had in '98. And at that point in time about
24 the only thing that a lot of commissions considered
25 was, you know, is this going to result in competition

1 and is there harm from that competition.

2 Now we have a lot -- especially this year
3 we've received a lot of guidance from the FCC and from
4 the Joint Board. The FCC issued the Virginia Cellular
5 Order, and in there they said just the benefit of
6 competition wasn't enough for the public interest.

7 They gave several factors about the public
8 interest. The only one that I really focused on in my
9 testimony was the impact of multiple ETC designations,
10 and the impact that that could have on the Universal
11 Service Fund.

12 The Joint Board had some recommendations as
13 well concerning public interest. They said that the
14 public interest should be analyzed in a manner that's
15 consistent with the goals and the purposes of the Act.
16 Several states base their public interest analysis on
17 relevant universal service principles.

18 One of the principles that I would
19 specifically believe the Commission should focus on is
20 ensuring the availability of quality telecommunications
21 services at just, reasonable, and affordable rates.

22 The Joint Board also indicated that they
23 believe another relevant factor in determining whether
24 it's in the public interest to designate another ETC is
25 the amount of per line support that's received in an

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1 area. Because the higher the amount of per line
2 support, the greater the burden there will be on the
3 Universal Service Fund if you designate another carrier
4 in that area.

5 And another reason that per line support is
6 important is because if we get some changes in the
7 universal service mechanisms, specifically the primary
8 line proposal, it could dilute the amount of support in
9 really high-cost areas to the point that no one carrier
10 would receive enough support to provide adequate
11 universal service.

12 And so, in summary, of all of this I said in
13 my testimony, I really don't believe it's in the public
14 interest to designate Western Wireless as an ETC and if
15 there's some concern about, well, we don't know exactly
16 what's going to happen with primary line at this point
17 in time, it might be wise for the Commission to somehow
18 condition the designation because maybe at this point
19 in time you may think it's in the public interest but
20 if primary line or some proposal to limit support to
21 the point that no carrier could actually provide
22 adequate universal service, then it may not be in the
23 public interest anymore to have more than one ETC in
24 the area.

25 That's the summary of my testimony.

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1 MS. ROGERS: Thank you.

2 MS. AILTS WIEST: Mr. Ayotte.

3 CROSS-EXAMINATION

4 BY MR. AYOTTE:

5 Q Thank you. Good morning, Ms. Vanicek.

6 A Vanicek.

7 Q Thank you. I understand the purpose of your testimony
8 today is to focus on the public interest standard to be
9 applied to designate Western Wireless as an additional
10 ETC in the study areas of the seven rural LECs;
11 correct?

12 A Correct.

13 Q And your testimony is limited to that public interest
14 issue, isn't it?

15 A Yes.

16 Q And I take it then nothing in your testimony addresses
17 any of the other ETC requirements.

18 A That would be correct.

19 Q And you're not disputing in your testimony Western
20 Wireless's satisfaction of those basic ETC criteria?

21 A I didn't address that.

22 Q You didn't address that because you don't dispute it.
23 Is that fair?

24 A No. I didn't address it because that wasn't my
25 responsibility.

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1 MS. ROGERS: Can I impose an
2 objection here? I believe that goes beyond the
3 scope of the direct testimony.

4 MR. AYOTTE: That's what we're
5 talking about is her direct testimony.

6 MS. AILTS WIEST: Overruled.

7 MR. AYOTTE: I think you've answered
8 it.

9 Q In your testimony on the public interest issue you
10 identify the factors considered by the FCC in its
11 public interest discussion in the Virginia Cellular
12 Decision; correct?

13 A Right.

14 Q You lay those out in both your direct testimony and
15 again in your surrebuttal testimony.

16 A Correct.

17 Q And you also note in your surrebuttal testimony that
18 the FCC applied these same public interest factors in
19 the Highland Cellular Decision; right?

20 A Correct.

21 Q And it's true the FCC actually proceeded to designate
22 Virginia Cellular and Highland Cellular as additional
23 ETCs in those Decisions, didn't they?

24 A Yes, they did.

25 Q But although you summarize in your testimony the

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1 factors considered by the FCC in Virginia Cellular and
2 Highland Cellular, you don't actually apply or provide
3 any discussion of those factors to the facts of Western
4 Wireless in this proceeding, do you?

5 A I believe I said that the Commission should consider
6 the impact of multiple designations.

7 Q Right. So you identify the factors, recommend them to
8 the Commission, but in your testimony you didn't apply
9 them to anything specific to Western Wireless; right?

10 A Well, I said if you consider the impact of multiple
11 designations, the per line support and the
12 affordability, I don't believe that's in the public
13 interest I guess I would say that is applying.

14 Q But with respect to all the other factors that the FCC
15 used in its public interest analysis --

16 A I did not address those in my testimony.

17 Q And your testimony also includes an extensive summary
18 of the Joint Board's recommendations; right?

19 A Yes.

20 Q Including the recommended permissive guidelines for the
21 ETC designation process?

22 A Yes.

23 Q And the Joint Board's proposal to limit the scope of
24 high-cost support to a single connection.

25 A Yes.

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1 Q And ultimately you conclude that it would not be in the
2 public interest to designate Western Wireless in this
3 proceeding because of the potential for harm to the
4 rural LECs based on the primary line proposal
5 recommended by the Joint Board?
6 A That is one aspect of the public interest, not the
7 entire but the one aspect.
8 Q And you would agree with me that the Joint Board's
9 Recommended Decision at this point is merely advisory,
10 it's not currently in effect?
11 A It hasn't been enacted into a rule. Excuse me. I want
12 to clarify that.
13 Q Sure.
14 A The primary line aspect has not been put into a rule.
15 I believe that the public interest factors as the
16 FCC -- or, excuse me, as the Joint Board indicated,
17 several states are already applying those public
18 interest factors so I do not believe that the FCC needs
19 to adopt any further rules for states to be applying
20 the public interest factors that the Joint Board
21 discussed. The FCC would only have to enact a rule
22 change to change the support mechanism.
23 Q And it's that potential change in the support mechanism
24 to a primary line connection which you rely upon to
25 conclude that it's not in the public interest because

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1 of the potential harm for the rural ILECs; true?
2 A Just the public interest with regard to potential harm,
3 but I do have some other public interest concerns.
4 Q No. I understand that. But your public interest
5 concern relating to the potential harm to rural LECs,
6 that's based on the Joint Board's recommended primary
7 line proposal; right?
8 A Largely, yes.
9 Q Yes. And that proposed primary line suggestion, just
10 trying not to use proposed again -- let me back up and
11 restart.
12 The Joint Board's proposal regarding the
13 primary connection?
14 A Uh-huh.
15 Q That has not been put into effect.
16 A No.
17 Q And the FCC would still have to take action to
18 implement that primary line proposal and change the
19 current funding rules.
20 A That's correct.
21 Q Would you agree with me, Ms. Vanicek, that nobody knows
22 today with any certainty if, when, or what the FCC
23 might ultimately do with the Joint Board's primary line
24 proposal?
25 A Well, obviously we've heard over the last couple of

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1 days a lot of people make predictions.
2 Q Speculation?
3 A I thought Mr. Wood said he was almost certain yesterday
4 but --
5 Q Speculation?
6 A I would characterize it as speculation.
7 Q And speculation by anyone else who would suggest that a
8 primary line proposal will be adopted; right?
9 A Well, obviously until you have a rule change, no one
10 knows with 100 percent certainty what the rule change
11 will be.
12 Q And to steal a line from Commissioner Hanson, you
13 wouldn't bet the farm on it, the primary line proposal
14 being adopted, would you?
15 A I believe that the probability is low that the impact
16 will be mitigated. I think there is going to be some
17 rationing because the FCC has really changed their
18 outlook -- you know, back when they enacted Mag in 2001
19 they were asked do we need to freeze per line support
20 when there's a CETC that enters an area, and they said
21 we don't think it's going to be a problem.
22 Now this year they say, wow, the amount of
23 support going to CETCs is really rapidly increasing,
24 maybe we need to look at this, it looks like it's going
25 to be a burden on the fund. So I see over a period of

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1 years a very different perception of the growth of the
2 fund problem and the need to do something to cap the
3 fund.
4 Q So it might change in the future; right?
5 A Yes.
6 Q And nobody knows with any certainty, if, when, or how
7 it might change; isn't that fair?
8 A Not with 100 percent certainty, no.
9 Q And isn't it equally possible that the levels of
10 universal service support to the rural LECs in this
11 proceeding might not change at all? It's possible,
12 isn't it?
13 A That's one possible outcome among many.
14 Q Now in addition to the primary connection proposal, the
15 Joint Board also recommended to the FCC consideration
16 of these other measures to avoid or mitigate reductions
17 in the amount of high-cost support flowing to rural
18 carriers as a result of any implementation of a primary
19 line restriction, didn't they?
20 A I believe if you read the Order, it says mitigate the
21 amount -- mitigating reducing the amount of support to
22 rural areas, not rural carriers. That's paragraph 72
23 of the Recommended Decision. But I believe the actual
24 wording is rural areas, not rural carriers.
25 Q That's very good, paragraph 72, but in paragraph 76 the

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1 Joint Board was very clear to say, "If the FCC
2 implements a primary line restriction, it must adopt
3 some means of preventing or mitigating reductions in
4 the support available to rural carriers."
5 A Okay.
6 Q Subject to check. But these additional proposals that
7 the Joint Board has recommended, one relates to
8 restating the total current support paid to the rural
9 carriers in terms of first lines; right?
10 A That's one of the proposals. I'm not sure they would
11 have characterized that as a mitigation. I'm not sure
12 I believe it offers a lot of mitigation.
13 Q And you don't know if the FCC is going to adopt it, do
14 you?
15 A Not with 100 percent certainty, no.
16 Q And they also recommended or suggested providing
17 supplemental lump sum payments to avoid any effects on
18 rural carriers; right?
19 A That is one option.
20 Q And another option was described as the hold harmless
21 proposal to freeze the per line support available to
22 competitive ETCs?
23 A That was another option.
24 Q But, in any event, you acknowledge in your surrebuttal
25 testimony that it is unclear exactly how these

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1 proposals would function; right?
2 A I don't believe any of them have great specificity.
3 Obviously, we don't know exactly how the computations
4 are going to be made. We don't know -- say, for
5 example, if they decide to do a lump sum payment, what
6 period of time it's going to be, a year, two years, six
7 months? Who knows.
8 Q Nobody knows; right?
9 A Not with 100 percent certainty, no.
10 Q And in your surrebuttal testimony, Intervener
11 Exhibit 4, on page 18, could you grab that, please.
12 A Yes.
13 Q On line 8 you're providing a quote and you state that,
14 "The FCC indicates that in conjunction with the
15 measures discussed above we recommend that high-cost
16 support" -- the FCC didn't indicate that. That's the
17 Joint Board; right?
18 A I'm sorry. Yes. I did miss that correction.
19 Q Okay. Is that a correction we should make?
20 A Yes.
21 Q And on that same page down on line 15 you say,
22 "Therefore, if the FCC believes that the growth in the
23 Universal Service Fund must be controlled," and then
24 you reference the hold harmless method. That should be
25 Joint Board, shouldn't it, not the FCC?

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1 A No. I am referring to the FCC there because I'm
2 talking about what the FCC might do with the Joint
3 Board recommendation.
4 Q I see. Okay. Thank you. So that statement beginning
5 on line 15 is not attributable to the Joint Board's
6 Recommended Decision but rather your opinion; is that
7 right? I'm just trying to put it in context.
8 A I'm not trying to paraphrase what's in the Joint Board
9 recommendation, if that's what you're asking.
10 Q Okay. It's your view.
11 A Yes.
12 Q Is it fair to say, Ms. Vanicek, that all of your
13 testimony on this public interest factor and potential
14 harm for the rural LECs based on the Joint Board's
15 Recommended Decision is really contingent on whatever
16 the FCC ultimately does in response to the Joint
17 Board's Recommended Decision?
18 A I don't think my entire testimony is contingent upon
19 that, no.
20 Q I'm talking about the public interest testimony and the
21 potential for harm, that piece of it.
22 A So you're talking about just the -- like a primary line
23 proposal?
24 Q Whatever you set forth in your testimony regarding
25 potential for harm based on the Joint Board's

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1 Recommended Decision.
2 A Well, I guess what I'm asking is when we're talking
3 about public interest are we talking about
4 affordability and the amount of per line support?
5 Q Let me ask the question this way. You're not
6 recommending to this Commission that they accept the
7 Joint Board's recommendations as discussed in your
8 testimony as a foregone conclusion.
9 A With regard to the adoption of the primary line
10 proposal?
11 Q Yes.
12 A I am suggesting that they need to consider it because I
13 believe it's a very real possibility.
14 Q But one that nobody can say with any certainty is going
15 to be adopted; right?
16 A No one knows 100 percent what's going to happen with
17 it, no.
18 Q With respect to the correction you made to your
19 surrebuttal testimony on page 13 in your footnote
20 correcting the citation of Section 254(b)(1) rather
21 than (b)(2)?
22 A Uh-huh.
23 Q That's the basis of your recommendation to the
24 Commission that they consider affordability as part of
25 a public interest determination; correct?

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1 A Well, I referenced the fact that the Joint Board says
2 that there are already some states that use universal
3 service principles in their ETC public interest
4 designation process and that is one of the universal
5 service principles.

6 Q And is that a universal service principle,
7 Section 254(b)(1), that you are recommending or
8 suggesting that this Commission consider as part of its
9 public interest determination?

10 A Yes.

11 Q And I'm not asking you for a legal opinion. You're not
12 a lawyer.

13 A No. I'm an economist.

14 Q Would you agree with me, subject to check, that the
15 beginning part of Section 254(b) states that the Joint
16 Board and the Commission, meaning FCC, the Joint Board
17 and the FCC shall base policies for the preservation
18 and advancement of universal service on the following
19 principles, and then you get into 254(b)(1)?

20 MS. ROGERS: Excuse me. Maybe I
21 could give her a copy.

22 MR. AYOTTE: Sure.

23 Q I'll restate my question. The universal service
24 principle in 254(b)(1), quality of services being
25 available at just, reasonable, and affordable rates,

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1 wouldn't you agree with me that when read in
2 conjunction with the beginning sentence that that is
3 Congress's directive to the Joint Board and the FCC to
4 base their policies on those principles?

5 A Well, let me go back through my chain of reasoning.
6 States are using -- the Joint Board said states are
7 using these principles for ETC designation. I'm
8 suggesting that this state does that too.

9 Q And the basis for that is the Joint Board's statement
10 then, not the statute itself?

11 A The Joint Board basically said that states are using
12 the statute.

13 Q That doesn't make it right, does it?

14 A They're recommending that states do it.

15 Q Okay. And --

16 A States have the ability to do it under the Fifth
17 Circuit.

18 Q Are you expressing a legal opinion on that?

19 A No. I'm not a lawyer.

20 Q Okay. Have you read the Fifth Circuit's opinion in
21 Texas PUC vs. FCC?

22 A Yes, I have.

23 Q Where they discussed how the FCC's prohibition against
24 states adding additional criteria to be designated as
25 an ETC?

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1 A Yes.

2 Q Okay. Wouldn't you agree with me that what the Fifth
3 Circuit said when you read that opinion is that states
4 with respect to matters within the State Commission's
5 jurisdiction such as requiring CLEC certificates and
6 certificates of registration that states are not
7 prohibited from otherwise applying lawful state
8 regulation in their designation of ETC?

9 A I did not see that in that opinion. What it says is --
10 I believe it's Paragraph 135 in the First Report and
11 Order -- the FCC told the states they couldn't impose
12 any additional eligibility criteria on ETCs. The court
13 said, no, FCC, you are not right, you can't do that.

14 I don't believe it talked about intrastate
15 regulation. As a matter of fact, I believe that the
16 Petitioners actually raised the issue of intrastate
17 regulation and the court never reached that because
18 they said the FCC's rule is wrong, we don't need to
19 address the issue of intrastate regulation.

20 Q Do you know why the Fifth Circuit said that the FCC's
21 statement was incorrect?

22 A I believe it was something to do with the number of
23 carriers rather than the criteria. I don't recall that
24 exactly.

25 Q And you don't recall any part of the Fifth Circuit's

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1 opinion that speaks to matters of state regulation?

2 A Not within the question of whether the states have the
3 ability to impose additional criteria on ETC
4 designation.

5 Q On ETC designations or on ETCs, carriers that are
6 designated as ETCs?

7 A I believe we were talking ETC designations.

8 Q If the FCC said that a state could not otherwise impose
9 additional requirements on ETCs and a company came in
10 and wanted to be designated -- a landline company came
11 in and want to be designated as an ETC --

12 A Uh-huh.

13 Q -- but did not have a Certificate of Authority, CLEC
14 certificate, then the State Commission couldn't require
15 that CLEC certificate as part of the designation
16 process, could they?

17 A Would you repeat the question.

18 Q If the FCC's statement were correct in that a State
19 Commission cannot add additional requirements on ETCs,
20 if that statement were correct, wouldn't that mean, for
21 example, that a landline carrier could apply to the
22 Commission to be designated as an ETC, they could
23 demonstrate that they're a common carrier, they offer
24 the supported services, they'll undertake to advertise
25 the availability of the services, and they'll provide

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1 the services throughout their designated area?

2 Let's just say they're seeking designation in

3 a nonrural area to avoid public interest.

4 A Okay.

5 Q Okay. If the FCC's rule were correct that a State

6 Commission could not otherwise have any other

7 requirements, then that applicability wouldn't even

8 need a Certificate of Authority to be designated as an

9 ETC, a Certificate of Authority under state law.

10 A The FCC's rules about ETC designation do not supersede

11 state law. Whatever state requirements were there to

12 operate otherwise would still be there.

13 Q Because the Fifth Circuit said that a state is not

14 precluded from having additional requirements on ETCs

15 if those requirements are a matter of state law; right?

16 A I don't believe it said if they are a matter of state

17 law.

18 Q The Joint Board's Recommended Decision was released on

19 February 27 of 2004; correct?

20 A Yes.

21 Q And the FCC's Decision in Highland Cellular was

22 released on April 12 of 2004; right?

23 A I don't have that in front of me so I don't know if

24 that's correct or not.

25 Q Take a look at your footnote 3 on page 5 of your

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1 surrebuttal testimony where you cite the High C

2 Decision, Highland Cellular Decision.

3 A Okay.

4 Q You agree with me that the Highland Cellular Decision

5 was released by the FCC on April 12 of 2004.

6 A Yes.

7 Q Which was after the release of the Joint Board's

8 Recommended Decision; right?

9 A Yes.

10 Q Isn't it true that the FCC did not undertake to apply

11 any of the Joint Board's recommendations when it

12 designated Highland Cellular as an ETC?

13 A I believe the FCC used the same criteria it used in the

14 Virginia Cellular.

15 Q Which was released on January 22 of 2004.

16 A Yes.

17 Q And, in fact, with respect to the Joint Board's

18 recommendations, the FCC in Highland Cellular stated

19 just the opposite, didn't they?

20 A Stated just the opposite what?

21 Q Stated just the opposite of anything that the Joint

22 Board was recommending.

23 A I don't know that I would characterize it as the

24 opposite.

25 Q Well, after acknowledging the Joint Board's Recommended

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1 Decision the FCC stated in Highland Cellular that the

2 outcome of that proceeding could potentially impact,

3 among other things, the support that Highland Cellular

4 and other competitive ETCs may receive in the future

5 and the criteria used for continued eligibility to

6 receive support; right?

7 A It states that -- I wouldn't characterize that as

8 opposite of what's in the Joint Board recommendation.

9 Q Well, they didn't undertake to apply any of the Joint

10 Board's recommended factors in making their decision,

11 did they?

12 A Well, in the Virginia Cellular Order the FCC announced

13 these new criteria that they were going to use for ETC

14 designation pending the Joint Board recommendation and

15 their action on it.

16 Q Then I think we're in agreement. Virginia Cellular was

17 released first, Joint Board was released second,

18 Highland Cellular was released third, right, in the

19 time line?

20 A Released --

21 MS. ROGERS: Could I interject

22 something perhaps for the purposes of

23 clarification? Could we also make reference to the

24 adoption date as opposed to the release date?

25 Would you like to add that to your question?

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1 MR. AYOTTE: No. I choose not to do

2 that.

3 Q Ms. Vanicek, in terms of the time line, Virginia

4 Cellular was released first, Joint Board's Recommended

5 Decision was released second, Highland Cellular

6 Decision was released third, was it not?

7 A The release dates and the adoption dates were not all

8 consecutive in these three cases.

9 Q And until the Decision is actually released you don't

10 know what the Order is going to say regardless of the

11 date it was adopted, do you?

12 A I would hope that the FCC would have a pretty clear

13 idea of what they're adopting and that they would

14 pretty much know what the Order is going to say and not

15 change it in between the adoption and the release.

16 Q They wouldn't do that, would they? Isn't it fair to

17 say, Ms. Vanicek, that the FCC in its Virginia Cellular

18 and Highland Cellular Decisions, the FCC did not

19 attempt to prejudice the outcome of the Joint Board's

20 recommendations?

21 A You're going to have to define for me what you mean by

22 prejudice.

23 Q What do you understand it to mean?

24 A I don't understand the term in this context.

25 Q The Joint Board's -- you agreed with me before that the

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1 Joint Board's recommendations --

2 A Uh-huh.

3 Q -- were advisory, did not change existing law --

4 A With regard to primary line. I mean, basically the

5 public interest findings there really isn't a lot of

6 law there so it doesn't change it.

7 Q And with respect to the Joint Board's recommendations

8 regarding their permissive guidelines to be adopted for

9 the ETC designation?

10 A I'm sorry. What's the question there?

11 Q Those too were recommendations to the FCC.

12 A Yes.

13 Q And like the primary line proposal, the Joint Board's

14 recommendations regarding the adoption of these

15 permissive guidelines for ETC designation, the ETC

16 designation process, those too were advisory.

17 A Well, because the advice on the permissive

18 guidelines -- the fact that the guidelines are

19 permissive I would interpret as meaning the states

20 could do this now because some states are actually

21 doing what the Joint Board recommended now.

22 Q But what the Joint Board was recommending regarding

23 permissive guidelines was a recommendation to the FCC

24 that they adopt permissive guidelines for states to

25 consider using; right?

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1 A I believe they did ask the FCC to adopt the guidelines.

2 However, as I just stated, I believe the states could

3 be using those guidelines now.

4 Q I know. You've said that three times today. My

5 question is with respect to those recommended

6 permissive guidelines to be adopted for the ETC

7 designation process, those too were advisory; right?

8 A Well, the whole thing is entitled Recommended Decision

9 so I would say the whole thing is advised.

10 Q And with respect to all of the advice from the Joint

11 Board's Recommended Decision, the FCC in its Virginia

12 Cellular and Highland Cellular Decisions did not

13 attempt to predetermine the outcome of the Joint

14 Board's Recommended Decisions, did they?

15 A Well, I don't believe it would be appropriate for the

16 FCC to try and prejudge what -- or to like read the

17 mind of the Joint Board and figure out what they were

18 going to recommend. I mean, that's -- they are

19 instructed to refer issues to the Joint Board, get

20 recommendations from the Joint Board, take comment on

21 those and rule on them.

22 So it would not be appropriate for the FCC to

23 try and figure out what the Joint Board was going to

24 recommend to them.

25 Q Agreed. And, likewise, wouldn't you agree it's not

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1 appropriate for this Commission to try to prejudge and

2 predetermine what's in the minds of what the FCC might

3 ultimately do?

4 A No. Because the Joint Board said that the states are

5 doing this today. You don't need to wait.

6 MR. AYOTTE: Thank you,

7 Ms. Vanicek. Nothing further.

8 MS. AILTS WIEST: We'll break.

9 (A lunch recess is taken)

10 MS. AILTS WIEST: Mr. Ayotte, you

11 were finished; correct?

12 MR. AYOTTE: Yes. Thank you.

13 MS. AILTS WIEST: Mr. Smith, do you

14 have any questions?

15 MR. SMITH: I do. Just a couple.

16 CROSS-EXAMINATION

17 BY MR. SMITH:

18 Q Ms. Vanicek, you've been here for the entirety of the

19 proceedings, have you not?

20 A Yes.

21 Q And in the course of sitting there listening to things,

22 you've heard the questions of several of the

23 Commissioners and comments and colloquies between them

24 and various witnesses concerning the use of this annual

25 certification process as a means of, I guess, an

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1 enforcement mechanism, if you will, as to compliance

2 with the ETC provisions and so forth?

3 A Yes. I've heard those discussions.

4 Q Without in any way -- I guess presuming that that's

5 what the Commission will decide, just assuming the

6 Commission were to grant the ETC designation sought by

7 Western Wireless in this case, could you take a few

8 moments to discuss how the kinds of public interest

9 factors that the FCC has discussed in its recent two

10 cases and maybe the Joint Board discussed in its recent

11 recommendation might be addressed by the Commission via

12 that annual certification process?

13 A Yes. I'll try. And I'm not sure if I'm going to

14 describe this correctly in terms of your certification

15 process so please forgive me. But I'm going to

16 describe it in terms of you might want to place some

17 conditions that you want to see demonstrated in the

18 certification process -- and this may not fit but with

19 regard to affordability you may want to decide that

20 certain offerings are affordable and only provide

21 support for the offerings that you consider to be

22 affordable.

23 As far as the investment goes, I think you'd

24 want to make sure that whatever investments were

25 proposed or planned -- I'm not sure exactly, as I say,

1 how your certification process works, are indeed
2 carried out and made. Let me think. And we're
3 assuming it's already designated.

4 I think the important thing if you're
5 assuming that it's designated is that you use the money
6 for universal service and when you do have coverage
7 gaps, it's important to build out to fill in those
8 coverage gaps because I think as we've demonstrated
9 here the ILECs basically serve every customer that
10 wants service and certainly your first priority would
11 want to be to get service to every customer if Western
12 got designation every customer that wanted wireless
13 service.

14 **Q** If the Commission rules one way or another in this
15 case, it will do so on the basis of findings that it
16 makes probably concerning facts as they exist today.

17 **A** Uh-huh.

18 **Q** Taking that certification process a step farther, is
19 there anything in that process that would allow the
20 Commission to react to changing circumstances and if
21 facts change materially in the ways that you've
22 suggested in their testimony that they might change, is
23 that something the Commission would be able to address
24 adequately in subsequent years via the certification
25 process?

1 **A** I'm not an expert on this. My understanding would be
2 that you would probably need to go back and look at the
3 designation and possibly either revoke the designation
4 or somehow condition that. Now, as I say, I'm not an
5 expert on this matter, but I believe once they're
6 designated the certification involves are they using
7 the funds correctly.

8 And if it's truly not in the public interest
9 to be providing support to Western Wireless, then I
10 believe you'd have to basically change the designation
11 and not designate them whatsoever.

12 **Q** So we'd have to reopen an undesignation proceeding?

13 **A** That would be my understanding.

14 **Q** Do you have in front of you the FCC Highland Decision?

15 **A** I do not have the Highland Decision. I'm sorry.

16 (Attorney hands witness document)

17 **A** Okay.

18 **Q** Would you turn to paragraph 43, please.

19 **A** Sure. Okay.

20 **Q** And the paragraph is -- it's Subdivision F called
21 Regulatory Oversight, and it's the one we've talked
22 about here on several occasions. But I note that one
23 of the somewhat unusual things about this is -- and
24 we've talked about certification and all of that, is if
25 you look down -- I think it's the second sentence.

1 It's the one that immediately follows footnote 118.

2 Do you see that?

3 **A** Yes.

4 **Q** The FCC begins its recitation of what I refer to as
5 conditions or additional requirements, et cetera, with
6 this phrase, "Separate and in addition to its annual
7 certification filings under Sections 54-3-13 and
8 54-3-14," which are the nonrural and rural
9 certification statutes -- or rules. And then it goes
10 onto list those various things the FCC found based on
11 the public interest criteria.

12 Now I guess based upon the discussion we've
13 just had would it be your understanding that perhaps
14 the reason that the FCC did that was to make it clear
15 that a revisitation of those particular issues would be
16 made and that the purpose of this was to put the
17 company on notice that they would be made?

18 **A** Yes. I would agree with that.

19 **Q** Is that the kind of thing with respect to at least some
20 of the issues we've talked about here with respect to
21 the public interest in satisfying that criteria that
22 perhaps this Commission ought to think about doing as
23 well, in your opinion?

24 Again, and assuming -- I'm not deciding. I'm
25 assuming for the sake of just the question that the

1 Commission were to grant the designation.

2 **A** Yes. Assuming you grant the designation, I think we
3 would definitely support, for example, the sentence
4 that you have just pointed out in Highland Cellular
5 where they committed to submit records and build-out
6 plans because I'm not sure that I ever heard Western
7 was willing to do that and I would certainly think that
8 would be one thing the Commission would want to do.

9 **Q** And I note if you turn the page, same paragraph, turn
10 the page to the second to the last sentence.

11 **A** That starts, "We further?"

12 **Q** "We further emphasize that if Highland Cellular fails
13 to fulfill," and then it lists a few things, it says,
14 "requirements of the statute," our rules, and then I'll
15 quote, "and the terms of this Order," which would
16 include those things in the previous paragraph?

17 **A** Yes.

18 **Q** "The Commission has authority to revoke its ETC
19 designation." And in your opinion is that the kind of
20 thing that the Commission ought to do in this case?

21 **A** Oh, yes. I think that the Commission should definitely
22 consider doing something like that if they do indeed
23 grant the designation.

24 MR. SMITH: Thank you. That's all
25 the questions I have.

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1 MS. AILTS WIEST: Commissioners?
2 COMMISSIONER BURG: Continuing that
3 line of questioning, have you testified in similar
4 cases any place else, similar issues?

5 THE WITNESS: I've testified on a
6 number of universal service issues in Nebraska. We
7 did have an ETC designation case in Nebraska. I
8 did not testify in it. I kind of kept track in it,
9 but I wasn't a participant.

10 COMMISSIONER BURG: And it appears
11 to me that you have the background. What kind of
12 conditions do you think we have the authority to
13 provide in the designation?

14 THE WITNESS: I think your
15 conditions are almost unlimited based on that
16 Fifth Circuit Court Order. I think you can impose
17 whatever conditions you wish.

18 COMMISSIONER BURG: Do you feel this
19 is quite a change from what I'd say our first round
20 or two or three years ago?

21 THE WITNESS: It's a change, and I
22 think the circumstances, you know, as I said in my
23 introduction, have changed, and I think it's
24 warranted. I know in Nebraska we had a Nextel
25 within about the last year applied for ETC

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1 designation and the Commission denied their
2 petition and the Commission basically said
3 circumstances have changed substantially in the
4 past two or three years and we no longer view just
5 having competition as being a proper public
6 interest standard and a reason to grant
7 designation.

8 COMMISSIONER BURG: Prior to that
9 denial did they offer or have any discussion about
10 conditions?

11 THE WITNESS: Yes. As a matter of
12 fact, Western Wireless does have designation in
13 Nebraska, but Nebraska has conditioned it to only
14 apply to fixed wireless -- the provision of fixed
15 wireless service.

16 COMMISSIONER BURG: Have you been
17 involved in any certifications?

18 THE WITNESS: No, I have not.

19 COMMISSIONER BURG: Are you aware,
20 has Nebraska done any -- have they held hearings or
21 anything dealing with the certification?

22 THE WITNESS: Nebraska has a
23 certification process. I'm not sure that I would
24 characterize it as quite as detailed as the
25 South Dakota certification process at this point in

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1 time. I don't believe that the state actually
2 requires, say, for example, that you provide what
3 you're going to -- you know, your investment
4 amounts and your accounts, some of those sort of
5 things that South Dakota requires.

6 COMMISSIONER BURG: This may be mor
7 technical, and if you aren't the expert on it, I
8 accept that. In areas you consider or in the areas
9 covered by this hearing would mobile only provide
10 universal service?

11 THE WITNESS: Do you mean would
12 mobile service be eligible for universal service
13 support?

14 COMMISSIONER BURG: No. If mobile
15 were the only thing available to a customer, could
16 they receive the kind of services that Universal
17 Service Fund was designated for?

18 THE WITNESS: If you had 100 percent
19 mobile coverage, I would say that today -- under
20 today's supported services, probably you could.
21 Tomorrow if we decide that advanced services are
22 included, maybe not. But, you know, assuming you'd
23 want 100 percent coverage of the areas.

24 COMMISSIONER BURG: Single voice
25 line, which is basically today's standard; is that

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1 correct?

2 THE WITNESS: Yes. That's correct.

3 COMMISSIONER BURG: And then the
4 last question, could the FCC adopt a Joint Board
5 recommendation -- we've had a lot of discussion
6 about the Joint Board and the FCC's following
7 recommendations of the Joint Board. There's been a
8 lot of discussion on that and what they may or may
9 not or could or could not do.

10 THE WITNESS: Uh-huh.

11 COMMISSIONER BURG: Could the FCC
12 adopt the Joint Board recommendations to limit
13 funds to a single line but not adopt the Joint
14 Board's recommendations to mitigate the effect on
15 rural areas or to do a hold harmless?

16 THE WITNESS: Certainly the FCC
17 could adopt the primary line and not have any
18 mitigation.

19 COMMISSIONER BURG: Well, Mr. Ayotte
20 in questioning you on that part said one of the
21 other requirements that the Joint Board said that
22 "they shall," I think the language was or "they
23 must" provide mitigating.

24 But does the Board have to follow that? Do
25 they have to provide --

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1 THE WITNESS: No. The FCC can
2 change -- they don't necessarily have to adopt
3 whatever the Joint Board recommends to them. And,
4 you know, they often tweak things a little bit.

5 COMMISSIONER BURG: Or they can
6 adopt portions or ignore portions.

7 THE WITNESS: Sure. Absolutely.

8 COMMISSIONER BURG: Okay. That's
9 all I have.

10 VICE CHAIR HANSON: Good afternoon,
11 Ms. Vanicek.

12 THE WITNESS: Good afternoon.

13 VICE CHAIR HANSON: Mr. Ayotte in
14 his opening remarks suggested that we give certain
15 criteria in examining whether or not an ETC status
16 should be granted to Western Wireless based upon
17 benefits versus harm.

18 THE WITNESS: Uh-huh.

19 VICE CHAIR HANSON: The suggestion,
20 of course, alludes to examining the benefits and
21 the harm of providing ETC status.

22 THE WITNESS: Uh-huh.

23 VICE CHAIR HANSON: What harm do you
24 see if we do not provide ETC status?

25 THE WITNESS: I don't believe off

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1 the top of my head I can think of any harms that
2 would happen if you didn't provide status.

3 VICE CHAIR HANSON: Should we ignore
4 the Interveners' witnesses who stated that wireless
5 services being clamored for, that it is necessary
6 for safety, for economic development in the rural
7 areas?

8 THE WITNESS: Well, I guess I would
9 characterize that as a benefit rather than as a
10 harm if you don't grant designation. I would say,
11 you know, public safety and things such as that are
12 benefits.

13 VICE CHAIR HANSON: So that would be
14 on the benefit side.

15 THE WITNESS: Yeah. That's what I'm
16 trying to say.

17 VICE CHAIR HANSON: Okay. Do you
18 think the public interest test is met by the
19 witnesses for the Interveners who said that it's
20 lacking, that we need more services, we need more
21 cell towers, we need to have this opportunity in
22 the rural areas?

23 THE WITNESS: I think it may be a
24 need, but I'm not sure that that need outweighs the
25 potential harm to universal service that's

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1 currently provided by the rural ILECs.

2 VICE CHAIR HANSON: That's certainly
3 a big guess, isn't it?

4 THE WITNESS: Well, I think as most
5 of the witnesses have said, this is a -- you know,
6 it's a balancing issue, and you have to weigh the
7 harms against the benefits. And it's a tough thing
8 to do.

9 VICE CHAIR HANSON: Especially since
10 we have no idea of knowing what the potential is on
11 either side, with the exception that we've heard
12 from witnesses saying that folks are clamoring for
13 the people who are -- you know, the example's been
14 given a number of times about people on the side of
15 the road in need of assistance.

16 One of the gentleman talked about wearing his
17 other hat as a public safety person and the need
18 for having better services in those areas. So we
19 do, in fact, know that communication is beneficial,
20 especially in some of the discussion that was
21 brought up about traffic accidents, things of that
22 nature, quality of life, economic development.
23 It's all been discussed from one extent.

24 Aren't those all pretty imposing arguments?

25 THE WITNESS: They're certainly all

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1 important things that you need to weigh as benefits
2 versus cost.

3 VICE CHAIR HANSON: Would you care
4 to clarify that at all, expand on it?

5 THE WITNESS: Well, ultimately I
6 think you as Commissioners will need to weigh that.
7 And, you know, I've mentioned in my testimony if
8 you decide to grant it now, maybe at some point if
9 you really do see, you know, not potential harms
10 but very definite harms to the rural ILECs, maybe
11 you need to, you know, reconsider at that point
12 whether designation is appropriate.

13 VICE CHAIR HANSON: Thank you very
14 much for appearing here. No further questions.

15 THE WITNESS: You're welcome.

16 CHAIRMAN SAHR: The shoe is on the
17 other foot with Commissioner Hanson going before me
18 for a change where he got to ask some of the
19 questions I had. But I do have some other
20 questions.

21 I'll start off, I'm just curious, in Nebraska
22 do you know how many wireless ETCs there are?

23 THE WITNESS: Currently, one.

24 CHAIRMAN SAHR: That one provider
25 currently has ETC status?

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1 THE WITNESS: It has status. To my
2 knowledge it's not providing service, the service
3 for which it has status, but it does have status.
4 CHAIRMAN SAHR: What company is
5 that?
6 THE WITNESS: Western Wireless.
7 CHAIRMAN SAHR: And that hasn't been
8 revoked or revisited?
9 THE WITNESS: They have status for
10 fixed wireless service, and that has not been
11 revoked or anything of that matter.
12 CHAIRMAN SAHR: Now you've been
13 urging more active state interpretation of the
14 public interest criteria. Is that a fair
15 characterization?
16 THE WITNESS: Yes.
17 CHAIRMAN SAHR: You're saying that
18 you believe certainly the Joint Board, if not the
19 FCC, has stated that states should have some
20 flexibility in what sort of criteria they consider.
21 THE WITNESS: Yes.
22 CHAIRMAN SAHR: This is going to
23 dovetail on Commissioner Hanson's question, but
24 would improved public safety be a criteria that a
25 Commission might reasonably consider as far as

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1 being part of the public interest test then?
2 THE WITNESS: I think it would be,
3 once again, one of the benefits you'd weigh against
4 the cost.
5 CHAIRMAN SAHR: What about improved
6 service on highways and in smaller towns?
7 THE WITNESS: Once again, a benefit
8 you'd weigh against the cost.
9 CHAIRMAN SAHR: What about better
10 economic development opportunities?
11 THE WITNESS: You could consider
12 that a benefit that you'd weigh against the cost.
13 CHAIRMAN SAHR: What about giving
14 consumers more choice? Or, excuse me, I can
15 rephrase that, opportunity to have a service in
16 their town that they might not otherwise have.
17 THE WITNESS: An additional
18 complimentary service as opposed to the same
19 service, yes.
20 CHAIRMAN SAHR: What about bring
21 cell phone service to people who don't have it now
22 and trying to meet the goals that Mr. Brown has
23 said that we all should be looking towards of
24 having urban quality in our rural parts of the
25 country?

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1 THE WITNESS: Certainly if you place
2 some conditions or criteria on the designation to
3 make sure that that's being accomplished, yes.
4 CHAIRMAN SAHR: Don't you think we
5 should place some pretty heavy weight on those type
6 of factors?
7 THE WITNESS: I think it's up to the
8 Commission to place the weights on the factors.
9 CHAIRMAN SAHR: So you don't have an
10 opinion as to what factors are important in
11 considering a public interest test?
12 THE WITNESS: Well, I think that
13 there's benefits and costs that you have to weigh,
14 and the benefits are important. The costs are a
15 potential risk that you have to weigh.
16 CHAIRMAN SAHR: Let's talk about
17 some of the mitigation steps that could be taken.
18 One of the primary costs or however you want to
19 phrase it, is potential impact if certain changes
20 are made to universal service funding or -- I'll
21 even lump it into what could happen in the future
22 with USF.
23 If our Commission saw that that was taking
24 place, why could we not open up a proceeding,
25 consider the factor at that point in time and say,

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1 you know, at this point in time we see not just
2 some potential harm, we're seeing a reasonable
3 expectation or we're seeing actual harm coming down
4 the pike? Why could we not at that point in time
5 look again into the question of anyone's ETC's
6 designation into the state?
7 THE WITNESS: Well, I think that
8 would be a wise thing to do. I think the reason
9 we're raising this here is we don't want that
10 possibility foreclosed. In other words, we do not
11 want the Commission to grant designation not
12 knowing that this potential harm could come up in
13 the future and then be foreclosed from the option
14 of changing or revoking the designation at some
15 point in the future.
16 CHAIRMAN SAHR: And I appreciate
17 your point on that, and I think it's a valid one.
18 But when we're engaging in this balancing act we
19 see a number of factors that are advantages, some
20 disadvantages but when you get to the public
21 interest test certainly we're all very, very
22 concerned about the Universal Service Fund.
23 But by everyone's own admission, until we see
24 more guidance from the Joint Board and the FCC or
25 maybe in definitive action by the FCC or Congress,

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1 we're really speculating as to what is going to
2 happen as far as primary lines are concerned,
3 potential caps to the fund, and those type of
4 things. I'm not saying they're not important
5 factors, and I'm not even saying they're things
6 this Commission doesn't consider on a regular
7 basis.

8 But the point is there is a mechanism in
9 place. We don't have to blindly go forward and
10 just say everyone can have Universal Service Funds
11 who asks for it. We've got the means to do a
12 certification. We've got the means -- and
13 requirement to do certifications. We have the
14 ability to look at certifications and say at this
15 point in time under these circumstances we will
16 revoke a certification because you haven't done X,
17 Y, and Z or because perhaps a public interest scale
18 has tipped because it could even be potential harm
19 to the Universal Service Fund.

20 We have those mechanisms in place; is that
21 correct?

22 THE WITNESS: I'm sorry. The
23 question got a little too long. I'm not sure I can
24 follow it from beginning to end.

25 CHAIRMAN SAHR: Here's the question.

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1 If we were to designate ETC status, would we not
2 have the ability to look at, during the
3 certification process, how that money is being
4 spent, evaluate it and then also -- in particular
5 with the universal -- I'll let you answer that
6 question. The first question is we do have
7 certification process where we can review
8 expenditures?

9 THE WITNESS: That is my
10 understanding. I think you may want to I'm going
11 to use the term "beef up" that certification and
12 make sure that those expenditures are really being
13 made or, like, require a build-out plan as we have
14 discussed.

15 CHAIRMAN SAHR: And I appreciate
16 your input on that. And then the second part of
17 the question, which may even be asked and answered,
18 but if we did see a potential impact because of
19 some changes that were made to the Universal
20 Service Fund, we could evaluate any company's ETC
21 status and consider that as part of a public
22 interest test at that point in time; is that
23 correct?

24 THE WITNESS: I would certainly
25 recommend that, yes.

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CHAIRMAN SAHR: Thank you.

2 MS. AILTS WIEST: Any further
3 questions from Commissioners? Any redirect?
4 MS. ROGERS: I have just a couple of
5 things.

REDIRECT EXAMINATION

7 BY MS. ROGERS:

8 Q First of all, with regard to some of the questions that
9 have just come up, when you refer to or when
10 Commissioner Sahr was referring to reviewing at a
11 future point in time, do I not understand from your
12 previous responses to questions that it would be your
13 recommendation that if ETC designation is going to be
14 granted, that it would be conditioned upon fulfillment
15 of some of the conditions as outlined in other points
16 made by Mr. Smith and in Highland and Virginia
17 Cellular?

18 A Yes. That is correct.

19 Q You talked some about weighing -- the potential
20 benefits and weighing the cost. I think that was a
21 term that you were referring to. By weighing costs
22 would that include, for example, how the services -- or
23 Western Wireless's commitment to expanding the services
24 in South Dakota?

25 A Yes. I think that's one way of looking at it or on the

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1 other side if they aren't willing to commit, then I
2 don't know how much you can count it as a benefit
3 because you don't really know if it's a benefit that's
4 going to occur if you don't have a commitment.
5 Q And I did want to clarify that is it my understanding
6 then that in Nebraska Western Wireless was designated
7 just for fixed services; is that correct?

8 A That's correct.

9 Q And, again, in the context of the questions concerning
10 a weighing of benefits versus cost, you've been here
11 throughout the course of this hearing. Did you hear
12 any evidence from Western Wireless that if ETC is not
13 granted, that they would no longer provide services in
14 South Dakota?

15 A No. I heard no evidence to that effect.

16 Q No evidence that in absence of ETC designation here
17 those services will go away?

18 A I didn't hear them testify that they would exit the
19 state if they didn't get ETC status.

20 Q Did you hear any evidence that Western Wireless, if
21 granted, would actually utilize ETC funds for expansion
22 of services in rural areas in South Dakota?

23 A I didn't perceive that we had a build-out plan or a
24 commitment as to exactly how those funds would be
25 spent.

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1 Q I wanted to make a clarification in the Virginia
2 Cellular case and also the Highland case. The FCC did
3 not designate ETC status in all areas in those cases,
4 did it?
5 A That's true. That's correct. There were some areas in
6 which they did not grant designation.
7 Q They denied it?
8 A Yes.
9 Q With regard to the Joint Board Decision, and we
10 discussed that at length back and forth, are you aware
11 of any distinction between the Joint Board's
12 Recommended Decision -- distinction meaning the
13 recommendation. Was there any distinction between the
14 Joint Board's recommendation regarding the public
15 interest guidelines versus the primary line?
16 A I'm not aware of any Commissioners that dissented with
17 the public interest guidelines. I think you had
18 unanimous support of those guidelines. There were some
19 Commissioners that dissented with the primary line
20 portion of the recommendation.
21 Q You discussed some potential options in the event that
22 if ETC designation is granted in this case. Would one
23 option for a condition be a grant of ETC status
24 contingent upon a review if further action comes from
25 the FCC regarding the Joint Board's Recommended

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1 Decision?
2 A Yes. I think that would be one condition that you
3 would want added to an Order.
4 Q And there will be continued input on that Joint Board
5 Decision, and there will be a final Decision from the
6 FCC one way or another; is that correct?
7 A Yes. Correct.
8 Q So to the extent that we know there are going to be
9 further proceedings at this point in time, that is a
10 definite thing?
11 A Yes.
12 Q I think one of the things that you were asked and I
13 think you testified to was that you feel certain, and
14 this is sort of a follow-up to my previous question
15 that, in fact, some action will be taken with regard to
16 the USF funds and some type of capping or primary line
17 or something along those lines?
18 A I think we've seen a definite shift and concern about
19 how fast the fund is growing, and I think you may not
20 know exactly how the proposal will be adopted but I
21 think there will be some capping or rationing mechanism
22 because the concern has been exhibited about how fast
23 the fund is growing and unless you do some sort of
24 rationing or capping, you aren't going to stop that
25 fund growth.

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1 Q So as you sit here today, you feel relatively certain
2 some action may be coming in that regard?
3 A Yes, I do.
4 Q I don't know that you were allowed to answer the
5 question of whether or not you would bet the farm on
6 that, but my question to you would be is your
7 estimation of some type of action on the FCC with
8 regard to capping or changing USF funds more certain
9 than your estimation of Western Wireless having a
10 construction plan and following it in the state of
11 South Dakota?
12 A In my estimation, yes.
13 MS. ROGERS: Thank you.
14 MS. AILTS WIEST: Do you have any
15 other questions?
16 MR. AYOTTE: Just a few.
17 RECROSS-EXAMINATION
18 BY MR. AYOTTE:
19 Q Ms. Vanicek, you testified on redirect you heard no
20 evidence that if Western Wireless were not granted ETC
21 status, they're not going to leave the State of South
22 Dakota; right?
23 A Yes.
24 Q But you did hear Mr. Blundell testify and you saw his
25 testimony regarding the account's plans for the

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1 construction of the 17 additional cell sites contingent
2 on ETC designation?
3 A I'm not sure if I can characterize it as a plan. There
4 was some talk of additional cell sites. I'm not sure
5 how to characterize that.
6 Q And I'm not trying to characterize it or
7 mischaracterize it. But you do understand that Western
8 Wireless, Mr. Blundell, spoke of 17 additional cell
9 sites that were dotted on one of the maps that
10 presuppose that it would be receiving USF support?
11 A Well, my recollection was that there was going to be
12 17 cell sites and we didn't know how many of them would
13 or would not be built, depending on whether or whether
14 or not there was ETC designation.
15 Q Correct. But at least some of those cell sites he
16 testified would not be built in the absence of being
17 designated as an ETC and receiving universal service
18 support?
19 A That was implied given that we were given no exact
20 numbers.
21 Q Correct. Now whatever the precise number of additional
22 cell sites there are of that 17, you testified -- you
23 recommended that if it were granted designation, that
24 that designation should be conditioned upon a review
25 once the FCC takes some definitive action in response

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1 to the Joint Board's Recommended Decision; correct?

2 A A review of the ETC designation.

3 Q Right. And is it fair to assume that as part of that

4 recommendation you would suggest to this Commission

5 that the condition be stated that the ETC status would

6 be revoked as a result of FCC action on the Joint

7 Board's Recommended Decision that there was some

8 financial impact on the rural LECs?

9 A I think I'm suggesting that the Commission needs to

10 revisit the public interest issue if they do indeed

11 grant designation at this point in time and there is a

12 change in the support mechanism because then there

13 could be potential -- there could be harm that can be

14 absolutely measured at that point in time.

15 Q Right. And, again, I guess I'm just trying to

16 understand and put a finer point on it that as part of

17 your recommended condition you would ask the Commission

18 then to revoke Western Wireless's ETC designation in

19 this proceeding if it were determined that there was

20 some adverse financial impact to the rural LECs as a

21 result of the change in fund mechanism?

22 A Because at that point in time you may have a totally

23 different picture of the public interest, and a

24 designation is dependant upon the public interest.

25 Q In other words, then I think you may have addressed

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1 this in your opening summary. You're really saying

2 just give them conditional status at this point subject

3 to reviewing it later once the FCC takes action.

4 A Well, I'm not actually recommending conditional status

5 at this point, but if the Commission feels it should

6 grant status, I'm recommending it be conditional.

7 Q It can be conditional subject to being taken away once

8 the FCC takes action on the Joint Board's Recommended

9 Decision?

10 A It can be conditional based on that, or I want to also

11 add any other proceeding that may occur that could

12 change the public interest, anything else that might

13 cause an impact on the provision of universal service.

14 Q But specifically what you're focusing in on, which is

15 what your testimony was --

16 A Right. Right now that's obviously the most foreseeable

17 change in the support mechanism and potential harm

18 that, you know, who knows, there could be other ones.

19 Q There could be others, but the potential impact to the

20 universal service support funding to these rural LECs

21 as a result of the Joint Board's Recommended Decision?

22 A That's obviously the most foreseeable one that we can

23 foresee in the future horizon.

24 Q Thinking about that for a moment, Ms. Vanicek, do you

25 think it reasonable that any company would proceed to

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1 make investments in infrastructure and otherwise start

2 providing universal services in reliance upon projected

3 universal service support if that were subject to being

4 taken away as a result of any FCC action based on the

5 Joint Board's Recommended Decision?

6 Would that be a reasonable decision for a

7 company to do?

8 A Well, I think every company that invests currently

9 given the fact that we have the primary line support

10 mechanism staring us in the face is taking a certain

11 risk. So, yes, I believe there are a lot of companies

12 that are still investing and there's a certain risk

13 that you won't recover that investment.

14 Q My point is a little more precise because there's been

15 a lot of discussion about the need for additional

16 infrastructure, cell site construction in some of these

17 areas, the white areas of the map, and improving the

18 quality of the service in some of these service areas

19 of the rural telephone companies.

20 And my question is very simple. Do you think

21 it would be reasonable for Western Wireless to proceed

22 to make those investments if their ETC status and the

23 potential availability of universal service support to

24 help fund some of the costs of that investment were

25 subject to being taken away?

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1 A I think that's a business risk that Western Wireless

2 has to assess if that's the condition that's placed on

3 their status. I can't answer that question for them.

4 That's a business case decision. People have different

5 risk levels that they're willing to accept.

6 Q And, lastly, you were asked some questions about

7 Virginia Cellular and Highland Cellular and how the FCC

8 did not designate those carriers in certain of the

9 areas they were requesting. Do you recall that?

10 A Yes.

11 Q Isn't it true they were not designated in those

12 areas -- Virginia Cellular and Highland Cellular were

13 not designated in certain areas because the Commission

14 did not redefine the service area requirement from

15 something -- from the study area down to a wire center

16 or subwire center level? It was those areas they were

17 not designated in; correct?

18 A Could you clarify that? I'm not sure I'm understanding

19 it.

20 Q Okay. To be designated as an additional ETC in an area

21 served by an incumbent rural telephone company, the

22 service area requirement is that of the study area;

23 correct?

24 A Correct.

25 Q And you're aware of provisions in the statute and the

633

1 FCC's rules to redefine the service area from the study
 2 area to something less than a study area if a carrier
 3 doesn't have the ability to serve throughout the study
 4 area?
 5 A Yes. That's correct.
 6 Q And in both Virginia Cellular and the Highland Cellular
 7 petitions for designation those two carriers were not
 8 only seeking designation as an ETC but also a
 9 redefinition of that study area down to the wire
 10 centers or partial wire centers that were within their
 11 licensed areas that they could serve?
 12 A I believe that's correct.
 13 Q And the FCC, for certain of the incumbent LECs,
 14 determined not to redefine the service area below the
 15 study area.
 16 A I'm not sure if I'd quite characterize it that way. I
 17 believe in the Virginia Cellular Order there was a
 18 company called NTELOS.
 19 And I'm not sure if this is what you're
 20 getting at. They sought to serve their entire area,
 21 but it basically ended up being low cost areas -- the
 22 Virginia Cellular company sought to serve only portions
 23 of a rural company's area? Is that what we're getting
 24 at here?
 25 Q Portions of the rural company's study area.

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1 A Yes.
 2 Q You can't do that unless you redefine the service area
 3 from the study area down to something less than the
 4 study area such as the wire center.
 5 A Yes. That's true.
 6 Q And when the FCC determined not to designate Virginia
 7 Cellular in the NTELOS area it was because the FCC
 8 determined not to redefine the service area --
 9 A I wasn't sure if that was requested of the FCC or not.
 10 I'm not familiar enough with the case. I didn't
 11 necessarily read that they had requested that.
 12 Q Okay. But do you recall that in those areas where the
 13 FCC determined not to designate Virginia Cellular or
 14 Highland Cellular it was not because of their public
 15 interest determination, it was for some other reason?
 16 A Well, it was because of some effect similar to cream
 17 skimming, which I think possibly could be interpreted
 18 as public entrance.
 19 Q But the FCC looked at the population density analysis
 20 and the potential for cream skimming as part of their
 21 analysis on redefining the service area?
 22 A Actually --
 23 Q Do you recall? If not, we can put it in brief.
 24 A No. I can't agree to that. I'm sorry.
 25 MR. AYOTTE: Okay. Thank you.

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1 MS. AILTS WIEST: Any further
 2 questions?
 3 MS. ROGERS: No. Thank you.
 4 MS. AILTS WIEST: Thank you.
 5 THE WITNESS: Thank you.
 6 MS. AILTS WIEST: We have no further
 7 witnesses. Is that true?
 8 MS. ROGERS: That's correct. We
 9 have no further witnesses.
 10 MS. AILTS WIEST: I just want to go
 11 through some late-filed exhibits. According to my
 12 notes, which I may have missed something, what I
 13 have is that for Intervener Exhibit 16 there will
 14 be an annual report, 2003 filed by Western
 15 Wireless.
 16 MR. AYOTTE: That's correct.
 17 MS. AILTS WIEST: For Western
 18 Wireless Exhibit 8 they will file the attachments.
 19 MR. WIECZOREK: That's correct.
 20 MS. AILTS WIEST: And I don't know,
 21 I assume -- I had this marked as Intervener because
 22 I think it was requested by the Interveners, the
 23 marketing plan for wireless local loop. I believe
 24 that was requested -- I have that on the list.
 25 MR. WIECZOREK: I think it was

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1 requested, but I don't think we talked about
 2 marking or numbering it at the time.
 3 MS. AILTS WIEST: I think the
 4 question was to Mr. Blundell and they requested it
 5 and he said they could provide it. That's my
 6 recollection, if someone has something different.
 7 MR. COIT: That's my recollection as
 8 well.
 9 MS. AILTS WIEST: Can we mark that
 10 as Intervener Exhibit 19?
 11 MR. AYOTTE: Sure.
 12 MR. WIECZOREK: Should I supply
 13 those originals straight to the Commission or to
 14 the court reporter or Interveners so they can mark
 15 them and provide them to the Commission?
 16 MR. COIT: Supply them straight to
 17 the Commission.
 18 MR. AYOTTE: We'll do everything,
 19 Rich. I'm sorry. I thought we were off the
 20 record.
 21 MR. COIT: Make sure you get that in
 22 the record.
 23 MS. AILTS WIEST: You can supply
 24 them to the court reporter. The Commissioners, I
 25 believe, asked for the map of the current cell

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1 sites and should that be marked as a Western
2 Wireless exhibit? Can we mark that as Exhibit 9?
3 And I assume that will be a confidential exhibit.

4 MR. AYOTTE: Yes, it will.

5 MS. AILTS WIEST: And then I have
6 Western Wireless was requested to file the map with
7 only the blue areas, and was that Exhibit 7, I
8 believe?

9 MR. WIECZOREK: Yeah. It's marked
10 as Exhibit 7 so you want us to provide it just as a
11 supplement to Exhibit 7 so all of those maps are
12 together, or do you want it as a separate exhibit?

13 CHAIRMAN SAHR: My recollection is
14 Jim had asked for the blue map, which I think would
15 be useful, and then I had asked -- there was some
16 type of technical glitch on some of the maps where
17 signal strength from Nebraska was dropped off or
18 Wyoming, whatever the case may be, North Dakota,
19 and I'd be fine if they just attached that as all
20 Exhibit 7. I think they're all pretty much the
21 same sort of things.

22 COMMISSIONER BURG: Can I make a
23 clarification? I would either on that -- probably
24 on the second map if you want to include what you
25 are proposing -- in other words, all the blue area

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1 MS. AILTS WIEST: Okay.

2 COMMISSIONER BURG: In other words,
3 I'd like to get feedback as to what kind of
4 conditions we should consider.

5 MR. AYOTTE: Or not.

6 COMMISSIONER BURG: Or not. That's
7 why I said or lack thereof. I wanted to be fair.

8 MS. AILTS WIEST: Let's go off the
9 record.

10 (Discussion off the record)

11 MS. AILTS WIEST: We will have
12 Western Wireless will file its initial brief
13 Monday, June 14. Interveners and staff can file
14 July 14 and rebuttal brief July 30.

15 With that, I believe that will close the
16 hearing. Thank you.

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1 that would be true today, the blue area would be
2 true of what you've -- the 17 you've thrown out.

3 Because, I mean, I don't want to be confused
4 as to does this include them or doesn't include
5 them.

6 CHAIRMAN SAHR: I think on Exhibit 7
7 the first one was today, second was planned, and
8 third one was planned with USF.

9 COMMISSIONER BURG: Take the second
10 and third formats and take it just the blue. That
11 would answer that.

12 CHAIRMAN SAHR: So you want just the
13 blue through all of those maps?

14 COMMISSIONER BURG: Right.

15 MS. AILTS WIEST: That's all I had.

16 COMMISSIONER BURG: I don't know if
17 this is exactly the right time, Rolayne. I'd like
18 to, since we've had so much discussion about
19 conditions for -- what do we call it now?

20 CHAIRMAN SAHR: Certification,
21 designation?

22 COMMISSIONER BURG: Conditions for
23 designation. I'd like to see conditions for
24 designation or lack thereof be briefed by all
25 parties.

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1 STATE OF SOUTH DAKOTA)

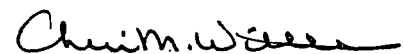
2 :SS CERTIFICATE

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 4th, 5th and
11 6th day of May 2004, and that the attached is a true
12 and correct transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 20th day
14 of May 2004.

15
16
17 

18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter
21
22
23
24
25

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