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TRANSCRIPTION OF DOCKET UT-043011

Item A1, Docket UT-043011

BOB SHIRLEY: Thank you madam Chairwoman, members of the Commission. This is Bob Shirley from the Telecommunications staff presenting in Docket UT...presenting for the first time with trifocals, excuse me...UT-043011. This could be more painful for you than for me. I apologize in advance.

This is a Petition for Designation as a Eligible Telecommunications Carrier made by several licensees doing business under the name AT&T Wireless or as designated or referred to in the Petition as "AWS," which I suspect is a stock ticker name or initials. Uh, in the recommendation is uh, is to designate AT&T Wireless as an eligible telecommunications carrier for the exchanges listed in its petition and to direct it to provide a map of its service areas in .shp format an electronic map. You have a staff memo and I have a few comments in addition and uh, this comes to you in part in a larger context. That is, some decisions or recommended decisions made at the national level, but ultimately, staff's recommendation is that, that the real decision needs to be made based on the local considerations here. But I want to speak to those.

There were two events surrounding this petition if you will, one that happened before, a decision in the Virginia Cellular petition before the FCC and a recommended decision of the Joint Board. In its memo, staff focused on the Virginia Cellular decision because it was an actual petition and decision as is the case here, and even though it is not binding authority on the WUTC. In terms of process, the UTC will be providing more process in its look at this petition than to the FCC and Virginia Cellular. It had a comment process only...

CHAIRWOMAN SHOWALTER: I'm sorry, but you mean, we'll have more process in this proceeding than Virginia...than the FCC had in Virginia Cellular.

BOB SHIRLEY: Yes...correct. Thank you. Because here in addition to whatever paper record there is, there is this forum today for the petitioner and opponents to speak and that was not part of the process before the FCC. They had only a

paper...the petition and whatever comments were made to it. The...in Virginia Cellular, the FCC, with one exception, considered the same issues that this Commission has considered in its designations of United States Cellular, RCC Minnesota, and Inland Cellular. The exception, is that the FCC considered the impact on the Federal High Cost Fund of a designation of Virginia Cellular, and chose to designate to Virginia Cellular, none the less, after considering that impact. As we said in our memo, staff recommends that the WUTC not attempt to consider that impact on the Federal Fund, because the Fund is wholly within the control of the FCC. It is a national issue and the FCC has not made far reaching changes for four years or more in the High Cost Fund, and it is not clear that it will make changes even a year from now.

The Joint Board had two major recommendations...and again, I am moving as quickly as I can, but to set the context for what I know, is coming in the discussion to follow.

The most important recommendation of the Joint Board might be its recommendation that Federal High Cost Fund support only a single connection to the public telephone network. The Joint Board did not say if it means a single connection per person, per household, for residential structure or even if it means support for only a single connection provided by each ETC. But that's for them to decide. In 1996, a Joint Board, also composed of two FCC Commissioners and several State Commissioners, made the same single connection recommendation. That recommendation was not accepted, if you will...was not put into the rules by the FCC then, and it is, by no means certain that it will do so, when it takes up this issue about a year from now...what I expect will be about a year from now.

If the FCC does adopt rules concerning a single connection, staff assumes they will apply to rural companies and to other ETCs, and to the extent that state commissions would have to act. It is hard to understand how designation of AT&T would effect, what might or might not have to be undertaken by all state commissions a year or more from now.

The other recommendation...major recommendation of the Joint Board was permissible Federal guidelines for ETC designation. These would not be rules that would apply to the states, but guidelines that they might use in their process of making ETC designations. The Joint Board acknowledges that states have been delegated the job of making designations consistent with the public interest as determined in each state. The WUTC has before it a record in this

case....when you're done today I think...that will be more complete than the one challenged in United States Cellular...and that...in that challenge the Commission was upheld by the Washington State Supreme Court.

If staff were to recommend a greater inquiry, it would be into the financial health of rural incumbents and not into the ability of AT&T to serve customers. AT&T clearly passes the threshold for designation in the opinion of staff. The questions is....could it harm consumers irreparably by harming rural incumbents? Staff does not recommend an inquiry into the finances of rural ILECs because in the four years since United States Cellular was designated an ETC in rural incumbent areas, no rural ILEC has requested assistance in the form of increased State Universal Service support or assistance in the form of a general rate increase. This is the case even where RCC and Inland Cellular have been designated in addition to US Cellular. There is no specific information that suggests an inquiry into rural ILEC finances is necessary. Similarly, staff recommends there is no need for a greater inquiry into the services of rural ILECs or wireless ETC petitioners, because in the more than six years since US Cellular has been an ETC, an area served by non-rural companies, and the four years in rural areas already mentioned. Customers have not contacted the Commission to request intervention in any matters that are tied to ETC status of either a rural ILEC or a wireless ETC. We have had two requests related to service from a non-rural ILEC/ETC...and those were resolved in a case here.

So, at this point, I think the petitioners and the commenter's are maybe in the best position to provide you with information. But, of course, if you have questions, I will attempt to answer them now.

CHAIRWOMAN SHOWALTER: Any questions at this time? Thank you.

BOB SHIRLEY: Thank you.

CHAIRWOMAN SHOWALTER: Mr. Finnigan.

RICHARD FINNIGAN: Good afternoon Chairwoman Showalter and Commissioners. This is Richard Finnigan appearing on behalf of the Washington Independent Telephone Association and its effected member companies. I am going to start my comments as Mr. Shirley did with some thoughts about what the Virginia Cellular order means. My thoughts are quite different than Mr. Shirley's. First of all, I think the Virginia Cellular order is binding on this Commission. The FCC stated at paragraph 4 of that order that the framework

that is setting forth applies to the designation of all future ETC after the date of its order. You will find that at paragraph 4 of the FCC's order. Secondly, I disagree that this process provides more process, if you will, than the Virginia Cellular did. In Virginia Cellular, the effected rural companies were allowed to present evidence. It was based on a paper record, but they still were allow the time to develop their case and present substantial evidence in written form. That's how the FCC does its...its hearings is in written form. We're...we haven't been given that opportunity, so I strongly disagree that this process provides more process than the Virginia Cellular case did. Now....what did the FCC say that would have to be undertaken within the framework that is was providing? What the FCC says at paragraph 28, is that you have to take a look at each of the rural wire centers...rural service areas...and determine whether or not the designation of an additional ETC provides benefits that outweigh any potential harms. They describe this process of a balancing of benefits and costs, that is fact specific exercise. Both those slots are contained at paragraph 28 of the FCC's order.

I mean, it's interesting in the paragraph just above that, paragraph 27, the FCC said that even in non-rural areas...

CHAIRWOMAN SHOWALTER: Mr. Finnigan...did you provide us with this order. I know your letter had a paragraph...but if you want us to be following, we need to...following...

RICHARD FINNIGAN: We can...I've got it here, so we can copy it.

CHAIRWOMAN SHOWALTER: I think if we are going to get into specific analysis of the case, the Virginia case and how it effects us here, that needs to be in front of us. Now, your memo had some of it.

RICHARD FINNIGAN: Yes...

CHAIRWOMAN SHOWALTER: And I...I would think that that would be what you would want us to focus on.

RICHARD FINNIGAN: Well...I normally try not to repeat written comments. Since I know that you have them and have read them. So, what I try to do is to try and explain what I meant...to emphasize if you will...different points, but not by repeating what I said. I mean, there are two pages that I have cited to, paragraphs 4 and paragraphs 28...if we can copy those right away, if you want.

CHAIRWOMAN SHOWALTER: Alright...let's be at ease for minute...I apologize...I do have it in my notebook. I thought it was only the Joint Board. So...can you...I'm sorry...but can you refer us to...paragraph 28 is where I think I left the boat...

RICHARD FINNIGAN: Okay...paragraph 28...what the FCC is saying, is that 28 is where it starts out on its analysis of the rural service areas. What they say at the fourth full line, is, "We have considered whether the benefits of an additional ETC in the wire centers for which Virginia Cellular seeks designation outweighs any potential harm." Do you see the citation? So, what they are doing there, is they are looking at each of the wire centers and considering whether the benefits outweigh the harms, and they go to emphasize that by stating, "We note that this balancing of benefits and costs is a fact-specific exercise..." and then they go on to lay out some of the factors that they consider in this balancing of cost and benefits.

CHAIRWOMAN SHOWALTER: Alright...now...let me ask some questions. First at the state level, it seems clear that the process we have here is sufficient in the eyes of state court. That is, to conduct these at an Open Meeting, which does not preclude any amount of evidence could be presented to us at this meeting, and it also does not preclude us from deciding we want to have a further hearing. So, I think...as far as the state level goes...the process that we have here is sufficient. Now, you're raising...

RICHARD FINNIGAN: Well...I respectfully disagree with that statement.

CHAIRWOMAN SHOWALTER: Alright...well then what's...then tell me under state authority and state cases, are you objecting to the process that we have here?

RICHARD FINNIGAN: Yes I am.

CHAIRWOMAN SHOWALTER: And...and...

RICHARD FINNIGAN: I think there a...

CHAIRWOMAN SHOWALTER: I want to get to the FCC and how it might be binding...I am trying to get...first just establish whether...

RICHARD FINNIGAN: I believe that if the FCC had issued this order...the Virginia Cellular order...prior to this Commission's decision with US Cellular, our State Supreme Court would have come out the other way.

CHAIRWOMAN SHOWALTER: Okay...so are saying that you could take...with this new Virginia order, the landscape has changed, even with respect to what kind of process...just process...we have at this level.

RICHARD FINNIGAN: Yes...that is one of my contentions.

CHAIRWOMAN SHOWALTER: Alright...now...here is the question I have. We do have a process here. It does allow for the submission of various degrees of evidence...and allows should the...special evidence warrant further proceedings. In that respect, why isn't what we are doing here fact-specific? Don't we have in front of us facts about service that is purported to be provided in particular areas of the state?

RICHARD FINNIGAN: I disagree with that as well. I think you have some general...you have some general statements concerning what it is that AT&T Wireless Services can provide. But, there is no consideration of each of the wire centers...each of the rural wire centers...and by the way...for today's purposes, wire centers and service area are the same term, so if I flip back and forth between them...

CHAIRWOMAN SHOWALTER: Okay...

RICHARD FINNIGAN: ...that would allow you to weight these cost benefits that the FCC said you must weigh. And...respectfully, given...I don't know when I first found out about this...but two weeks, three weeks, something like that...and expect us to come in with factual analysis...is not a sufficient process as far as I can see to be able to present facts that would allow a fact-specific weighing of cost and benefit.

CHAIRWOMAN SHOWALTER: Alright...now, I'm looking at paragraph 4. It's your contention that when the FCC says, "...the framework enunciated in this order shall apply to all ETC designations for rural areas, pending further action the by the Commission..." that, that is a national...statement of national scope?

RICHARD FINNIGAN: Yes it is.

CHAIRWOMAN SHOWALTER: And...what is your support for that. Obviously, this is the FCC...it's a national entity...but it is an unusual situation where they are in, effect, acting in place of the state of Virginia, because Virginia doesn't have the ability to make these kinds of determinations. So...given that...how do we know that this has national scope?

RICHARD FINNIGAN: Well...I...until I came here today, I had no idea that anybody would read it, that it didn't have national scope. But, uh...that aside...I mean, the FCC is saying that it applies to all...uh...ETC designations...not just the ones that come before the Commission...not before the FCC. I mean...it's talking about the need for a...we acknowledge the need for more stringent public interest analysis for ETC designations in rural telephone company service areas. The first sentence in paragraph 4...what they are talking about is...okay...we've got all these ETC designations going on out there...and we are recognizing a more stringent test must be applied. And...what they are saying is...while we await a recommended decision from the Joint Board that they would act on.

Obviously, what they are saying...we've got the Joint Board process out there...they are going to come in with a recommendation that would apply across the board...until they do...here's the framework that applies.

CHAIRWOMAN SHOWALTER: So...in continuing with this paragraph...if it governs this proceeding here today...then, we are to weigh numerous factors, and that would be presumably based on a record...and then your contention is we don't have the kind of record that we need. But...you do grant that...anyone who wanted to put in more of a record, could have?

RICHARD FINNIGAN: I'm sorry...I don't acknowledge that.

CHAIRWOMAN SHOWALTER: Okay...

RICHARD FINNIGAN: I'm saying that it was not possible in the timeframe given, for the rural companies, to put fact-specific material in the record, that would go to these factors.

CHAIRWOMAN SHOWALTER: Alright...

RICHARD FINNIGAN: So...I don't acknowledge that...

CHAIRWOMAN SHOWALTER: So...if we find...supposing we find, we don't have enough information today to weigh the relevant factors...are you proposing that we hold...set this over for hearing...at which we inquire into those factors?

RICHARD FINNIGAN: Yes I am.

CHAIRWOMAN SHOWALTER: And...does that involve the impact of a decision on the financial well-being of the rural ILECs?

RICHARD FINNIGAN: That's one of the possible issues.

CHAIRWOMAN SHOWALTER: So...so...that you are willing to include that in the hearings that would be held?...It seemed to me that there was some underlying tension I was trying to find.

RICHARD FINNIGAN: I didn't understand really what Mr. Shirley was getting at. But, certainly, one of the issues is that we've got to take a look at the potential of the Joint Board recommendation, that we go to a single connection. On that issue...Mr. Shirley said there's two ways to read it...in all fairness...I am having reading the Joint Board decision that says...saying other than...a single connection...not per ETC, but per customer.

CHAIRWOMAN SHOWALTER: But, I want to hold us in abeyance for the time being...the Joint Board...because I think that's quite different than an FCC order.

RICHARD FINNIGAN: I...and I'm not going to disagree with you on that point. And I do...I had that for the end anyway, so...

CHAIRWOMAN SHOWALTER: Right...but so...so, I think the question I am asking at this moment...if this order governs us and we decide there's not enough evidence in front of us to make...to weigh these factors today...I am trying to get a sense from you what kind of evidentiary hearing, would satisfy this paragraph in your view.

RICHARD FINNIGAN: Well...one of the...it would...in my view, it's a hearing that goes through a full adjudication....and the issues are raised that the application pause at certain issues. Other issues would be raised in responsive testimony. We've got...

CHAIRWOMAN SHOWALTER: But what would they be, for example...do you think that the effect of our decision on the national fund and how the national fund is administered, and whether it's one line of two lines, is relevant...or do we take a...given what is...what...what the current rules and perhaps case law is until such time as the Federal Communications Commission changes it.

RICHARD FINNIGAN: There's two issues there. One is the impact of the size of the fund under any set of rules...and...that's...the FCC said that's a consideration to be raised...and I think that is an issue for it. The other issue is whether or not the Joint Board's recommendation should be considered as part of the proceeding. I would take the position that it should. I can understand why...how other people might take the position that we don't know for sure because it's just a recommendation at this point, so you shouldn't. The FCC's position was that you should take a look at the benefits versus whether they outweigh any potential harms. They use the term "potential harms" at paragraph 28. Certainly, with that Joint Board recommendation having been made, it's a possibility that's out there, that's a very real possibility. Mr. Shirley said this...this item was raised a few years back in a prior Joint Board recommendation, was not accepted. But again, we've changed. The concern now over the size of the fund, and the growing size of the fund, is much more heightened today, than it was with the first Joint Board recommendations.

CHAIRWOMAN SHOWALTER: So...you think in a hearing that we should, at the state level be, considering the effect of our decision on the size or use of the federal fund.

RICHARD FINNIGAN: On the size of the federal fund, yes. And the effect of...the potential effect...potential effect...of what the Joint Board recommendation would mean if you've got three ETCs in an area...you've got 1,000 access lines, and you go to a primary connection. Is there going to be...is there economically enough room for a fourth ETC under those...under those circumstances? It seems to me that those are very real issues.

CHAIRWOMAN SHOWALTER: Doesn't that, in effect, make individual ETC proceeding into one of, not just statewide significance, but national. It's as if every...every fact-finding would be almost like a rulemaking. This might be a bad analogy but, I have problems with the size of the federal deficit, and think that it's important to close a number of tax loopholes...and I support that at the national level. But at an individual level, every individual ought to be treated equally under the current tax scheme, and if you have...can take advantage of

something, that's certainly your right. In other words, I don't ask myself, "Should I pay extra taxes?" because that helps the deficit. It's not my...I might discuss that with my senator...but...what do we do at this level about that problem?

RICHARD FINNIGAN: First of all...I don't think that, that analogy is directly on point. I think the FCC has said, among the factors that have to be considered, are the impact on the fund. We don't know....we are sitting here with one of the largest wireless carriers in the nation asking for ETC recognition. We have no idea of how many of those customers are in rural service areas in the state of Washington. We have no idea what that means. We don't know if it's a \$30 million dollar draw they're going to be making and what benefits they're going to get for that \$30 million dollars or whatever other number it is. So, as part of the cost benefit analysis, that's one of the factors that the FCC has said you take into account. In looking at an application, it's not the only factor. It's one among several factors that you take into account.

CHAIRWOMAN SHOWALTER: Could we at least circumscribe that somewhat by saying that the effect on the fund of a particular decision, with a particular company in a state like ours, is...I mean that impact, incrementally, is not likely to be very great.

RICHARD FINNIGAN: I don't know whether it's great or not, because we don't have that information here. But, that's also like saying...well, it's okay until we find the straw that breaks the camel's back. I don't think that, that's the analysis that people wanted...wanted to undertake...I think what the FCC, I believe is saying...is saying...that's one factor that you need to look at. So, it is a factor. You know....it's not...it's not a hard factor to figure out. I mean...you can take the number of customers that they have in their imbedded base, in the existing...in each of the existing service areas, and multiply that times the per line rate, and you can find out. You then know the size the of "bread box," and you can then say...yes...that's not...in light of the benefits, that's not an overriding cost issue that...that's going to cause us to deny the application. Or, you say, "We didn't know it was that big." What types of benefits are there that justify imposing that back cost? And, it seems to me that, that's part of the balancing that the FCC has said that you've got to undertake. So, it's not isolated, but it's part of the overall review of an application.

The other...well...that's enough on that one.

COMMISSIONER HEMSTAD: I have several questions pursuing these points. Are you going on to other topics?

RICHARD FINNIGAN: Well...I'm still on the cost benefit analysis. I was going to start talking about some of the facts that you don't have before you, but...if you want to ask....

COMMISSIONER HEMSTAD: Before I lose my thought here, I am looking at paragraph 4 that you reference. Where the language is in the first sentence is, "We acknowledge the need for a more stringent public interest analysis." What is your idea of what is meant by "more stringent," more stringent than what?

RICHARD FINNIGAN: Well...more stringent than what had been going on at the state's and...and at the FCC's wireline competition bureau, prior to the date of this order.

COMMISSIONER HEMSTAD: So...it's comparing it with what had heretofore, has been the standard?

RICHARD FINNIGAN: Correct.

COMMISSIONER HEMSTAD: Not intended to differentiate between urban and non-urban?

RICHARD FINNIGAN: Uh...no...because it says....well I...I don't believe so. I mean that's not the way I am reading it. That's a possible reading of it, but that's not the way I read it in the context of what follows in this order.

COMMISSIONER HEMSTAD: Then, a lot of discussion...you're already on the impact on the Universal Service Fund. Given some indication of this, what if the...turning it into more of a hypothetical circumstance, and I suppose it follows that any request for ETC designation would have impact on the Universal Service Fund by an applicant, other than in incumbent?

RICHARD FINNIGAN: That would be true...if they have existing customers, that would be true.

COMMISSIONER HEMSTAD: And, does it follow from that, that negative would "ipsofacto" result in a conclusion that it is undesirable?

RICHARD FINNIGAN: No...I don't read the FCC's order as saying that. What I am saying is....what I'm trying...the point I'm trying to make, is that is a factor, that is required to look at. It may...there is no conclusion that you draw immediately from one factor. You look at that in the balancing of the costs and the factors together. That's why they said it's a fact-specific analysis.

COMMISSIONER HEMSTAD: Now...you suggest AT&T Wireless is a large company. What if it were a small company that was requesting that...the equivalent.

RICHARD FINNIGAN: I wouldn't have as strong an argument. But, it would be a case...it's still a factor (inaudible).

COMMISSIONER HEMSTAD: So the fact that a stronger competitor comes into the market, makes their case weaker than if a relatively weak competitor comes into the market?

RICHARD FINNIGAN: Well...I'd use larger than...and smaller. Our companies are small, but I think we're pretty good competitors. So, I...

COMMISSIONER HEMSTAD: I think...but I'm talking about different wireless applications.

RICHARD FINNIGAN: Each one has to be weighed on its own merits and their own facts. That's what this is saying. I don't think you can say, one would be granted under "X" hypothetical, and one would be granted...not granted under "Y" hypothetical. I think what they are clearly saying here is, you have to consider each that comes before you on its merits, in...as it effects each of the rural service areas that they're asking for designation.

COMMISSIONER HEMSTAD: Now...if...if we accept your interpretation here and proceed with the kind of hearing that you are requesting. Does it follow from that, that either on our own motion or on a petition, that we would need to re-open the earlier ETC designations already made?

RICHARD FINNIGAN: That's an issue that I've thought a little about, but I don't have a conclusion for you at this point. I don't know the answer to that question, and I...well...at this point, I don't know. Just leave it at that. I have started my thinking on that issue, but I haven't reached a conclusion.

CHAIRWOMAN SHOWALTER: But if we did open...did have a hearing, aren't you inviting us to implement early, in a sense, the Joint Board's recommendation. And, if so, doesn't that go a lot further than just having a hearing.

RICHARD FINNIGAN: No, and I'm not going that. What I said is that, there are many issues that would have to be looked at in the hearing. One that I would probably raise, is the Joint Board recommendation. But, I can fully understand, that someone else on the AT&T Wireless would say, that's not a relevant issue for this consideration, and that's some then that you would have to sort out...is it relevant or isn't it relevant. But, we are not asking you to do any sort of early implementation of a Joint Board recommendation. What I would...what I would be arguing is that, as one of the various factors that you would look at...one factor for you to think about...is what happens if there is a joint...if there is a single connection put in place. If you think that's not....

CHAIRWOMAN SHOWALTER: Single connection rule....is that what....single line rule?

RICHARD FINNIGAN: Correct...single line rule. But, that's not...that doesn't mean that decides the case. You could...you could say that's not a relevant issue at this time. You could say, yes, we'll think about it. You could say, here's a decision that we...that we will move forward with, if "A" happens, if the Joint Board's recommendation is not...uh...put in place, and here is it what happens if it put in place. You know...there are various ways that, that issue could be dealt with. But, its not...I'm not standing here saying that you're...we're asking you to implement that recommendation prior to it being resolved. I'm saying, it's just one of many factors to look at.

You know, I will say this. I am involved in two wireless ETC proceedings in the state of Oregon, that are both in the briefing stages. And, I will tell you that, the difference between the application and the evidence...that was...when said and done through the hearing...it's pretty amazing. By the time...when you get in and get into the information behind what the surface of the application, which looks...those two looked like what...actually they are more detailed than what AT&T Wireless...their paper app...their start of the process had a lot more detail than AT&T's did. When you got into it, it changes. It changes a lot. We found...we found wire centers that were, in the application, that in fact, it turned out, they weren't serving, when we got through. But if, it's...there are a lot of

things that come out in a hearing process that blend itself to this weighing....this balancing of benefits and costs.

CHAIRWOMAN SHOWALTER: I think anytime you go to an adjudicatory hearing...well, anytime you go to just a further hearing...whether adjudicatory or not...you do get more evidence in. Issues are joined and...but isn't the question I think is...do...does this Commission have sufficient evidence today to make a decision on this issue, regardless of whether it might get more information of all kinds in for the proceedings?

RICHARD FINNIGAN: And my position is, you do not. And...that is actually what I was going to talk about next. To give you some of the examples of the things that would be, in weighing these costs and benefits, facts that you don't have. I mean...you really don't have any facts about the rural service areas, in this record. They're identified as to where they are, but you don't have any facts about them. You have no fact on customer densities in those rural service areas. You have no facts on the potential harms to consumers in those rural areas. You have no facts on the potential effect of the ability of the existing ETCs to provide service and what that means to customers.

I'll tell you a couple of things that you do know. I mean...at least I know, and I can impart to you...this would be the fourth ETC for the St. John service area. There are 642 access lines in the St. John service area. Is it in the public interest, to have four ETCs for 642 access lines? Are those the types of costs for that service area that are appropriate against what may be very marginal benefits, if any benefits, in that particular service area? This would also be the fourth ETC in the Asotin service areas. They have approximately 1,400 access lines split between Asotin and Anatone. Approximately 1,200 in Asotin and 200 in Anatone. Again, is a fourth ETC, and the costs that, that imposes, worth whatever incremental benefits might be derived in that service area. You know...there's an interesting...I hadn't planned to go into this, but there's an interesting proposal that the Joint Board didn't adopt...but it's kind of interesting....it came from their public counsel member...and what he...his analysis is...if you look out and you say, there are some areas...and his approach was that you would have certain sizes of service areas and you'd have a certain number of ETCs allowed for certain sizes of...of a...service areas, based...sort of based on a rough justice of economically, how many can they support? A certain level would be one, certain two, other three, other four, and unlimited. It was an interesting concept, but it's not one that was granted. But, I think it does show...that there...there should be some concern about putting four, five, six,

however many ETCs there are, into very small service areas. And, I gave you those two examples. We've got several where this would be the third ETC, and, you know, is it in the public interest for those...for those areas?

You know...one of the things that is interesting about this application, as I looked at it is, you know...AT&T Wireless states in its application, that it's licensed by county. That it's license area is entire counties, and it names a certain number of counties in the state. But then it goes on, and says, but we're excluding some wire centers in some of those counties, because we don't think we have service in those wire centers. But, you know what that does. Is that raises the implication of whether or not they have service throughout the wire centers it does name. To give you an...give you a few examples.

WesternWahkiakum...as you may know, serves in a very small area that's partially in Wahkiakum County and partially in Pacific County. AT&T Wireless says that is wants to designate Western Wahkiakum service area...service area...as a...as part of its ETC service area. But, it's interesting that they don't name the much larger communities of Raymond and South Bend immediately to the north in Pacific County. So...it raises the question...and if you know the topography of Western Wahkiakum, which goes up and down like...it goes in and up and down hills...whether or not, they are actually able to serve throughout Wahkiakum service areas. They ask for...another example, they asked for Forks, but they don't ask for the adjacent exchanges of Beaver, Clallam Bay, and Neah Bay. Again, this raises a question of, how are they serving Forks. Is it just Highway...Highway 101 running through Forks that they are serving...the more dense area...and are they not serving...Forks is a big exchange geographically...are they not serving the outlying areas of that exchange? They ask for Yale and Amboy served by Lewis River, but not the adjacent Lewis River wire center of Cougar. Again, it raises that sort of question. Two more examples...they say they want to have Morton designated as an ETC area, but not again, the adjacent areas of Randle, Packwood, and Glenoma. How do we know that they serve throughout the Morton exchange, again a very broad exchange...a large exchange geographically. It says it serves St. John's in Colfax County, but it does not serve Colfax...the Colfax exchange. That to me, raises a real questions of...do they really serve the St. John exchange of they're not serving the Colfax exchange?

Now...those types of issues...which we don't the know facts...we don't the answers. Our concern, one for "cream skimming," but they're also a concern for (inaudible) Virginia Cellular. These eleven cell sites in...in "X" years, and this is what putting those eleven cell sites in will do. That's not in this application. We

don't even know the facts of what...where they can or can't provide services. I said in those Oregon proceedings, the difference between what the application said they could serve, and what factually they could serve, was pretty startling. So...those are some of the things that need to be considered. We don't have a sufficient record before you to say that you've considered factors like that.

I do...I just want one more...we've talked about the size of the fund. But, one factor that I want to keep everybody in mind...you know, it's the customer that pays for the fund. If they get surcharged on their bill...so that they are the ones who bear...who bear the cost of an increasing size of the fund. So...you know, that's part of this calculus, that needs to go on. The uh...and I do want to go to the Joint Board recommendation.

CHAIRWOMAN SHOWALTER: Before you...I think it's probably a given that...it's rele...that the issues there are relevant. It isn't an issue whether we're governed in any way or ought to regard ourselves as governed by the Joint Board. There's a tremendous wealth of...of discussion of issues there, that are generally relevant.

RICHARD FINNIGAN: Right...and, my point...my point to date, has been that you are governed by the Virginia Cellular order, and everything I've talked to, to this point, is...comes under the Virginia Cellular order...just to make that clear. Any, you know...the Joint Board's recommendation is a recommendation. You know...it's not a fact today. It is a consideration today. It's not on...on the types of things they said on the second part of the order, dealing with...with the guidelines for the ETC designation. You haven't heard me advocate that you need to adopt that analysis. Because of...that, again I think, not part of what we have before us today. We do have the Virginia Cellular before us today. There is a lot of overlap between Virginia Cellular and the Joint Board's recommendation, but I'm not...I've not advocated that you are bound by what they say about the factors you have to consider. The point that I am making on the Joint Board recommendation...again we're in a changed environment, where concern about the size of the fund has grown a lot...and this becomes a very real possibility. It's not...it's not a fact, but it's a strong possibility, and it's a stronger possibility today than it was a few years ago. So...it's a consideration that I think goes into the matrix of weighing this fact...specific balancing of costs. So, don't think you have enough before you to make that decision, and our request is that you set this over for hearing.

CHAIRWOMAN SHOWALTER: Alright, thank you. Now you are signed us as a possibly....are you possibly interested in speaking.

ROBERT SNYDER: I am definitely interested in...I wasn't sure where the discussion was going. Good afternoon, I am Robert Snyder. I represent a number of the rural ILECs in the state of Washington, and I wanted to just comment on two things, in part, because in sitting in the audience, you listen to the dialogue that goes back and forth and you are not sure whether the dialogue is going passed...the participants going passed one another. So, I wanted to make sure that a couple of things were clear of what the concern is.

If AT&T Wireless is approved as an ETC, and even if it does not bring service to a single additional rural customer, by virtue of the approval of this application, it will be entitled to draw from the Universal Service Fund for the entirety of its embedded base in the state of Washington. So, there is the possibility...I'm not saying it's a probability...but there is the possibility, that by the mere act of approval with no promise of bringing additional service to any new customers, that the entire embedded base of their customers distributed across whatever rural territories they are in, when multi...will be multiplied by the support numbers for each of those exchanges, and will cause an automatic immediate bump or jump in the draw for the...in the state of Washington from the Universal Service Fund.

CHAIRWOMAN SHOWALTER: Well...just, could I stop you there? Is your argument that there is no...it does not cause AT&T necessarily to expand its services? Is that what your point is? I mean, I guess the question I have is...

ROBERT SNYDER: There's a cost...my point is, Madam Chairwoman, is that there is an immediate cost. It is a quantifiable cost that is attached to your order, if you grant approval, regardless of whether they serve a single additional customer beyond what they serve today.

CHAIRWOMAN SHOWALTER: But don't all of your companies...don't they get...ah...support for every existing customer, regardless whether they add one or not?

ROBERT SNYDER: Yes, but that's because that support was historically embedded in the design of their service rates and the support of their networks. The point that I am trying to make is that in...under the FCC's decision in Virginia Cellular, there is a balancing of the benefits versus the burdens. And, to

ascertain the burden at a minimum, it seems to me, that the Commission should have an understanding of what is the total cost. Let's assume that it's \$30 million dollars a quarter of additional draw from the Universal Service Fund...and now you have to estimate how many additional custom...citizens in the state of Washington will get any new service as a result of that expenditure? Will there be any improvement in services, but no showing by AT&T....

COMMISSIONER HEMSTAD: Mr. Snyder, if I can break in. If I understood your statement, you said there is the possibility that the AWS would be entitled to draw on its entire embedded base. Did I hear you correctly?

ROBERT SNYDER: No...I said there's a possibility they would be able to draw without any additional service. They may very well bring additional service. We don't know (inaudible)....

COMMISSIONER HEMSTAD: Well, okay...assuming that...

ROBERT SNYDER: But I think it's a certainty that if they are approved, and if they have embedded base in areas that have Universal Service support, then given the manner in which the fund formulas work, it think it is a certainty that they will draw.

COMMISSIONER HEMSTAD: Alright...that's what I am trying to pin down. So you say it is a certainty...that would be the result.

ROBERT SNYDER: They must report, of course, to the Universal Service Fund. I'm assuming that they will make timely reports to be eligible.

COMMISSIONER HEMSTAD: Okay...

ROBERT SNYDER: Did I answer your question Commissioner?

COMMISSIONER HEMSTAD: Yes.

COMMISSIONER OSHIE: Mr. Snyder, before you go any further, I want to follow the line of questioning that the...I believe the Chairwoman has asked you, and you also commented on, which is the impact to the Universal Service Fund. Just...as I understand the Virginia Cellular order, that order was the ETC status of Virginia Cellular was approved. And, by the...by the Commission, and they found in their order in paragraph 31, that the ETC designation will not

dramatically burden the Universal Service Fund, and it's not clear to me how they made that determination....and do you know how they made that determination...and...

ROBERT SNYDER: No I do not Commissioner.

COMMISSIONER OSHIE: If I read the paragraph, it appears that they just looked at...um...what had happened historically in...or they compared historically what competitive ETCs had withdrawn from the fund and looked at what the ILEC ETCs had withdrawn from the fund...made a general comparison and said...well, it's a small amount and we find that there's no burden or there's no dramatic burden. Not enough of a burden to deny the application. Now...is that...why should be go further than the FCC did in our determination of the facts of this case?

ROBERT SNYDER: I'm not sure...I do not know Commissioner, whether the Virginia Cellular presented a case that was like RCC Minnesota. It think what distinguishes AT&T Wireless' application is its significant...and I think it is public knowledge...significant presence in the market place. They are not a small incremental player. When RCC Minnesota came before you, there was at least the argument to be made that the draws they would be getting in the state of Washington would largely be associated with new services they might be bringing. In AT&T's case, the size of the embedded base...and I'd like to just comment...Commissioner Hemstad asked Mr. Finnigan about what large company versus small company...and I don't think that's the issue, nor do I think the issue is effective competitor or large competitor versus small competitor. I think the issue is the size of the embedded base, because it will be an immediate cost associated with the approval, and that embedded base, versus the incremental benefits that approving at that particular ETC will bring to the service areas for which it is being approved. And I think the AT&T Wireless situation presents a case that is very different than these smaller wireless carriers coming in. Not because of the effectiveness of the competition they offer, but because of the size of the embedded base and the manner in which the fund calculations...at least today, this is not speculative...but the way they today work. AT&T has not offered as part of the record here, any information about the distribution of their embedded base across the rural ILEC service areas for which they seek approval. If they had offered that information, this Commission could readily perform, as could any other participant that wished to participate, could perform the calculation and advise the Commission of the approximate dollar magnitude of the cost to be associated with their approval. This record

does not support it, and while there is the opportunity to speak at this meeting, without that information being made available for the participants to be able to address, it's very hard to present it to you. The Virginia Cellular case clearly placed the burden of proof on the applicant, not on those opposing. I would respectfully submit that AT&T Wireless has simply not come forth with the kind of information that the Commission should have before it, to allow it to make an appropriate evaluation of the benefits on...and I have only talked about the cost piece so far...but of the costs versus the respective benefits. There has been no showing that any of the communities or if so, which of the communities lacks adequate cellular service today, if any. Whether there is any unserved need, that by approving this petition, you may cause to be fulfilled. We are not seeing on this record any record of deficiency in service or any segment of the population that is not today receiving adequate...and I'll just confine my attention to wireless service...in the areas for which this ETC application is being sought.

COMMISSIONER HEMSTAD: Is it your view that the state law that directs us to promote diversity of supply statewide is not relevant?

ROBERT SNYDER: I would not say that it is irrelevant. I would say that the FCC in the Virginia Cellular case...if I recall correctly...said that the fact of competition alone is not a sufficient public benefit in and of itself to support the ETC designation.

CHAIRWOMAN SHOWALTER: You've argued concerns about the fund. I just want to clarify...will any of your companies suffer in any way financially, in an immediate sense, from our designation...let me rephrase that...Is your ability to draw from the fund affected by our designation of the applicant? In an immediate sense. I don't mean a long term effect on the fund.

ROBERT SNYDER: As I understand it, Madam Chairwoman, the answer to that would be no...not today. According to my understanding today, there would not be a diminution of what they would be permitted to draw. But, I don't think that is the end of the inquiry, and that's what I am trying to suggest is that, the scope of the Commission's responsibilities under the regimen articulated in Virginia Cellular, is to be vigilant of the public interest, not just the interest of discreet players in the market place...and there is a significant public cost to approving additional ETCs in terms of the draw...especially the draw associated with that embedded base...and without any showing of an offsetting benefit to the public, from incurring that cost as a public cost, it will find its way on to consumer's bills, because that's where the fund comes from. The balancing that

the FCC has suggested needs to be performed, hasn't occurred and cannot occur on this record with what you have before you.

CHAIRWOMAN SHOWALTER: I have a question...does the size of the fund grow automatically with demand? Or is it just, there's a greater draw from the state of Washington on a pot that is not going to increase until mechanisms cause it to do so?

ROBERT SNYDER: My understanding...and I can only speak to the...is that in the rural areas, the fund does grow in total size, as you approve additional ETCs and additional draws are taken from the fund.

CHAIRWOMAN SHOWALTER: And the monies comes from where?

ROBERT SNYDER: The percentage that is assessed on interstate telephone bills, by and large, is a percentage that is adjusted every quarter, that is then remitted to the Universal Service Fund to generate the pool of money that is then re-distributed in the form of Universal Service support. But it comes from customers and it comes from interstate customers. As I understand the mechanism, I think there is an option to place the burden on international services as well.

One other piece that I would like to just comment on because the staff memo addresses this is, and this is the GPRS element of this. Because, as I read the staff memo, one of the suggestions in that presentation was that a benefit to the public here, is the GPRS aspect of AT&T's network. I'm not sure whether that GPRS function is available everywhere. I don't think you have in the record whether it is available everywhere or only available in certain areas. You have no evidence, if it is to be a consideration as to whether it has received any public acceptance or what levels of public acceptance it has received, that would warrant, again, be sufficient to justify incurring the expense of approving this additional ETC applicant in order to procure GPRS availability in rural areas. The last thing I would like to say about that is that GPRS is not one of the supported services of Universal Service. And so, I am not sure that is a relevant consideration that AT&T Wireless does or does not provide a GPRS service in evaluating their Universal Service or their application for ETC designation.

I did want to put just one further thought here because the burden of proof is really on AT&T. And, in this discussion of what...what would a hearing look like, I think the first questions is whether AT&T Wireless itself, has carried its

burden of proof. And I...looking at what you have before you, and measuring it against the kinds of information that Virginia Cellular seems to suggest, should be in front of the forum that is making the decision. I am not sure that the applicant has provided you with evidence that you need to make your decision. Commissioner Oshie, you asked me, did they not approve them? They approved them in Virginia Cellular. They were approved in some of the wire centers and they were turned down others. As Mr. Finnigan said, part of the analysis is, is there a potential...is there actual or potential "cream skimming" occurring. And, without knowledge of the densities or what parts of these exchanges or wire centers AT&T can serve or is incapable of serving...and if they incapable today...what is their plan to extend their service. There is a potential, if they have built along highways, for example, for "cream skimming." That's not a forgone conclusion that it's "cream skimming," but without an assessment of it, you don't know whether there is a significant or insignificant "cream skimming," whether by design...or even if not by design...but by effect. Not trying to impugn their motives, but the effect of how these networks have historically been built, could produce that result, that there is a "cream skimming" outcome. And, no ones looked at that issue, on this application as nearly as we can tell.

COMMISSIONER HEMSTAD: Just to pursue one further point. With regard to the Virginia Cellular case, the Commission in effect, acting as a state Commission, approved the application for ETC designation. Even...even as it acknowledged there was going to be an impact on the Universal Service Fund, it had to have been found that there were, according to your analysis, offsetting benefits. Can you briefly describe what those offsetting benefits were that the FCC found?

ROBERT SNYDER: I would need to go back and look at the order, quite frankly, Commissioner. I can certainly take a look, but my recollection is the Commission did go through that, did talk about that in their order...

COMMISSIONER HEMSTAD: But that was on a paper record...

ROBERT SNYDER: In the Virginia Cellular...

COMMISSIONER HEMSTAD: Similar to what we have in front of us now, isn't it?

ROBERT SNYDER: No, I don't agree, Commission, that it's similar to the record that you have in front of you today. I don't know what discovery was permitted

in that record...and the degree of the paper records in front of the FCC normally have a greater evidentiary quality to them than what occurs...typically at least...on your open meeting agenda.

CHAIRWOMAN SHOWALTER: Say, paragraph 29 of the order lists some of the benefits that they did find.

ROBERT SNYDER: But...but again, I think, one of the...one of the questions may be, is there a difference between the first wireless carrier that comes in and gets approved, and additional ones that are overlapping one you've already approved? I mean...there is a point at which one can say...if one accepts that analysis...that wireless in some respects may bring some aspects of service that wireline service doesn't bring. But once you've served that need, to approve then a second or a third or a fourth...particularly where one comes with a particularly large embedded base, so that there's an especially high price tag on approving that one. I think in the public interest warrants examining what is the cost of approving this one, and how much incremental benefit to the public is this approval going to bring. If we already have a diversity of supply, then how much more benefit are we getting, for this price tag that we are incurring?

CHAIRWOMAN SHOWALTER: You're welcome to lower that mike down.

ROBERT SNYDER: I'm sorry...(inaudible)

CHAIRWOMAN SHOWALTER: That was for Mr. Finnigan.

ROBERT SNYDER: That concludes what I wanted to address, but I'd be happy to respond to any further questions.

CHAIRWOMAN SHOWALTER: Alright, any other questions? Thank you.

ROBERT SNYDER: Thank you for the opportunity.

CHAIRWOMAN SHOWALTER: I think we'd probably like to hear from Mr. Kopta.

RICHARD FINNIGAN: Just...okay...but

CHAIRWOMAN SHOWALTER: Okay...clarifying...

RICHARD FINNIGAN: Commissioner Hemstad, on your question on the extent of the record. At paragraph 34, the FCC says that, in the second sentence, our analysis of the population density of each of the affected wire centers reveals...and they go on to talk about it. So, they had a record that went into each of the affected wire centers, their densities, and looking at whether or not this would result in "cream skimming." So, that's far different, and far more detailed, than what you have before you.

CHAIRWOMAN SHOWALTER: Thanks...actually it's not Mr. Kopta. He's here, but Mr. Schenkenberg, who volunteered to comment.

PHIL SCHENKENBERG: Thank you Chairwoman Showalter, my name is Phil Schenkenberg.

CHAIRWOMAN SHOWALTER: You might have sp...you might have to bring these microphones a little closer to you. They serve two different purposes.

PHIL SCHENKENBERG: Is that better?

CHAIRWOMAN SHOWALTER: I think so. I'm looking at the...yes, it's okay. I'm looking at the "crying room" back there...it's okay.

PHIL SCHENKENBERG: Thank you, my name is Phil Schenkenberg. I'm from the law firm of Briggs and Morgan in St. Paul, Minnesota. I'm here on behalf of the Petitioners, collectively referred to as, AT&T Wireless. Thank you for the opportunity to be here. I am joined today by Karl Korsmo, who is sitting here, who is Vice President, External Affairs, and would be happy to answer any questions.

AT&T Wireless is excited to be here, and excited about this application. We appreciate the good work of staff and concur in Mr. Shirley's recommendations and his comments. The comments that have been received by Verizon and WITA, do not raise any issues that you haven't considered before. We would ask the Commission to grant the petition consistent with your prior practice and your precedent, which has been upheld by the State Supreme Court, consistent with the staff's recommendation.

I'd first like to address the question of process. The Supreme Court decision upheld the process that is recommended in this case, and that was used in prior cases because the opposing incumbent carriers did not demonstrate a 14th

Amendment right to try to keep somebody else from being another ETC. That hasn't changed. The 14th Amendment hasn't changed. The case law under the 14th Amendment hasn't changed...and the procedure that this Commission utilized in the U.S. Cellular case, is appropriate, and still the proper procedure today. In addition, the public interest analysis that was conducted in that proceeding and affirmed by the Supreme Court, can and should be applied on this petition here before you. Based on the public interest analysis that you have done in U.S. Cellular and in RCC Minnesota, and in Inland. The petition, the exhibits, the testimony, the commitments, support...fully support a finding that the public interest is served, allowing you to grant the application in the area served by the rural telephone companies.

The Virginia Cellular case does not change anything this Commission does today. And let's pull back and look at the context. This was not a rulemaking proceeding. Virginia Cellular, a carrier in Virginia, sought designation under 47 USC Section 214 (e) (6), at the FCC, because the state Commission did not have the jurisdiction to consider that. There are many applications currently pending at the FCC, and there had been a period of time in which the FCC had not issued any orders in those applications. This was the order that broke the "log jam" as to how the FCC was going to deal with these petitions under 214 (e)(6). At no time in that proceeding, did the FCC seek comment on whether or not it should issue binding rules that state Commissions be obligated to follow in considering ETC applications or in analyzing the public interest. That was simply not part of this process.

CHAIRWOMAN SHOWALTER: So, what is your interpretation of paragraph 4 of the Virginia decision when they say, "...the framework enunciated in this order shall apply to all ETC designations, pending further action by the Commission..." Are they talking about their own process?

PHIL SCHENKENBERG: Absolutely. That was the only thing at issue in this case, was how the FCC was going to consider an ETC application under 214 (e)(6). The FCC, has over the years, been very supportive of state Commissions conducting their own public interest analysis, and looking at issues specific to their state....and interpreting the Federal Act and applying it to their own special situation. To suggest that the FCC...without every saying so...without taking comment on the issue...has effectively pre-empted state Commissions from conducting their own public interest analysis, is simply not the case.

A few more pieces of clarification on Virginia Cellular. Commissioner Hemstad's observation...I believe it was Commissioner Hemstad...I apologize if I'm incorrect...that we don't really know from reading the order what the impact on the fund was is correct. We don't know that. What we do know is that the FCC recognized that the designation of any single carrier is not going to impact a \$3.7 billion fund. And, while the FCC made the statement that, that is something that could be considered, it did not give any direction on what would be considered a significant impact, an insignificant impact, and it deferred to the Joint Board that is presently...has been looking at these issues, and the FCC will continue to look at these issues.

The other issue about Virginia Cellular that I believe has been mis-stated here this afternoon, relates to the question of "cream skimming." "Cream skimming" was an issue discussed at length in that order. There's only one reason that, that issue was discussed, and it was because the applicant sought designation in only some of the rural telephone company wire centers, and the rural telephone company had not disaggregated its Federal Universal Service support. And the FCC says in this order, "cream skimming" is when a competitor serves the least cost...I'm sorry...serves low cost, high support exchanges. Exchanges that are low cost but have high support, and so, we've got to figure out whether or not they are going to get more money than they should. Now, ultimately, the FCC granted the application in all but one wire center where, where the FCC found there were very low costs and their would be very high support because the carrier hadn't disaggregated support. That issue doesn't apply here in this state. You have disaggregated...all the rural ILECs have disaggregated their support down to the wire center level. Once you have disaggregation, you don't have "cream skimming." That discussion of density analysis and "cream skimming" is specific to an issue that was in the Virginia Cellular case, that is not here in this docket. If you look at what the FCC did in Virginia Cellular, I believe you will find it at the bottom...at the bottom line...strikingly similar to what you have done in your four plus years...five years of designating competitive ETCs in the state. You've looked at the provision of the supported services. You've looked at ability to serve, and you've decided that consistent with FCC recommendations, an applicant need not show signal coverage maps, need not show ubiquitous coverage at the time of the application. That decision was upheld by the Supreme Court of the state. You've decided in the Inland Cellular case that designation based on current network coverage, would not be good for consumers. Because we want networks to expand over time. The FCC looked at benefits that would come with designating a competitive ETC and wireless ETC, and talked about the benefits of E-911 and 911 in rural areas. Talked about larger

local calling areas. The things that wireless companies are bringing to consumers and consumers are choosing throughout the state of Washington and throughout the country. Those are benefits that ought to be brought to rural consumers as they are to urban consumers. Those are things this Commission has looked at in the past, and can find supported on the face of this application.

AT&T Wireless has also demonstrated, as was discussed in the staff memo, a cutting edge, industry leading ability to delivery data services over wireless network. Mr. Snyder's right, that's not a supported service, but that does not mean it's irrelevant. AT&T Wireless has a...has a network that can provide two sets of services, a supported voice service for which the port would be available, and high speed data services, again, at the leading edge of the industry. Those are benefits this Commission recognized back in 1999, 2000, and was ahead of the curve in recognizing where wireless data was going to come, and recognizing it's importance in rural areas. That is important, and that is a specific benefit brought by this application.

In addition, AT&T Wireless, as this Commission knows, is a big company, is a strong company, is a nationwide player that has the ability to bring nationwide plans, in a nationwide network into the rural areas...into the rural company areas...in a way that hasn't been...you haven't seen from the other ETCs that have come and been granted designation in the state of Washington.

CHAIRWOMAN SHOWALTER: You amplify on that point. I'm not sure what you mean...what AT&T would bring? You mentioned the data.

PHIL SCHENKENBERG: I'm sorry, Chairwoman Showalter, your question is with regard to the national nature of this...

CHAIRWOMAN SHOWALTER: I thought what you were saying, is that you're a different wireless company, than the one...that you were going to bring things that we haven't seen. Of course you're already here...but, were you referring to the data capability of wireless?

PHIL SCHENKENBERG: I was not, I was moving on, not very well, to another topic.

CHAIRWOMAN SHOWALTER: Okay, go ahead.

PHIL SCHENKENBERG: The...my point was this. The carriers that have been designated by this Commission...AT&T Wireless does not take issue with any of those carriers...they're not national carriers. They're not carriers that have service in as big of a part of the state of Washington and nationwide as AT&T Wireless has. The strength of that nationwide network. Tact that it rolls out service plans that have to be competitive in the urban markets, and rolls them out in the rural markets as well, that's a...that's a benefit that this ETC brings, and I don't believe the other carriers simply because they are more of rural carriers rather than rural and urban carriers, brought. What we think is important is that, rural...rural consumers will benefit over the long term by having more choices available to them. By having the ability to choose an ETC that has...is AT&T Wireless or is Inland Cellular or is Sprint PCS or is RCC. All of these carriers are going to bring different aspects, different service offerings, and work real hard to win customers.

Mr. Snyder used the term "embedded base" four or five times. AT&T Wireless doesn't have an embedded base. AT&T Wireless has customers...has customers, that tomorrow, can take their number somewhere else. Our customer base is...will be our customer base, because we continue to provide them service that they find valuable, and decide that we're the best deal on the market.

CHAIRWOMAN SHOWALTER: Um...are you able to say what kind of draw you will make from the fund? Maybe that's a confidential number, I don't know.

PHIL SCHENKENBERG: It's not. If you'd like us to put that number on the record, we'll do that.

CHAIRWOMAN SHOWALTER: I think we would like that.

PHIL SCHENKENBERG: If designation is granted prior to the end of the first quarter, the expectation, based on the way that the funding rules work, is designated...is the ability to have funds, that would be funded for the third quarter and fourth quarter. If that happens, AT&T Wireless would expect, based on its current customer count, as where they are distributed, among these service areas, to receive \$6 to \$7 million dollars for the balance of 2004.

CHAIRWOMAN SHOWALTER: So, for...on an annual basis, that's something like \$12 to \$14 million dollars.

PHIL SCHENKENBERG: That's correct. A few other numbers that may help put that number in context. One is, that AT&T Wireless serves, in the state of Washington, on the order of 850,000 to 900,000 customers.

CHAIRWOMAN SHOWALTER: Wait...that is how many customers would be eligible for support or...I mean, we're not talking about all of King County, for example, are we?

PHIL SCHENKENBERG: That number represents total customers in the state of Washington...all of which...I'm sorry, not all of which are covered by this application. There are a few areas where we have customers, but have pulled out the exchanges because, our license cut through a wire center. So, the number's not exact. And not every customer is...is in an area that receives support.

CHAIRWOMAN SHOWALTER: Right...

PHIL SCHENKENBERG: But, in a statewide basis, it's 850,000 to 900,000 customers, with a little over...if you average it out...a little over \$1 per month per customer...if you look at it that way.

CHAIRWOMAN SHOWALTER: I'm confused by that. I would have thought you'd take the number of customers in the area for which you'd be eligible to draw, and multiply that number by something...as opposed to all of your customers. I think we'll probably get some clarification of that.

PHIL SCHENKENBERG: I'm sorry. I don't want to...I don't want to mis...mis-state or mis-communicate. The number...the draw number was generated just as you suggested.

CHAIRWOMAN SHOWALTER: Okay.

PHIL SCHENKENBERG: By identifying which wire center's the customers are in, determining the current levels of support available to the incumbent carriers, and...and doing projections which, we expect, are as accurate as we can determine at this point. I do not know the number of customers that are in the areas covered by the petition.

CHAIRWOMAN SHOWALTER: So that the...the...I'm sorry, go ahead. That the \$6 to \$7 million for the remainder of the year, correlates to some number of customers that's less than your 850,000 to 900,000?

PHIL SCHENKENBERG: Absolutely. Qwest doesn't receive any I believe in the state, and so any customers that are in the Qwest areas are not receiving support, unless their low income customers.

The other number that I would like to provide to you...again to put it in context... The question of impact on the fund. If you've got a bigger carrier, you very may have a bigger number. That makes sense if you serve a lot of customers, you're going to get more support. It's the case of the ILECs, it's the case with competitive ETCs. But the other number is...AT&T Wireless projects today that it will spend more than \$100 million dollars in...in the ground...in its network, in the state of Washington in 2004.

CHAIRWOMAN SHOWALTER: 2004?

PHIL SCHENKENBERG: 2004. This a company that is committed to the state, that is committed to continuing to upgrade and build out it's very well developed network in the state. And, while it's going to receive...it designated...and if it keeps its customers, it's going to receive a substantial amount of support. That's appropriate for a carrier that is putting this much investment, and serving this many consumers, in high cost areas.

The other point on the effect of the fund. I believe staff's math in the staff memo, is a good point of reference. That we have a \$3.7 billion dollar fund, and he identifies the amount of that, that's attributable to competitive carriers. This is a fund that, today exists for the incumbent carriers in very, very, very large part. The question about how designations like this are going to impact the consumer, is one that was raised. When the math is done, you can strip out all of the wireless ETC dollars in the fund, and if you took those all out, the contribution percentage that is, the amount that is assessed on your state revenues, wouldn't change. The amount that is passed through to consumers on a per dollar basis as an assessment to pay for the fund, wouldn't change if you took out all wireless ETCs, because they calculate it out to enough significant digits.

CHAIRWOMAN SHOWALTER: So, you're saying that wireless ETCs, as a class, are such a small percentage of the whole fund, that...that doesn't make a

difference on the end use consumer, let alone, the designation of a single company or set of companies in a single state?

PHIL SCHENKENBERG: Yes.

PHIL SCHENKENBERG: I'm sorry for jumping around. Just a few more points. One is...just a point of clarification...I don't believe Mr. Finnigan suggested that the cases he's doing involve AT&T Wireless, but they do not. Just for the record. And the last point...I guess gets back to the beginning, which related to Virginia Cellular. The question, I think posed up front, was whether this Commission will conduct a wire center specific, fact specific of ETC applications, as was required by Virginia Cellular. That's what not Virginia Cellular did. What the FCC did was recognize the kinds of benefits this Commission has recognized, and this Commission, in addition, has a record of five years of competitive ETCs...four years of competitive ETCs in areas served by rural telephone companies. And, as noted by staff, rural telephone companies haven't asked to increase their revenue requirement, haven't demonstrated...you have no reason to believe they have adverse impacts associated with these...and I believe that Mr. Snyder said, and admitted, there won't be any short term impacts on them, regardless of additional ETCs.

Tape change....

Consistent with what you've done in prior cases, and we look forward to being an ETC in the state of Washington. Happy to answer any further questions.

CHAIRWOMAN SHOWALTER: One more financial question. You say you have 850,000 to 900,000 customers, and I believe that was the whole state, not just the ETC areas. What contribution to the US Fund does AWS make on behalf of those lines.

PHIL SCHENKENBERG: I don't know that...I don't know the answer to that question Chairwoman Showalter. I certainly expect we could obtain it with a couple of phone calls. If you'd like...

CHAIRWOMAN SHOWALTER: Well...we'll see...there may be... there might be somebody else who could answer it, but...and if we take...we need to take a break, which maybe we do, maybe we could make a phone call.

PHIL SCHENKENBERG: Okay.

CHAIRWOMAN SHOWALTER: Any other questions at this time? Thank you very much.

PHIL SCHENKENBERG: Thank you.

CHAIRWOMAN SHOWALTER: Mr. Kopta, do you have anything to add?

GREGORY KOPTA: No, your honor, unless there is some question that you had for me that was specific to Washington State laws.

CHAIRWOMAN SHOWALTER: Alright. Mr. Korsmo, you said you would answer questions. I'm not sure if we have any questions, unless there's one you've heard that we've asked, that you might want to answer or add to....

KARL KORSMO: (inaudible)

CHAIRWOMAN SHOWALTER: Don't say too much unless you're speaking into the record. Alright...then come forward and identify yourself for the record.

KARL KORSMO: I'm Karl Korsmo. I'm Vice President, External Affairs of AT&T Wireless Services in Redmond, Washington, at our headquarters there, and since my name is in the application, as having signed the affidavit, I wanted to reiterate that...that AT&T Wireless is committed...as I said in the application, to providing all of the services required under this...the Universal Service rules. We are committed to being a good citizen, as I think we have been in the past in Washington State. We are trying to make more investments in Washington State for consumer benefits. As the rules change, we'll change with the rules, obviously, but we're here to promise that we will live up to every requirement in these Universal Services rules, and I certainly hope, for the good of consumers, that you'll approve our designation here today.

CHAIRWOMAN SHOWALTER: Thank you.

KARL KORSMO: Any questions?

CHAIRWOMAN SHOWALTER: Not at this time, thanks. Let me ask, we've been going an hour and a half. I see a couple of requests for a break, so why don't we take a...just...just five...five minutes or not much more, that might

allow you to make a phone call, and if you need a little longer, we'll wait for that. We'll reconvene at...well, well let's make it 3:15 p.m.

CHAIRWOMAN SHOWALTER: Well, lets resume after the break. Mr. Shirley, I saw you writing a lot of notes. Do you want to respond to some of the issues raised? Only if you want to.

ROBERT SHIRLEY: I think there's only one thing that I think I can state clearly that I don't know that it was. Under 487 USC 254, there is a requirement that Federal support be spent only for the intended purposes. And, I don't know if it's clear, but if AT&T receives this designation and ultimately draws from the fund, then it has to spend that money in a certain way. Staff has never recommended to this Commission, say...you know, over in this county or that county or what have, again, I think we've...the combination of knowing that...that the law require it spend...and this is true for the companies represented by Mr. Finnigan and Mr. Snyder, and their desire to be in the market, increase their customers, would target the money in those rural areas...does target the money in the rural areas.

I guess the other thing...and we may get a number from...from AT&T. The nature of pooling is that, in some states, a company may be a net contributor, and in other states, it may be a net drawer...draw from the fund...it may have a net draw. Qwest, for example in this state, contributes and receives only a little bit of money related to the low income, nothing related to the high cost fund. And...and I don't think it's relevant whether its, any given company, is a net contributor or a net drawer in this or any one state, because there will be places where they are...you know...to the good or to the bad, if you will, you need to see it on the national level. I think that's all I have to add, unless there's a question.

CHAIRWOMAN SHOWALTER: Just..."cream skimming" came up a couple of times, and um...can you give us the status of what this Commission has done on that question?

ROBERT SHIRLEY: Yes. I think the most basic way in which this Commission has addressed "cream skimming," and I think, eliminated any...eliminated any likelihood, perhaps any possibility, is by having disaggregated support. The other thing that the Commission has done, for example, with RCC. In their case, their license coverage area extended only into some portions of some exchanges. And, never the less, the designation was extended into those portions of

exchanges because the nature of the licenses, is they were drawn by the FCC, ten, fifteen, maybe going on twenty years ago now. Any "cream skimming" ...and I wouldn't even call it "cream skimming" ...any chance that a company might be, in some instances, serving the lower cost portion, and in another instance, serving the higher cost portion, is by happenstance and that, given the benefits and the fact that under the current funding formula, there is no loss to any of the other ETCs, so long as they have customers. That's really a non-issue in Washington, and so that lack of disaggregation in Virginia, and I don't have the order in front of me...I gave mine away...contributed mine. The lack of disaggregation was discussed, and I think they even, talked about having Virginia disaggregate those areas or at least look at that...look at that. I hope that answers your question.

CHAIRWOMAN SHOWALTER: It does. Well, thank you. Speaking, is there an answer to my other question on contributions to the fund?

PHIL SCHENKENBERG: Thank you, Chairwoman Showalter. We are still trying to make some phone calls and find out. AT&T Wireless' tax department and most everyone that would know the answer to this question, is in the eastern time zone, where it's 6:30 p.m., on Friday. So, I'm not sure we're going to get you an answer.

CHAIRWOMAN SHOWALTER: Alright.

PHIL SCHENKENBERG: Our best guess, understanding that this is a guess, is \$1 per subscriber, per month, which gets you to \$800,000, \$900,000 a month paid in to the Federal fund, and comes somewhat close to being a wash in this give in, take out equation.

CHAIRWOMAN SHOWALTER: And I, along the lines of Mr. Shirley's comments, I wasn't meaning to suggest that there had to be some kind of perfect balance. I was just interested in the question.

PHIL SCHENKENBERG: I understand. Thank you. If we come back with a better number than that, we'll provide it.

CHAIRWOMAN SHOWALTER: Okay, thank you. Any other comments that have to be made? Mr. Finnigan...I'm sure their going to be short.

RICHARD FINNIGAN: They are...they are, thank you. Just on one thing, on this disaggregation as a solution to "cream skimming." I don't have the paragraph cite for you. I will be happy to provide it, but the Joint Board, in its recommendation, said no, it's not the answer. It's part of an answer, but in and of itself, is not the complete answer. So, you don't get there just through disaggregation. So, and I can provide the citation for you if you'd like.

I guess that was the...that was the point I wanted to make. Thank you.

CHAIRWOMAN SHOWALTER: Well...we'd like to have a little discussion on this issue. I think I want to begin with the legal framework as I understand it. And, it is that, under Federal law, the states, not the FCC, has the primary authority to make this designation. That the FCC has the authority to make the designation in situations where the state has yielded up its authority or does not have it. And, the Virginia case was such a case. It is not clear to me that the FCC has the authority to proscribe precisely what kind of process or standard we must use. Hence, you get the Joint Board phraseology of permissive guidelines, that even if the FCC were to adopt this, which it has not, the guidelines would be permissive, and I believe that's the reason they would be permissive. Otherwise, I think you would find the FCC being quite a bit more prescriptive. But, in any event, the Joint Board is about four steps removed from binding us in the sense that, first it's a Joint Board, it's making a recommendation to the FCC. The FCC would have to have more process of its own before it adopted something, and should it adopt exactly what the Joint Board has recommended here, it would be adopting permissive guidelines for the state to use.

All that said, I think that the Joint Board has raised many important issues, and the Joint Board isn't the only body to have raised them. It is a...a public policy issue of how the fund should be administered, who pays in, how it is paid out, what criteria people do use to draw it. But, I don't think we can turn every application in front of a state Commission into such a proceeding or you would find that the proceeding...that such a proceeding, would be far more extensive and expensive than is justified by what the application is about, which is designation under whatever criteria do exist. At the Federal level, I think, there have been some factors prescribed that an applicant must meet. That's not the process we use to determine the public interest. I think that's for us.

So, I don't think, from my reading, we are bound by either the Virginia decision or the Joint Board. But, I do think that our prior proceedings on other applications and this one...they are consistent with the...with the Virginia case.

In the past, and here, I think we have the ability to make a fact-specific finding. Now, there are degrees of specificity, and I think Mr. Finnigan would like us to be...have a lot more detail than we have today, but that doesn't mean we don't have enough, and these hearings, open meeting hearings, can accommodate a great range of evidence. Depending on the situation and what the parties bring to us. And, I don't think we're precluded in an open meeting from determining that we need more evidence, and we could do that today. But...I think my last point is, when we have these applications, we do build on what has gone before. That is, we have addressed and considered in prior proceedings issues such as "cream skimming," and what we have done about it. So, some of the factors at play are actually general ones, but some of the factors at play are specific. That is, this company and what it is bringing to particular areas. We do have evidence in the record that, in my view, does allow us...even if we are using the Virginia paragraph number 4, to...to make a judgment that it is in the public interest that they be designated.

The hit on the fund, I think is a real issue, but I think that's an issue that needs to be addressed at a broader national level, and when it's resolved, we will be...we will either be guided by it or bound by it. I'm not sure which. So, I'm prepared, based on all of the evidence we have received, to support the recommendation.

COMMISSIONER OSHIE: And I would...I agree with the Chairwoman and am prepared to support the recommendation of staff. The arguments made by the...by the protestants here, I guess you could call them...I know that their made in good faith and that they are made with passion. But, I do believe that the application that has been made for ETC designation by AT&T Wireless, promotes and supports the policies of the state and it is consistent with state law in promoting competition. I believe it does make more telecommunications choices available to rural consumers. It tends to promote the growth of new technologies or the adoption of new technology and services in rural communities, and I believe, preserves and advances the role of Universal Service as a tool to encourage the adoption and the delivery of telecommunications service in its highest form to rural communities. For these reasons, I would also support the recommendation of staff.

COMMISSIONER HEMSTAD: I'll concur on the comments of both of my colleagues. I would add just some...a few additional comments. I don't read the Virginia Cellular case, as counsel here today, urging us to go to a full blown adjudication. As I read the paragraphs that have been cited, it seems to me the only reasonable way to read them, ultimately, is that the FCC is describing how

it will act when it is sitting as an equivalent of a state commission, where a state does not have the authority to make the ETC designation. So, when it is describing how it will apply to all ETCs, I read it to mean, to those ETC applications that are pending in front of it, not those that are pending in front of a state commission. And, that's further supported by the proposal from the Joint Board that talks about permissive Federal guidelines that apply to the state, then differentiates that from how the FCC should act. That is should actually apply the proposed guidelines making the distinction between a standard articulated that the FCC would then apply, but only permissibly apply to the states that has under 214 (e)(2), the responsibility to determine what is in the public interest as it goes through about the ETC designation process. And finally, reference I think was made to this...but I want to emphasize it...that I can't read the Virginia Cellular case as being a directive to how states must act. This was an adjudication. It was not a rulemaking, and it isn't using language that you would find normally in a rulemaking when it is applying something universally. It is an adjudication from which...and the clearer distinction one can extract from an adjudication, a clue as to what is the precedent, and it is describing the precedent as it will apply to itself. If it were to be considered like a rulemaking, with absolutely no notice to anybody for public comment, it would simply violate all the norms of what rulemakings are about. We certainly didn't have any indication that this kind of universality of application with respect to which we would be able to comment. That simply further reinforces my conclusion that the...it was speaking to itself about how it will make further decisions where it is the decider of a ETC application.

With regard to the merits here, the petition is substantial and it describes a commitment that AT&T Wireless will make to meet the nine service requirements that the ETCs must meet, as well as the additional representation with respect to low income customers and the WTAP Program, and cumulatively and collectively, it seems to me those are clear benefits to consumers, that fall within and reinforce our state law requirement to promote the diversity of supply. State statute on a statewide basis.

So, for all of those reasons, I also will support the recommendation of staff and I'm prepared to make a motion.

CHAIRWOMAN SHOWALTER: Ready for it.

COMMISSIONER HEMSTAD: In Docket UT-043011, collectively, the applications referred to as AWS, I will move that the Commission designate

AWS, doing business as AT&T Wireless, as an eligible telecommunications carrier with the exchanges listed in Exhibits B and C of the petition, and direct AWS to provide a map of its service areas in .shp format.

COMMISSIONER OSHIE: I'll second the motion.

CHAIRWOMAN SHOWALTER: And the motion carries. Thank you for your arguments, and thank you for coming, and thank you for the rest of you for waiting, because we are now ready to move to the second item on the Agenda, A-2.

COMMISSIONER HEMSTAD: I don't think any of us thought we would spend this much time on the first item.