

Open Meeting June 14, 2002

Bob Shirley: Good Morning commissioners. This is Bob Shirley with the telecom regulatory staff. I am up here to present three dockets in a row. You have received a binder from staff. June 14th 2002. WUTC open meeting UT023033 petition of RCC Minnesota for designation as an UTC. UT-030158 and UT-0203020 disaggregating rural ILEC federal usf and UT-020321 disaggregation rural ILEC federal usf. My comments will be fairly brief. On RCC and as well as the others. The memos were long enough to tell you what there is to say for the most part. And RCC is represented here today and there are those who oppose the petition also represented today. You will hear from them on the particulars. This docket and the other two, essentially ask to continue a journey which the commission began in 1997. With the first UTC designations that the exchange geographic level rather than the statewide geographic. And they kind of all blend together. Specifically on the RCC this petition is before you. And in the regular course of business this commission has an unbroken track record of taking up these petitions fairly rapidly, because they really represent the first step in adjusting competition so that all participants in high cost low revenue have access to the same federal support. RCC already competes its just not on an equal basis. RCC predecessor companies have operated in these cellular geographic service areas named in the petition for a decade. RCC faces the same low revenue circumstances as rural ILECs. And participation in federal universal funding will help in the competition. Rural ILEC's still have the state universal service funds for which RCC is not eligible. So even designating them today as an UTC does not mean that they are truly going to be treated the same in the overall scheme of universal service supports. However, it is a step. This petition and designation as an UTC preserves and advances the universal service. It moves in the direction of sufficiency

of support for RCC. Sufficiency of universal service support for competitors is important for the individual customers. Because it permits the competitor to offer the individual customers the benefits of competition. And those are lower prices innovation of products and emphasis on customer service. Which may not be there when there is no competition. You have some materials that were presented substantiated from Mr. Finnigin and they will speak to that . I simply note the absence of any citation to the March 2002 Washington court of appeals decision. ? vs. WUTC that had upheld the commission's process. Thus far with respect to designation of UTC's finding amid public interest with respect to service in areas currently served by rural incumbent local exchange companies. I can answer questions or Ms. Beth Coller and her associates are here from the RCC. They are the petitioners.

Chairwoman Showalter: Are there any questions at this time? Not at this time.

Bob Shirley: Thank you very much.

Chairwoman Showalter: We have several witnesses or commentators signed up to comment. I don't know if amongst yourselves you think that there is a logical order. In general we will take those are opposed to the petition first. Then the supporters after that will respond. I see Mr. Finnigin standing up so we will let him go first. I do want to say that we consider ourselves governed by the law as laid out in the Court of Appeals Division 2 case. Parties are off course welcome to make a reference, but it will help our deliberations if you point out to us. If you are making some kind of new argument, new argument, legal argument or new fact situation. Something that perhaps was not addressed to the Division 2 court of Appeals. Or the Division 2 has addressed so we will be informed by that.

Richard Finnigin: Thank you Chairwoman and commissioners. This is Richard Finnigin. I am appearing on behalf of Washington Independent Telephone Association. On behalf of a certain telephone. On behalf of Century Tel of Washington. I am going to look and make sure that I am not missing anybody. On behalf of Pioneer Telephone Company. On Behalf of St. John Cooperative Telephone company, Telegraph Company. On behalf of Inland Telephone Company and on behalf of Monterey Telephone Company. And I think that virtually everything that I will present to you this morning is new and different from what the Court of Appeals had before them. There is a different factual setting than what the Court of Appeals had before. There is a much different legal setting than what the Court of Appeals had before. Based upon events and decisions that have occurred since the commission considered the United States Cellular matter in December 1999. So there is an entirely new environment and I will also will include. That case is still under petition for review. And the petition review has not been denied or granted at this point. In the time that we had to respond. I made a decision that since the due process issues were still fresh in people's minds. That I wouldn't include a lengthy citation of cases and issues related to due process. Number one everybody is pretty familiar of where we are on these issues. And the matter is still pending the State Supreme Court. Rather than go through that in a limited time. I chose to try address what we have. The petition that is before us and the facts that the petition presents in the context of that petition. As you can tell from the matters that we filed this morning. We are asking that the petition be denied on its face as not sufficient. If the commission is not inclined to do that then we are asking that the matter be set for hearing to consider the factual disputes that we are able to raise in the time that we have. And we would certainly be prepared to go forward and address those and other issues in a hearing procedure. If the commission is not inclined to deny the sufficiency of the petition on its face. And that raises one

of the first issues that is not generally before the court of appeals. Because it involves an FCC decision that I referred to in these materials. Their rules after this commission decided the United States Cellular petition. In that case the South Dakota commission petitioned the FCC and asked what is it that is needed for the commission to consider an application for a second UTC. And the FCC provides some guidance that we want something more than just a mere expression that a second UTC is willing to and can provide. There is gotta be something beyond that. This commission filed comments in that docket suggesting that a mere affidavit would suffice. The FCC said maybe but its gotta be more than just a general expression of willingness. So we are in a very different context in that way and I will represent to you that in my opinion. The petition that is filed in here, at best contains just a general statement. And at worst contains nothing. Because there is no supporting affidavit. The only affidavit that they attached was the affidavit that required for certification on the use of funds. It is not an affidavit on how they will serve and what services they will provide. It is an unverified petition that you have before you. The companies tried to do what they could to address some of the aspects of the matters raised in the petition. One of the declarations that were submitted was from Mr. Jackson. And Mr. Jackson is an employee of both Inland Cellular Telephone Company, an affiliate of Inland Telephone Company and Inland Telephone.

Chairwoman Showalter: Mr. Finnigin I am going to interrupt. Can you get the microphone a little closer. Maybe you just need to raise it.

Richard Finnigin: Is that better? As I was saying. The declaration of Mr. Jackson who is an employee of both Inland Cellular Telephone Company, and Inland Telephone Company. He is

familiar with how cellular systems operate. How cell sites work. How signal propagation works. He took test equipment out and went through in the time that he had some of the exchanges for which RCC Minnesota is applying for UTC status and has represented in this petition that it has the ability to serve. We were not able to visit all the exchanges or wire centers in the time that we had. But, he went to some of the ones, in particular he went to some of the ones that he was most familiar with. Because there are areas where Inland Cellular has its own cellular operation. If you look at the maps that are attached. The exhibits that are attached to Mr. Jackson's declaration. I will explain to you what these means. The first one should be in your packet. Should be related to the St. John exchange and there are two maps. One is designated, if you look in the box, the legend there. It's got a St. John, an underscore and a CA. I will pause and make sure that we are all on the same.

Chairwoman Showalter: We have it now.

Richard Finnigin: If you look at this map. This is a geographical representation of the St. John Exchange. And where you see those lines that have been traced around. Those are the major ropes that are in that exchange. Now the first map represents are analysis done with test equipment for signal strength. And what the red and yellow represent are generally acceptable signal strengths. What the blue and green represent and it graduates down from green to blue. Blue being the worst. Are unacceptable signal strengths. As you can see looking at the St. John exchange. It is almost universally unacceptable in the terms of the signal reception from RCC Minnesota's equipment in that exchange.

Chairwoman Showalter: You say unacceptable. What standard are you using?

Richard Finnigin: The industry standard of negative 95 decibels. It is recognized as an industry standard for acceptable signal strength. There was even a slight break and it went to negative 97. Remember these are negative numbers. The lower you are. The better you are. So a minus 88 is better than a minus 97. And don't ask me why. That's what they told me and that's what I am going with. I am not an engineer. The second map that relates to St. John. Does two things. It provides you with a legend of where test calls were made. Where Mr. Jackson took the handset and made a test call. These were at locations where there were wire line customers premises. And you can go down that list and you'll see that a few calls worked but the vast majority of calls failed. They did not go through. The second part of this exhibit. Has to do again with the coloration. And this is with the handset. Using the test equipment he was also plotting data with the handset to see what the handset would produce as opposed to the test data. And remember because it says in his declarations. He was using an antenna attached to the car, which would produce a stronger signal than a normal handset would. So he wanted to get the benefit of the doubt to RCC Minnesota. And again the same color-coding applies. Red and yellow indicates generally acceptable signal was coming in on the handset and the blues to greens represent unacceptable. And where you see blanks is no signal at all.

Chairwoman Showalter: And you have orange, what you call failed...

Richard Finnigin: No that was the first one. If you go back up above, there are two things on this particular map. The first one are the X's for the crosses. Where they are color coded as to locations where a test call was actually placed. And a notation as to whether the call worked or

failed. Or whether there was even service. Again. These are location of actual landline premises where they weren't just going down the road. He stopped at local locations where LAN line service was being provided. And he made test calls on the RCC Network. So that is one of part of this exhibit. And I do acknowledge that sometimes it's hard to find the process. They are there but sometimes you have to look for them and then code them back to the legend.

Chairwoman Showalter: I see now. The crosses are few and far between. More or less contiguous lines are made up of little squares, which is the second legend.

Richard Finnigin: Correct. In St. John's area he made 14 test calls. Yes and then what the lines show the boxes, the colored components show is the signal strength that is shown on the handset. And what that shows again. Red to yellow, green to blue. Blue being the worst. Being unacceptable. Where you can see that there are blanks where there is just flat out, nothing showing up. And he did this with both the digital. He tested both the digital and the analog signal. And got generally the same results for both. If there are any questions on those maps. I will move on. The next exhibit to Mr. Jackson's declaration. If I have them in the right order. I don't think I have them in the right order.

Chairwoman Showalter: Our says lacrosse.

Richard Finnigin: Lacrosse. Thank you. And the lacrosse. Its labeled lacrosse but it covers both of Pioneers exchanges. It covers both the Lacrosse exchange and the Endicott exchange. So again if you look at the CA map, the Lacrosse underscore CA. What you will see is the testing.

With the test equipment of the signal strength. And you can see again that there are only very limited areas where an unacceptable signal strength shows up and the vast majority of the coverage is the green to blue. In this case it's almost all blue. Which is the lowest reading. Which is minus 99 and higher. Again what this shows is traveling the major roads within those two exchanges.

Chairwoman Showalter: May I interject on the question. Because these are the major roads does that imply that the other roads that appear on the map are of a smaller size.

Richard Finnigin: Yes. Then you go to the next Lacrosse map. You will see. Again this shows a limited number of test calls made and then we show the signal strength on the telephone. And again shows generally a weak signal throughout or a nonexistent signal throughout most of the exchange and a few areas where signal strength would produce an acceptable call.

Chairwoman Showalter: Doug, using a GIS system or something like that. How do these all little tiny squares add up to solid lines get made. How is it known that?

Richard Finnigin: He plotted the data using a Map Intro professional version 5.0 plotting that as he went. From the results that were showing up on both the test equipment and the phone set. So they were plotted as he went through the exchanges.

Chairwoman Showalter: So he determined where he was. Is that right?

Richard Finnigin: That's correct. The next map is for the Prescott exchange served by Inland Telephone Company. Here what you will see. Again the first one. The Prescott underscore CA shows the results with the test equipment. Here what you will see is that moving through the center of the map. There is a pretty good signal strength. There is one area where it disappears completely. But there is a pretty good signal strength throughout the middle, but weak to nonexistent as you go either north or south. What that line you see going down the middle is Highway 124, which is a major highway going into the TriCities. For that part of the state into the TriCities. And shows that there is pretty good cellular coverage along most of it. Although there is a very significant piece which has no coverage at all. Likely with the other two exchanges. The second map which is Prescott underscore PH. Which shows what the handset was showing. And there is also then in the legend some of the test calls that were made. And as with the other exchanges. The handset tended to confirm what the test equipment was showing. If you compare the maps you will see that they are generally consistent with what the handset and the test equipment showed. And again in this case the handset showed pretty good coverage along most of 124. Although there was the same area of no signal. And then again as you move north or south of that thoroughfare there was increasingly spotty coverage. And then the last exhibit I had to Mr. Jackson's declaration is a map of the Union Town exchange. In this case he only had the phone set available to him. So that's what you are seeing here. But in Union Town they do have generally good coverage. Generally acceptable signal strength. There are some areas where that is not true. But on that test. They do tend to cover a good portion of this. So that is a factual presentation that calls into question the petition statement that they can provide service throughout the areas for which they seek designation. We also provided you with the declarations from several of the companies and these declarations generally describe some of the

service characteristics of the companies. The number of lines they serve. The densities that they serve. If you look at that its pretty spotty. Its one customer per square mile is the density for this regions if you go through some of the declarations you will see some of their descriptions of the areas that are served by these companies.

Chairwoman Showalter: I just want to make sure that I understood what you said. This is under the petitioner's representation of one customer per mile, or under the word customer per mile.

Richard Finnigin: No. Per square mile. What I was trying to provide in terms of these declarations from the companies was a description of their exchange of service characteristics. So these are from the wire line perspective. Ok.

Chairwoman Showalter: Right. So some of these areas have very very low density.

Richard Finnigin: That's correct. As you would expect. But we are trying to put some factual picture on what some of their services are like. I am not going to repeat the numbers. They are there for you to look at. There are a couple of areas that I would like to highlight in these declarations. If you look at what some of the companies had to say about their penetration ratios. The ability to serve to customers within the exchanges. Several of them said that they able to serve a 100 percent of those that are within the exchange or those within the exchange that have ever requested service. I just want to call to your attention to this declaration. He was probably being a little modest. He said approximately a 100 percent. What I learned is that when he last did a physical survey of his exchanges of his exchange of service with Pioneer Telephone

Company. There was only one building. And this might be a terrible characterization. You might even want to call it a structure. It did not have LAN line service built to it and that was unoccupied. He is being very careful when he is saying approximately 100 percent. He is probably being a little modest. What I think that calls into question. For purposes of our being here today. What public interest is being served to advance Universal Service. These are not vast areas where you have got a vast number of customers being underserved. These are not like the petitions presented by the Smith Bagley Company in Arizona and New Mexico. Where they brought in evidence and showed the areas that they wanted to serve had very, very low penetration rates and by they being there they would giving service to people that did not have service. So from a factual standpoint. That is not something that is present here. So you have to take a look at, what interest, what public interest will be served. And I am going to get into that in a little more depth in a moment. The other aspect of those declarations you should look at is some of them indicate to you why cellular coverage may be difficult to achieve in these areas. Some of them are very mountainous regions. You look at this area served by Monterrey Telephone Company. You look at the road map which I brought with you is generally described by Mr. Richland's declaration is that there are a number of mountains. Quite frankly 6, 7000 foot peaks that are within that service area. No wonder cell coverage is difficult to obtain in those certain areas. What is also useful is that they offer their perspective on what cellular service is used . And from their experience it is not used for basic telephone service. It is not used for universal purpose services. It's used for traveling. It's used for other adjunct services. It is not there to satisfy the basic telecommunication needs of the customer. And again I think, again raises another policy issue that perhaps you didn't have before. Perhaps you had insufficient detail in the United States Cellular case. So there are those things that you need to pay attention

to in their declarations. And on that point. I think that Mr. ? declaration is particular important to look through. Mr. ? is the treasurer of both Inland Telephone Company and Inland Cellular telephone Company. He has been the treasure of, he has been involved with Inland Telephone Company since its inception. If I can remember the date. I think its 1989. But has long experience in that companies operation in cellular. And that declaration is really saying to you that mobile wireless service is really not a service that is desirable.

Chairwoman Showalter: We should not grant ETC status if its not going to further universal service goals. Is that a policy point or also a legal point. Is there something in the law that says ETC is solely for, only for, conditioned by the need to meet universal basic service?

Richard Finnigin: I think it's both a legal issue and a policy issue.

Chairwoman Showalter: But where is the law?

Richard Finnigin: Can I defer that for moment?

Chairwoman Showalter: Sure.

Richard Finnigin: I am going to get to that. The last thing that I want to touch on from a factual standpoint and then I will be getting into the issues that you have raised. Madam Chairwoman. We weren't able to get a declaration together from Century Tel because there are several more exchanges involved and it's a little more complex analysis. But, I do want to pass out to you at

least some information that was provided. That they were able to gather late yesterday. So may I approach? I don't know how I can approach. Quite Frankly. And for Century Tel this provides some basic data about their exchanges in terms of the number of lines, their densities and what their major community within those exchanges might look like. As well as a narrative description of the geography of those exchanges. I did want to distribute that to you. Now as I indicated, both Mr. Shirley and the Chairwoman brought up the question. You didn't cite to the Court of Appeals. As I explained at the onset. I didn't see the reason to burden the record. And quite frankly I had to make some decisions as to time as to what to present. We all knew what those arguments are and we all know the status of the case. But, there are some things that have been happening legally since that time. And in partial response to your question with respect to the purpose and the policies. I turn that around a little bit. The presentation from Mr. Shirley is that this will advance competition. And that is a valid and good goal for the Universal Service Program. I take issue slightly with that. I think you have to find public interest within the definition and purpose of the statute that you were looking at. I think that you would find it in section 454. and clearly I will acknowledge that one of the purposes of the Universal Service Program is to advance competition. I am not sure that I agree with them but, I will acknowledge that that is what they said. But, clearly another purpose, just as important is the advancement of Universal Service. So you have to look at how an application will meet those public interest considerations. In an area. I think it's a real interesting decision. I included that which is labeled Exhibit 1 in here is the recent decision from the Court of Appeals. The DC Circuit in the USTA case. They are looking at an issue that is just core, it is fundamental to the advancement of competition and that is the way the FCC deals with the unbundling of network elements. This commission in the US cellular case has represented to the courts that this is a key to the overall

analysis. That is one of the jumpstarts to competition. It is one of the fundamentals. That's what this commission has presented to the courts.

Chairwoman Showalter: When you say this and that what are you referring to?

Richard Finnigin: I am sorry. The commission's briefs to the court of appeals and the commission's briefs to superior court in United States Cellular. This is the commission's order on union. The FCC's order on unbundled network elements. Its sort of an underpinning or a premise or why competition is a valid public policy consideration in Universal Service matters. That's sort of how that argument is presented for the commission to get started. That's sort of the starting point. This order says that even in that consideration, even when you are looking at that which is clearly designed for competition issues. You can't just do it on a competition for competition sake basis. It's not a sufficient rationale. And I will advance to you that that is a rationale that you have before you for granting this petition from RCC Minnesota. In addition, and very importantly for a second part. Based on what the Court of Appeals said you must look at what you are doing in competition on a market-by-market basis. There is no basis within the 96 Act to make a broad sweeping declaration as to what can further competition in all the markets without looking at a market-by-market basis. That goes to the point that we have raised. Its needed for the commission to look at the effect that granting a second ETC will have on each of the rural companies. Not together, not collectively. But you have to consider what it means for Inland Telephone Company. You have to consider what it means for St. Johns Telephone Company, for Ponterrey Telephone Company. Those are individual markets that need to be

reviewed. Again going back to the question that you asked at the outset. We do have some very different legal principles that we need to take into account. Than were know in 1999.

Chairwoman Showalter: I think I understand the point that you are making. Which is that we need to or must look at the effect on individual companies. But I missed the point, which you may have been saying. What it is in this order that requires that? Can you point me to that?

Richard Finnigin: What the order says is that you cannot make a broad sweeping statement as to what is good in furthering competition across all market. You have to look at. One of the rationales for the Court of Appeals decision is the FCC failed to take into account what is appropriate in one market may not be appropriate in another market. And requiring all companies to do the same thing is not something that they have the authority necessarily to do.

Commissioner Hemstad: Are you equating a market as each individual indiscriminate company?

Richard Finnigin: In this case I am. It is the only market they serve. And the FCC and I believe the Court of Appeals in terms talked about that. The companies were different. That SBC was different than Qwest. And what one company might be doing might be different than what another company might be doing. Yes I am saying. In particular I am going to back to the language in 254. Which talks about you have to consider whether the introduction of a second ETC. An additional ETC is in the public interest. That certainly implies, it doesn't state directly that you need to look at that effect on the company. And I will also say to you that the FCC in its more recent orders has said that as well. I have cited to that in the petition. That even where a company, the rural company where an agency sought designation for that are didn't oppose the application. The FCC said, " Well, Congress has told us that we must still consider the effects of the introduction of a second ETC on that company and the customers served by that company.

Commissioner Hemstad: Isn't the standard the effect on consumers indirectly affect companies but isn't the standard the effect on consumers?

Richard Finnigin: I think the standard is both. You have to take into consideration both. From my perspective.

Commissioner Hemstad: But I thought competitive analysis told you that it didn't deal with competitors but public benefit to the customers, not customers but to consumers?

Richard Finnigin: I would agree with you except to the extent that Section 254 directs you to take a look at that in more detail for rural areas. We maybe talking schematics as to how you measure that effect. But, I think it requires you to go a little deeper than just a general competitive analysis. That's why I think that court of appeals case is so telling. That was dealing with general competitive issues and they still said we have to look at more than just competition for competition sake.

Commissioner Oshie: Mr. Finnigin I would like to explore more about your interpretation of a market and lets just use Century Tel as an example.

Richard Finnigin: Sure.

Commissioner Oshie: Why is the market for Century Tel. Why do you believe that to be one market? When in fact at least geographically they are serving a considerable area in Eastern Washington and not just Central Washington, but Eastern Washington. And also an area on the Peninsula including Gig Harbor. Are those really two separate markets?

Richard Finnigin: Sure they are. And my response to that would be. How you determine what the market is that you need to look for this case. Within a 254 analysis sort of depends on the areas that you have said are the areas for designation. If for example this commission was at the point where it was saying that in order to be designated a second ETC you had to apply for the

entire study area of the incumbent rural area. And that would most likely be the entire market of the study area. If it's on an exchange basis then arguably you need to look at that on an exchange-by-exchange basis. So I think that ties to the decisions that this commission makes as to what area a company can seek designation as an ETC. You have to try and fit some of those elements together to try and make them come out as a whole. I do want to address just briefly. An item raised in Mr. Shurley's memorandum. And this has to do with his statements that I believe are on page 3 of the memorandum related to cream skimming. While I think its important to keep what we are discussing with RCC Cellular is separate from what we will be discussing in a few minutes on disaggregation. This area tends to overlap a little bit and one of Mr. Shurleys points is that there must not be a concern for cream skimming. If the companies came in and said that they wanted to follow path 1. Well that's not true. With the wireless ETC whose cost characteristics are very very different than a LAN line, a wire line and perhaps different than a fixed wireless. The concern is whether or not there is cream skimming you go to disaggregation both the wire center or not. And based upon information and I cant tell you whether there is cream skimming going on. I am meaning to imply that US Cellular is engaging in cream skimming. But there are concerns that are raised by the way which USAC seem to be administering this program and the data that is being recorded by USAC. And maybe it's all aired by USAC. That maybe difficult to tell you. But there are some very serious concerns that are raised by that. And you tend to, in our opinion address cream skimming issues by mobile wireless carriers. By averaging your support not by de-averaging it. Because it's an accident as to where they have constructed cell sites and they can reach customers as opposed to an ubiquitous service as this map show of all the customers that maybe being served. I do disagree

with Mr. Shurley's analysis. I think factually the presentations show why there is a concern for cream skimming.

Chairwoman Showalter: You say it's an accident. I don't know what you mean. Clearly the wireless company put its power where it determined to. So it wasn't an accident in that sense. What do you mean?

Richard Finnigin: It's an accident in terms of its ability to provide service to any particular group of customers within the wire line exchange. It's coming for you. We are an ETC we can serve that entire exchange. But, to me where it can serve is more billed out based upon a mobile model of people traveling and where people's residences happen to be in relation to their service ability. Is why I call it an accident? It's not a network that is constructed to serve those residences. It's a network constructed to serve a mobile population.

Chairwoman Showalter: Doesn't this point out one of the dynamics that there are different industries, not different industries but different technologies that serve in different ways. My sense is that the wire line companies, for totally understandable reasons of their own. Want to see the default position of the basic orientation as wire line and the way that wire line has built up and its functions and with its particular exchanges and then along come another mode of communication. Which is functionally somewhat different and they both are valid. Aren't they.

Richard Finnigin: I can't say that they are valid in terms of the purposes that we are trying to arrive at here today. Whether or not the granting the petition to a mobile wireless carrier will advance the interest of Universal Service and competition. If you want to include that as well. For example. We have had the experience with US Cellular for 18 months. It maybe good to stop and take a look at, have the public policy reasons that the commission granted that petition did fulfill or in the process of being fulfilled. There will be data we got. And its accidental. Its not

meant to criticize US Cellular. But, the data is there based on USEC. That many areas. Their customer service numbers are going down. They are not serving more customers. They are serving less or fewer customers. How does that serve Universal Service purposes? So maybe that's what we need to do before you say we need to go to another mobile wireless carrier. Maybe we need to stop and look at how that experiment has played out and get some data from that experiment. To see whether or not the Commission's public policy purposes are being fulfilled. One other point I do want to make. The data is sort of incomplete on it. We are not saying that wireless technology is not appropriate. There is a difference between fixed wireless and mobile wireless. WE don't know a lot about mobile wireless, at least I don't know about fixed wireless. Today it is occurring in some areas. But, the issues that I am trying to address are addressed to mobile wireless. One brief point because you have been really generous with your time. Is that the petition asked for designation in some partial exchanges, not the complete exchange. And I think that again raising public policy issues and legal issues that need to be addressed. I don't think you can grant that application as to those areas. Even if you were inclined to do so which we would hope you aren't. but if you were there has to be a federal state concurrence as to less than the exchange area and that hasn't been demonstrated. They haven't made any representations that they are going to serve the entire exchange. They only want to serve part of it. In some other states where mobile wireless has been granted for an entire exchange. They made factual presentations, factual representations about their ability to serve the remainder of exchange through resale. In Colorado they took a different approach and said we won't grant the partial ones until there is a separate, if you will, disaggregation proceeding that would allow that sort of partial designation. So, that in itself raises another issue.

Chairwoman Showalter: I just want to make sure I understand what you meant because I don't by federal state concurrence, what did you mean there?

Richard Finnigin: Under the FCC's rules, if there is going to be a service to less than the entire study area. The commission's position is that they are making designations on an exchange basis or wire center basis. There has to be a federal state concurrence as to the appropriateness of these smaller areas. Its sort of what we went through in this state for the two-zone approach. And that has not happened to date or what RCC is proposing for its service areas in those partial exchanges.

Commissioner Hemstad: I have one question. What is your response to the point that some of the devised FCC rules. The incumbent elect doesn't lose any support if there is a second wire service in the area.

Richard Finnigin: I would say that. I have two points on that. One is that that is correct under the current rules. However, if you remember the FCC's original rules said you did and they can change it back whenever they want it. Theoretically.

Commissioner Hemstad: We take the rule as it is.

Richard Finnigin: I understand that. But the second issue if you take the rest of this is a policy. There are two policy issues involved. What is it that this application brings to the table that means that it should be granted. And even if the underlying wire company does not lose any support. The second policy issue is what are we going to do with the total size of the fund. As Mr. Koo? Points out in his declaration. There are six wireless carriers serving many of these areas. If all six of them come in and get support. At what point in time does somebody come in and say this isn't working. Just saying whoever wants to can come to the party and use support without more. To me could bring the whole thing down and that would not serve the public

interest. So you have got those issues. The second issue is really a question of practicality. Really what is going to happen on the ground. It's difficult to understand. I will just stop there.

Commissioner Hemstad: I understand the issue about the size of the fund. But, that issue aside if the incumbent is not to have their universal service payments reduced. How is it harmed.?

Richard Finnigin: I have not. Well there is a couple of ways that it can be harmed. I haven't to date argued before you that the reason for denying this is harm to my clients. That is not the thrust of my argument.

Commissioner Hemstad: How does that relate to your earlier argument about, to look at the impact....

Richard Finnigin: I was just going to see segway into that. Part of it, goes beyond just looking at whether the dollar flow will continue. You have got to look at whether or not the application advances universal service. Whether or not the application, from your perspective advances competition. What does that mean? If it advances competition, then it can mean that there is disconnection of service from the wire line to the wireless and that it is somehow more than an adjunct that people have both. That it is a replacement technology. And then you do raise questions about to what extent the company can continue to serve if they lose their major customers. Because, with USF money, wireless ETC can go into a couple of customers and say we will give you free service because they are getting covered from the USF fund. And you can't to the extent that you are saying that the purpose is to encourage competition say what is the effect of competition in this area and what is the effect of losing service in one area from another. Those are issues that we would need to look at, I think. If the purpose is to advance competition.

Chairwoman Showalter: One effect of competition can be a variety of services. Supposing, it's the case that for the foreseeable future that the incumbents don't lose any money, and if we designate a wireless as an ETC they gain money. And in our state for the foreseeable future that the consumers have a; a choice, b; possibly get two services. The evidence seems to be that these are not substitutions so far. Isn't the result an enrichment for the state of Washington and its consumers. That they have two subsidized sources which maybe someone would make a choice of one over the other. Maybe they would make both. The issue of what happens to Federal Universal Service Fund. I think it's a real one but we have an answer for now. Until it becomes a true problem, it isn't the problem.

Richard Finnigin: But to answer your question. Maybe this is why we look at what has been going on for the last year and a half with US Cellular. Has there been some new advancement in service. Have there been new service plans put out there. Have the consumers benefited? Because right now you do have your choice. You can subscribe to RCC Minnesota cellular one. You can subscribe to their service. So what are you gaining. What public benefit are you gaining from additional universal service. What additional services have been provided in the last year and a half in the US Cellular example. You can say that those things might happen. But, you can also say they won't happen. We don't know that standing here today. So what public interest is there that is going to be advanced by granting this application. Particularly if you can sit back and say, Ok lets take a look at what's happened with the first experiment we tried.

Chairwoman Showalter: Its clear to me that we are going to go until noon. And so I think that we better take a break until eleven o'clock and then well decide how to proceed after that.

Break.

Chairwoman Showalter: I think I want to have a very brief process discussion here. We cannot go past noon. And the reason is that we have multiple other matters that we have to address. It doesn't appear to me that we are going to be able to hear from everybody on all issues between now and then. But in any event we will stop at five minutes to twelve to hear item number 6. Because that is the waiver of a rule. I want to that because I think its time sensitive. That leaves the other issues here. One alternative would be to recognize that we cannot get to the disaggregation issues and simply put them over to the next open meeting. It would mean that the people would come only for that would have to come back. For which we are sorry. Another approach would be hear from, to continue the matter we are on but maybe not to hear from everybody on it. To hear from the company. To hear from the petitioning from the staff, and maybe engage in any further arguments that we may have had joined. Say ending at 11:30. If we are not finished with this matter. We also carry it over there may be a decision anyway. I would like to hear from the commissioners or anyone else on a good way to manage the next fifty minutes of our time.

? I think that disaggregation can wait. Ms. Kohler has come here from Vermont and she would like to have an opportunity to speak today and I believe one of here colleagues has come nearly as far, if not farther.

Chairwoman Showalter: We would certainly hear from them today in any event.

? Both the disaggregation and the one that follows concerning Verizon, Sprint, disegration can we do at the next open meeting.

Chairwoman Showalter: So the proposal would be to put over item 3 and 5. I don't know what happened to 4. What did happen? Its part of. I am sorry. The proposal would be to put over

items 3,4 and 5 for the next open meeting. Does anyone have heartburn with that? Is that a problem? Mr. Finnigin.

Richard Finnigin: I don't have any heartburn with that. I just wanted to offer something to you for your planning purposes. I understand that the next open meeting. Is again something where you have got some serious time pressures involved. At least that is what I was told. And on the disegration we did check with USAC and part of my presentation was going to put a declaration. And the earliest that they expect to implement any of the plans that were filed in May is the fourth quarter. That is the very earliest. They submitted a whole lists of questions to the FCC. Asking all sorts of implementation questions and have no intention of implementing until they get the answer from the FCC. It may in fact may not be until the first quarter of 2003. So just for your own playing purposes. It may be all right to carry that out 2 meetings out. Just so you know.

Chairwoman Showalter: What I think we can do for purposes of today is to put it over to the next open meeting. But, we might decide after consulting with whatever is on that agenda to extend it further. Does that sound like a good plan? Alright then, we will put items 3, 4 and 5. We will carry them on the open meeting calendar to the next meeting. But do check in and see if they are really going to be in the next meeting or we will postpone them even further. I apologize to those who have come to speak on this. And if we had time today we would just push on through and finish our meeting. But we simply don't. We are running into this problem everywhere, this June. We are booked and double booked. All right, in that case. We will continue with RCC Minnesota. I think that since Mr. Finnigin had such a long time. Which we wanted to hear from him. It would be fair to hear from RCC. Unless you would prefer to hear a few more arguments. Especially the legal arguments before you respond. Not that you wont be

able to respond later if something comes up. What is your preference? Ok. Come on forward.

Introduce yourself for the record and you are going to have to adjust that microphone probably.

Beth Kohler: Yeah. Story of my life. Thank you very much. I am legal services director for Rural Cellular Corporation. We are the parent company for RCC Minnesota. Which is the FCC licensee that holds our license in the state of Washington. I first wanted to ask the commissions permission to appear here today. I am an attorney. I am the in-house attorney for the company, but I am not licensed in the state of Washington. I also have with me, outside counsel David Lafuria with the Washington DC firm of Lucas/Scuttier/Saks. He too is not admitted. But we were looking to your commission today to appear and comment in support of staff's recommendation for approval.

Chairwoman Showalter: You are not required to be an attorney to appear. So we welcome you as an attorney or non-attorney and you are free to raise legal arguments in front of us.

Beth Kohler: Great. Thank you very much. Rural Cellular Corporation as its name suggest is focused on rural markets. We do business in fourteen states. WE have 36 cellular licenses. 33 are rural cellular areas. It is our focus as a company. We acquired through an acquisition our markets in Washington State in 2000. and we have spent the last year looking at the markets and integrating them. Always with an eye towards a petition for ETC status in the state. Which we think is an important step for us. I think the most important thing for the commission to hear from us as a company is. Not only are we committed but we are required to spend every dollar in subsidy we would receive under this program and facilities in the state of Washington. We are excited about that prospect because we know we have dead spots. We know that there are more people out there that we want to serve and we fully intend to serve. That's reflected in our petition. The only other point I want to make and then I would like David Lafuria to have a few

minutes on some of the other legal issues that were brought up in the response to our petition. Is that the FCC has clearly stated and I can read it for you. This is a decision the federal and joint force decision in Western wireless decision in Western wireless petition in South Dakota order.

Chairwoman Showalter: Do you have a date and a docket number?

Beth Kohler: Yep. I will leave a copy with the commission too. But it is a declaratory ruling. It was released August 10th 2000. What the FCC stated was that. We find that an interpretation of Section 214 E, regarding carriers, requiring carriers to provide supportive services throughout the service prior to a designation as an ETC has the effect of prohibiting the ability of prospective entrants from providing telecommunication services. I think recognizing not only the importance for competitive reasons but the importance of reaching some un-served areas in rural markets. The FCC does not it make a prerequisite that we serve ubiquitously throughout the designated area. We hope to. We hope we have access to the subsidies that we can have network equals or superior to our competitors, which we view this LAN line company to be.

Chairwoman Showalter: Can you just read the docket number or identification number?

Beth Kohler: Sure. The FCC number is FCC00-248. I think with that said. If I could yield some time to David. And also for any additional questions I wanted to point out that Kyle Bruce is our senior Network Operations Director. He can answer technical questions about coverage. What we do, how we serve the state of Washington. And I brought him here as well. Thank you.

David Lafuria: Good morning. David Lafuria for RCC Minnesota. Thanks for having us and making time for us this morning. I think that the most important question that Mr. Finnigin raised is what does this commission gain by designating a second ETC in these areas. Many of which are relatively sparsely populated. I think the answer to that is clear. What the state gains and the customers gain is infrastructure investment in rural areas. Which may not be otherwise by made

by any other carrier in the absence of a subsidy. I think that a number of exhibits provided by the incumbents more or less prove the point that RCC today has adequate service in areas where there are population centers and enough commerce to support them and where a business plan exists that supports providing service without subsidies in areas. And this is taking the maps that were submitted as true without having had an opportunity to review them or otherwise go out and have our own testing. Even if you take them as true, I think what they point out is that in every area where a business plan exists to serve customers in the absence of a subsidy RCC has and its predecessor really have attempted to do so. And I think if you look at the service areas for wireless carriers throughout the state and throughout the nation in rural areas. You will find similar maps and a similar refrain throughout. What the state gains is the ability for a competitive carrier to move into areas that would otherwise not support competition and provide service and build infrastructure and drive this infrastructure from the more populated into areas that would otherwise never have a true competitor. I believe that in the papers submitted this morning and some of the comments. There were statements that wireless is more of an adjunct service for consumers. Used in their cars when they move around and used occasionally but not intended for customers to depend on it as their primary phone service or to give customers a true LAN line experience. My answer to that is without subsidies that will be the definite state of affairs into the indefinite future. With high cost support the construction timetable that any wireless carrier would have within which to build these necessary facilities in these unpopulated areas will be significantly advanced. So the question for this commission is do we want these facilities to be built, never, in 2015, 2020. Or do we want them to be built on an accelerated timetable. And if you believe its in the public interest to do that. To try an accelerate the provision of services and infrastructure investment. Which congress and the FCC and congress have clearly outlined as

goals of the 96 act. Then approval of this application is appropriate. Excuse me, I have to look at my notes a little bit here. Because we were not all prepared. As wrote them as we were going along this morning. There was a discussion this morning about the commission to do a specific market-by-market analysis. I would say that in the analysis that the FCC has done. They have never performed a market-by-market analysis. And I believe if you look at most state decisions they have not done so either. I believe that the clear focus of the public interest analysis here is on the public interest and on the consumer interest in having a competitive service offering. Its not focused on the private interest of the incumbents. I also believe that there is no questions but that there will be no harm to the incumbents and the FCC and a number of states have routinely rejected unsupported claims of competitive harm. And among the carriers who have gained competitive entry thus far. I am not aware of any incumbents who have demonstrated or otherwise taken action, which will indicate that they have suffered competitive harm thus far as a result. I think that brings me to the larger policy issues. I believe that some of the concerns that the incumbents have raised about the size of the overall fund and the general federal policy with respect to the fund are valid concerns. I think the FCC has acknowledged that explicitly in its orders and I think they have said at this time. This will be the 14th report in order, which was released in May of 2001. it said at this time we see no evidence of a rapid expansion of the universal service support mechanism. We don't see any harm to the fund. We don't see anything that would lead to us to change our path at this time. Nevertheless, we have in Docket 9--. They have indicated in some of their public. I guess I would say in formal public statements, speeches of Commissioner Abernathy and several other folks. That later this year they would like to open up a proceeding to address more specifically certain items relating to the overall size of the fund and how competitive ETCs provide service and really hit on the overarching policy issues which

maybe relevant. And I believe that there is no question but that those issues, which are overall issues, are properly before the FCC. And that they are not properly before this commission. I believe that if RCC draws from the Federal Universal Fund here in Washington is a decision which this commission makes on its merits, but that making or delving into the overarching nationwide federal policy issues on Universal Service is not appropriate for this proceeding. There was some discussion about service to partial exchanges and the need for federal state concurrence and I wanted to take a moment and speak about that, because being from Washington DC that happens to be something I do a lot. Its section 54.207 of the FCC's rules. Which provide that if a competitive ETC wishes to serve less than a complete service area of an incumbent that a state is permitted to designate it as such. But that following such designation a petition needs to be filed and that can be filed either by the commission or by the applicants. And that petition is filed to the FCC requesting their concurrence in the designation. For reasons I am not certain of the Joint board decided that with respect to service areas the FCC and the state should agree on what the service areas is for the competitive carrier. And in a number of cases across the country several of which I have been involved in other states. What typically happens is the commission makes its designation and then in cases that I have been involved in the carrier has taken that designation and a recommendation is made in the decision that this is the service area for the competitive carrier. The competitive carrier in cases that I have been involved in have been taking that decision to the FCC and filed a petition for concurrence with the states recommendation. The competitive carrier does not receive support during the time that this is pending and the proceeding here at the FCC is the commission looks at the petition and if they do nothing for 90 days after it is placed on public notice it becomes effective automatically. And then the carrier is eligible for support. And if they believe that there should be a proceeding

involved to determine or work through what the service area should be they will open a proceeding and then work with the state on it.

Chairwoman Showalter: Basically, there are two hoops to go through in the state. The first hoop and a necessary prerequisite to going through the second hoop.

David Lafuria: Yes. If you make a determination that RCC should be designated in the service that it proposes. In the areas where RCC Serves entire service areas they could then begin the process of getting funded and spending the money in those areas and offering lifeline service. In the other areas where there is partial coverage, then a petition is filed to the FCC requesting that that area be designated and if the commission concurs then ETC status would attach there as a step two. And that's a proceeding which has been followed in a number of states. I have been involved in New Mexico and Arizona on where those proceedings have gone to conclusion. I am going to skip over a lot of this just to be brief for you. I think the last subtenant point I want to make is that there is no requirement that a carrier provide coverage to a 100 percent of the service area. And I believe that the FCC in the South Dakota case was pretty clear that requiring a carrier to first provide service to a 100 percent of the service area would amount to a barrier to entry. Which is prohibited under section 253 of the act of Congress implemented. It to me has the subsidy mechanism backwards; that is when the Rural LECs begging getting subsidy any number of years ago they clearly did not have service to all areas or all customers or all homes throughout their proposed areas. And it was the subsidy, which enabled them to build facilities out to these areas. And likewise here to the extent that there are customers that the company does not now serve. It has made a commitment to get facilities out to them and it is the provision of the subsidies, which will enable them to do so. And in point of fact, I believe RCC's position would be pretty clear that the company agrees that without the provision of the subsidy there is

never going to be a competitive service in many of these remote areas. And I believe that as you look through the application and if you look back at the US Cellular case. I think what you will discover is that the health and safety benefits and the benefits to the customers far outweigh the potential competitive harms that the incumbents have alleged.

Chairwoman Showalter: When you said the South Dakota case were you referring to the same case that your colleague mentioned, issued on August 10, 2000?

David Lafuria: There were several decisions that got issued in that one and it is the same case but, I am not sure it is the same decision. There were some South Dakota cases at the state level and there was one at least at the federal level. Maybe two. I believe it's the same case.

Chairwoman Showalter: We could at least find it through 00-248?

David Lafuria: That's the document number for that particular decision. There is a docket number for that case. Unfortunately, it's in an enormous docket which is common carrier docket #9645.

Chairwoman Showalter: That's good enough.

David Lafuria: And I could certainly pull it up if you need it and provide a copy. There was also some discussion this morning on what more of a general policy issue. What happens with respect to granting multiple applications. And I think that the laws have settled at this moment that each application is evaluated on its merits, but the FCC has not hesitated to grant ETC applications in areas where another ETC has been granted and in fact another competitor has been granted. So even in the areas where there is overlaps, the FCC has not hesitated to make grants. I think to conclude. I think that from a federal policy issue. The congress and the FCC have been looking to level the playing field here. I mean there is no question that the subsidy helps to drive infrastructure investment. And the health and safety benefits of a competitive carrier are going to

be obvious. My view of it in short hand, is this. Mobility and wireless service is the best thing that ever happened to a 911 call. Because you can make your 911 call wherever the emergency happens to exist and not necessarily where the end of the phone line is. And while I am sure that wire line carriers could say that there might be some area where you push the send button and the call doesn't go through. I would say that if you are out in your backyard you cant make and if you are down the street you cant make call unless you can find a wire line phone. Which requires you to go some distance so the benefits and drawbacks to both are relatively equivalent. I would argue that wireless has an advantage but, even if you say they are equivalent the fact of the matter is I think a consumer should be required to choose. Should be able to choose. If I lived in a remote area and felt that I should have a mobile phone even if it meant in some areas I couldn't make a emergency call. But, because when I am driving along and generally the calls go through and I want to make that choice. That is a good choice for consumers and one that the commission should support. In closing I would just like to say that there is no question that approval of this application is going to drive infrastructure investment in these remote areas and it is going to be to the consumers benefits. I believe that not only RCC but all of the affected incumbents are going to lower prices, improve services, try to differentiate their services and try to do whatever they can to keep their perspective customers and if subsidies are provided for any length of time. If the federal policy remains and RCC has time to improve its network and builds its infrastructure out, then I think you are going to see a second carrier in these areas, which advances the federal policy of the telecom act. Which is that subscribers in these areas deserve at least one choice as to service providers. Similar to what folks in these urban areas enjoy across the board where subsidies are not provided. That's all I have. I'll take any questions.

Chairwoman Showalter: Do you have any comment on the applicability of the DC Circuit case that Mr. Finnigin cited as requiring or ?

David Lafuria: Yes. I followed that case fairly. Although I do not represent any clients who are of local exchange carriers and doing UNIS. And that case which deals with whether a DSL line should be shared and unbundled is the product of a. I think Mr. Shurley described it best as a cage match. Between the incumbents and all of the competitors which has been going on since 1996. the incumbents have sued the FCC and have gotten decisions from the various circuits around the country on the 96 act dealing with interconnection. We have now gotten some Supreme Court cases dealing with it. These huge policy issues over whether a particular network element should be unbundled. On the subject of massive litigation, I don't believe that those cases dealing with unbundling have anything to do with ETC status. I don't believe that, ETC status for example confers a property right on either RCC or the incumbent. I believe it is a grant that this commission makes which this commission can take away if a carrier does not comply. And some of the arguments that are made in those gigantic interconnection and uni fights. I think could be templated or transposed into virtually any piece of litigation in the telecom and I just don't think that they are appropriate here.

Chairwoman Showalter: Mr. Lafuria. Thank you.

David Lafuria: Thanks for the opportunity to speak today. We will hear from some of the other commentators. I would like to request that you limit your comments to new arguments that have not already been made by a prior commentator or quickly refer to the prior comment if you want to endorse them. Mr. Snyder.

Robert Snyder: Good morning. My name is Robert Snyder. I am here this morning in this issue with respect to Whidbey Telephone Company and there was only one item that I wanted to raise

on the interest of time. I think Mr. Finnigin has made a very full presentation. But I believe there is one question I think that has been prompted by the most recent exchange and comments. And that has to do with the effect of the commission designating an ETC for a portion of exchange. Which seems to be an issue that was raised for the first time here. When we went through the original ETC designations in the state of Washington; the commission at that time made a decision to designate ETCs at the exchange level. Indeed before you at that time on behalf of Whidbey Telephone Company a request to be designated for a portion of GTE's exchange. It was referred to as a supplemental service area. And at that time the decision was to not move forward with that. The commission however did move forward and determine that in lieu of service areas being equivalent to study areas, which is the default result under the FCC's rules to designate exchange level ETCs. That went to the FCC for its concurrence and I don't recall now whether, yes it expressed and concurred by its order. The question that I have at this point, to which I don't really know an answer but I wanted to put it on the table because I think that it does require some attention. Is my understanding that the FCC's mechanism that was established is the determination of whether an ETC will be designated at the study area level or exchange level or somewhat finite level. Whatever that decision is must apply uniformly to all ETCs. You can't have one ETC whose designated for a larger and a different ETC whose designated for a smaller area that is subsumed by the larger area. Because that does not create a level playing field. There are obligations that go with designating an ETC in addition to rights. I am not sure whether you would not need at this point, and that is why I wanted to raise the issue to commence some form of proceeding to change the ETC designations for all the incumbents that heretofore have been designated. So that their designated areas would then become bifurcated between one area that

matches if RCC's application were to be granted their portion. So now you have two ETCs for that named service area and in the incumbent has a service area for the balance.

Chairwoman Showalter: Are you talking about the case where there are not only the ILECs but also two ETCs in a geographic area or are you talking in the abstract. If we had designated US Cellular somewhere at one level of granularity we cant designate somewhere else at a smaller level of granularity without going back.

Robert Snyder: I think the answer is both. We have before us today in this case with RCC's application. A petition that if granted, with respect to rural areas designate them for ETCs for a portion of some companies that I normally represent but in this matter Mr. Finnigin is representing them such as Prescott exchange, Inland Telephone Company, St. John Exchange and if I recall one of the Pioneer Telephone Company exchanges, is also divided by the math that RCC submitted to show where they wanted the boundary for their ETC designation. So we have it in front of us today, its both a hypothetical issue whenever someone comes in and you have previously entered an order that an ETC designation has to be done at a particular level. I believe you have to designated all entrants who come. Those that you decide to grant you must grant for an area no more granular than you granted for the others.

Chairwoman Showalter: Would you give us a citation or a legal authority for this proposition.

Robert Snyder: Among others the section that was cited. I am sorry I don't recall Mr. Lafuria who preceded me. That same section which I think was 54207. If I recall. It contains the definition of service area. I believe that there is another section 254 that says "the default for rural exchange areas is the study area unless it is..." is it in 254. Is it all in 207? I am sorry I started saying that this needs some attention the issue is just really. I started thinking about while I was sitting here in this way that really the purpose of the ETC designation was to have a level

playing field. Whoever is designated, if you designate more than one they must have an equal footing. To get the designation should not be saddled with a broader obligation than the other ETC in the same area. I think that if you are disposed to grant ETC designations for a portion of an exchange. And that is what you have said previously is the level at which you would designate and which the FCC concurred. You can't now designate someone for less than that. and leave the incumbent saddled with a broader obligation and only saddle the new entrant with a narrower obligation without going back to the ones that you have previously designated. And say that we are going to now bifurcate the designation, the service area where you previously had one service that encompassed an entire exchange unit of 2.

Chairwoman Showalter: Wouldn't it at a minimum be a petition of the companies that wanted that?

Robert Snyder: No. I think that for you to grant this application maybe a violation of the federal structure. If you elect to split the area in where you have already granted others.

Commissioner Hemstad: First the FCC has said that the requirement of the designation of the entire area becomes a barrier to entry. And hence policy choice of having partial area designation. What you are proposing would make nonsense of that, because then have to go back and reduce the area. If we thought the partial designation was appropriate then we would reduce the designated area for the incumbent and how do you square that with the FCC policy that says the incumbent will not have a reduction in the Universal Service Fund funding.

Robert Snyder: I don't think that you shrink back the sum of the incumbent's territories. But, I think you had a proceeding to determine that issue of how you felt the public position was best served. At what level of granularity should service areas be defined in the state of Washington. And you answered that question at that time. And secured FCC concurrence. And what is being

asked of you is to say that those will be the rules for everyone except one that is coming in. and I am not sure that you can do that under the structure that has being laid down by the FCC. I am not suggesting that it is a nonsensical outcome. It's the level playing field issue.

Commissioner Hemstad: But what is the playing field to be leveled?

Commissioner Hemstad: It may be that if you said the designation is on a particular sub exchange level there might be different decisions made as to whether all incumbents today would want to still be saddled with the same obligation to serve the most expensive, least condensed territory. Thank you very much.

Chairwoman Showalter: I think it does make sense to hear from Mr. Lafuria on this point. I recognize that we are not doing things exactly as we normally do but, we need to make sure that we cover the points that have been made as they are made. In particular I want to hear the legal points that are made. Because we have to operate within our legal constraints and the policy issues come within those constraints. So Mr. Lafuria do you have response on that particular point only?

David Lafuria: As I understand Mr. Snyder's argument. My apologies to Mr. Snyder, I don't understand his argument to tell you the truth. What I will say is that the commission's rules provide for different carriers to have different service areas and that is a different analysis from the disaggregation of support and I think that's where we are little mixed up. Mixing service areas with disaggregation. Its clear that for rural carriers the default position is that a competitor has to come in and serve the entire study area until this commission decides that it may have a different service area. And if you decide that it is entitled to a different service area then you may so designate. Once you designate a service area for RCC that is the area within which it has its obligations. And one of the things that you have to consider whether in RCC requesting a

different a service area is cream skimming. For example, have they chosen only to serve these small towns, which are not dense, and they are not going to get a lot of support.

Chairwoman Showalter: I am sorry I am going to have to stop you for one second because your microphone went off and its not blinking anymore. And I see someone in the crying room smiling. We do want to get all of this on the record in case a transcript needs to be made. Here comes another microphone.

David Lafuria: Alright. This is fine. So once you decide that RCC should have a different service area and you make the determination that perhaps the company is not cream skimming. They are entitled to serve that service area which is different from the incumbent. Should another carrier approach and say we want some other subset the commission is empowered to designate that carrier for a service area. The concern of if you had two or three, lets not call them overlapping for a moment. Lets just say two or three different competitors come into a large LEC service and each one proposes to serve a different service area. If in each case you make the determination that they should have a separate service area, you are entitled to do so. If we follow the disaggregation rules, which means that, in theory after this May 15th order the incumbents are going to desegregate and eventually this process works. Where by the higher cost areas receive most or all of the supported and the lower cost areas of a town receive less money. That is what permits competitors to come in and have their own service. So in theory RCC or some other company could come in and propose only to serve the lower cost areas of a particular incumbents service area. And if the incumbent has properly desegregated and there is no support available there or only a few pennies of support. Then you may decide that it is in the public interests, but a competitor is not going to receive much subsidy there. The net effect on the fund and on the incumbent is going to be negligible. On the other hand if a carrier looks at a

high cost area and says “you know there is not many subs there but they are 75 dollars per line, that is what I am going to choose” that’s exactly what you want them to do because its those highest cost areas which are the areas that in theory need the support. And so the federal scheme contemplates different carriers having different service areas. And the incumbent having a service area, which it has been designated as well.

Chairwoman Showalter: Thank you. Mrs. Smith, do you have any points to add on this legal point. Ok. Then I would like hear from Veal Long. And I don’t there any other commenter signed up. There are some question marks. Does anyone want to comment? Mr. Snyder. Well help you I am just trying to get anybody who hasn’t commented.

Robert Snyder: I wasn’t sure that he understood my argument. My issue is not about disaggregation of support. That is a separate issue that we are going to be talking about another day. When one looks at 54.207 it talks about defining a service area for a rural telephone company. My reading of that is that you are defining it for the area served by the rural telephone company. Then it binds all entrants into that area. It doesn’t talk about making a service area designation for other applicants who come in who are not rural telephone companies. So I just wanted to clarify that. When you look at that rule more closely. That’s what leads to the concern that it is a designation for an area, not for a company. Once you have parsed up the areas, then those areas come to apply to those areas however you have applied them. That’s what I would submit.

Chairwoman Showalter: Even if you are correct wouldn’t it mean that if a party is designated for a broader area than an area we have designated. The party is entitled to come and argue that point.

David Lafuria: I think you have defined the study area and gotten the FCC's concurrence and you cannot, we may just differ legally in our analysis. I think you understand the issue that I am trying to raise.

Chairwoman Showalter: All right. Lets hear from Mr. Shurley and legal counsel also.

Shurley: Mrs. Enyan apologizes she had to leave for another engagement. She asked me to bring up something that I was already intending to bring up. Mrs. Enyan for United States Cellular. The area proposed for a service area by RCC includes the Colville Indian reservation, the Spokane Indian reservation and the Calistoga Indian Reservation in Ponterrey County. And one of the things that is available to an ETC is participation in the enhanced tribal lifeline program. United States Cellular on the Yakima nation reservation has signed up to date 3400 customers in the enhance tribal lifeline program. This is an area where the incumbent has had decades to build. These are not additional lines. These are not people getting additional lines. That program is restricted to one line. Either at a persons phone or a mobile line. So there are particular good that can be done in some place. I am not to suggest that there aren't lots of other goods. In fact that is my second point. I did not say that the good here is in the public interest is competition. Rather it's the benefits of competition. That's the important thing and those are benefit are generally acknowledged to be downward pressure in prices, introduction of new products, service innovations. And of course, attention to customer service needs where there are two or more two or more competitors. Finally on the last point. We have in the past, staff has only recommended designation at the exchange level. But as discussed in the memo, we looked at the changed circumstances since last were presented with that. Changed circumstances are no longer zero sum gain for federal universal service support. So the notion that a competitor would go to the little town, snap up all the competitors, leave the other competitor or incumbent

whatever you wish to call them, without sufficient funds. It's just not the case. It's not a zero sum gain. And then in particular...

Chairwoman Showalter: On that point, it is no longer a zero sum gain but, wasn't it before we were worried that it might be a zero sum gain. Now the question has been answered that it is not.

Shurley: Correct. And with respect to a cellular company that has a license that can only serve in the boundaries of that license. If it happens to cut through a portion, half of a wire line exchange on the map. That cellular company did not say I want to go to just half of that exchange. That was all determined back in the mid 80's before there were even bidders on these licenses. So there can be no intentional cream skimming, in this case, on the part of RCC. So I think its time to follow the process that Mr. Lafuria points out. Make that partial designation, ask for the concurrence of the FCC. If there are things that need to be said about that have not been said. There is that process of the FCC. The FCC has done several of these. They have the experience and no benefit accrues to RCC with respect to this partial designation, until the FCC approves the partial designation and RCC is eligible for the funds for that area as well. Or rejected if that may be the case. If it is the case that it is either legally necessary or good policy or wise to cut a similar line through a wire line exchange for that rural incumbent or any other incumbent serving there. That can be done by this commission, again following the same process where it would again ask the FCC for concurrence if it could be done at the same time. And we have always processed petitions quickly. Thank you very much.

Chairwoman Showalter: Other necessary comments. Ok. I am for discussion. Would anybody like to begin.

Commissioner Oshie: I would like to open up with the comment that Mr. Finnigin raised initially that this is an invalidated, if you will, unverified excuse me; petition. And whether we

would require it by law to verify the service territory of the company. And I have realized that there are some decisions by the FCC at least has been represented with. Have upheld that the company to be designated as an ETC does not have to serve the whole territory. But is there any need for a verified petition in which there is evidence in the record as to the territory it does serve.

Mr. Shurley: The petition requests designation for three cellular geographic service areas for which RCC is licensed. Those are know locations, they have boundaries they can be found on the FCC website. I don't think there is any mystery about them and what they are and where they are. And if they were to venture over those boundaries they would be violating their license. The geographic area is know and it is specific. Anyone in the country in the country, in the world, may look at those boundaries on the FCC website.

Commissioner Hemstad: On the merits of what is in front of us. I am prepared to support the staff recommendation. In this changed environment as Mr. Shurley said in his last comment. And as we heard it before it is no longer a zero sum game. There would not appear at the least for the present, any harm to the incumbent and our focus seems to be the benefits to the consumers. And it would be hard to argue there would not be the point about infrastructure investment as Mr. Lafuria made it is quite persuasive. It would accelerate that infrastructure development of an alternative technology especially both in this state and nationally. And inextensible focus on how do you encourage infrastructure development for alternative technology of the rural areas. It may assure but provide an opportunity for it to occur. Secondly, it provides additional choices to consumer and how they use telecommunications services and it would appear from what has been occurring in areas where cellular phones are used that it is an additional device for communication more than it is a substitution. But in any event it provides an opportunity for

consumer choice. Thirdly, is the issue of health and safety as an additional benefit for the use of cellular phones. That I think is self-evident. Those are the policies and the legal issues are more technical. It would appear there is a substantial for proceeding with this. If we are wrong we will find out.

Chairwoman Showalter: I share commissioners Hemstad's thoughts completely. I would add a few more things that I think we can say about these areas in particular. I don't think we are making a blanket judgment that it is good to have wireless infrastructure. Although, I think that's a judgment that can be supported. But, I am interested in these areas and the maps. We heard from Mr. Shirley on a particular benefit to the tribal areas. But, more than that I have driven through the Tri-Cities area. It is terribly remote. It seems to me it would be very good to be able to make a call. Not simply to 911 when you get in trouble and you are not at a LAN line. It's nice to be able to call any number of people. I was thinking about where the calls can be made and cannot be made and surely it would be better to have the infrastructure where they can be made. But I wonder if one were out in some of those areas where a wireless call can't be made. Whether there is any house anywhere nearby where you could make a LAN line call. In other words it is a public service to be able to make calls from more than just houses. And this points out the difference between these two technologies. I think, incumbent Wire line companies definitely serve the public interest. But so can wireless. And having both of them does as well, if not better. I don't want to repeat Commissioners Hemstad argument, but I do agree with him and I am prepared to support the staff recommendation.

Commissioner Oshie: And I too am prepared to support staff recommendation and I will not repeat the reasons that were made by Commissioner Hemstad and the Chair. But I do concur with them.

Commissioner Hemstad: Accordingly, on Docket UT023033 with regard to RCC Minnesota DBA: Cellular One. I move that the commission designate RCC Minnesota and DBA: Cellular One as an eligible telecommunications carrier. With the exchanges and parts of the exchanges listed in the attachment to the staff menu.

Commissioner Oshie: I second the motion.

Chairwoman Showalter: The motion carries.