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BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

COLUMBIA, SOUTH CAROLINA

COMMISSION DOCKET NO. 2003-277-C MARCH 15, 2006 1:00 P.M.

HARGRAY WIRELESS, LLC -- Allowable Ex Parte Communication Briefing to Discuss Status of Federal Universal Service Program Following the FCC's Report & Order in CC Docket No. 96-45, Released March 17, 2005; Review of ETC Designation Cases in other States; Q&A on Federal Universal Service Mechanisms and Criteria for Designation.

BRIEFING BEFORE: Randy MITCHELL, CHAIRMAN, COMMISSIONERS C. Robert MOSELEY and Elizabeth B. "Lib" FLEMING, and Joseph Melchers, Esq., Chief Legal Counsel.

APPEARANCES: David A. LaFuria, Esq. and William W. Jones, Jr., Esq., representing Hargray Wireless, Inc.; and Bob Labonte, VP and COO for Hargray Wireless, Inc.

Wendy Cartledge, Esq., Lessie Hammonds, Esq., and Nanette Edwards, Esq., representing the State of South Carolina, Office of Regulatory Staff.

REPORTED BY: Janet L. LeVeque
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1 MR. LAFURIA: We're all very happy to be here. I'm
2 here on behalf of Hargray Wireless. Some of the staff told me
3 I have of couple housekeeping matters to do. First I'll
4 introduce who I am. I'm here on behalf of Hargray Wireless.
5 This is Bob Labonte on my right, who is with the company, and
6 the company's general counsel, William Wes Jones, is on my
7 left here.

8 I'm reminded that there is a sign-up sheet that's
9 been circulated around the room, and that, folks, if you would
10 please sign that sheet; and also there is a separate Form 4,
11 an Allowable Ex Parte Communication Certified Statement.
12 There are some copies up here that everyone, as I understand
13 it, is required to get one, look it over and sign it and turn
14 it back in. And if you turn it back in to the staff that's
15 here today, they can file it for you, or you have to file it
16 on your own within 48 hours. Those are my housekeeping
17 matters.

18 CHAIRMAN MITCHELL: Okay. You did a good job.

19 MR. LAFURIA: All right.

20 Let me just, if I could, bring up, I'll give you
21 copies of my slides, just because -- they are not real fancy
22 or anything. I wasn't going to try to do a Power Point thing,
23 but I thought I'd give you some outline bullets here for my
24 talk. And I have some extras here if there's folks here that
25 would like to get them. I have extra copies of them.

1 Well, okay, I guess the biggest reason that the
2 company asked me to come today is because, for better or for
3 worse and for all the wear and tear, over the last five or
4 six years I have been dealing with universal service and ETCs
5 over 25 states, and it was thought that if I came and did a
6 presentation on what's the latest and greatest in designating
7 competitive ETCs, and what's going on with the federal
8 universal service program at the FCC in some of the states and
9 even in Congress now, that it may be a useful presentation to
10 make, and I'm hopeful that it will be that today.

11 I'm going to run through these slides rather
12 quickly, and if you want to interrupt me on the way and ask
13 questions, I'm happy to have them. And if we get done early,
14 great. If you want to ask away to the end when the next group
15 comes in, by all means have at it.

16 As an overview on the federal universal service
17 program, and you may already know this, but all consumers in
18 the country who purchase interstate service pay into this
19 fund, and this federal program includes our high-cost program,
20 which provides funds to build and maintain infrastructure in
21 high-cost rural areas. There is also a low-income program
22 that subsidizes low-income users of service, and there's a
23 school and library program, which funds the construction of
24 broadband connections for schools and libraries throughout the
25 country, and a very small rural healthcare program, so when

1 consumers pay in, they are not just paying in for the
2 high-cost piece that I'm here to talk about, they are paying
3 for all these programs within that.

4 The total 2006 is going to be around \$7 billion, and
5 about \$4 billion of that is going to be distributed out to
6 carriers to construct infrastructure in the high-cost areas,
7 so it's that \$4-billion-piece that I'm really here to talk
8 about today. I can certainly answer some questions on the
9 schools and libraries and rural healthcare, but it's not a
10 specialty of mine and I don't follow those programs like I do
11 the high-cost piece.

12 Right now wireless consumers around the country
13 contribute, roughly, a third of the total or a little over
14 \$2.5 billion a year, and around the country wireless carriers
15 now draw out -- well, in 2005 it was a little less than 10
16 percent, and in 2006 I think it's closer to 13 to 15 percent.
17 The reason why the numbers aren't quite clear is that the
18 carriers are getting designated and some carriers draw more
19 and less, depending on a variety of factors, so you really
20 don't know exactly how much gets drawn out until the end of
21 the year.

22 On my second slide I want to point out, it may seem
23 kind of obvious, but right now all but a few rural states have
24 designated one or more competitive carriers to be ETCs. I
25 brought along a rudimentary map as one of the slides, which

1 shows -- unfortunately our engineers forgot that Alaska and
2 Hawaii are states in this country and they are not on this
3 map, but Alaska and Hawaii have also designated competitors to
4 be ETCs.

5 As you look at this map, the states up in the
6 Northeast are primarily urban states that don't have
7 eligibility for funds. They, of course, don't designate them;
8 there are not that many rural areas in Connecticut these days.

9 I have a couple of cases pending around the country,
10 one in Illinois, which is expected to be acted on within the
11 next month, so there aren't really many places left that
12 haven't designated at least one.

13 The FCC has designated competitors in nine states
14 that have decided that they don't want to do it. That was
15 part of the federal statute that states have the option to say
16 we just don't want to do this because we don't regulate
17 wireless carriers, and so there are nine states that have
18 gone, where carriers have gone to the FCC and made their
19 application.

20 And as a result of those applications of the FCC,
21 last March it was coming up on a year, March 17th, the FCC
22 released an order that set forth a set of guidelines for:
23 What do carriers have to do if they want to be a competitive
24 ETC and be designated when they apply to the FCC; so for those
25 nine states, when a carrier wants to become eligible, there is

1 an order, which I have included -- we have some copies here.
2 I don't invite anybody to read it, it's awfully dry, but it
3 does include in there a list of criteria that you have to do
4 if you want to be an ETC when you apply to the FCC.

5 And the Commission was careful to say, even though
6 we don't have the authority to require the states to do this,
7 we think these are good guidelines. And I can tell you a
8 number of states that picked up on that and adopted the FCC's
9 guidelines; some have adopted them almost word for word and
10 some have added some things, and some have done less, but
11 generally they've looked at them as a good guidepost for what
12 should we do when we designate competitors.

13 Since that March order, the FCC and the states have
14 designated a number of additional carriers. If we flip to
15 the -- just give you some examples, I've got a slide here
16 which I just looked up, in terms of competitive carriers, how
17 much universal service support out of the federal fund are
18 they drawing, and I picked out the states that are in the
19 region here because I figured they were a little more relevant
20 than perhaps North and South Dakota. But I think there was a
21 relevance to North and South Dakota here, and that is that
22 this is a federal program and every consumer in the country
23 puts money into this program, and wireless consumers are a big
24 chunk of it now; and so I guess one of the things that I've
25 observed is that in this state, and in a few others, wireless

1 consumers are paying into this fund and the dollars are going
2 into a federal pot and they're getting distributed out to the
3 other states who are using those funds to invest in wireless
4 infrastructure that's built in these networks out in rural
5 areas.

6 In the states that are on this list, I'll just pull
7 out Mississippi as an example. I represent Cellular South
8 down there and they draw a significant amount of money out of
9 that fund, and they -- the key for the Mississippi Commission
10 has been accountability: How do you use these funds? What
11 are you doing with them? How do we know we're getting some
12 bang for our buck for our consumers? And they go to the state
13 and they report regularly: Here's how much we got last month
14 or last quarter or last year, and here's what we did with it
15 that we wouldn't have otherwise done; here are the communities
16 that we service that we wouldn't have otherwise gotten; here
17 are the battery backup we installed to put better service at
18 the cell sites; here's the capacity we added to accommodate
19 new demand.

20 I will tell you, if you talk to those folks down
21 there, it has paid off in a real big way for them. And the
22 biggest way it's paid off is -- and I know you probably heard
23 a lot about this, but this was the hurricane season last year,
24 and they cover the entire state of Mississippi with their
25 service and they certainly cover Biloxi and Gulfport a lot

1 better than they do some of the remote areas, but when that
2 hurricane hit and wiped out Biloxi and Gulfport, two things
3 happened: The first thing that happened was their network was
4 back on the next day, to some extent, for first responders to
5 be able to make calls. They had enough backups and they had
6 enough equipment to go down in there and set up temporary cell
7 sites and get the critical people online immediately.

8 The second thing that happened is that when people
9 moved north, up into the more rural areas away from the storm
10 and were displaced, they had enough network facilities in
11 those areas that their facilities were not overwhelmed. They
12 were taxed, people got that fast-busy that you might get now
13 and then, annoying fast-busy, they got a little more than they
14 might otherwise get, but they had enough facilities up there
15 that when people moved out of their homes, and they depended
16 on that wireless phone for calling their insurance company,
17 keeping in touch with their loved ones, doing all the things
18 you got to do when you're displaced from your home, those
19 folks had service and they had service immediately.

20 Down in Biloxi-Gulfport, that network was back on
21 the air in full capacity in 13 days and they got a
22 commendation from the Mississippi legislature as a result
23 because they were the only network that was really cooking
24 down there.

25 The wireline network in some areas was not rebuilt

1 until after the first of the year. It's not that they weren't
2 trying. It's just that when you knock out a wireline network
3 in a major city, it takes a heck of a long time to rebuild it,
4 so the disaster recovery down there was particularly important
5 to have good wireless network infrastructure in those areas.

6 To talk just a little bit about the federal program
7 mechanics -- I don't want to spend a whole lot of time on it.
8 I want to make sure a couple things popped out there that I
9 think are important. One is the way the federal program
10 works. A competitor can't get any high-cost support from that
11 federal fund unless they first go out and build facilities.
12 The way the program works is if you get a customer, you get
13 support. If you don't get a customer, you don't get support,
14 and you can't get any money for reselling, so unless you're
15 willing to go out and construct a cell site and turn it on and
16 market it and get people to come on your network and be your
17 customers, you can't get any dollars.

18 So for a competitor, they have to invest risk
19 capital to do this, and they have to invest rationally and
20 efficiently and make decisions that are good decisions for
21 both their company and for the consumers.

22 Also, a competitor loses when they lose support. If
23 a customer comes and the service is not good and they go to
24 another carrier, they not only lose that customer revenue but
25 they also lose the support.

1 And if I could draw kind of a little mental picture
2 for you the way this works, the way that the federal program
3 folks set it up, what they were going to fund was one
4 competitive network in an area, because if you think about 100
5 people out in an area, and the competitors can only get
6 support when they get a customer, let's say there's 100
7 potential customers out there, there's a cap on the fund for
8 competitors and they all have to fight for those 100
9 customers. So if you designate one ETC and they were to get
10 all 100 customers, you have that much money that goes out. If
11 you designate four competitors out there, and they all shared
12 and they all get 25 customers, it's the same amount of support
13 going out no matter how many competitors you have. So there
14 was a market-capping mechanism that they put in there.

15 And, finally, the competitors have, under the
16 federal rules, a federal carrier of last resort obligation is
17 the same for all carriers, to respond to all reasonable
18 requests for service. Today a competitive carrier, if he's
19 not an ETC, can -- a customer could show up and say, Gee, I
20 don't get good service out here at my house, and a carrier
21 would say, Gee, I'm really sorry, maybe you should try another
22 carrier, because I don't have a cell site up there. Once
23 you're an ETC, you have an obligation to do your best to get
24 service out there and to respond to all reasonable requests.

25 In cases I've been in, I can think of in Minnesota

1 and Washington, for example, customers have filed a letter, an
2 informal complaint or a letter with the commission and said, I
3 want service and I'm not getting it, and the commission has
4 had to make a decision to as to whether they're going to order
5 that carrier to provide service out to that customer, much
6 like they do for an ILEC.

7 CHAIRMAN MITCHELL: Do most all of the customers
8 know that they have that ability to complain to the FCC, or is
9 that presented? How are they aware how they can resolve their
10 complaints? Do you have anything formally printed to them in
11 their bills?

12 MR. LAFURIA: The requirements vary by state. There
13 are states like Vermont, which have put in a specific
14 requirement that when you sell them service, you have to give
15 them a notice that says "We're going to do our best to get
16 service out to your home, and if your service is not good
17 enough" -- I can't recall exactly what the words are, but if
18 you can't get service where you live or where your business
19 is, you let this company know and they have an obligation to
20 try to get you service, so the other states have not put a
21 specific requirement on it.

22 CHAIRMAN MITCHELL: What about are there any
23 requirements for the number of miles for cell calls, or is it
24 a standard procedure? I've heard of a 3-mile deal. Is that
25 normal? Tell me about that.

1 MR. LAFURIA: Yeah, I can tell you a little bit
2 about that.

3 CHAIRMAN MITCHELL: There seems to be an awful lot
4 of complaints about the coverage in certain areas.

5 MR. LAFURIA: Yes, that's a real good question.
6 It's probably why this whole competitive ETC thing is really
7 important.

8 First of all, there are two -- for cellular and PTS,
9 there are two different technologies, and the distance that
10 the cell site will go out to cover someone is different for
11 each one, so you have carriers that operate on different
12 networks that have little different architectures, I guess
13 what I want to say. And so what I can tell you is in an area
14 that's flat, it's going to be somewhere between 8 and 20 miles
15 diameter from that tower. It sounds like a lot of spread, but
16 there is a significant difference in the two frequencies, and
17 there is a significant difference depending on how dense it
18 is.

19 I think a radio, if you put this radio, the higher
20 you go up on a tower, the farther out it's going to cover, and
21 that's good in rural areas. As you get into more densely
22 populated areas, the height of the tower comes down because
23 you don't want that cell site scattered too far because it
24 lowers the capacity of your system; so where it's dense,
25 you're going to have smaller towers, smaller cells, and people

1 are going to be hopping among the cells. And when you drive
2 out of here, if you go ten miles downtown, you probably hop a
3 couple, two, three cells, and you don't even know it, because
4 it's seamless.

5 CHAIRMAN MITCHELL: Are there any zoning issues that
6 are becoming problems with cell towers? Have you run into
7 that? I've heard of some cities that are having problems with
8 it, and how are you trying to deal with that?

9 MR. LAFURIA: I think I'll let maybe Bob take a
10 crack at that. I can tell you I don't know South Carolina
11 specifically. I can tell you in Vermont, it's awful to try
12 get a cell site through zoning. In South Dakota, where I was
13 the chairman, the commission said, Bring us all the towers you
14 want, we need service really bad, so it does vary among the
15 states.

16 MR. LABONTE: My name is Bob Labonte. I live in
17 Hilton Head itself, in an area called Hilton Head Plantation.
18 It's a gated community there.

19 In that gated community, Hargray Wireless struggled
20 for over seven years to get a cell site constructed. Never
21 did get approval for that. The property owners association,
22 which I benefit from, has decided to construct their own
23 cellular system within the Plantation, but unfortunately the
24 results have not been as promising as putting up a couple of
25 125-foot towers. Aesthetic concerns were an issue there,

1 although I fear down the road the solution they've chosen
2 won't address the concerns people are going to have in order
3 to be able to get service inside their homes, necessarily, and
4 their request for data service is going to be coming down the
5 road shortly.

6 MR. LAFURIA: I think if there is anything else I
7 can tell you about -- well, while we're on coverage, I think
8 one of the really important things that I've seen around the
9 various states, and it especially applies to some of these
10 giant states like South Dakota, Minnesota and all, that are so
11 rural and so vast that you put up 50 towers, you're not even
12 scratching the surface sometimes.

13 I get a lot of questions about -- and it's often
14 brought up in a lot of the cases that I've been in, the
15 question comes up: Well, gee, David, you're a wireless
16 client, they are already out there and consumers already have
17 service out there and you don't have universal service, I
18 don't understand why you really need it. And the real answer
19 to that, I think, is apparent when folks drive around and
20 experience their cellphone coverage, and it is because what
21 you get in rural areas today really, for the most part -- and
22 I can't say it everywhere in the country with authority, but
23 for the most part what you get in rural areas is you get
24 coverage on the interstate highways, the main state roads, and
25 the main towns.

1 But a consumer that actually lives out there, even
2 if they live in one of the main towns, they can't depend on
3 their wireless phone the way that we do here in Columbia. I
4 hear fairly often -- I have friend down here and I never drop
5 a call in Columbia. It's a great service area, but the rural
6 folks don't have that same level of service.

7 And the service quality issues that a lot of states
8 have really get resolved when consumers get the coverage,
9 because whether it's Hargray or any of our other clients, they
10 all have the same thing. When you look at 100 complaints, the
11 first 88 on the line have to do with "my call dropped," "my
12 call is not clear," "you don't have coverage in the area where
13 I want to use the phone," that kind of stuff.

14 And when competitors get these funds and they start
15 building these cell sites out in these areas, a difference for
16 rural America is instead of having to drive to the mall to use
17 the phone or drive to the main highway to use they phone, they
18 start to be able to depend on it everywhere they live, work
19 and play.

20 And that's what the program was designed to do. It
21 was designed to structure development out in these rural
22 areas, to knit together these networks and give consumers the
23 choices, the same kinds of choices that they have in urban
24 America.

25 And I think that's probably one of the biggest

1 pitches that I make in all the states, that they are -- if you
2 focus on consumers, there are really important health, safety
3 and economic development for the rural consumers out there who
4 are just as smart and just as aggressive and just as wanting
5 of business opportunities and health and safety benefits as
6 everybody in the more urban areas.

7 I had a sheriff come down from Maine, very memorable
8 guy who came to the FCC to try to shake loose an application
9 that the FCC had, and it was revealing in that his stories
10 were very practical. He said, Look, I'm a sheriff and when I
11 get a call that there is a domestic disturbance in a house,
12 the first thing I tell the dispatcher is, Give me the phone
13 number of that house, and I'm going down the road heading to
14 that house and I get on that phone. Just last week I got on
15 the phone and I got this woman and I said, Is your husband
16 there? Yes. Is he drunk? I think so. Does he have a
17 weapon? No. Are the kids in the house?

18 He starts asking all those questions, and he says, I
19 know what I'm getting into when I go to that house now because
20 I have that wireless phone. And when I'm in the Portland
21 metro area, Portland, Maine metro area, I take it for granted
22 that I can do that. When I get out in the rural areas,
23 there's no way for me to do it. Whether I got backup or not,
24 I got a job to do, I got to knock on that door, and that's
25 important to me.

1 And he talked about the uses of the newer digital
2 phones that are secure. When an EMT goes to an accident, they
3 have people showing up with these scanners, and they get these
4 police radio scanners and it's not secure, and the next of kin
5 get notified sometimes by people who shouldn't be notifying
6 them because scanners are out there. So rather than use the
7 scanners to report the license plate or whatever is going on,
8 they will use cellphones. So when they're out at an accident
9 scene, they can have secure communication that way that they
10 don't otherwise have.

11 So in terms of health and safety, whether it's a
12 disaster response or just the everyday uses of police and the
13 EMTs, there are benefits to be had when these networks get
14 knitted together out in the rural areas.

15 Also, when I was in Nebraska last year, the economic
16 development record for several rural counties came up and
17 testified in an open hearing and talked about how difficult it
18 is to get businesses to move out to those rural areas and
19 locate out there. And she said, You know, everybody talks
20 about broadband, but you'd be surprised on the checklist of
21 the businesses that come out here, one of the first things:
22 Is my mobile phone going to work? Am I going to be able to
23 conduct business the way I want?

24 And we had an operator of an, it was a parts store
25 that they sold tractors and other parts. He said, I've got

1 three stores that are 150 miles spread around rural Nebraska.
2 I go from store to store and I go from customer to customer,
3 and that wireless phone I absolutely depend on it. Without it
4 I wouldn't be able to do business the way I do now, wouldn't
5 be nearly as efficient, I wouldn't be competitive with some of
6 the bigger operators in my area.

7 And so I just, in all of this I guess I just want to
8 point out that there are some really significant health,
9 safety, economic benefits out there.

10 Some folks asked me about competition: Why should
11 we fund a network out here in an area where it won't even
12 support one competitor properly? What are we doing funding
13 competition? I get that question a lot. And the answer in
14 the first part is in the statute, that is, it's pretty clear
15 when Congress allowed competitors to come in, what they really
16 intended was for consumers out in these rural areas to have
17 similar, even if we can't get them exactly, but similar
18 choices in telecom service providers as there are in urban
19 areas. And they understood that a competitor in most rural
20 areas, even if you have a more efficient technology, can't go
21 out there and enter these areas if the incumbent carrier has
22 all the customers and also gets support.

23 And so one of the things they did, which was good,
24 at least in the early years of the program, was set it up so
25 that the incumbents don't lose any funds when a competitor

1 comes in. As it stands now, a competitor comes in and draws
2 money out of the funds; they are not taking dollars away from
3 the incumbents.

4 In the long term, the Feds may decide that it's a
5 better way to go. It's been ten years and they haven't done
6 so yet, and I can't promise it will never change. It's not on
7 the drawing board for it to change right now, but at the
8 present time, the idea was to get some dollars into the
9 competitors' hands with the idea that they would be
10 accountable, to go and use these funds to expand their
11 networks and fill in these dead spots in these areas to get
12 consumers these kinds of choices; and with that
13 accountability, the benefits will flow to consumers and they
14 will be able to choose the services they really want.

15 And to be really biased, I really think in the next
16 ten years we're going to continue to see what we're seeing now
17 in a big way. We are going to see consumers choosing wireless
18 for their voice.

19 Most young people today, they don't really attach
20 themselves to the kitchen wall like I did when I was a kid,
21 and I still have a landline phone, but a lot of people don't
22 anymore. And if customers want that, and if they are out
23 there in these areas and say, This is what I need for my
24 community, it's for my business, it's for health and safety,
25 if that's their choice, part of this program is giving them

1 the ability to make that choice. And if carriers are
2 accountable for how they use the funds, I think you'll see a
3 lot of benefits for customers here in South Carolina.

4 I mean, I could pop a couple other questions that
5 typically come up, but I'd be happy to stop talking for just a
6 moment and let you offer whatever questions you have.

7 CHAIRMAN MITCHELL: Any questions?

8 (No response.)

9 CHAIRMAN MITCHELL: Do you see, overall throughout
10 the country, complaints? You think you've got them in the
11 direction as far as going down? It seems like we hear an
12 awful lot of complaints now in a roundabout way. We don't
13 regulate wireless, but do you see the complaint issues going
14 down as you construct more of these towers?

15 MR. LAFURIA: Well, oddly enough, when you construct
16 more towers, the first thing is complaints go up because more
17 people get service and then you have more customers and then
18 you have more complaints. It's kind of a reverse thing. It
19 happens if you have 200 customers and 2,000 customers, it goes
20 like that.

21 But, overall, what I will say is that in the areas
22 where service has improved by -- where these cell sites get
23 built, by and large it's the coverage that really generates
24 the complaints. It's the lack of coverage. When a company
25 can't serve an area and when a consumer calls up and says,

1 Every time I drive down here my phone drops off and I can't
2 get it for another 8 miles until I go into the next town,
3 that's a big source of complaints.

4 Every carrier has their own tracking and ability to
5 tell you how many complaints per 100 handsets or what kind of
6 complaints they are getting, and states have put in a variety
7 of requirements for them.

8 I can't say that there's been any huge change in the
9 quality of service as a result of the regulations, but I can
10 say that as service has improved -- Mississippi is a great
11 example because they have gotten a lot of money and they've
12 built a lot of cell sites. They have seen a pretty dramatic
13 reduction in the overall level of complaints, and a big
14 increase in customer satisfaction.

15 Now, they are the "golden boys" right now because of
16 their performance after Katrina; but these networks take time.
17 And I think the biggest piece of this is when you have an
18 immature network that doesn't have enough capacity, doesn't
19 have enough coverage and you're really just getting going, I
20 think you're going to get a lot of complaints. And as that
21 network matures and people get service they can depend on,
22 then the level of complaints really goes down.

23 CHAIRMAN MITCHELL: Could you tell us maybe the
24 other side of the story as far as the constituents that
25 wouldn't be getting ETC and why they would be there, or is

1 there another side to this story?

2 MR. LAFURIA: Help me with your question a little
3 bit.

4 MR. MELCHERS: What are the constituencies that are
5 not going to interested in seeing an expansion of ETC into
6 South Carolina, and what would be their argument for why it
7 would not be healthy?

8 MR. LAFURIA: Well, there is only one answer to that
9 question and I want to say it as clearly without being
10 pejorative at all: It's the incumbents. I mean, in every
11 state I've been in, except for one, they've opposed the
12 entrance of new ETCs into their area. And if you ask why,
13 I'll tell you squarely why. I think it is because they
14 understand that if money comes into these networks and the
15 carriers do nothing but buy a boat, and nothing happens, they
16 are fine. If money comes into these networks and these
17 customers build out and knit together a really good network
18 that people can depend on, they've got a real problem.

19 It's not going to 50 years, it's going to be a short
20 time, people are going to be using wireless for their voice
21 predominantly. It's going to be the number one device when
22 they walk out of the house. It's the wallet, it's the keys
23 and it's the cellphone. And when this comes, and especially
24 if these carriers are efficient and they build these networks
25 properly, I think they are going to have a real problem.

1 I think that's why they're opposing this, because
2 they don't lose any money when we come in, so we're not taking
3 universal service dollars out of their pocket by coming in.

4 So I don't know how else to -- I can't sugar-coat
5 that message much, because when we've talked to EMTs or
6 sheriffs or people who live out in these areas -- we did a
7 public hearing in McCook, Nebraska, last summer, and the room
8 was just packed with people who we didn't even invite who came
9 in to say, Look, are you telling us that we're paying in and
10 there's federal money to come in here a build towers out here
11 in these rural areas and get us some service? What is going
12 on here? One lady said, How come you're not doing this? And
13 so the public -- you know, I've never had a public witness
14 come in and say this isn't a good idea to get this
15 infrastructure built out here. It's a problem, but it's a
16 problem of competition, and I think it's fair for any carrier
17 affected by this, it's fair for them to want to oppose it. I
18 mean, I don't begrudge them that part of it at all; that's
19 their right absolutely.

20 But, fundamentally, this is good for consumers, and
21 it's a much more competitive issue than it is anything else.

22 MR. MELCHERS: I guess what I'm asking is, what
23 would be their response to what you have presented to us
24 today? It sounds very good. I'm sure there is another side
25 to their story and I'm curious how you would couch their

1 response.

2 MR. LAFURIA: Number one would be, well, these folks
3 are going to be in here and they are going to build and they
4 don't have the same carrier of last resort obligations we do.

5 Number two, they don't want to be regulated like we
6 do. We've got all these regulations as incumbent carriers and
7 they should have the same regulations that they do, and they
8 don't want that and that's not right.

9 I think those are the two big ones.

10 The third one, which has not flown anywhere really
11 yet where it's been examined is, well, these guys are going to
12 blow up the size of the fund. I think it's pretty hard to say
13 that a carrier coming in and getting \$2 million out of a
14 \$4-billion fund is going to have some huge effect. And when
15 South Carolina consumers are paying in, it's kind of hard to
16 say they shouldn't get some benefits, especially the wireless
17 folks, so I can throw that out.

18 The answer to the carrier of last resort is that as
19 a federal matter, all the carriers coming in have the same
20 carrier-of-last-resort obligation: Respond to all reasonable
21 requests for service. So if a customer wants service, let's
22 say they are way out there, it's going to cost \$300,000 to get
23 them service, it's just one customer. Any wireless company,
24 any telecom company would probably come in and say, We can't
25 do that, we're never going to recover our investment in a

1 thousand years, it's not a reasonable request.

2 But another customer might come in and want service,
3 and it might cost 3,000 to get service out to them, and if
4 that customer comes to you and you say, Gee, you're going to
5 get \$80 a month out of it from their revenues, they are going
6 to spend that much, and there's another \$25 in support, and
7 you add this up, you're going to recover your investment in
8 about 15 months, we think you ought to build it, get a cell
9 extender out there and get them service, you can do that.

10 The State of Washington has done that, the State of
11 the Minnesota did it with respect to the wireline carriers
12 recently, tried it, get service out there.

13 The other side is the regulation side: Why do
14 wireless carriers not want to be regulated like we do.

15 CHAIRMAN MITCHELL: That was going to be my next
16 question.

17 MR. LAFURIA: There you go.

18 CHAIRMAN MITCHELL: We tend to hear, even in some
19 states what about -- didn't I hear New York or some of those
20 areas up there are getting some type of regulation? Tell me
21 about that.

22 MR. LAFURIA: I think California and New York are
23 the big public battlegrounds right now these days, where the
24 various associations, the cellular association and the
25 consumer groups are all generating enough publicity that we're

1 reading about it in all the papers.

2 Let me start specifically in terms of ETCs. The way
3 that the system was originally set up, the incumbent carrier
4 was a monopoly carrier and the level of regulation that a
5 monopoly carrier gets is greater because there are no
6 competitors in the marketplace, so they need to be regulated
7 carefully to protect consumers from monopoly business
8 practices.

9 When competitors come in, whether they enter on
10 their own or they enter with universal service support, there
11 is some level of regulation that they need to have; but they
12 don't need to have monopoly regulation because they are not a
13 monopoly. Consumers who subscribe to a competitive carrier,
14 if they don't like the service, they can switch, and that's a
15 big deal. It's a big difference here.

16 What I think is what we should be striving for is
17 what I call the rental car model, that is, if you go to the
18 rental car counter at the airport, you have six different
19 choices and you can choose whatever one you want. And when
20 you think about what they have, they have some level of
21 regulation. There are those deceptive trade practices and
22 those disclosure requirements to make sure that when you check
23 that box that you know what you're doing so they don't charge
24 you extra, all those consumer protections that we have that
25 are necessary, whether telephones or rental cars.

1 In an ideal world, when a competitor comes in and
2 gets these funds, if they can get enough network built to give
3 consumers these real choices, slowly the states can begin to
4 ratchet back regulation on the monopoly ILEC, because they're
5 not really a monopoly anymore, and we're starting to see that.

6 Nebraska has an order out with respect to Omaha, and
7 Mississippi has got an order cooking. There's a number of
8 states that are starting to pull the high level of regulation
9 away from the wireline carriers when they view competition as
10 being in there, to substitute for some of that.

11 So our view of it is we don't need to be regulated
12 up to the monopoly ILEC level; we need some level of
13 regulation, and if we are successful, and if you deem that
14 there is real competition in these areas, you can start to
15 dial back that level of regulation, so we wind up somewhere
16 like the rental car model, where consumer protections are very
17 important, making sure that all these carriers have adequate
18 backups, adequate redundancies, that they are responding to
19 their complaints properly, that they're using the funds
20 properly. All those basic things that are obviously necessary
21 still belong there.

22 And, in closing, I guess what I would say is the
23 wireline industry has never linked together the dollars they
24 get for universal service and their level of regulation, that
25 is, they always want to be deregulated, and sometimes they

1 should be, when there is competition; but when they're
2 deregulated they don't say, Well, now we don't want the funds
3 either. They are totally separate things.

4 When a competitor comes in, they try to link them
5 together and say, Well, if you want this money you should have
6 our level of regulation. And the federal statute for the
7 federal program was really clear: You don't have to be an
8 ILEC to be a competitive ETC; you can come in and have the
9 lowest level of regulation, because you might only have
10 5 percent, 10 percent market share. And if you're successful
11 and if the incumbent comes down, you can start to deregulate
12 them, and that was the pro-competitive policy that the
13 Congress intended back in '96.

14 COMMISSIONER FLEMING: I'd like to go back to the
15 customer service issue. You mentioned that states have
16 different ways of answering that question, so what authority
17 with wireless, what authority do states have in setting up
18 those regulations?

19 MR. LAFURIA: A fair amount of latitude. There's a
20 specific preemption in the federal statute, that is, the
21 federal statute says, Look, states, you can't regulate the
22 rates of competitors. Even if they're competitive ETCs, you
23 can't regulate the rates, that's that. And they said, You
24 can't regulate their entry, meaning you can't decide how many
25 carriers should be allowed to be in the marketplace or not.

1 The federal government handles the whole question of whether
2 someone is eligible to provide wireless service.

3 But you can regulate "other terms and conditions"
4 provided that it doesn't intrude upon rates or entry. For
5 example, if you wanted to have a requirement that says -- and
6 this really applies to whether someone is an ETC or not. If
7 you wanted to have a requirement that says, Look, we want to
8 make sure that every carrier in the state has adequate backup
9 power at every one of their switches, their cell sites, their
10 central offices, whatever the architecture is, you can
11 certainly make that regulation and enforce carriers to have
12 adequate backup power.

13 If you want to set up a complaint department for
14 customer complaints to come in, you certainly could do that,
15 and tell the carriers, you know, we expect you to perform well
16 on customer complaints, and you can set up matrix or --
17 whether it's monetary forfeitures, you can penalize carriers
18 for having poor customer service.

19 The term "other terms and conditions" surely
20 encompasses the zoning and all the other things that go along
21 with providing service, so it's within that area. It's pretty
22 broad.

23 COMMISSIONER FLEMING: Would the zoning be more
24 local or on the state level?

25 MR. LAFURIA: Generally zoning has been a more local

1 thing, and I'm not aware of many localities that have really
2 tried to intrude upon rate regulation. I think there are some
3 that may have tried to add line items, and that's been
4 litigated, but that hasn't been a really big item.

5 So there is a fair -- in terms of the way the
6 Congress set it out, "other terms and conditions," it is a
7 fairly broad standard. It didn't get very specific and say
8 it's got to be only these things. And there are a number of
9 court cases out there that have decided whether a particular
10 regulation of "other terms and conditions" is a back doorway
11 of regulating rates or regulating entry, and that's just how
12 the law has developed over the last 10 years.

13 COMMISSIONER FLEMING: And did I understand you to
14 say that the obligation to serve, the strength of that could
15 be on the state level as well?

16 MR. LAFURIA: On the federal program, if you are
17 participating in the federal program, the federal government
18 imposes upon the carrier a federal carrier of last resort,
19 meaning that you have to respond to all reasonable requests.
20 And the way that most carriers have complied with it, and if
21 you look at that March 17th order from last year, the FCC kind
22 of set forth, here's how we think you ought to do it if you're
23 a wireless carrier. It's a 5- or 6-step process that starts
24 from the simplest and gets to the most complicated; and the
25 carriers ticks off those five steps when a customer is out

1 there.

2 It may take nothing more than a change of equipment
3 or a small adjustment on a cell site, or it may take the
4 installation of a cell extender or repeater that might cost
5 several thousand dollars. It might be more complicated
6 adjustments. It might be even installing a little antenna on
7 top of someone's roof.

8 I have a client in Colorado who has put these little
9 antennas on a telephone pole and run the wire down underground
10 into a house like a landline, for someone who is really far
11 out there, but really wants service and they can't afford to
12 put a cell site out to them, and they've gotten service that
13 way.

14 COMMISSIONER FLEMING: Maybe I misunderstood, but
15 didn't you say certain states, the carrier of last resort,
16 didn't you say that some had stronger guidelines, or whatever,
17 so that they -- I've forgotten the example of the states.

18 MR. LAFURIA: Yeah. There are some states which
19 have -- well, every state has a different
20 carrier-of-last-resort obligation for its ILECs. I've started
21 to learn that, and I've also learned it's really hard to
22 define it sometimes because it's not in the statutes
23 specifically.

24 In other words, I don't know of any state that says
25 you have to build out there no matter what, no matter what the

1 cost or no matter when you will recover your costs. There is
2 always a combination of customer contributions, federal or
3 state universal service support and the company's investment
4 to get service out there; and, hopefully, it all works
5 together so the carrier has a reasonable chance of recovering
6 its costs, assuming that the customer actually stays on the
7 network and continues.

8 But the exact, how that works in every state, to me
9 it seems to be a little different. It's a little bit -- my
10 favorite story is the FCC guy in Missouri last month says he's
11 in ten states and he still doesn't understand what it means,
12 so I'm not better qualified today because he would be the
13 expert.

14 CHAIRMAN MITCHELL: We certainly appreciate you all
15 sharing with us and appreciate the opportunity and look
16 forward to another session at any time. We certainly thank
17 all of you for being here at this time. If no one else has
18 any questions, we'll close this session.

19 MR. LAFURIA: I appreciate it, Mr. Chairman and
20 commissioners, very much for having us.

21 {WHEREUPON, at approximately 1:49
22 P.M., on March 15, 2006, the Briefing was
23 adjourned.}

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CERTIFICATE OF REPORTER

I, Janet L. LeVeque, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

March 16, 2006

Janet L. LeVeque
Notary Public,
State of South Carolina at Large.
My Commission expires
July 3, 2006.

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